



Exchange Regulation

Stock Exchange Ordinance, SESTO Ordinance on Stock Exchanges and Securities Trading

(Stock Exchange Ordinance, SESTO)

unofficial translation

Unrestricted

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Ordinance on Stock Exchanges and Securities Trading

(Stock Exchange Ordinance, SESTO)
of December 2, 1996

Version May 1, 2013

Unofficial translation

The Swiss Federal Council,

based upon the Federal Act on Stock Exchanges and Securities Trading of 24 March 1995¹ (SESTA, hereinafter referred to as the Act),

decrees:

Chapter 1: General Provisions

Art. 1 Subject matter

This Ordinance contains:

- a. Definitions (Arts 2-5);
- b. Provisions on the organisation of stock exchanges (Arts 6-12);
- c. Provisions on the approval of stock exchange regulations (Art. 13);
- d. Requirements for authorisation of foreign stock exchanges (Art. 14);
- e. Provisions on the exemption of stock exchanges from the Act and on the application of the Act to organisations which are similar to stock exchanges (Arts 15 and 16);
- f. Requirements for authorisation of domestic securities dealers, including provisions on conduct of business, capital adequacy, risk diversification and accounting (Arts 17-29);²
- g. Provisions on foreign securities dealers (Arts 38-53);
- h. Provisions on the cancellation of outstanding equity securities (Arts 54 and 55);
- i. Provisions on foreign control of stock exchanges and securities dealers (Art. 56);
- k. Final provisions and transitional provisions (Arts 57 and 58).

AS 1997 85

¹ SR 954.1

² Fassung gemäss Anhang Ziff. 9 der Finanzmarktprüfverordnung vom 15. Okt. 2008, in Kraft seit 1. Jan. 2009 (AS 2008 5363).

Art. 2 Securities dealers

(Art. 2 letter d SESTA)

¹ Securities dealers within the meaning of the Act are own-account dealers, issuing houses and derivatives firms, provided that they are mainly active in the financial sector.

² Market makers and client dealers are securities dealers within the meaning of the Act, even if they are not mainly active in the financial sector.

³ The following institutions are not considered as securities dealers:

- a. The Swiss National Bank;
- b. Fund management companies within the meaning of the Investment Fund Act of March 18, 1994³;
- c. Insurance companies within the meaning of the Insurance Supervision Act of June 23, 1978⁴;
- d. Occupational pension funds to which Article 71 of the Federal Act on Provision for Retirement, Surviving Dependents and Invalidity of June 25, 1982⁵ is applicable and which are subject to supervision.

Art. 3 Categories of dealers

(Art. 2 letter d SESTA)

¹ Own-account dealers are securities dealers who, in a professional capacity, trade in securities for their own account on a short-term basis.

² Issuing houses are securities dealers who, in a professional capacity, underwrite securities issued by third parties on a firm basis or against commission and offer them to the public on the primary market.

³ Derivatives firms are securities dealers who, in a professional capacity, create derivatives and offer them to the public on the primary market for their own account or for the account of third parties.

⁴ Market makers are securities dealers who, in a professional capacity, trade in securities for their own account on a short-term basis and maintain firm bid and offer prices in given securities permanently or on request.

⁵ Client dealers are securities dealers who, in a professional capacity, trade in securities in their own name for the account of clients and:

- a. maintain accounts for these clients themselves or through third parties for the settlement of transactions; or
- b. hold securities of these clients in safe custody themselves or through third parties in their own name.

⁶ The following are not considered as clients within the meaning of paragraph 5:

- a. domestic and foreign banks and securities dealers, or other enterprises under government supervision;
- b. shareholders or partners with a significant interest in the borrower and persons with business or family ties to them;
- c. institutional investors with a professional treasury unit.

⁷ Offers to persons mentioned in paragraph 6 are not considered as public within the meaning of paragraphs 2, 3 and 4.

³ [AS 1994 2523, 2000 2355 Anhang Ziff. 27, 2004 1985 Anhang Ziff. II 4, 2006 2197 Anhang Ziff. 135. AS 2006 5379 Anhang Ziff. I]. Siehe heute: das Kollektivanlagengesetz vom 23. Juni 2006 (SR 951.31).

⁴ [AS 1978 1836, 1988 414, 1992 288 Anhang Ziff. 66 733 SchIB Art. 7 Ziff. 3 2363 Anhang Ziff. 2, 1993 3204, 1995 1328 Anhang Ziff. 2 3517 Ziff. I 12 5679, 2000 2355 Anhang Ziff. 28, 2003 232, 2004 1677 Anhang Ziff. 4 2617 Anhang Ziff. 12. AS 2005 5269 Anhang Ziff. I 3]. Siehe heute: das BG vom 17. Dez. 2004 (SR 961.01).

⁵ SR 831.40

Art. 4 Standardisation and suitability for mass trading

(Art. 2 letter a SESTA)

Securities, rights not represented by a certificate and derivatives with the same structure and denomination which are publicly offered or placed with more than 20 clients are considered as standardised and suitable for mass trading, provided that they are not created specially for individual counterparties.

