

## Statement of Reasons

### General part

Pursuant to Article 36 para 4 of the *Pensionskassengesetz* (PKG; *Pensionskassen Act*), Federal Law Gazette no. 281/1990, last amended by the federal act Federal Law Gazette I no. 77/2011, the Financial Market Authority (FMA) is authorised by regulation to determine the layout of the quarterly financial statements. In 2005, the layout of the quarterly financial statements was issued for the first time by the FMA by regulation Federal Law Gazette II no. 2005/382, which shall be applied to the statement as at the cut-off date of 31 December 2011 for the last time and which will expire as this Regulation becomes effective. Due to an overall revision of and significant changes to the Regulation on Quarterly Financial Statements it is reasonable and expedient to issue a completely new regulation.

The present Regulation shall allow the FMA to get additional information for a risk-based assessment of assets held by an investment and risk sharing group. The financial crisis has shown that it is not possible to give a true and fair picture of the asset and risk situation of an investment and risk sharing group without taking the actual risk level of investments into account. As a consequence, a risk-based reporting statement is introduced by this Regulation which focuses on the principle of “substance over form”: When looking through the assets, the focus should not be on the legal structure of the assets but rather on their economic effect (statement of exposure). Furthermore, within the scope of this Regulation, synergies with the *Investmentfondsgesetz* 2011 (InvFG 2011; Investment Funds Act 2011) and the pertaining regulations, in particular the 4th Derivatives Risk Measurement and Reporting Regulation (Federal Law Gazette II no. 266/2011) are utilised (commitment approach for computing the overall risk).

With this risk-based statement, on the one hand, an adequate verification of compliance with the investment rules laid down in the PKG and in the Regulation on Special Investment Provisions for *Pensionskassen* becomes possible. On the other hand, this statement shall be part of an overall assessment, by means of which the FMA verifies compliance with the prudent person principle pursuant to Article 25 para 1 PKG. Furthermore, the revised quarterly financial statement ensures that the invested assets are shown in a consistent manner throughout the entire industry.

### Special part

#### With regard to Article 1:

This provision determines the layout of the quarterly financial statement. The statement of assets pursuant to the Annex reflects the principles of the statement of exposure.

The management board of the *Pensionskasse* shall confirm in writing adherence to Articles 25 and 25a PKG. If necessary, the confirmation may also be signed by authorised signatories in accordance with the power of signature defined in the *Pensionskasse's* rules of procedure.

In order to furnish proof of the actual existence of at least 90 per cent of the assets allocated to an investment and risk sharing group (VRG), presentation of the following documents is adequate: a statement of assets confirmed by the custodian bank, a securities account statement, an account statement, an extract from the land register, an extract from the company register or a loan agreement, with a copy of each being sufficient.

In addition, the Regulation stipulates that all assets that can be directly allocated to an investment and risk sharing group shall be reported to the FMA in standardised form within the scope of the quarterly financial statement.

#### With regard to Article 2:

The provision of para 1 is based on the principle of “substance over form”.

The mandatory look-through approach pursuant to Article 25 para 8 PKG is specified in detail by the provision in para 2. Likewise, shares in unlisted companies whose predominant business activity is investing the invested capital shall now be apportioned, with borrowings taken account of and listed separately. In economic terms, these shares are on an equal footing with investment fund units and comprise, among others, shares in special purpose vehicles. Structured products may be apportioned optionally. This enables *Pensionskassen* to make better use of the investment limits.

High costs or a significant administrative effort are considered reasons for economic unreasonableness of carrying out the look-through of an asset as defined in para 3. If the market value of the asset to be looked through and/or of a component of an asset to be looked through exceeds 2 per cent of the assets

of the investment and risk sharing group, a look-through approach is reasonable in any case. The obligation to determine the risk level of derivatives that are directly held or to be shown following the looking-through pursuant to Article 3 with a market value of less than two per cent of the assets of an investment and risk sharing group still applies. Derivatives contained in an asset or a component of an asset that has been allocated in a simplified manner, however, may be allocated with this in a simplified manner as well.

Securities accounts shall be held for each investment and risk sharing group. The name of the securities accounts shall, in any case, include both the *Pensionskasse* and the number of the investment and risk sharing group.

**With regard to Article 3:**

With this Article, provisions of the Investment Funds Act 2011 and its regulations, in particular of the 4th Derivatives Risk Measurement and Reporting Regulation (Federal Law Gazette II no. 266/2011) are adopted. It takes into account that the provisions of the InvFG 2011, with respect to which the 4th Derivatives Risk Measurement and Reporting Regulation has been issued, not only apply to investment funds as defined by the InvFG 2011 but, pursuant to Articles 164 and 167 InvFG 2011, also to special funds and other assets. The special provision pursuant to Article 25 para 4 sentence 2 PKG on hedging transactions shall remain unaffected.

**With regard to Article 4:**

This provision allows for a simplified computation of the investment provisions for verification of Article 25 paras 5 and 7 PKG. High costs or a significant administrative effort are considered reasons for economic unreasonableness of identifying the issuers. As regards special funds within the meaning of Article 163 InvFG 2011, the issuers shall be identified in any case.

**With regard to Article 5:**

This provision governs the documentation requirements for a *Pensionskasse* with regard to, among other things, simplifications it has made use of.

**With regard to Article 6:**

The data specifications required for supervision shall be reported to the FMA within the scope of the quarterly financial statement in a standardised form based on a list of data defined by the FMA, including data record features regarding the Annex as well as any assets directly allocated to an investment and risk sharing group pursuant to Article 1 no. 4.

If required, the FMA can adjust the scope of data specifications and characteristics of the data list to the investment characteristics to be examined pursuant to the PKG and to the statistical requirements of national and international institutions.

**With regard to Article 7:**

This provision governs the Regulation's entry into force and the simultaneous expiration of the Regulation effective until recently and contains the instruction of dynamic reference to other regulations issued by the FMA.

**With regard to the Annex:**

The investment category of "Purchase and sale of assets" (item number 160) is a correction item. This investment category shall only be completed if no respective entry was made in the clearing account at the time of purchase or sale. This is the case, for example, if a bond is purchased and already credited to the securities account, but the payment does not yet show in the clearing account (and vice versa).