

GUIDELINES

on submitting applications for recognition of **foreign trading venues**

November 2017

I. Purpose

These guidelines seek to assist applicants submitting applications for recognition of foreign trading venues in accordance with the requirements set out in the Financial Market Infrastructure Act (FMIA).¹

These guidelines are not legally binding (see Art. 41 para. 4 FMIA). They define the details and documentation to be included with the application. This does not exclude, however, that FINMA may request the applicant(s) to submit additional information and documentation. The application must be in one of Switzerland's official languages. In well-founded cases and subject to FINMA's prior approval, applications may also be submitted in English. Where an application is submitted by an applicant's legal representative, a copy of the latter's power of attorney must also be included with the application.

When the Financial Market Infrastructure Act and implementing ordinances came into force on 1 January 2016, Swiss regulations on financial market infrastructures (FMI) underwent significant changes. Provisions previously dispersed over the Stock Exchange Act, the Banking Act and the National Bank Act were largely repealed and replaced with separate regulations for FMIs set out in one key act, which takes account of changed market structures and international rules.

Under the financial market infrastructure regulations, trading venues, i.e. stock exchanges or multilateral trading facilities (MTFs), are systematically classed as FMIs (see Art. 2 let. a nos. 1 and 2 in conjunction with Art. 26 FMIA).

II. Scope of application

Trading venues domiciled outside Switzerland must be recognised by FINMA before they can grant supervised Swiss participants direct access to their facilities (Art. 41 para. 1 FMIA). The term "trading venues"² includes stock exchanges³ and multilateral trading facilities⁴, i.e. all

¹ Available at <https://www.admin.ch/opc/en/classified-compilation/20141779/index.html>.

² See Article 26 let. a FMIA.

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comparable, foreign-regulated trading venues regardless of their specific status (e.g. regulated exchanges, multilateral trading venues).

Recognition must be acquired before business is carried out with supervised Swiss participants. Allowing direct access to facilities prior to and without holding the requisite recognition is liable to punishment (Art. 44 FINMASA)⁵.

III. Applications for recognition

Applications for recognition of foreign trading venues are submitted to FINMA:

Swiss Financial Market Supervisory Authority FINMA
Legal Market Infrastructures
Laupenstrasse 27
CH-3003 Bern

1. Designation of a domicile for service and an invoice address in Switzerland

Applicants for recognition as foreign trading venue must indicate a domicile for service in Switzerland (Art. 11b para. 1 APA⁶). A domicile for service is an address in Switzerland to which a Swiss authority may deliver a decree or decision. Domicile for service can be a Swiss law firm or any other person who is authorized to receive deliveries in Switzerland.

For the correct delivery of the invoice, applicants for recognition as foreign trading venue also have to designate both a billing address and a contact person in Switzerland. Applicants can also provide further information for the invoicing (e.g. reference number).

Applications for recognition should demonstrate that all the recognition requirements laid down in Article 41 FMIA have been met.

Applications should include the following details and/or documentation:

2. Appropriate supervision and regulation

³ Article 26 let. b FMIA defines the stock exchange as “an institution for multilateral securities trading where securities are listed, whose purpose is the simultaneous exchange of bids between several participants and the conclusion of contracts based on non-discretionary rules.”

⁴ Article 26 let. c FMIA defines “multilateral trading facilities” as an institution for multilateral securities trading whose purpose is the simultaneous exchange of bids between several participants and the conclusion of contracts based on non-discretionary rules without listing securities.

⁵ Available at <https://www.admin.ch/opc/en/classified-compilation/20052624/index.html>.

⁶ Available at <https://www.admin.ch/opc/en/classified-compilation/19680294/index.html>.

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FINMA assesses whether foreign trading venues are adequately regulated and supervised (Art. 41 para. 2 let. a FMIA). During the evaluation process, the applicant can submit any useful information and documents (e.g. reference to the International Monetary Fund's international assessment via the relevant internet links).

3. Confirmation from a foreign supervisory authority

Under Article 41 para. 2 let. b FMIA, the competent foreign supervisory authority must:

- confirm that it does not raise any objections to cross-border activities being conducted by foreign trading venues;
- ensure that it will inform FINMA about any breaches of the law or other deficiencies committed by supervised Swiss participants; and
- ensure that it will assist FINMA (international cooperation).