Art. 5 Derivatives

(Art. 2 letter a SESTA)

Derivatives are financial contracts whose price is derived from:

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

Chapter 2: Stock Exchanges

Section 1: Organisation

Art. 6 Body for the admission of securities

(Art. 3 para. 2 letters a and c and Art. 4 para. 1 SESTA)

¹ Issuers and investors must be appropriately represented in the body responsible for the admission of securities.

² The stock exchange shall determine the representation of issuers and investors in its regulations.

Art. 7 Management

(Art. 3 para. 2 letters a and c and Art. 4 para. 1 SESTA)

In terms of personnel, the management must be independent of the body in charge of supervision, regulation and control.

Art. 8 Surveillance and Enforcement

(Art. 3 para. 2 letters a and c, Art. 4 para. 1 and Art. 6 SESTA)

¹ The body in charge of supervision, regulation and control shall create an internal surveillance office for the stock exchange. In terms of personnel and organisation, this unit must be independent of the management.

² The surveillance office must be provided with adequate staff and facilities.

³ The appointment of the head of the surveillance office shall be subject to the approval of the Swiss Financial Market Supervisory Authority (FINMA).⁶

⁴ The stock exchange shall define the duties and powers of the surveillance office in its regulations.

⁶ Fassung gemäss Anhang Ziff. 9 der Finanzmarktprüfverordnung vom 15. Okt. 2008, in Kraft seit 1. Jan. 2009 (AS 2008 5363).

Art. 9 Senior officials

(Art. 3 para. 2 letter b SESTA)

Senior officials of the stock exchange pursuant to Article 3 paragraph 2 letter b of the Act shall be:

- a. the members of the body in charge of supervision, regulation and control, and the members of the management;
- b. the head of the surveillance office.

Art. 10⁷

Art. 11 Investigations

(Art. 3 para. 2 letters a and c, Art. 4 para. 1 and Art. 6 para. 2 SESTA)

In the event of suspected breaches of the law or any other irregularities, FINMA⁸ may instruct the stock exchange, the auditors⁹ or other experts to conduct the necessary investigations.

Art. 12 Foreign business

(Art. 3 para. 2 letter a and Art. 35 para. 2 SESTA)

The stock exchange shall inform FINMA before it admits foreign securities dealers as members or establishes a subsidiary, branch or representative office abroad.

Section 2: Approval of Stock Exchange Regulations

Art. 13

(Art. 4 para. 2 SESTA)

¹ In deciding on the approval of stock exchange regulations, FINMA shall verify in particular whether they:

- a. ensure transparency and equality of treatment for investors; and
- b. guarantee the proper functioning of securities markets.

² Before taking its decision, it may consult the Competition Commission. This will give an opinion on whether the regulations are neutral with regard to competition and whether they favour anticompetitive agreements.

⁷ Aufgehoben durch Anhang Ziff. 9 der Finanzmarktprüfverordnung vom 15. Okt. 2008, mit Wirkung seit 1. Jan. 2009 (AS 2008 5363).

⁸ Ausdruck gemäss Anhang Ziff. 9 der Finanzmarktprüfverordnung vom 15. Okt. 2008, in Kraft seit 1. Jan. 2009 (AS 2008 5363). Die Anpassung wurde im ganzen Text vorgenommen.

⁹ Ausdruck gemäss Anhang Ziff. 9 der Finanzmarktprüfverordnung vom 15. Okt. 2008, in Kraft seit 1. Jan. 2009 (AS 2008 5363). Die Anpassung wurde im ganzen Text vorgenommen.

Section 3: Requirements for Authorisation of Foreign Stock Exchanges

Art. 14

(Art. 3 para. 3 and Art. 37 SESTA)

¹ Stock exchanges organised under foreign law must seek authorisation from FINMA before providing securities dealers in Switzerland with access to their facilities.

² FINMA shall grant the authorisation, if:

- a. the foreign stock exchange is subject to appropriate supervision; and
- b. the foreign supervisory authorities:
 1. do not object to the cross-border activities of the foreign stock exchange,
 2. guarantee that they will inform FINMA if any breaches of the law or other irregularities by Swiss securities dealers come to their notice; and
 3. they are in a position to grant FINMA administrative assistance.

³ FINMA may refuse authorisation pursuant to Article 37 of the Act.

Section 4: Exemption from the Act

Art. 15

(Art. 3 para. 4 SESTA)

¹ A stock exchange shall be exempted from the provisions of the Act in whole or in part, if:

- a. the volume of trading on the exchange is insignificant in relation to total turnover of all securities or classes of securities traded on Swiss stock exchanges; and
- b. orderly and transparent trading in the securities listed on the exchange would otherwise be jeopardised.

² FINMA shall decide on full or partial exemption from the Act.

Section 5: Application of the Act to Institutions Similar to Stock Exchanges

Art. 16

(Art. 3 para. 4 SESTA)

FINMA shall decide whether institutions which are similar to stock exchanges shall be subject to the provisions of the Act in whole or in part.

