

Guidelines

on submitting applications for authorisation of **trading venues**

16 June 2016

I. Purpose

These non-legally binding guidelines aim to assist applicants submitting applications for the authorisation of trading venues. They define the details and documentation to be included in 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 in the application.

The relevant statutory provisions can be obtained from the Federal Office for Buildings and Logistics (FBL) or downloaded from the federal government's and FINMA's websites: www.admin.ch and www.finma.ch.

II. Scope of application

Anyone who wants to operate a trading venue must be authorised by FINMA to do so (Art. 2 let. a nos. 1 and 2 FMIA in conjunction with Art. 4 para. 1 FMIA). The term "trading venues" includes stock exchanges and multilateral trading facilities (Art. 26 let. a FMIA). All applications must be submitted to FINMA (See Section **Fehler! Verweisquelle konnte nicht gefunden werden.** below).

Any changes in circumstance underlying the authorisation granted must be reported to FINMA; where these are significant, licence holders must first obtain approval from FINMA in order for business activities to be continued (See Section IV below).

A trading venue must be authorised before it can operate. It is a criminal offence to operate a trading venue without the required authorisation (Art. 44 FINMASA).

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III. Applications for authorisation

Applications for authorisation must include proof that all authorisation requirements in accordance with Article 4 ff. FMIA and Article 4 ff. FMIO are met. Applications must therefore specify clearly the section, sub-section and page of the application on which proof of meeting the requirements has been provided.

Before submitting an application, applicants can discuss their business project with FINMA officials. This simplifies the application process and shortens the processing time as certain issues and possible solutions can be clarified and discussed prior to submitting an application.

Applications should include the following details and/or documentation:

1. General information

- 1.1 Reasons and intention for obtaining authorisation as a trading venue;
- 1.2 The applicant's/group's area of activity;
- 1.3 Organisational chart and description of the group (i.e. consolidated supervision, also outside Switzerland, and for each group company; country in which the company is officially entered in a commercial register; company, country of domicile, activities, financial market supervisory authority, etc.).

2. Licence holders

- 2.1 Company, headquarters and company address (incl. phone and fax numbers, email and website);
- 2.2 Purpose of the company and description of activities conducted up to now (incl. copy of an extract from the commercial register and the articles of association);
- 2.3 Participations and/or those planned in other companies in and outside Switzerland;
- 2.4 Business plan over a period of at least three years of the intended activities to be conducted by the trading venue and, where available, annual reports and audit reports from the last three years (incl. management letter).

3. Trading venues and self-regulatory organisations

- 3.1 Purpose and description of the trading venue, description of the trading platform (precise details about the market model, order types, matching mechanisms and price determination), trading activities planned, transaction settlements and providing any other information relevant to the supervision of stock exchange activities (strategic approach, technical innovation, statistics, etc.).

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3.2 Full documentation about the organisation and processes (Art. 7 ff. FMIA, Art. 4 ff. FMIO), in particular regulations on:

- organisation of trading (Art. 28 FMIA);
- listing and admission to trading (Arts. 35 and 36 FMIA);
- duties, competences and composition of the body responsible for the admission of securities;
- admission and exclusion of participants (Art. 34 FMIA);
- duties and competences of market surveillance (incl. a description of their independence in terms of personnel and organisation, and their personal and material compensation; Art. 27 FMIA);
- composition, duties, competences, organisation of the appeals board and its appeal procedures (Art. 37 FMIA).

3.3 Details confirming compliance with requirements for:

- fair and open access (Art. 18 FMIA);
- documentation and retention duties (Art. 19 FMIA);
- prevention of conflicts of interest (Art. 20 FMIA);
- publication of essential information (Art. 21 FMIA);
- pre- and post-trade transparency (Art. 29 FMIA);
- guarantee of orderly trading (Art. 30 FMIA), incl. guaranteeing stability of the system and compliance with requirements for algorithmic and high frequency trading (Art. 30 f. FMIO);
- means used to receive and process participants' reports in accordance with the reporting requirements set out in stock exchange law (Art. 38 f. FMIA, Art. 15 SESTA and Art. 2 ff. FMIO-FINMA);
- supervision of the market, in particular with respect to price formation; the prevention of manipulation, notifying the supervisory authority in the event of violations of the law or other irregularities (Art. 31 FMIA).

