

# GUIDE

pertaining to applications for

**authorisation** as a domestic or foreign stock exchange or stock exchange-like organisation

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## I. Purpose

This document is intended strictly as a guide for the convenience of applicants and to facilitate the presentation of applications submitted by them. It does not justify any legal right. This guide details the information and documents an applicant must usually submit when making application. The guide does not exclude the possibility that the applicant might submit additional information as needed in an individual case or that the Swiss Financial Market Supervisory Authority (FINMA) might request further details and documents. Applications are to be submitted in one of Switzerland's official languages (German, French or Italian). In justified cases applications may also be submitted in English, however this is subject to FINMA's prior approval. Where an application is submitted by an applicant's legal representative, the representative's power of attorney is to be submitted in the original.

The authorisation procedure is based on the provisions of the Federal Act on Stock Exchanges and Securities Trading of 24 March 1995 (Stock Exchange and Securities Trading Act, SESTA; SR 954.1) and the Federal Ordinance on Stock Exchanges and Securities Trading of 2 December 1996 (Stock Exchange and Securities Trading Ordinance, SESTO; SR 954.11). These documents are also available for download from FINMA's website [www.finma.ch](http://www.finma.ch) (go to: Regulation > Stock Exchanges and Markets).

## II. Applicable legal provisions

### 2.1 Domestic stock exchanges

SESTA sets out the requirements for the establishment and operation of stock exchanges and for professional trading with securities (art. 1 SESTA). According to Swiss law, "stock exchange" refers to any organisation which is set up for the purpose of securities trading and which enables the simultaneous exchange of offers of securities among a number of securities dealers, as well as the execution of transactions (art. 2 lett. b SESTA). An authorisation is issued where the applicant ensures — by way of its regulations and organisation — compliance with the obligations of the aforementioned laws

and its senior officials are able to show proof of the requisite professional knowledge and provide a guarantee of the proper conduct of business (art. 3 sect. 1 SESTA).

## 2.2 Stock exchange-like organisations

Stock exchange-like organisations may be subject to compliance with the provisions of the relevant laws in whole or in part (art. 3 sect. 4 SESTA and art. 16 SESTO).

They may also be exempt from the provisions of the Stock Exchange and Securities Trading Act where requirements are satisfied in accordance with the practice of FINMA.

## 2.3 Foreign stock exchanges

Stock exchanges organised under foreign law must seek authorisation from FINMA where they intend to enable securities dealers domiciled in Switzerland access to their facilities/trading platform (art. 14 SESTO).

Authorisation may be denied where the foreign state in which the stock exchange is domiciled does not afford Swiss stock exchanges reciprocal rights with regard to genuine access to their markets or the same competitive advantages as enjoyed by local stock exchanges (art. 37 SESTA).

# III. Application for authorisation by domestic stock exchanges and stock exchange-like organisations

## 3.1 Preliminary remarks

The application for authorisation is to show **proof** that all the requirements pursuant to section II above have been satisfied. Prior to submitting the application the applicant has the option of discussing its project with representatives of FINMA. Experience shows that processing the application is facilitated as a result and the time required for completion of the process is shortened since critical issues can be clarified and possible solutions discussed in advance.

As a general rule, an application is to contain the **information and/or documents** listed below. When making application for the authorisation of stock exchange-like organisations, the provision of certain information items and documents not relevant for regulatory purposes may be dispensed with, subject to FINMA's prior approval.

## 3.2 General information pertaining to the stock exchange

- a) The stock exchange's history (or purpose when being founded), description of the planned trading activities or trading platform, any other information relevant for the proposed stock exchange operations (e.g. strategic orientation, technological innovations, statistics, etc.);
- b) The company's registered office (extract from the commercial register must also be enclosed);
- c) Organisational chart and description of the stock exchange, and the group as applicable;
- d) Reference to the respective internal rules and regulations with regard to:
  - Obligation to maintain a journal and publish all information necessary for maintaining transparency with regard to securities trading (art. 5 sect. 2 and 3 SESTA),

- The means used to receive and handle the reports of securities dealers in connection with their statutory reporting obligations,
  - The measures taken to monitor the market, particularly with regard to price formation and the execution and settlement of transactions (art. 6 sect. 1 SESTA),
  - The means employed to detect possible legal violations or other irregularities and to notify the supervisory authority (art. 6 sect. 2 SESTA);
- e) Business plan covering a period of at least five years as from the projected initiation of operation of the stock exchange and, if available, the annual report and auditors' report of the last three years including management letter;
- f) List of current and potential associated participants (securities dealers);
- g) Indication of reasons that would justify exemption from compliance with the provisions of the relevant laws in whole or in part (art. 3 sect. 4 SESTA and art. 15 sect. 1 SESTO).