Chapter 3: Domestic Securities Dealers

Section 1: Requirements for Authorisation

Art. 17 Application for request of authorisation

(Art. 10 paras 2 and 5, Arts 12-14 and Art. 17 para. 1 SESTA)

¹ The securities dealer shall submit an application for authorisation to FINMA. This application shall contain all the information necessary for the purposes of assessment, specifically:

- a. area of business (Art. 18);
- b. organisation (Art. 19);
- c. internal control system (Art. 20);¹⁰
- d. place of management (Art. 21);
- e. minimum capital or security deposit (Art. 22);
- f. senior staff and principal shareholders (Art. 23);
- g. capital adequacy and risk diversification (Art. 29);
- h. the auditors (Art. 30).

² The securities dealer shall attach the necessary documents to the application, specifically copies of the articles of association or partnership agreements and the regulations.

Art. 18 Description of scope of business

(Art. 10 para. 2 letter a and para. 3 SESTA)

¹ The securities dealer must provide an exact factual and geographical description of his area of business in the articles of association, partnership agreements or regulations.

² In particular, it shall state:

- a. in which type of securities it trades and in which other activities it engages;
- b. on which markets it trades;
- c. for which type of client it trades.

³ The factual and geographical description of the area of business must correspond to the financial resources and the operating organisation.

⁴ it shall inform FINMA which Swiss or foreign stock exchanges it wishes to join.

⁵ If the securities dealer intends to operate a subsidiary, a branch or a representative office abroad, it shall supply FINMA with all the information it needs to assess these foreign activities, namely:

- a. a business plan, with particular reference to the type of transactions envisaged and the organisational structure;
- b. the address of the office abroad;
- c. the names of the persons entrusted with the administration and management;
- d. the auditors;
- e. the supervisory authority in the host country.

¹⁰ Fassung gemäss Anhang Ziff. 9 der Finanzmarktprüfverordnung vom 15. Okt. 2008, in Kraft seit 1. Jan. 2009 (AS 2008 5363).

Art. 19 Organisation

(Art. 10 para. 2 letter a and para. 3 SESTA)

¹ The securities dealer shall ensure effective internal separation of functions between trading, portfolio management and settlement. FINMA may allow exceptions in justified individual cases, or order the separation of further functions.

² Market makers and client dealers within the meaning of Article 2 paragraph 2 who are not mainly active in the financial sector must make the securities trading business a legally autonomous entity.

³ For the purposes of identifying, limiting and monitoring the risks pursuant to Article 26 paragraph 1¹¹ the securities dealer shall define in regulations or internal directives:

- a. the basic principles of risk management;
- b. the responsibility and the procedure for authorising transactions involving risks.

Art. 20¹² Internal Control system

(Art. 10 para. 2 letter a and para. 3 SESTA)

¹ The securities dealer shall ensure an effective internal control system.

² In particular, it shall entrust a unit independent of the management with the internal auditing function (internal audit unit). This unit shall also verify compliance with the duties of disclosure, diligence and loyalty pursuant to Article 11 of the Act.

³ FINMA may exempt a securities dealer from the obligation to appoint an internal audit unit in well-grounded individual cases.

Art. 21 Place of management

(Art. 10 para. 2 letter a, para. 3 and para. 5 SESTA)

¹ The securities dealer must effectively be managed from Switzerland. General directives and decisions within the framework of group supervision must be complied with provided that the dealer is part of a group which operates in the financial sector and is appropriately supervised on a consolidated basis by a foreign supervisory authority.

² The persons entrusted with the management of the securities dealer must be domiciled where they can discharge their management duties effectively and responsibly.

Art. 22 Minimum capital and security deposit

(Art. 10 para. 2 letter b and para. 3 SESTA)

¹ The securities dealer must have a minimum capital of CHF 1.5 million, which must be fully paid. In the event of non-cash capital contributions, the value of the assets brought in and the amount of the liabilities shall be examined by the auditors recognised by FINMA; this shall also apply when an existing company is transformed into a securities dealer.

² For natural persons and partnerships, capital shall be considered as:

- a. the capital accounts; and
- b. the credit balances of the partners with unlimited liability, provided that a written declaration exists to the effect that they rank irrevocably after the claims of all other creditors in the event of liquidation, bankruptcy or settlement agreements, and that they are neither set off against claims of the securities dealer nor secured by his assets.¹³

¹¹ Dieser Art. hat heute eine neue Fassung.

¹² Fassung gemäss Anhang Ziff. 9 der Finanzmarktprüfverordnung vom 15. Okt. 2008, in Kraft seit 1. Jan. 2009 (AS 2008 5363).

¹³ Fassung gemäss Ziff. I der V vom 31. März 2004, in Kraft seit 1. Juli 2004 (AS 2004 2781).

³ The credit balances referred to in paragraph 2 can only be credited as capital if it emerges from a written statement lodged with the auditors that the securities dealer has undertaken not to reduce, without the prior consent of the auditors, either of the two components of capital to such an extent that this capital falls below the minimum amount.

⁴ FINMA may allow natural persons and partnerships to deposit collateral of at least CHF 1.5 million, instead of a minimum capital pursuant to paragraphs 2 and 3; such collateral may, for instance, take the form of a bank guarantee or a cash deposit in a blocked account with a bank.

⁵ In justified individual cases, FINMA may fix another minimum amount.

