


# KRAUL v.DRATHEN

RECHTSANWÄLTE PARTNERSCHAFT mbB • NOTAR

Rechtsanwälte KRAUL  v.DRATHEN Zeppelinstraße 4 • D-30175 Hannover

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Hannover, January 09, 2021  
376/20 -VII- M/he

## Proof of Legality

Dear Mr Nickel and Mr Paa,

in the above-mentioned matter, we are referencing your email dated December 11, 2020, and your previous emails, in particular the one dated December 9, 2020, in which you specified the services to be rendered by your company. Subsequently your services as the provider of be-infinity.com in the context of WealthAcademy, Wealth Live Education, Marktanalyzer, Trades To Go (app) und Expert Advisor (software) shall be considered in particular with regard to the question whether


- (i) they constitute investment advice within the meaning of § 2 Abs. 3 Satz 1 Nr. 9 WpHG (German Securities Trading Act) and, respectively, § 1 Abs. 1a Satz 2 Nr. 1a KWG (German Banking Act) and
- (ii) whether a license with regard to portfolio management in correspondence with § 1 Abs. 1a S. 2 Nr. 3 KWG (German Banking Act), investment brokerage within the meaning of § 1 Abs. 1a S. 2 Nr. 1 KWG (German Banking Act) and/or acquisition brokerage in correspondence with § 1 Abs. 1a S. 2 Nr. 2 KWG (German Banking Act) is required.


**Eduard Kraul**  
**Partner**  
Rechtsanwalt und Notar


**Rolf-Peter von Drathen**  
**Partner**  
Rechtsanwalt  
Fachanwalt für Strafrecht


**Christiane Kraul**  
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Gerichtsfach 184

## 1. WealthAcademy, Wealth Live Education, Marktalyzer, Trades To Go (app) and Expert Advisor (software)

### 1.1 Your WealthAcademy addresses the following six topics with the help of educational videos:

- Monetary System = the general workings of the monetary system
- Forex Academy = basics, beginner, advanced and professional level courses
- Blockchain Academy = basic blockchain knowledge
- Tax Academy = basic tax network and trading knowledge conveyed by a tax consultant
- Stock Academy = basics, beginner, advanced and professional level courses
- Real Estate Academy = basics, beginner, advanced and professional level courses

### 1.2 Your WealthLiveEducation training covers the following areas:

- Live Forex Trading, where an educator analyzes forex charts live for clients and conveys basic trading know-how,
- Live Stock Trading, where an educator analyses a variety of stock charts live for clients and conveys basic trading know-how and
- Live Krypto Trading, where an educator analyses crypto charts live for clients and conveys basic trading knowledge.

### 1.3 Your Marktalyzer Tool offers a variety of internal indicators allowing clients to build their own strategy to trade forex, crypto currencies or stocks. Only the client is in control of the settings applied to the provided Marktalyzer Tool.

### 1.4 Your app "Trades To Go" provides clients with several complete analyses of different charts for educational purposes. The app is supported by traders who analyze these charts and provide clients with these analyses for educational purposes. The client has the opportunity to study these analyses, thereby learning more about trading on the go as well as proper chart analysis.

1.5 Your software, in particular the software "Expert Advisor", as described to me, is provided as a mere service to the client in exchange for the payment of a monthly fee. This service includes software, such as the software "Expert Advisor", as described to me, which clients can fully customize to their individual requirements. Only clients have full control over the customization of the software provided. Any sum invested by the client with the aid of the software is invested with a brokerage firm that is both picked independently from you and that is independent of you.

2. Legal evaluation of services provided by the operators of be-infinity.com in connection with WealthAcademy, Wealth Live Education, Marktanalyzer, Trades To Go (App) and Expert Advisor (Software):

2.1 As operator of be-infinity.com you are, according to the information provided by you, not an asset managing company managing clients' suggested portfolios on their behalf. According to the information provided by you, your sole intent is to provide the client with educational support for the implementation of their investment plan.

2.2 You are neither investment advisor nor investment broker.

2.2.1 Investment advice in accordance with § 1 Abs. 1a Satz 2 Nr. 1a KWG (German Banking Act) and the identically phrased § 2 Abs. 3 Satz 1 Nr. 9 WpHG (German Securities Act), is the submission of personal recommendations to clients or their agents in relation to the trading of certain financial instruments, as long as such a recommendation is based on an assessment of the investor's personal financial circumstances or presented as suitable for them and not solely disseminated through communications channels or to the public.

