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# **Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act, FinMIA)**

of 19 June 2015 (Status as of 1 August 2021)

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*The Federal Assembly of the Swiss Confederation,*

based on Articles 95 and 98 paragraphs 1 and 2 of the Federal Constitution<sup>1</sup>,  
and having considered the Federal Council Dispatch dated 3 September 2014<sup>2</sup>,  
*decrees:*

## **Title 1            General Provisions**

### **Art. 1            Subject matter and purpose**

<sup>1</sup> This Act governs the organisation and operation of financial market infrastructures, and the conduct of financial market participants in securities and derivatives trading.

<sup>2</sup> It aims to ensure the proper functioning and transparency of securities and derivatives markets, the stability of the financial system, the protection of financial market participants and equal treatment of investors.

### **Art. 2            Definitions**

For the purposes of this Act, the following terms shall have the following meanings:

a. *Financial market infrastructure:*

1. a stock exchange (Art. 26 let. b);
2. a multilateral trading facility (Art. 26 let. c);
3. a central counterparty (Art. 48);
4. a central securities depository (Art. 61);
5. a trade repository (Art. 74);

5a.<sup>3</sup> a trading facility for DLT securities (DLT trading facility; Art. 73a);

AS 2015 5339

<sup>1</sup> SR 101

<sup>2</sup> BBl 2014 7483

<sup>3</sup> Inserted by No I 10 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 33, 399; BBl 2020 233).

6. a payment system (Art. 81).
- b.<sup>4</sup> *Securities*: standardised certificated and uncertificated securities, in particular uncertificated securities in accordance with Article 973c of the Code of Obligations<sup>5</sup> (CO) and ledger-based securities in accordance with Article 973d of the CO, as well as derivatives and intermediated securities, which are suitable for mass trading.
- b<sup>bis</sup>.<sup>6</sup> *Distributed ledger technology securities (DLT securities)*: securities in the form of:
1. Ledger-based securities (Art. 973d CO); or
  2. other uncertificated securities that are held in distributed electronic registers and use technological processes to give the creditors, but not the obligor, power of disposal over the uncertificated security.
- c. *Derivatives or derivatives transactions*: financial contracts whose value depends on one or several underlying assets and which are not cash transactions.
- d. *Participant*: any person making direct use of financial market infrastructure services.
- e. *Indirect participant*: any person making use of financial market infrastructure services indirectly via a participant.
- f. *Listing*: the admission of a security to trading on a stock exchange in accordance with a standardised procedure whereby the stock exchange's requirements regarding issuers and securities are being verified.
- g. *Clearing*: processing steps between the conclusion and the settlement of a transaction, in particular:
1. the entry, reconciliation and confirmation of the transaction data;
  2. the assumption of obligations by a central counterparty or other risk mitigation measures;
  3. the netting of transactions;
  4. the reconciliation and confirmation of outstanding payments and securities transfers.
- h. *Settlement*: fulfilment of the obligations entered into upon conclusion of the transaction, namely by transferring funds or securities.
- i. *Public takeover offers*: offers to purchase or exchange shares, participation certificates, profit-sharing certificates or other participation rights (equity

<sup>4</sup> Amended by No I 10 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 33, 399; BBl 2020 233).

<sup>5</sup> SR 220

<sup>6</sup> Inserted by No I 10 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 33, 399; BBl 2020 233).

securities) which are made publicly to the holders of shares or other equity securities.

- j.<sup>7</sup> *Insider information*: confidential information whose disclosure would significantly affect the prices of securities admitted to trading on a trading venue or DLT trading facility which has its registered office in Switzerland.

**Art. 3**                    Group parent companies and significant group companies

<sup>1</sup> The following are subject to Articles 88 to 92 provided they are not subject to the bankruptcy jurisdiction of the Swiss Financial Market Supervisory Authority (FINMA) within the scope of the supervision of the individual institution:

- a. group parent companies of a financial group which have their registered office in Switzerland;
- b. those group companies which have their registered office in Switzerland and perform significant functions for activities which require authorisation (significant group companies).

<sup>2</sup> The Federal Council shall set the criteria for assessing significance.

<sup>3</sup> FINMA shall identify significant group companies and keep a publicly accessible list of said companies.

**Title 2                    Financial Market Infrastructures**

**Chapter 1                Common Provisions**

**Section 1**

**Authorisation Conditions and Duties for all  
Financial Market Infrastructures**

**Art. 4**                    Duty to obtain authorisation

<sup>1</sup> Financial market infrastructures require authorisation from FINMA.