⁶ Banks shall be subject to the provisions of the Capital Adequacy Ordinance of June 1, 2012^{14, 15}

Art. 23 Information on senior staff and principal shareholders

(Art. 10 para. 2 letter d, para. 3 and Art. 35 para. 2 SESTA)

¹ The securities dealer must provide information on senior staff and principal shareholders in his, her, or its application for authorisation. The application shall contain, in particular:

- a. for natural persons: information on nationality, domicile, significant interests in other companies, pending judicial proceedings and administrative procedures as well as a signed curriculum vitae, references and an extract from the register of criminal records;
- b. for companies: the articles of association or partnership agreements, an extract from the commercial register or an attestation to this effect, a description of business activities, the financial position and, where appropriate, the group structure as well as information on completed or pending judicial proceedings and administrative procedures.

² With regard to principal shareholders, the application for authorisation shall contain in addition:

- a. the percentages of capital held;
- b. the declaration pursuant to Article 28 paragraph 2.

³ Senior staff of the securities dealer, pursuant to Article 10 paragraph 2 letter d of the Act shall be:

- a. the members of the body in charge of supervision, regulation and control, and the members of the management;
- b. the head of the internal audit unit.¹⁶

⁴ Principal (qualified) shareholders, pursuant to Article 10 paragraph 2 letter d of the Act shall be natural persons and legal entities who hold, directly or indirectly, at least 10 percent of the capital or voting rights of a securities dealer, or who can otherwise exert a significant influence on the latter's business activities.

Art. 24 Registration in the commercial register

(Art. 10 para. 2 letter a and para. 3 SESTA)

A newly established securities dealer may only apply for registration in the commercial register if FINMA has authorised him to commence business.

¹⁴ SR 952.03

¹⁵ Fassung gemäss Anhang 6 Ziff. 3 der Eigenmittelverordnung vom 1. Juni 2012, in Kraft seit 1. Jan. 2013 (AS 2012 5441).

¹⁶ Fassung gemäss Anhang Ziff. 9 der Finanzmarktprüfverordnung vom 15. Okt. 2008, in Kraft seit 1. Jan. 2009 (AS 2008 5363).

Section 2: Conduct of Business

Art. 25 Change in the requirements for authorisation

(Art. 10 para. 6 and Art. 35 para. 2 SESTA)

¹ The securities dealer shall report any change in the requirements for authorisation to FINMA, in particular:

- a. any amendments to the articles of association or partnership agreements and regulations;
- b. the intention to establish a subsidiary, branch or representative office abroad, with the information specified in Article 18, paragraph 5;
- c. the discontinuance of, or any significant change in, the business activities of the subsidiary, branch or representative office abroad;
- d. a change in the auditing firm or the competent foreign supervisory authority of the subsidiary, branch or representative office abroad.

² A change in the senior staff need only be reported to the auditors.

³ The securities dealer may only apply to have amendments to the articles of association entered in the commercial register and implement amendments to the regulations, if FINMA has approved such amendments.

Art. 26¹⁷ Pledge contracts

(Art. 11a SESTA)

For pledge contracts, Article 33¹⁸ of the Banking Ordinance of May 17, 1972¹⁹ shall apply.

Art. 27 Stock exchange membership

(Art. 10 para. 2 letter a, para. 6 and Art. 35 para. 2 SESTA)

Every year, within 60 days of the close of the financial year, the securities dealer shall provide FINMA with the names of the Swiss and foreign stock exchanges of which it is a member.

Art. 28 Acquisition and sale of significant financial interests

(Art. 10 para. 2 letter d, para. 6 and Art. 35 para. 2 SESTA)

¹ Every natural person or legal entity shall be obliged to notify FINMA before acquiring or selling, either directly or indirectly, a significant interest in a securities dealer organised according to Swiss law. This obligation shall also apply if a significant interest is increased or reduced to such an extent that it reaches, exceeds or falls below the thresholds of 20, 33 or 50 percent of the capital or voting rights.

² Persons who have a significant interest must make a declaration to FINMA, stating whether they are acquiring the interest on their own account or on a fiduciary basis for third parties and whether they have granted options or similar rights for said interest.

³ The securities dealer shall notify FINMA of the persons who meet the criteria pursuant to paragraph 1, as soon as it has knowledge thereof.

¹⁷ Fassung gemäss Anhang Ziff. 9 der Finanzmarktprüfverordnung vom 15. Okt. 2008, in Kraft seit 1. Jan. 2009 (AS 2008 5363).

¹⁸ Dieser Artikel ist aufgehoben. Siehe heute: das Bucheffektengesetz vom 3. Okt. 2008 (SR 957.1).

¹⁹ SR 952.02

⁴ Within 60 days of the close of the financial year, the securities dealer shall provide FINMA with a list of the principal shareholders of his firm. The list shall contain information on the identity of all the principal shareholders and the percentage of capital held by them on the closing date, as well as any changes on the previous year.

⁵ The reports pursuant to paragraphs 3 and 4 shall contain, in addition, the information and documents pursuant to paragraph 2 and Article 23, paragraph 1, unless FINMA is already in possession of them as a result of an earlier report.

