

GUIDE

pertaining to applications for

authorisation as a foreign stock exchange member (remote member)

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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 licensing 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), the Federal Ordinance on Stock Exchanges and Securities Trading of 2 December 1996 (Stock Exchange and Securities Trading Ordinance, SESTO; SR 954.11) and the Ordinance of the Swiss Financial Market Supervisory Authority of 25 October 2008 on Stock Exchanges and Securities Trading (FINMA Stock Exchange Ordinance, SESTO-FINMA; SR 954.193). These documents are also available for download from FINMA's website www.finma.ch (go to: Regulation > Stock Exchanges and Markets).

II. Applicable legal provisions

According to art. 10 SESTA whoever wishes to operate as a securities dealer is subject to licensing by FINMA. A foreign securities dealer intending to operate in Switzerland, however not domiciled or without a branch office in Switzerland (art. 10 sect. 4 SESTA), is also subject to this licensing requirement where it seeks to become a participant in a stock exchange domiciled in Switzerland as provided for in art. 39 sect. 1 lett. b SESTO.

III. Application for authorisation

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.

For the application process SIX Swiss Exchange and Scoach Switzerland AG the application template for regulated and non-regulated companies published on <http://www.six-swiss-exchange.com/participants/participation/forms.html> is preferably used.

3.2 Confirmation by the foreign regulatory authority

The central document required by FINMA is **confirmation by the responsible foreign regulatory authority** (to be submitted in the original) with regard to compliance with the licensing requirements of art. 53 SESTO.

The foreign regulatory authority is to certify the following in writing:

- The foreign securities dealer is subject to proper regulatory control in its country of domicile;
- The competent foreign regulatory authority confirms that it has no objections to the activities of the foreign securities dealer in Switzerland;
- The competent foreign regulatory authority is able to lend FINMA administrative assistance.

FINMA may make the issuance of a license contingent upon whether the applicant's country of domicile also grants Swiss securities dealers access to its markets and offers them the same competitive advantages as they do to local securities dealers (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.

Where the applicant is a securities dealer not subject to regulatory control abroad equivalent to that under Swiss law (e.g. by MiFID not regulated trades for one's own account) and for this reason is able to furnish only partial confirmation or no confirmation at all with regard to the requirements of art. 53 SESTO, FINMA will render its decision pertaining to licensing at its discretion on an individual case basis.

3.3 Further information and documents to be furnished

The following information and documents are to be additionally enclosed with the written application:

- a) Address of the headquarters / domicile;
- b) Copy of the organisation rules;
- c) Organisational chart of the enterprise or group as applicable;
- d) Information pertaining to the composition of the board of directors and the executive board;

- e) Purpose and date of founding of the enterprise (extract from the commercial register to be enclosed);
- f) Description of the aimed trading activities in Switzerland;
- g) Most current annual report including the financial statements (balance sheet and profit-and-loss account);
- h) Authorisation of counsel of the applicant's legal representative (to be submitted in the original).

3.4 Rules of conduct, daily journaling and reporting requirements

FINMA is to be shown and confirmation furnished to it that adherence is maintained to the rules of conduct (art. 11 SESTA) and daily journaling and reporting requirements (art. 15 SESTA and art. 1–6 SESTO-FINMA). Regulated companies must enclose a copy of the domicile's applicable provisions pertaining to the code of conduct and compliance with the journal-keeping and reporting obligations.

IV. Amendment application

Where there is a change in the circumstances on which an authorisation is based (e.g. change in the licence issued abroad, restriction or expansion of trading activities), a securities dealer may not continue operations unless it **has filed an amendment application in advance**.

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.