<sup>2</sup> A payment system requires authorisation from FINMA only if this is necessary for the proper functioning of the financial market or the protection of financial market participants and if the payment system is not operated by a bank.

<sup>3</sup> Financial market infrastructures operated by the Swiss National Bank (SNB) or on its behalf are not subject to FINMA authorisation and supervision within the scope of this activity.

<sup>4</sup> The financial market infrastructure may be entered in the commercial register only after FINMA has issued the authorisation.

<sup>7</sup> Amended by No I 10 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 33, 399; BBl 2020 233).

**Art. 5** Authorisation conditions

Anyone who meets the conditions set out in this section and the supplementary conditions that apply to individual financial market infrastructures is entitled to authorisation.

**Art. 6** Additional requirements for systemically important financial market infrastructures

Systemically important financial market infrastructures (Art. 22) have to meet the requirements set out in section 2 in addition to the conditions detailed in Article 5.

**Art. 7** Changes in facts

<sup>1</sup> The financial market infrastructure shall notify FINMA of any changes in the facts on which its authorisation or approval is based.

<sup>2</sup> If the changes are of material significance, the financial market infrastructure must obtain prior authorisation or approval from FINMA in order to pursue its activity.

<sup>3</sup> This provision applies by analogy to recognised foreign financial market infrastructures.

**Art. 8** Organisation

<sup>1</sup> The financial market infrastructure must be a legal entity under Swiss law and have its registered office and head office in Switzerland.

<sup>2</sup> It must establish appropriate corporate management rules and be organised in such a way that it can fulfil its statutory duties. In particular, it must designate specific bodies responsible for its business management, on the one hand, and for its overall management, supervision and control on the other, and define the scope of these bodies' respective powers in such a way as to ensure proper and independent supervision of business management. It shall set out the relevant tasks and authorities in its articles of incorporation and organisational regulations.

<sup>3</sup> It shall identify, measure, control and monitor its risks and organise an effective internal control system. In particular, it shall establish an internal audit function that is independent of the business management body and a compliance department that is separate from operating business units.

**Art. 9** Guarantee of irreproachable business conduct

<sup>1</sup> The financial market infrastructure and the persons responsible for its administration and management must provide the guarantee of irreproachable business conduct.<sup>8</sup>

<sup>8</sup> German text only amended by Annex No II 18 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

<sup>2</sup> Moreover, the persons responsible for the administration and management of the financial market infrastructure must enjoy a good reputation and have the specialist qualifications required for their functions.

<sup>3</sup> Qualified participants in a financial market infrastructure must also enjoy a good reputation and ensure that their influence is not detrimental to prudent and sound business activity.

<sup>4</sup> Persons who directly or indirectly hold at least 10% of the share capital or votes or who can significantly influence its business activity in another manner are deemed to be qualified participants in a financial market infrastructure.

<sup>5</sup> Each person must notify FINMA before directly or indirectly acquiring or disposing of a qualified participation in accordance with paragraph 4 in a financial market infrastructure organised under Swiss law. This notification duty also applies if a qualified participation is increased or reduced in such a way as to reach, exceed or fall below the thresholds of 20%, 33% or 50% of the share capital or votes.

<sup>6</sup> The financial market infrastructure shall notify FINMA of the persons who meet the conditions of paragraph 5 as soon as it becomes aware of the same. It must submit a list of its qualified participants to FINMA at least once a year.

#### **Art. 10** Ancillary services

<sup>1</sup> A legal entity may operate only one financial market infrastructure. The foregoing does not apply to the operation of a multilateral trading facility by a stock exchange.

<sup>2</sup> The provision of ancillary services subject to authorisation or approval by virtue of Article 1 of the Financial Market Supervision Act of 22 June 2007<sup>9</sup> (financial market legislation) must be authorised or approved by FINMA and must be in compliance with the additional authorisation conditions.

<sup>3</sup> If the provision of ancillary services not subject to authorisation or approval by virtue of financial market legislation increases the risks of a financial market infrastructure, FINMA may require organisational measures or the establishment of additional own funds and sufficient liquidity.

#### **Art. 11** Outsourcing

<sup>1</sup> If a financial market infrastructure wishes to outsource essential services such as risk management, prior approval must be obtained from FINMA. FINMA must consult the SNB beforehand if the financial market infrastructure in question is considered systemically important by the SNB.

<sup>2</sup> The financial market infrastructure shall set out the reciprocal rights and duties in a written agreement with the service provider.

<sup>3</sup> If a financial market infrastructure outsources services, it shall remain responsible for compliance with the duties arising from this Act.

<sup>9</sup> SR 956.1