Section 3: Provisions on Capital Adequacy, Risk Diversification and Accounting

Art. 29²⁰ Capital adequacy, risk diversification and accounting

¹ The provisions of the Capital Adequacy Ordinance of September 29, 2006²¹ and of the Banking Ordinance of May 17, 1972²² on annual accounts (Art. 23 ff.) shall also apply to securities dealers.

² In justified individual cases, FINMA may exceptionally:

- a. granting of specific reliefs;
- b. tighten the provisions relating to capital adequacy and risk diversification. In particular, it may require the securities dealer to draw up statements on capital adequacy pursuant to Article 13 of the Capital Adequacy Ordinance of September 29, 2006 at shorter intervals.

³ In the case of securities dealers not subject to the Banking Act of November 8, 1934²³, the level of capital adequacy must be at least one quarter of the annual full costs, if

- a. the requirements pursuant to Article 42 and 43 of the Capital Adequacy Ordinance²⁴ are lower; and
- b. the core capital pursuant to Article 21 of the Capital Adequacy Ordinance does not reach 10 million CHF.²⁵

⁴ Full costs are deemed to be the expenses listed in the income statement of the latest annual report under the positions 1.5.1 (personnel expenses), 1.5.2 (operating expenses), 2.2 (writedowns on fixed assets), and 2.3 (value adjustments, provisions and losses) pursuant to Article 25a para. 1 of the Banking Ordinance of May 17, 1972.

Art. 29a²⁶ Deposit insurance **(Art. 17, Arts 19 und 36a SESTA)**

¹ For securities dealers, which have to guarantee additional liquidity pursuant to Article 37h para. 3 of the Banking Act of November 8, 1934²⁷, Art. 19²⁸ of the Banking Ordinance of May 17, 1972²⁹ shall apply.

² The auditors examine on the base of the work performed, if the additional liquidity is available and state the result in their audit report.³⁰

²⁰ Fassung gemäss Anhang 7 Ziff. 2 der Eigenmittelverordnung vom 29. Sept. 2006, in Kraft seit 1. Jan. 2007 (AS **2006** 4307).

²¹ SR **952.03**

²² SR **952.02**

²³ SR **952.0**

²⁴ SR **952.03**

²⁵ Fassung gemäss Anhang 6 Ziff. 3 der Eigenmittelverordnung vom 1. Juni 2012, in Kraft seit 1. Jan. 2013 (AS **2012** 5441).

²⁶ Eingefügt durch Ziff. III der V vom 30. Sept. 2005, in Kraft seit 1. Jan. 2006 (AS **2005** 4849).

²⁷ SR **952.0**

²⁸ Dieser Artikel ist aufgehoben. Siehe heute: Art. 18 der Liquiditätsverordnung vom 30. Nov. 2012 (SR **952.06**).

²⁹ SR **952.02**

³⁰ Fassung gemäss Anhang Ziff. 9 der Finanzmarktprüfverordnung vom 15. Okt. 2008, in Kraft seit 1. Jan. 2009 (AS **2008** 5363).

Section 4: External Audit

Art. 30-37³¹

Chapter 4: Foreign Securities Dealers

Section 1: General Provisions

Art. 38 Foreign securities dealers

(Art. 10 paras 3 and 4 SESTA)

¹ A foreign securities dealer shall be considered as any company organised according to foreign law which:

- a. holds an authorisation as a securities dealer abroad;
- b. uses the term "securities dealer" or a term with a similar meaning in the company name, in the description of its business purpose or in business documents; or
- c. conducts securities trading within the meaning of Article 2 letter d of the Act.

² If the foreign securities dealer is effectively managed in Switzerland, or if it carries out its operations exclusively or predominantly in or from Switzerland, it must organise itself according to Swiss law and shall be subject to the provisions governing domestic securities dealers.

Art. 39 Requirement for authorisation

(Art. 10 paras 3 and 4, and Art. 38 SESTA)

¹ A foreign securities dealer shall require an authorisation from FINMA, if it:

- a. employs people in Switzerland who, permanently and in a professional capacity for it, in or from Switzerland:
 1. trade in securities, maintain client accounts or commit the securities dealer legally (branch);
 2. operate in another way than pursuant to subparagraph 1 above, specifically by passing on client orders to the dealer or representing it for advertising or other purposes (representative office);
- b. wishes to become a member of a stock exchange incorporated in Switzerland (foreign member of the stock exchange).

² If FINMA becomes aware of other cross-border activities, it may inform the competent foreign supervisory authorities under the conditions set forth in Article 38 of the Act.

³¹ Aufgehoben durch Anhang Ziff. 9 der Finanzmarktprüfverordnung vom 15. Okt. 2008, mit Wirkung seit 1. Jan. 2009 (AS 2008 5363).

Art. 40 Applicable law

(Art. 10 paras 3 and 4 SESTA)

¹ The activities of foreign securities dealers in Switzerland shall be governed by the provisions of the Act and the present Ordinance relating to domestic securities dealers, in so far as no special regulations are stipulated in said Ordinance.

² FINMA may subject foreign securities dealers fully to the provisions governing domestic securities dealers, in so far as the law at the place of the registered office of the foreign securities dealer does not grant Swiss securities dealers equivalent specific reliefs and such action does not conflict with any international treaty.