### **3.3 Information pertaining to senior officials (art. 3 sect. 2 lett. b SESTA and art. 9 SESTO)**

- a) Board of directors / body responsible for overall direction, supervision and control:
- Members, particulars pertaining to the chairman, vice chairman, and any committees,
  - Signed curriculum vitae containing personal particulars (i.e. nationality and date of birth), formal education and professional training details including continuing professional development, previous professional experience and responsibilities, appointments, committee and board memberships, positions and offices held, etc.,
  - Certificate of good character, extract from the Central Criminal Register, references,
  - Judicial and administration proceedings (concluded and pending) where they are of economic relevance or might impact the stock exchange's guarantee for the irreproachable conduct of business;
- b) Executive management:
- Information pertaining to composition, organisation and powers,
  - Information pertaining to the members of executive board (see a) above) and supplementation of the curriculum vitae with a chronological listing and brief description of previous professional activities (there may be no gaps)  
[name of former superiors, number of subordinates at last employer (and any other previous employers), reason for changing jobs, letters of references of former employers];
- c) Head of the exchange surveillance and admission board: For particulars, see a) and b) above;

### **3.4 Internal Organisation**

- a) Organisation rules (art. 3 sect. 2 lett. a and art. 4 SESTA);
- b) Stock exchange regulations including any fixed customs and practices and guides (art. 5 sect. 1 SESTA);
- c) Rules and regulations pertaining to the powers and responsibilities and composition of the body in charge of the admission of securities (art. 8 SESTA and art. 6 SESTO);

- d) Rules and regulations pertaining to the powers and responsibilities of the surveillance and enforcement unit, including a description of its organisational autonomy, staff and facilities (art. 8 SESTO);
- e) Rules and regulations for members (art. 7 SESTA);
- f) Listing rules (art. 8 SESTA);
- g) Rules and regulations pertaining to the composition, responsibilities, powers, organisation and procedures of the appeals board (art. 9 SESTA);
- h) Rules and regulations pertaining to the risk organisation and compliance;
- i) Rules and regulations pertaining to the proprietary (own-account) trading of staff;

**General remarks:**

Compliance with legal provisions must not necessarily be tied to individual rules and regulations but rather may be set out in global regulations.

### 3.5 External auditors

- a) Written declaration of acceptance of engagement by a FINMA-recognised auditor (art. 26 FINMAG and art. 3 FINMA-PV);
- b) Statement issued by the recognised auditor pertaining to compliance with statutory provisions (art. 27 FINMAG and art.18 FINMA-PV);
- c) Concept of cooperation between the stock exchange and the recognised auditors of stock exchange participants (direct and/or indirect audit of participants).

## IV. Application for authorisation by foreign stock exchanges

Stock exchanges licensed abroad subject to regulatory control equivalent to that under Swiss law are not subject to the same comprehensive review in Switzerland and consequently must only submit the documents relevant for review pursuant to art. 14 SESTO.

The central document required by FINMA is confirmation **by the responsible foreign regulatory authority** with regard to compliance with the requirements of art. 14 SESTO.

Authorisation is issued where

- The foreign stock exchange is subject to (an equivalent) regulatory authority;
- The foreign stock exchange regulatory authority confirms that it has no objections to the transnational trading activities of the exchange under its supervision;
- The foreign stock exchange regulatory authority confirms that it will notify FINMA in the event of any legal violations or other irregularities (attributable to the Swiss securities dealer);
- The foreign stock exchange regulatory authority confirms that it will provide FINMA administrative assistance upon a justified request to this effect.

FINMA may make the issuance of authorisation contingent upon whether the applicant's country of domicile also grants Swiss stock exchanges or stock exchange-like organisations access to its markets and offers them the same competitive advantages as they do to local stock exchanges (compliance with reciprocal rights). This is specifically the case where the applicant's country of domicile is a signatory to the WTO General Agreement on Trade in Services (GATS). The applicant must furnish proof of satisfaction of this reciprocal right requirement in its application.

FINMA also usually requires that the following documents be submitted in order to obtain a comprehensive picture of the applicant:

- a) Commercial register excerpt;
- b) Description of the proposed trading activities with Swiss participants;
- c) Organisational chart of the stock exchange or of the group as applicable;
- d) Overview of the individuals on the board of directors and executive board (guarantors of the proper and ethical conduct of business);
- e) Organisation rules of the enterprise;
- f) General terms and conditions (rulebook);
- g) The power of attorney of the Swiss legal representative;
- h) If available, the most current annual report including the financial statements (balance sheet and profit-and-loss account).

## V. Amendment application

Where there is a change in the circumstances on which an authorisation is based, operation of the stock exchange shall not be continued unless an amendment application **has been filed in advance** (the same applies to expansion of trading to other categories of securities).

The application must contain a detailed and well-founded description of the changes and include all relevant information and amended documents (the relevant places in the documents are to be highlighted). It is advisable to discuss changes with FINMA in advance.