

Consumers

22.06.2023 | Topic [Prospectuses](#)

Violation of prospectus requirement: Performance to Go PLC not allowed to publicly offer its “pre-market cumulative preferred shares”

On 30 May 2022, the Financial Supervisory Authority (BaFin) prohibited Performance to Go PLC from publicly offering its “pre-market cumulative preferred shares” in Germany.

BaFin announced the prohibition because it has sufficient grounds to suspect that Performance to Go PLC is offering the aforementioned securities to the public without the required prospectus. There is no evidence to suggest that the company is exempt from the prospectus requirement.

This action by BaFin has not yet become final but is immediately enforceable.

On 29 March 2023, BaFin had already [announced](#) that there were sufficient grounds to suspect that the securities in question were being offered to the public in Germany without the required prospectus.

According to its website, Performance to Go PLC is domiciled in the United Kingdom (PO Box Suite 6 Cumberland Road Cliftonville CT9 2 JZ Cliftonville), but also has a German representative office (GT3 Center, Auf der Reihe 2, 45884 Gelsenkirchen).

Background information:

As a rule, securities may be offered to the public in Germany only if a prospectus has been published. This prospectus must be approved by BaFin prior to publication. Offering securities to the public without an approved prospectus constitutes a violation of the prospectus requirement under Article 3(1) of the [EU Prospectus Regulation](#) – unless an exemption applies.

During the prospectus approval process, BaFin checks whether the minimum information required by law is included in the prospectus and whether its content is understandable, coherent and consistent. However, BaFin is not responsible for checking whether the information contained in the prospectus is correct, for assessing the integrity of the issuer, or for monitoring the product in question.

Offerors and issuers can be held liable for failing to publish a prospectus as required (section 14 of the German Securities Prospectus Act (Wertpapierprospektgesetz – [WpPG](#)). The parties responsible for the prospectus are liable for the accuracy and completeness of the information contained in the securities prospectus (sections 9 and 10 of the [WpPG](#)).

Violations of the prospectus requirement are punishable by a fine of up to EUR 5 million or 3% of total revenues for the previous financial year. Fines of up to twice the economic advantage gained from committing the offence may also be imposed.

BaFin advises consumers to base all investments in securities solely on the information offerors are required to provide by law.

You can check whether an approved prospectus for an offer of securities to the public has been filed with BaFin by consulting the Prospectuses filed database on the BaFin website.

In accordance with section 4 (4) of the German Act Establishing the Federal Financial Supervisory Authority (Finanzdienstleistungsaufsichtsgesetz – FinDAG), BaFin performs its functions and exercises its powers exclusively in the public interest. Due to their statutory obligation of confidentiality, BaFin's staff are not in a position to provide third parties with information regarding the progress and results of administrative proceedings.

However, there are ways in which you can support BaFin's work: if you have any specific information about the offerors mentioned above – such as contract templates, e-mail addresses, telephone or fax numbers of contact persons or the offeror's account details – please do not hesitate to get in touch with our contact point for whistleblowers.

Announcement

Performance to Go PLC: BaFin prohibits Performance to Go PLC from publicly offering its “pre-market cumulative preferred shares” in Germany without the required prospectus.

On 30 May 2022, the Financial Supervisory Authority (BaFin) prohibited Performance to Go PLC from publicly offering its “pre-market cumulative preferred shares” in Germany. According to its website, Performance to Go PLC is domiciled in the United Kingdom (PO Box Suite 6 Cumberland Road Cliftonville CT9 2 JZ Cliftonville), but also has a German representative office (GT3 Center, Auf der Reihe 2, 45884 Gelsenkirchen).

As a result of this prohibition, Performance to Go PLC is not allowed to publicly offer the aforementioned shares in Germany.

The prohibition on account of sufficient grounds to suspect that shares are being publicly offered without an approved prospectus is based on section 18 (4) sentence 3 no. 1 of the German Securities Prospectus Act (Wertpapierprospektgesetz – WpPG) in conjunction with Article 3 of the EU Prospectus regulation. There is no evidence to suggest that the company is exempt from the prospectus requirement. This action by BaFin has not yet become final but is immediately enforceable.

On 29 March 2023, BaFin had already announced that there were sufficient grounds to suspect that the securities in question were being offered to the public in Germany without the required prospectus.

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