Section 2: Branches

Art. 41 Requirements for authorisation

(Art. 10 paras 3 and 4, and Art. 37 SESTA)

¹ FINMA shall grant the foreign securities dealer authorisation to set up a branch, if:

- a. the foreign securities dealer is adequately organised and has sufficient financial resources and qualified staff to operate a branch in Switzerland;
- b. the foreign securities dealer is subject to appropriate supervision, which also includes the branch;
- c. the competent foreign supervisory authorities do not object to the establishment of the branch;
- d. the competent foreign supervisory authorities undertake to notify FINMA without delay, should circumstances arise which could seriously jeopardise client assets at the branch;
- e. the competent foreign supervisory authorities are in a position to offer FINMA administrative assistance;
- f. the branch is organised in keeping with its business activities and has regulations which precisely define the scope of business and provide for an administrative organisation in keeping with its business activities;
- g. the senior staff responsible for the management of the branch (Art. 23 para. 3) offer the guarantee of irreproachable business conduct;
- h. the foreign securities dealer furnishes proof that the company name of the branch can be entered in the commercial register.

² FINMA is entitled to refuse authorisation pursuant to Article 37 of the Act.

³ If the foreign securities dealer is part of a group operating in the financial sector, FINMA may make authorisation conditional upon the requirement that it is subject to appropriate consolidated supervision by foreign supervisory authorities.

⁴ Articles 12-14 of the Act shall not be applicable to branches of foreign securities dealers.

Art. 42 Registration in the commercial register

(Art. 10 paras 3 and 4 SESTA)

The foreign securities dealer may only apply for registration of the branch in the commercial register if FINMA has authorised the establishment of the branch.

Art. 43 Several branches

(Art. 10 paras 3 and 4 SESTA)

¹ If a foreign securities dealer sets up several branches in Switzerland, it must:

- a. obtain authorisation for each of them;
- b. designate one of them to be in charge of relations with the FINMA.

² These branches must jointly meet the requirements of the Act and the present Ordinance. One audit report³² shall suffice.

Art. 44 Security deposits

(Art. 10 paras 3 and 4 SESTA)

FINMA may require the branch to provide security, if this is necessary for the protection of investors.

Art. 45 Preparation of annual and interim accounts of the branch

(Art. 10 paras 3 and 4 SESTA)

¹ The branch may prepare its annual and interim accounts in accordance with the provisions applicable to the foreign securities dealer, in so far as they satisfy international accounting standards.

² Separate statements must be drawn up for claims and commitments in respect of:

- a. the foreign securities dealer;
- b. companies active in the financial sector or real estate firms, if:
 1. the foreign securities dealer forms an economic unit with them, or
 2. it appears that the foreign securities dealer is under a legal duty or indeed compelled to assist such companies.

³ Paragraph 2 also applies to off-balance-sheet business.

⁴ The branch shall submit its annual and interim accounts to FINMA in triplicate. Publication is not required.

Art. 46 Publication of the annual report of the foreign securities dealer

(Art. 10 paras 3 and 4 SESTA)

¹ Within four months of the close of the financial year, the branch shall make the annual report of the foreign securities dealer available to the press and all who request it, and shall forward a copy to FINMA.

² The annual report of the foreign securities dealer must be published in one of Switzerland's official languages or in English.

Art. 47 ³³

³² Ausdruck gemäss Anhang Ziff. 9 der Finanzmarktprüfverordnung vom 15. Okt. 2008, in Kraft seit 1. Jan. 2009 (AS 2008 5363). Die Anpassung wurde im ganzen Text vorgenommen.

³³ Aufgehoben durch Anhang Ziff. 9 der Finanzmarktprüfverordnung vom 15. Okt. 2008, mit Wirkung seit 1. Jan. 2009 (AS 2008 5363).

Art. 48 Closure of a branch

(Art. 10 paras 3 and 4 SESTA)

The foreign securities dealer shall obtain the approval of FINMA before closing a branch.

Section 3: Representative Offices

Art. 49 Authorisation requirements

(Art. 10 para. 4 and Art. 37 SESTA)

¹ FINMA shall grant the foreign securities dealer authorisation to set up a representative office, if:

- a. the foreign securities dealer is subject to appropriate supervision;
- b. the competent foreign supervisory authorities do not object to the establishment of the representative office; and
- c. the persons entrusted with the management of the representative office offer the guarantee of irreproachable conduct of their activities.

² FINMA is entitled to refuse authorisation pursuant to Article 37 of the Act.

³ Articles 12-14, 16 and 17 of the Act shall not be applicable to representative offices of foreign securities dealers.

Art. 50 Several representative offices

(Art. 10 para. 4 SESTA)

¹ If a foreign securities dealer sets up several representative offices in Switzerland, it must:

- a. obtain authorisation for each of them;
- b. designate one of them to be in charge of relations with FINMA.

Art. 51 Annual report

(Art. 10 para. 4 SESTA)

The representative office shall forward the annual report of the foreign securities dealer to FINMA within four months of the close of the financial year.

Art. 52 Closure of a representative office

(Art. 10 para. 4 SESTA)

The foreign securities dealer shall notify FINMA of the closure of a representative office.

