

NÖRR STIEFENHOFER LUTZ

RECHTSANWÄLTE STEUERBERATER WIRTSCHAFTSPRÜFER • PARTNERSCHAFT



Alternative Financing Strategies: SPAC Public Offerings, PIPE Transactions, and Listings on Foreign Stock Exchanges: Frankfurt Stock Exchange

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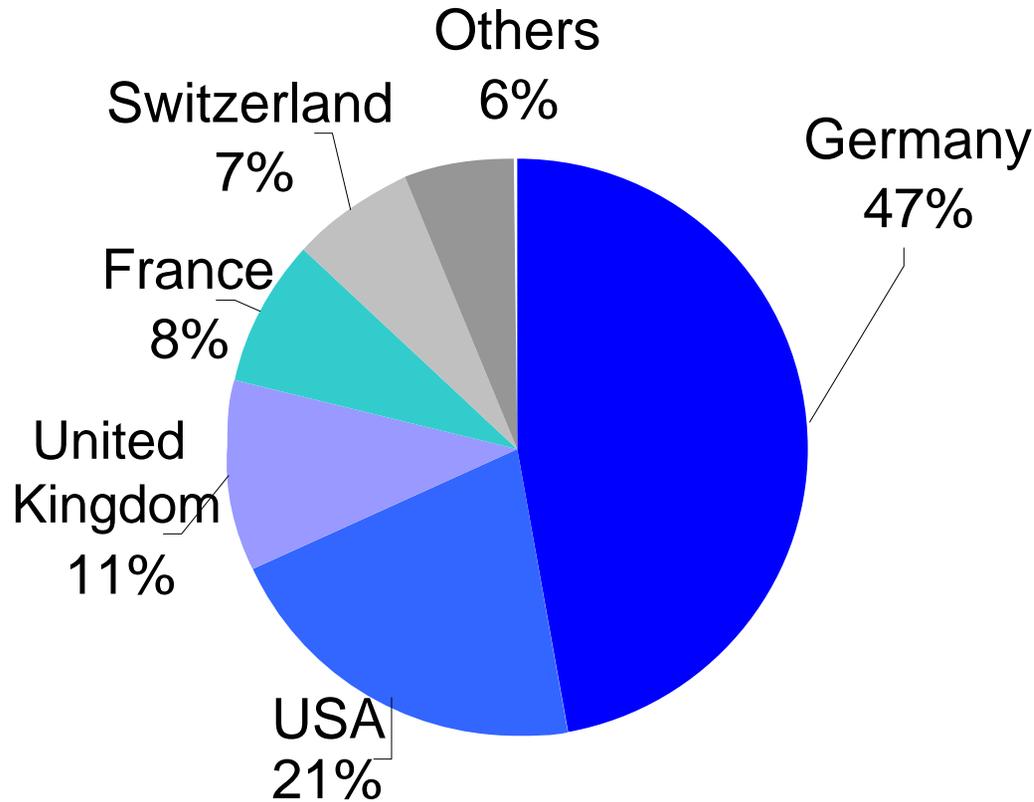
Frankfurt Stock Exchange (1)

- More than 8,000 stocks and securities are traded on the platforms of FSE. These cover equities from 70 countries around the world, and include over 4,000 from the United States, more than 1,000 from Asia and 2,900 from across Europe.
- In 2006: 210 new entrants in the Regulated Markets and the Open Market (including 19 Initial Public Offerings in the Regulated Markets) with an issuing volume of more than € 7.9 billion
- In the six months 2007: 17 Initial Public Offerings in the Regulated Markets and 66 new entrants in the Open Market (including 7 Initial Public Offerings) with an issuing volume of more than € 3.45 billion

Frankfurt Stock Exchange (2)

- Access to European Investors: XETRA on Frankfurt Stock Exchange is one of the most powerful and reliable trading systems in the world
- 287 international and German banks or financial institutions are trading members of the Frankfurt Stock Exchange, with over 269 firms with 4.330 traders using the XETRA pan-European electronic trading platform across with approximate 100% reliability. The system processes more than 330.000 trades per day with an average daily trading volume of € 9.3 billion.
- Foreign traders generate more than 50% of the whole volume enabling issuers to benefit from a significant international visibility of the Frankfurt Stock Exchange. Investors and traders benefit from lowest transactions costs (FSE).

