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Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Ordinance, FinMIO)

of 25 November 2015 (Status as of 1 October 2021)

The Swiss Federal Council

based on the Financial Market Infrastructure Act of 19 June 2015¹ (FinMIA),
ordains:

Title 1 General Provisions

Art. 1 Subject matter (Art. 1 and 157 FinMIA)

This Ordinance governs specifically:

- a. the authorisation conditions and duties for financial market infrastructures;
- b. the duties of financial market participants in derivatives trading;
- c. the disclosure of shareholdings;
- d. public takeover offers;
- e. the exceptions that apply with regard to the ban on insider trading and market manipulation.

Art. 2 Definitions (Art. 2 lit. b and c FinMIA)

¹ Securities are deemed to be standardised and suitable for mass trading if they are publicly offered for sale in the same structure and denomination or are placed with more than 20 clients, insofar as they have not been created especially for individual counterparties.²

² Derivatives are deemed to comprise financial contracts whose price is derived specifically from:

AS 2015 5413

¹ SR 958.1

² Amended by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 400).

- a. assets such as shares, bonds, commodities and precious metals;
- b. reference values such as currencies, interest rates and indices.

³ The following are not deemed to be derivatives:

- a. spot transactions;
- b. derivatives transactions relating to electricity and gas which:
 - 1. are traded on an organised trading facility,
 - 2. must be physically delivered, and
 - 3. cannot be settled in cash at a party's discretion;
- c. derivatives transactions relating to climatic variables, freight rates, inflation rates or other official economic statistics that are settled in cash only in the event of a default or other termination event.

⁴ Spot transactions are deemed to be transactions that are settled either immediately or following expiry of the deferred settlement deadline within two business days. Spot transactions are also deemed to be:

- a. transactions that are settled with a longer settlement deadline in accordance with the market norm for the currency pair in question;
- b. purchases or sales of securities, irrespective of their currency, which are paid for by the deadline prescribed by the regulator or by a deadline that is customary in the market;
- c. transactions that are continuously extended without there being a legal obligation or without such an extension between the parties being usual.

Art. 3 Significant group companies

(Art. 3 para. 2 FinMIA)

The functions of a group company are significant with respect to the activities which require authorisation if they are necessary for the continuation of important business processes, in particular in the areas of liquidity management, treasury, risk management, master data administration and accounting, personnel, information technology, trading and settlement, and legal and compliance.

Title 2 Financial Market Infrastructures**Chapter 1 Common Provisions****Section 1****Authorisation Conditions and Duties for all Financial Market Infrastructures****Art. 4 Authorisation application**

(Art. 4 and 5 FinMIA)

¹ The financial market infrastructure shall submit an authorisation application to the Swiss Financial Market Supervisory Authority (FINMA). This shall contain all the information necessary for assessing it, specifically information on:

- a. the business area (Art. 6);
- b. the place of management (Art. 7);
- c. corporate governance (Art. 8);
- d. risk management (Art. 9);
- e. guarantee of irreproachable business conduct (Art. 10);
- f. minimum capital (Art. 13);
- g. capital adequacy and risk diversification (Art. 48, 49, 56, 57 and 69);
- h. the audit firm (Art. 71).

² The financial market infrastructure shall attach along with its authorisation application the necessary documentation, namely its articles of association or partnership agreements and regulations.

Art. 5 Changes in facts

(Art. 7 FinMIA)

¹ The financial market infrastructure shall notify FINMA in particular of:

- a. any amendments to the articles of association or partnership agreements and regulations;
- b. any material change in the business activity of a subsidiary, branch or representation abroad;
- c. any change in audit firm or in the competent foreign supervisory authority with respect to any subsidiary, branch or representation abroad.

² It may only report any changes in its articles of association to the commercial register and put any changes in regulations into effect following FINMA's approval of the changes in question.

Art. 6 Business area

(Art. 8 para. 2 FinMIA)

¹ The financial market infrastructure must describe its area of business in factually and geographically precise terms in the articles of association, partnership agreements or regulations.

² The business area and its geographical extent must be in harmony with the financial market infrastructure's financial capabilities and administrative organisation.

Art. 7 Place of management

(Art. 8 paras. 1 and 2 FinMIA)

¹ The financial market infrastructure must effectively be managed from Switzerland. An exception is made here for general directives and decisions within the context of group supervision if the financial market infrastructure forms part of a financial group that is subject to appropriate consolidated supervision by a foreign financial market supervisory authority.

² The persons entrusted with managing the financial market infrastructure must be resident in a place from which they can effectively exercise such management.

Art. 8 Corporate governance

(Art. 8 para. 2 FinMIA)

¹ The financial market infrastructure must have an organisational structure and an organisational basis that set out the tasks, responsibilities, powers and accountability of the following bodies:

- a. body for business management;
- b. body for governance, supervision and control;
- c. internal audit function.

² The body for governance, supervision and control must comprise at least three members. These may not belong to the bodies described in paragraph 1 letters a and c.

³ The body for governance, supervision and control shall set out the basic risk management principles and determine the risk tolerance of the financial market infrastructure. This body shall have its work evaluated regularly.

⁴ The financial market infrastructure shall define, implement and maintain a compensation policy that promotes sound and effective risk management and does not create incentives to relax risk standards.

⁵ It must have mechanisms in place that allow it to establish the needs of participants with regard to the services provided by the financial market infrastructure.

Art. 9 Risk management

(Art. 8 para. 3 FinMIA)

¹ With regard to risk management, the financial market infrastructure must have a concept for the integrated identification, measurement, management and monitoring of risks, particularly with respect to:

- a. legal risks;
- b. credit and liquidity risks;
- c. market risks;
- d. operational risks;
- e. settlement risks;
- f. reputational risks;
- g. general business risks.

² It must have instruments in place and create incentives in order to ensure that participants can continuously manage and limit the risks arising for themselves or for the financial market infrastructure.

³ Insofar as the financial market infrastructure has indirect participants and these are identifiable, it must also identify, measure, control and monitor the risks posed to the financial market infrastructure by these parties.

⁴ The internal documentation of the financial market infrastructure on passing a resolution and the monitoring of transactions associated with the risks should be designed in such a way that allows the audit firm to make a reliable assessment with respect to the business activity.

⁵ The financial market infrastructure shall ensure an effective internal control system which, among other things, guarantees compliance with legal and internal company rules and regulations (compliance function).

⁶ The internal audit function must submit a report to the body with responsibility for governance, supervision and control or to one of its committees. It must have sufficient resources as well as unrestricted audit rights.

Art. 10 Guarantee of irreproachable business conduct

(Art. 9 paras. 2 and 3 FinMIA)

¹ The authorisation application for a new financial market infrastructure must contain the following information and documentation in particular on the members of the board and executive management in accordance with Article 9 paragraph 2 FinMIA and on the owners of a qualified participation in accordance with Article 9 paragraph 3 FinMIA:

- a. natural persons:
 1. details on nationality, domicile, qualified participations in other companies and any pending court or administrative proceedings,
 2. a curriculum vitae signed by the relevant person,