Section 4: Foreign Members of a Stock Exchange

Art. 53 Foreign securities dealers³⁴

(Art. 10 para. 4 and Art. 37 SESTA)

¹ FINMA shall grant an authorisation to the foreign securities dealer who wishes to become a member of a stock exchange registered in Switzerland, if:

- a. the foreign securities dealer is subject to appropriate supervision;
- b. the competent foreign supervisory authorities do not object to the activities of the foreign securities dealer in Switzerland; and
- c. the competent foreign supervisory authorities are in a position to offer FINMA administrative assistance.

² FINMA is entitled to refuse authorisation pursuant to Article 37 of the Act.

³ Articles 12-14, 16 and 17 of the Act shall not be applicable to foreign members of a stock exchange.

Article 53a³⁵ Unsupervised foreign own-account dealers

(Article 10 para. 4 and 37 SESTA)

¹ FINMA may grant an authorisation as a foreign stock exchange member to a foreign own-account dealer which is not subject in its state of domicile to any appropriate supervisory regime if it meets the requirements of Article 10 paragraph 2 of the Act.

² It is entitled to refuse authorisation pursuant to Article 37 of the Act.

³ The own-account dealer is obliged to provide FINMA and stock exchange with any information and to publish any documents that they require to fulfill their supervisory role.

⁴ FINMA can exempt the own-account dealer from compliance with Articles 12-14, 16 and 17 of the Act if the protective purpose of these provisions is taken into account in some other way.

Chapter 4a:³⁶ Main Listing

Article 53b

(Article 20 para. 1 and 22 para. 1 SESTA)

¹ The equity securities of a company not domiciled in Switzerland is mainly listed in Switzerland when the company must fulfil at least the same duties and maintenance of a listing on a stock exchange in Switzerland as a company domiciled in Switzerland.

² The Stock Exchange publishes which equity securities of companies not domiciled in Switzerland are mainly listed.

³ Companies not domiciled in Switzerland with equity securities mainly listed in Switzerland shall publish the current total of equity securities issued and associated voting rights.

³⁴ Eingefügt durch Ziff. I der V vom 29. Juni 2011, in Kraft seit 1. Aug. 2011 (AS 2011 3461).

³⁵ Eingefügt durch Ziff. I der V vom 29. Juni 2011, in Kraft seit 1. August 2011 (AS 2011 3461).

³⁶ Eingefügt durch Ziff. I der V vom 10. April 2013, in Kraft seit 1. Mai 2013 (AS 2013 1111).

Chapter 5: Public Offers: Cancellation of Outstanding Equity Securities

Art. 54 Calculation of voting rights

(Art. 33 para. 1 SESTA)

In order to determine whether the threshold of 98 percent pursuant to Article 33 paragraph 1 of the Act is exceeded or not, the following shares shall be taken into account in addition to the shares held directly:

- a. those with dormant voting rights;
- b. those held by the offeror indirectly or in concert with third parties at the time of the application for cancellation.

Art. 55 Proceedings

(Art. 33 SESTA)

¹ Should the offeror bring an action against the company to have the outstanding equity securities cancelled, the judge shall make this known to the public and inform the remaining shareholders that they may participate in the proceedings. The judge shall set a time-limit of not less than three months for this, beginning on the day of the first announcement.

² The announcement pursuant to paragraph 1 shall be published in the Swiss Official Commercial Gazette (SOCG) three times. In special cases, the judge may arrange for appropriate publication in another form.

³ If shareholders participate in the proceedings, they shall be independent of the defendant company in their litigious acts.

⁴ The cancellation notice shall be published immediately in the Swiss Official Commercial Gazette (SOCG); other forms of publication shall be at the discretion of the judge.

Chapter 5a:³⁷ Exceptions to the prohibition of insider trading and of market manipulation

(Art. 33e para. 2 and 33f para. 2 SESTA)

Art. 55a Subject matter

The provisions of this chapter shall determine the cases in which behaviors which fall under Article 33e paragraph 1 and 33f paragraph 1 of the Act are admissible.

³⁷ Eingefügt durch Ziff. I der V vom 10. April 2013, in Kraft seit 1. Mai 2013 (AS 2013 1111).

Article 55b Buyback of own equity securities

¹ The buyback of own equity securities within a public buyback offer (buyback program) at market price, which falls under Article 33e paragraph 1 letter a and 33f paragraph 1 of the Act, is admissible subject to Article 55c, if:

- a. the buyback program lasts a maximum of three years;
- b. the total volume of repurchases does not exceed 10 percent of the capital and the voting rights and 20 percent of the freely tradable portion of equity securities;
- c. the daily volume of repurchases does not exceed 25 percent of the average volume per day traded on the regular trading line during the thirty days prior to the publication of the buyback program;
- d. the purchase price is not higher than:
 1. the latest independent closing price reached on the regular trading line, or
 2. the current best independent price bid on the regular trading line, as long as it is below the price under subparagraph 1;
- e. no prices are provided during breaks in trading as well as the opening or closing auction;
- f. sales of own equity securities during the buyback program are made solely for the fulfillment of employee participation programs or meet the following conditions:
 1. they are reported to the stock exchange on the trading day after they occur,
 2. they are published by the issuer no later than the fifth trading day after they occur, and
 3. on any given day they do not exceed the total of 5 percent of the average daily volume traded on the regular trading line during the thirty days prior to the publication of the buyback program;
- g. the essential content of the buyback program is published through a buyback notice before the start of the buyback program and remains publicly available during the entire duration of the buyback program, and
- h. the individual repurchases are reported to the stock market as part of the buyback program no later than the fifth trading day after they occur and are made public by the issuer.