Frankfurt Stock Exchange (3)

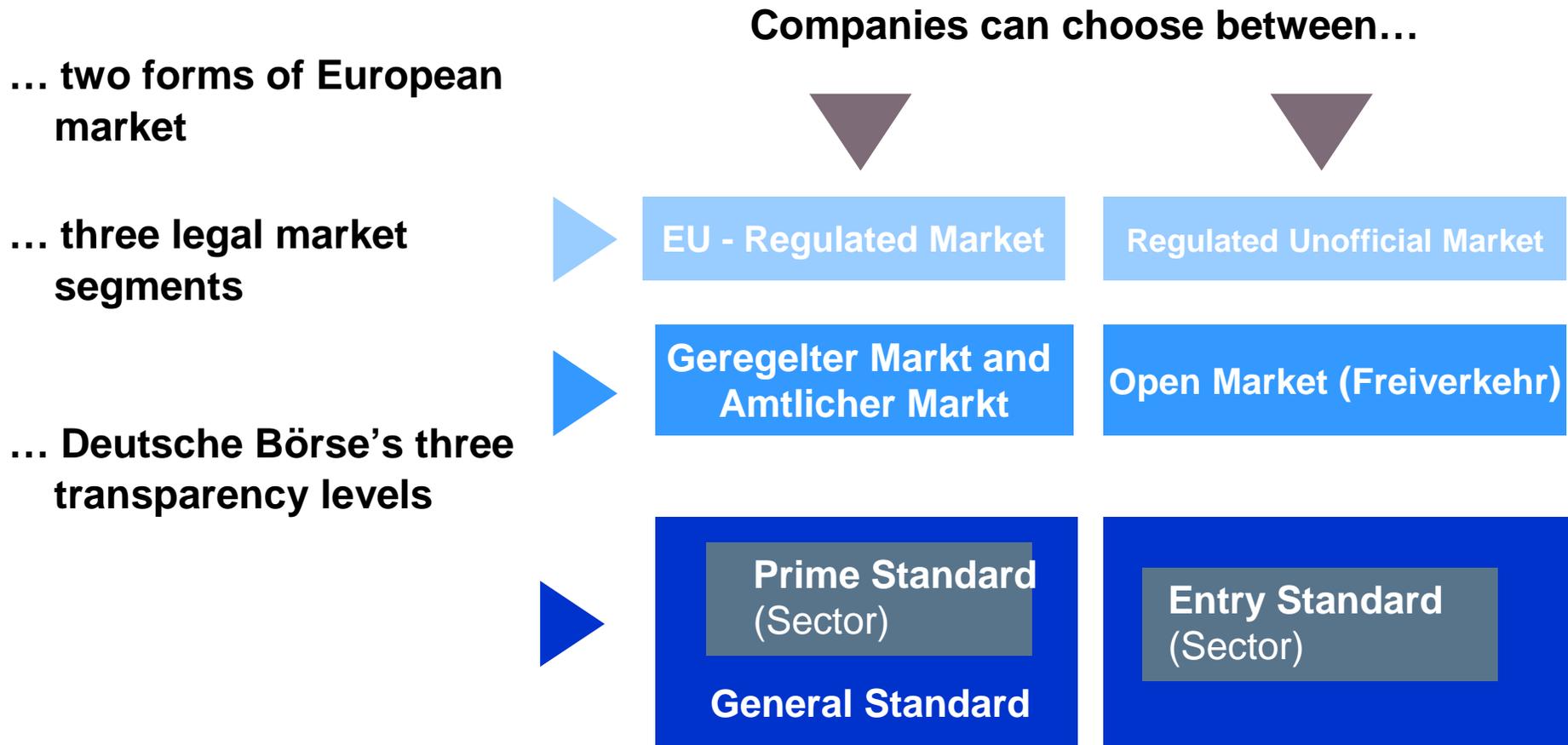


Concentrating liquidity



- More than 53% of trading volume originates from outside Germany
- Leading trading platform with 96% German trading volume vs. 2.6% Frankfurt floor