4. General information

In addition to the information and confirmation specified in Sections 1 and 2, the following information and documents must be included with the application for recognition:

- a description of the function of the foreign trading venue in terms of its activities and its trading model;
- an extract from the Commercial Register (or a similar document);
- documents regarding its organisation (articles of association, organisation regulations, organisation chart);
- the foreign trading venue's contact details and the coordinates of the contact person handling the application (company, headquarters, address, telephone number, fax number, email, website address);
- the contact details of the competent foreign supervisory authority and the coordinates of the person responsible (address, telephone number, fax number, email, website address), as well as the link for registering foreign trading venues as supervised trading platforms or for indicating their regulatory status, where available.

IV. Information and reporting requirements

Where recognition is granted, foreign trading venues must comply with the requirements prescribed in the recognition decree and report in writing to FINMA as specified (see FINMA's address under Section III above or by email to exchangesupervision@finma.ch).

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1. Annual submission of an updated list of supervised Swiss participants

As the reporting requirements for foreign trading venues are connected to their interaction with supervised Swiss participants, recognised foreign trading venues must submit a list of Swiss participants to FINMA at the end of each year.

2. Reporting changes in circumstances to FINMA

Changes in facts and circumstances that are of interest to FINMA, including:

- new contact details;
- changes in the supervisory and/or regulatory status of the recognised foreign trading venue in its home country;
- restructuring of the recognised foreign trading venue, e.g. mergers, takeovers and any other significant changes (e.g. change of company name, etc.);

must be reported by the foreign trading venue to FINMA without delay. In the event of restructuring and/or changes to the foreign trading venue's supervisory/regulatory status, proof must be provided that the competent foreign supervisory authority has either approved or has not objected to such changes.

V. Recognition of foreign trading venues under the transitional legal provisions

1. General principles

Article 159 para. 1 FMIA sets out that financial market infrastructures which were granted authorisation or recognition before FMIA came into force must submit a new authorisation/recognition application within one year after the Act became effective. They may continue their business activities until a decision has been made about their application.

Under Article 159 para. 2 FMIA, financial market infrastructures which fall subject to FMIA must report to FINMA within six months following the Act's entry into force. They must fulfil the FMIA requirements within one year of its entry into force and submit an application for authorisation/recognition. They may continue their business activities until a decision has been made about their application.

Article 159 para. 1 FMIA applies to foreign stock exchanges granted FINMA authorisation before FMIA came into force that must qualify as a trading venue within the meaning of Article 26 FMIA. They must submit a new application for recognition within one year of the date on which FMIA came into force, i.e. starting from 1 January 2016. Where authorisation as a for-

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foreign stock exchange was granted by FINMA no longer than three years prior to 1 January 2016, FINMA will carry out a simplified recognition procedure (see Section 2 below).

Article 159 para. 2 applies to foreign trading venues which were not authorised as a foreign exchange under Article 14 SESTO on 1 January 2016, but now require recognition as a multi-lateral trading facility (MTF) under FMIA.

2. Simplified recognition procedure

Where authorisation as a foreign exchange was granted by FINMA no longer than three years prior to 1 January 2016, it is assumed that the details provided for the initial application are still valid and correct. In that case, the details and documentation specified in Section III above must not be resubmitted. Should there have been any significant changes in circumstances during that period (e.g. new contact details, restructuring of the stock exchange or changes to the supervisory and/or regulatory status in the home country), updated documentation must be submitted to FINMA. Nevertheless in all cases, FINMA must receive an updated confirmation from the competent supervisory authority within the meaning of Article 41 para. 2 let. b FMIA (see Section III, 2 above).

Where authorisation was granted over three years ago, all the information required under Section III above must be provided.

VI. Organised trading facilities (OTFs)

FMIA does not set out any recognition requirements for operators of foreign OTFs. If they wish, operators may submit an application for recognition to FINMA. However, this does not include those OTFs that provide services to Swiss participants in order to fulfil their trading venue obligations for trading derivatives as prescribed in FMIA. In such cases, under Article 112 para. 1 let. b FMIA recognition is required de facto where Swiss participants want to use these trading venues to fulfil their trading venue duties. It is to be noted, however, that the Federal Council brings the duty to trade via a trading venue or organised trading facility into force (Art. 112-115 FMIA) only if and when international developments so require (Art. 164 para. 3 FMIA). Consequently, until enacted by the Federal Council, there are no de facto recognition requirements for foreign OTFs.

When Articles 112-115 FMIA come into force, the principles for the recognition of foreign trading venues (Art. 41 FMIA) will apply analogously to recognition procedures for foreign OTFs.