2.2.1.1 Any action presented to a potential investor as being in their interest constitutes a recommendation in the context of investment advice. Recommendations are to be distinguished from mere information or advertisements for individual products. According to the information provided by you, no personal portfolio recommendation is provided in relation to the use of the services provided by you. You do not enter into trades regarding the acquisition or sale of financial instruments in the context of § 1 Abs. 11 KWG (German Banking Act) on behalf of your

clients and you do not act as a broker in such trades. You and any brokers linked to you do not provide any recommendations with regard to any individual financial instruments. You do not make specific suggestions regarding the investment of your clients' specific capital into financial instruments. You do not check the individual economic circumstances of your clients in order to provide them with investment recommendations. You are not interested in your clients' investment horizon. You do not inquire with regard to money saved, loan obligations, time until retirement or previous experience with financial instruments. Your clients do not provide you with information regarding their personal financial situation. You do not give your clients the impression that your services aim to provide them with an investment recommendation based on their personal circumstances. We recommend that you always use a disclaimer to emphasize that any and all results generated based on the submission of any customer information have been created without taking the financial circumstances of your customers into account and that it is thus not possible for you to determine whether or not any client is capable of bearing the risks associated with your specific services. Such a distinctly emphasized disclaimer should make it clear that this is not a "personal" recommendation. Solely pointing out that no check of adequacy or suitability has been carried out would be insufficient, as would be stating that the information provided does not constitute investment advice. The relevant question is, whether or not potential clients are likely to assume from the overall appearance of the website that for any investment recommendation provided their personal financial circumstances have been taken into consideration.

- 2.2.1.2 An abstract recommendation via the internet, based on which an investment suggestion for your customers is publicized via your media channels, that is both public and reproduceable for any and all clients and not made on an individual basis, does not constitute investment advice, as long as your investment suggestions are made available in a newspaper or magazine or any other publication aimed at a wide audience (including internet), on TV or radio and as long as your customers cannot

influence your investment suggestions through the provision of personal information.

2.2.2 You do not make specific suggestions providing your clients with a wide variety of financial instruments to choose from. You do not, as stated above, make inquiries with regard to your customers. Therefore, your activities do not constitute investment brokerage in the sense of § 1 Abs. 1a Satz 2 Nr. 1 KWG (German Banking Act).

2.2.2.1 Investment brokerage is defined in § 1 Abs. 1a Satz 2 Nr. 1 KWG (German Banking Act) (as well as in the equally worded § 2 Abs. 3 Satz 1 Nr. 4 WpHG – German Stock Act) as the brokerage of transactions regarding the purchase and sale of financial instruments. Investment brokers limit themselves to the reception and transmission of their clients' orders. As messengers they forward their clients' statements of intent with regard to the purchase or sale of financial instruments. As soon as investors grant agency to the intermediary and this intermediary does not act as a messenger, but as an agent of the investor and issues a statement of intent on their behalf, this action is considered acquisition brokerage in accordance with § 1 Abs. 1a Satz 2 Nr. 2 KWG (German Banking Code).

2.2.2.2 The term "investment brokerage" is rather broad and includes, according to BaFin (German Federal Financial Supervisory Authority), any and all intentional and final acting upon investors, in order to get them to conclude a financial instrument transaction. This includes the bringing together of parties that facilitates a business transaction. Your services do not include these specific services. Merely bringing investors and sellers of financial instruments into contact does not constitute investment brokerage.

2.2.2.3 You and any and all traders potentially connected to you, do, according to the information provided by you, not submit orders for the execution of transactions on behalf of your clients to brokers or deposit banks. Thus, investment brokerage in accordance with § 1 Abs. 1a S. 2 Nr. 1 KWG (German Banking Code) can be negated. As no order from a social trader that may potentially be connected to you is being forwarded to the client's

broker without a personal statement of intent from the client, acquisition brokerage as described in § 1 Abs. 1a S. 2 Nr. 2 KWG (German Banking Act) can be denied as well.

2.3 You are not operating a financial institution as described in § 1 Abs. 1 Satz 1 KWG and are not a financial services provider as described in § 1 Abs. 1a Satz 1 KWG (German Banking Act).

2.4 According to your own statement, you do not translate your clients' decisions into specific orders and there are no traders who can be associated with be-infinity.com, thus negating the existence of financial portfolio management as defined in § 1 Abs. 1a S. 2 Nr. 3 KWG (German Banking Act).

2.5 As, based on the statement provided by you, none of the above-mentioned services are provided by you, your offering does not constitute a service subject to license in the sense of § 32 Abs. 1 KWG (German banking Act) and § 34f GewO (German Trade Regulation Act). Please note: should the parameters of the services provided and as described by you shift, a license may become obligatory. Negligent or willful non-compliance is a criminal offense in accordance with § 54 KWG (German Banking Code) that, in accordance with § 144 Abs. 1 Nr. 1 lit. I), Abs. 4 GewO (German Trade Regulation Act), will carry a fine of up to €50,000. Additionally, you would be required to adhere by the rather extensive good conduct rules for investment advisors.

RECHTSANWÄLTE KRAUL, v. DRATHEN

Mass  
Attorney-at-Law