Two Ways to Access Capital Market (1)



Two Ways to Access Capital Market (2)

- EU-Regulated Official Market
 - FSE: 800 Companies traded on the Official/Regulated Market
 - Two Segments with different transparency requirements: General Standard/Prime Standard
- Regulated Unofficial Market (Exchange Regulated Market)
 - FSE: 7,200 Companies traded in the Open Market (Freiverkehr)
 - New Segment with additional transparency requirements: Entry Standard (since October 2005)

Admission to Trading on EU Regulated Market (1)

- Application for Admission to Trading to be made jointly by the issuer together with a banking institution admitted to trade on a domestic exchange (under German Exchange Act)
- Prospectus required that complies with the German Securities Prospectus Act which implements the EU-Prospectus Directive 2003/71/EG (November 4, 2003)
- Securities Prospectus Act constitutes obligation to publish a prospectus for public offers of securities and contains detailed description on the content of a prospectus. As a result, a prospectus may be required for two reasons: 1) Application for Admission to Trading on EU Regulated Market and/or 2) for a public offer

Admission to Trading on EU Regulated Market (2)

- Prospectus needs to be filed with and approved by German Federal Financial Supervisory Authority (BaFin)
- Admission to Trading will be granted by Admission Board of Frankfurt Stock Exchange, if certain criteria are fulfilled (under Stock Exchange Admission Ordinance):
 - issuer exists for more than 3 years (Official Market)
 - minimum share capital EUR 250,000
 - free float of at least 25 per cent
- Alternative: Approval by other European regulatory authority under European Passport regime

Admission to Trading on EU Regulated Market (3)

- European Passport
 - European Passport allows Pan-European Public Offerings and Listings
 - Prospectus will be approved only by one European regulatory authority
 - Issuer files notification order with German regulatory authority which receives approved prospectus
 - IPO-Examples: Air Berlin plc., Alstria Office AG
 - No pure bilingual documents allowed

Admission to Trading on EU Regulated Market (4)

- Foreign Issuers from third countries (non-EEA)
 - German regulatory authority (BaFin) may approve prospectus from third country issuers if drawn up (i) in accordance with the legislation of a third country, and (ii) in accordance with international standards set by international securities commission organisations, including IOSCO disclosure standards, and (iii) the information requirements are equivalent to the requirements under the Prospectus Directive.
 - The German legislator may set up procedures for determining equivalence. However, not yet implemented.

Inclusion of Securities in Exchange Regulated Market (1)

- Inclusion of Securities in Open Market (e.g. Entry Standard)
- Sec. 13 para. 1 of the General Terms and Conditions for the Open Market
“If the prerequisites named in item e) [i.e. admitted to trading on an organized market or approved prospectus exists] are not fulfilled, the Participant may create an exposé containing details about the security and the issuer. The information

Inclusion of Securities in Exchange Regulated Market (2)

- The inclusion of securities in the Open Market does not constitute a public offer. However, marketing activities could lead to a public offer:
 - merely the publication of information on the trading of the shares in connection with general business information on the company could lead to a public offer (e.g. corporate news with reference to ISIN)
 - References to the details and possibilities to purchase shares at press conferences

Public Offer (1): Definition

- *“Offer of securities to the public” means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities. This definition shall also be applicable to the placing of securities through financial intermediaries.”*
(Article 2 (1.)(d) Directive 2003/71/EC)

Public Offer (2): Opportunities

- Access to Capital Markets as attractive form of long-term corporate finance
- More systematic internationalization
- A solution to succession problems
- Greater Appeal as an Employer
- Shares as acquisition currency

Content of Prospectus (1): General Rule

- The Prospectus shall contain in easily analyzable and comprehensible form all information which, according to the particular nature of the issuer and the securities offered to the public or admitted to trading on a regulated market, is necessary to enable the public to make an assessment on the assets and liabilities, the financial condition, the profits and losses and the future expectations of the issuer and any guarantor as well as the rights associated with the securities
- The prospectus shall be presented in a form which facilitate its comprehension and analysis
- In essence: “*Plain German*”, but no further requirements

