

In advance by e-mail

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Modernisation of the outsourcing regulations and integration within
MaRisk/publication of Circular 5/2007

Attachments: 5

Dear Sir or Madam,

After having considered your opinions on the second draft version of 13 August 2007 I can provide you today with an officially amended version of MaRisk. Main additions were made with respect to the new outsourcing regulations. The new MaRisk and a few other documents are attached to this letter. All documents can also be downloaded at www.bafin.de and www.bundesbank.de.

The outsourcing regulations have been modernised in order to develop a set of hands-on requirements that dovetail smoothly with MaRisk's principle-driven approach, thus simultaneously creating the basis for risk-oriented supervisory and auditing practice. Detailed regulations and stipulations have been eliminated and replaced by opening clauses that allow institutions more freedom to develop implementation solutions that are driven primarily by business considerations. I am therefore pleased that the banking industry's umbrella organisations have welcomed the new regulations for their principle-driven orientation. They have also applauded the constructive dialogue engaged in during the development of the new regulations. I go along with this unreservedly: discussions in the MaRisk expert committee (MaRisk-Fachgremium) have been particularly helpful in identifying practical solutions for open issues. Hence the committee will continue to meet regularly in the future in order to discuss basic questions regarding the application of MaRisk.

**Bereich
Bankenaufsicht**

Hausanschrift:
Bundesanstalt für
Finanzdienstleistungsaufsicht
Graurheindorfer Str. 108
53117 Bonn | Germany

Kontakt:

Referat BA 17
Fon +49 (0)2 28 41 08-0
Fax +49 (0)2 28 41 08-1550
poststelle@bafin.de
www.bafin.de

Zentrale:
Fon +49 (0)2 28 41 08-0
Fax +49 (0)2 28 41 08-1550

Dienststätte:
53117 Bonn
Graurheindorfer Str. 108
Georg-von-Boeselager-Str. 25
Friedrich-Wöhler-Str. 2
Friedrich-Wöhler-Str. 69

60439 Frankfurt
Lurgiallee 12

My covering letter for the first draft of 5 April 2007 already dealt in some detail with the main motives for modernising the outsourcing regulations as well as their integration in MaRisk: a thorough revision had become necessary due to developments at the European level and the old regulations' high degree of complexity and their large amount of details. As far as the substance is concerned, however, we have hold on to the sensible basic ideas underlying the old regulations. For this reason, central elements of the old Circular 11/2001 such as, for example, the differentiation between 'material' and 'non-material' outsourcing also feature in the new regulations. What is really 'modern' about the new regulations is that they attach far greater importance than previously to the management of risks that arise specifically from outsourcing. Essentially, in the future banks will mainly need to secure outsourced activities and processes in an appropriate 'Sourcing Governance' procedure in order to meet the requirements of section 25a (2) of the Banking Act (*Kreditwesengesetz – KWG*). The banks themselves will, for example, have to determine the 'materiality' of outsourcing on the basis of a risk analysis (AT 9 item 2). This analysis will need to identify aspects of the outsourcing that are essential for the proper integration of the outsourced activities and processes in the banks' risk-management systems. There are, however, no concrete requirements as regards what shape this analysis should take, so different solutions may well be adopted in order to comply with the aim and object of the outsourcing regulations. Naturally, the other new regulations are also based on this open and principle-driven approach.

Principle-driven regulation creates discretionary leeway for alternative approaches to the implementation of the regulations. It goes without saying that the exercise of this discretion entails a high degree of responsibility on the part of the management board, which remains fully responsible for the compliance of the bank's business organisation with the requirements. In addition, limits on outsourcing also need to be taken into account: for example, outsourcing must not lead to the delegation of management board responsibility to the external service provider. Nor is it admissible to outsource management board functions. Specific supervisory standards may also apply to building societies (Bausparkassen) because of the special legislation to which they are subject. This applies particularly with regard to the risk control/management concerning the home savings collective (Kollektivsteuerung).

I have incorporated most of the new outsourcing regulations into MaRisk's Module AT 9. Additions to some other modules such as, for example, AT 3 item 1 or AT 4.2 item 1 were also made. The Markets in Financial Instruments Directive also necessitated additional changes that are not directly connected with outsourcing issues (e.g. AT 1 item 3 and AT 2 item 1). Finally, the drafting of the amended version has been taken as an opportunity to smooth some parts. Because of the

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integration of the new regulations it was necessary, for example, to restructure Module BT 2 ('Special Requirements for internal audit'). Basically, however, no material changes are linked to this restructuring.

The new MaRisk will come into effect together with the Act Implementing the Markets in Financial Instruments Directive (*Finanzmarktrichtlinie-Umsetzungsgesetz* - FRUG) on 1 November 2007. The circulars mentioned in Attachment 3 will no longer apply when the new requirements come into effect. If the implementation of the new requirements proves difficult I shall naturally take account of this in due consideration of the principle of proportionality when assessing each individual case.

With regard to outsourcings that were arranged before the new regulations came into effect (so called 'old cases'), I regard the following procedure as correct: such cases have already been included in the bank's internal controlling procedures in order to comply with the current section 25a (2) KWG. Hence there will be negligible substantial changes when the new amended version of section 25a (2) KWG comes into effect as of 1 November 2007 ('Inclusion in Risk Management'). I therefore assume, that with regard to the 'old cases' no reappraisals will be necessary under AT 9 item 2 (Risk Analysis). If the risk situation of 'old cases' changes, the bank has to take this into account by carrying out a new – or modifying an existing – risk analysis.

Yours faithfully,

Sabine Lautenschläger-Peiter

This is a computer-generated letter and therefore requires no signature.