3.4 Details about the self-regulatory organisation (precise details about its organisation, procedures and regulations).

3.5 List of participants already admitted and those to be admitted (Art. 34 FMIA).

4. Direct and indirect participation (Art. 9 paras. 3 and 4 FMIA and Art. 10 FMIO)

4.1 Share capital (structure, allocation, nominal value, payment, etc.);

4.2 List of all shareholders with direct or indirect participation of 10% or more of voting rights (incl. the final beneficial owner, indicating the voting rights and capital holding);

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- 4.3 Organisational chart of the shareholder structure grouped according to voting rights and share capital;
- 4.4 Details of any agreements and/or other possibilities to exercise control or influence. Where necessary, such documents, e.g. a shareholder agreement, must be submitted;
- 4.5 Qualified shareholders must provide FINMA with a declaration confirming whether the participations are for own account or in a fiduciary capacity for third parties, and whether they have granted option or similar rights for these participations.
- 4.6 For each directly or indirectly qualified individual:
- personal details and domicile, copy of a valid ID (passport or identity card);
 - detailed CV signed by the person concerned;
 - contact details of at least two referees;
 - criminal record extract;
 - debt register extract;
 - declaration of pending and closed proceedings;¹
 - declaration of qualified participations;¹
 - declaration of other mandates.¹
- 4.7 For each directly or indirectly qualified legal entity:
- articles of association;
 - an extract from the commercial register or a relevant confirmation;
 - extract from the debt register;
 - description of business activities, financial status and, where necessary, the group structure;
 - declaration of any pending or closed proceedings.¹
- 5. Board of directors, executive board and management (Art. 9 paras.1 and 2 FMIA, Art. 27 para. 2 FMIA and Art. 10 FMIO)**
- 5.1 Board of directors:
- composition and organisation indicating the current chair, vice-chair, board members and members of any committees;
 - personal details and domicile, copy of a valid ID (passport or identity card);
 - detailed CV signed by the person concerned;

¹ <https://www.finma.ch/en/authorisation/financial-market-infrastructures-and-foreign-market-participants/swiss-financial-market-infrastructures/>

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- contact details of at least two referees;
- criminal record extract;
- debt register extract;
- declaration of pending and closed proceedings;¹
- declaration of qualified participations;¹
- declaration of other mandates.¹

5.2 Executive board:

- composition, organisation and competences
- personal details and domicile, copy of a valid ID (passport or identity card);
- detailed CV signed by the person concerned;
- contact details of at least two referees;
- degrees and professional qualifications;
- references from former employers;
- criminal record extract;
- debt register extract;
- declaration of pending and closed proceedings;¹
- declaration of qualified participations;¹
- declaration of other mandates.¹

5.3 Persons involved in the regulatory and monitoring organisation:

- detailed CV signed by the person concerned;
- contact details of at least two referees;
- degrees and professional qualifications;
- references from former employers;
- criminal record extract;
- debt register extract;
- declaration of pending and closed proceedings;¹
- declaration of qualified participations;¹
- declaration of other mandates.¹

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6. Business activities and internal organisation

- 6.1 Detailed description of business activities and relevant processes;
- 6.2 Articles of association, organisational regulations, and where necessary, assignment of responsibilities;
- 6.3 Regulations on risk organisation and compliance;
- 6.4 Regulations on employee proprietary trading;
- 6.5 Organisational chart (indicating top management);
- 6.6 Additional details about organisation:
 - staff (number of employees, workload);
 - infrastructure, logistics and IT;
 - delegation of duties and outsourcing;
 - risk management, internal control system and compliance, and where necessary, internal audit;
- 6.7 Proof of business continuity (Art. 13 FMIA);
- 6.8 Proof of compliance with the minimum capital requirements (Art. 12 FMIA in conjunction with Art. 13 FMIO).

7. Audit firms

- 7.1 Regulatory audit firm:
 - written declaration of acceptance of the regulatory audit mandate;
 - completed questionnaire on the services provided by the authorised audit firm.
 - audit firm during the authorisation process; audit firm's written declaration of acceptance of mandate during the authorisation process;
 - completed questionnaire on the services provided by authorised audit firm;
 - detailed statement from the audit firm in line with separate guidelines on confirmation of audit firms in the authorisation process.

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IV. Changes

Any changes in circumstance underlying the authorisation granted must be reported to FINMA; where these are significant, licence holders must first obtain approval from FINMA in order for business activities to be continued (Art. 7 FMIA).

Significant changes require FINMA's prior approval. These include changes in/on:

- organisational documentation (regulations, company contracts, articles of association);
- the board of directors, executive board or the trading supervisory body;
- qualified participations' control;
- the organisation of financial market infrastructures;
- internal regulations on the management of financial market infrastructures;
- ancillary services of financial market infrastructures;
- the outsourcing of key services within the meaning of Article 12 FMIO;
- acquisition or relinquishing of foreign subsidiaries, branches or representative offices;
- access to financial market infrastructures.

Applications seeking the approval of changes must be detailed and set out the reasons for those changes. Please document all the relevant details and enclose any amended documents in track changes mode. Depending on the type of change(s) in question, it is recommended to contact FINMA to discuss the matter prior to submitting the application.