Content of Prospectus (2): Prospectus Summary

- The Prospectus Summary should
 - be brief and generally understandable
 - contain a warning
 - describe the material characteristics of the issuer and the securities and associated risks
- Under EU-Directive substantially more information in Prospectus Summary required (e.g. financial information, information on the auditors, management, major shareholders and related parties' transactions)
- Prospectus Summary always in German (relevant for EU Passport)
- In essence: Prospectus Summary as “*prospectus in a nutshell*”

Content of Prospectus (3): Risk Factors/Business Section

- Risk Factors:
Prominent disclosure of risk factors that are specific to the issuer or its industry in a section headed «Risk Factors»
- Business Section:
A description of, and key factors relating to, the nature of the issuer's operations and its principal activities, stating the main categories of products sold and/or services performed as well as a description of the principal markets in which the issuer competes, including a breakdown of total revenues by category of activity and geographic market.

Content of Prospectus (4): MD&A

- MD&A: The purpose is to summarize key information about the company's financial condition and capitalization as well as to provide the management's explanation of factors that have affected the company's financial condition and results of operation for the historical periods covered by the financial statements, and management's assessment of factors and trends which are expected to have a material effect on the company's financial condition and results of operations in future periods.

Content of Prospectus (5): Other Information (Overview)

- General Information and Information on the company (the issuer)
- Details of the offer and admission to trading details
- Material Contracts
- Regulatory Section
- Litigation Section
- Capital structure of the Company
- Directors/senior management, supervisory board members, employees
- Major shareholders of the company and related party transactions
- Taxation section

Content of Prospectus (6): Financial Information

- Audited historical financial information covering the latest three financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year
- In the case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of

Content of Prospectus (7): Financial Information

- The last year of audited financial information may not be older than one of the following:
 - (a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document;
 - (b) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document
- If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year

Additional Information required for Specialist Issuers (1)

- Section 7 Securities Prospectus Act
“The minimum requirements that need to form part of a prospectus are contained in the Prospectus Regulation.”
- Article 23 para 1 Prospectus Regulation:
“... the competent authority ... taking into consideration the specific nature of the activities involved, may ask for adapted information in addition to the information items included in the schedules and building blocks ... where appropriate, a

Additional Information required for Specialist Issuers (2)

- Annex XIX of the Prospectus Regulation: List of specialist issuers
 - Property companies
 - Mineral companies
 - Investment companies
 - Scientific research based companies
 - Companies with less than three years of existence (start up companies)
 - Shipping companies
- CESR published certain recommendations on specialist issuers

Prospectus Liability

- Cause of the liability is the purchase of securities on the basis of an incorrect or incomplete prospectus (liability also, if issuer fails to publish a prospectus)
- Claims may be made by the purchaser of the securities, if acquired in the first six months after issue
- Both the Issuer and the Underwriters are liable towards the person who acquired the securities
- gross negligence
- Generally, statute of limitations: one year after knowledge of the incorrectness or incompleteness of the prospectus; three years after publication of the prospectus at the latest

Conclusion (1): Legal Environment

- Regulatory Regime within EU Framework
- Positive Approach of German Federal Financial Supervisory Authority (BaFin) to foreign issuers
- We have made good experience with BaFin in solving problems by constructive dialogues
- English language in documentation (except for German summary)

Conclusion (2): Frankfurt Stock Exchange

- Traders, investors and issuers might wish to consider the benefits of a listing on the Frankfurt Stock Exchange.
 - the lowest admissions exchange fees of any leading international stock exchange (FSE)
 - a clear market structure with access to international indices
 - company reporting requirements based on international best practice
 - ability to place your stock alongside international peer group companies
 - higher valuation in strong European peer groups
 - the credibility and the investors confidence of Open Market, Entry Standard, General Standard and Prime Standard



Any questions or need for
specific legal advice?

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