² The buyback of own equity securities within a public buyback offer (buyback program) at a fixed price or by the issuance of put-options which falls under Article 33e paragraph 1 letter a and 33f paragraph 1 of the Act, is admissible subject to Article 55c, if:

- a. the buyback program lasts at least ten trading days;
- b. the total volume of repurchases does not exceed 10 percent of the capital and the voting rights and 20 percent of the freely tradable portion of equity securities;
- c. the essential content of the buyback program is published through a buyback notice before the start of the buyback program and remains publicly available during the entire duration of the buyback program, and
- d. the individual repurchases are made public by the issuer at the latest within one trading day of the end of the buyback program.

³ The Takeover Board may in individual cases authorize buybacks to a greater extent than those referred to in paragraphs 1 letters b and c and 2 letter b, provided that this is compatible with the interests of investors.

⁴ It is presumed that article 33e paragraph 1 letter a and Article 33f paragraph 1 of the Act have not been violated when the purchase price paid on a separate trading line is a maximum of 2 percent higher than:

- a. the latest closing price reached on the ordinary trading line, or
- b. the current best price bid on the ordinary trading line, provided this is below the price referred to in letter a.

Article 55c Black-out periods

¹ Article 55b paragraphs 1 and 2 shall not apply to the buyback of own equity securities if the buyback program is announced or the buyback of own equity securities occurs:

- a. while the issuer defers the disclosure of a price-sensitive fact in accordance with the provisions of the stock exchange;
- b. for ten trading days prior to the public disclosure of financial results; or
- c. more than nine months after the cut-off date of the last published consolidated financial statements.

² During black-out periods, buyback at market price is however authorized by:

- a. a securities dealer who was mandated before the opening of the buyback program and makes its decisions within the predefined parameters without being influenced by the issuer;
- b. a trading unit that is protected by information barriers, as long as the issuer is a securities dealer.

³ In accordance with paragraph 2 letter a, the parameters must be fixed before the publication of the buyback offer and can be adjusted once a month for the duration of the buyback program. If the parameters are set or adjusted in accordance with paragraph 1 within one of the periods, the buyback may then be executed only after a waiting period of 90 days.

Article 55d Content of the buyback notice

Following Article 55b paragraph 1 letter g and paragraph 2 letter c, the buyback notice must contain at least the following information:

- a. information about the issuer, in particular:
 - 1. its identity,
 - 2. the issued share capital,
 - 3. its own investment in the capital,
 - 4. the shareholders' equity in accordance with Article 20 of the Act;
- b. the nature, purpose and object of the buyback program;
- c. the schedule.

Article 55e Price stabilisation after a public placement of securities

Securities transactions which are intended to stabilise the price of a security available for trading on a stock exchange or an institution which is similar to a stock exchange in Switzerland and which fall under Article 33e paragraph 1 letter a and 33f paragraph 1 of the Act are admissible, if:

- a. they are made within 30 days after the public offering of the security to be stabilised;
- b. they reach at maximum the issue price or, in case of trading with subscription or conversion rights, at maximum the market price;
- c. the maximum period during which securities transactions can be made, and the responsible securities dealer through whom the securities transactions can be made are published before the start of trading with the security to be stabilised;
- d. no prices are offered during breaks in trading and during the opening or closing auctions;
- e. they are reported to the stock exchange no later than on the fifth trading day following their execution and published by the issuer no later than on the fifth trading day following the expiry of the period in accordance with letter a³⁸; and
- f. the issuer informs the public no later than on the fifth trading day following the exercise of an overallotment option of the date of this exercise and the number and the type of securities concerned.

³⁸ Der Verweis wurde in Anwendung von Art. 12 Abs. 2 der Publikationsgesetzes vom 18. Juni 2004 (SR 170.512) angepasst.

Article 55f Other permissible securities transactions

The following securities transactions are permitted even if they fall under Article 33e paragraph 1 letter a and 33f paragraph 1 of the Act:

- a. securities transactions implementing an own decision to make a securities transaction, in particular the purchase of securities of an offeree company by a potential offeror with regard to the publication of a public offer, provided that the decision was not the result of insider information;
- b. securities transactions of the Confederation, cantons, communes and the Swiss National Bank (SNB) within the scope of their public functions, provided that such transactions are not made for investment purposes.

Article 55g Admissible communication of insider information

The communication of insider information to a person does not fall under Article 33e paragraph 1 letter b of the Act, if:

- a. this person requires the insider information in order to fulfill his or her legal or contractual obligations; or
- b. the communication is required with regard to the conclusion of a contract and the holder of information:
 1. tells the receiver of the information that the insider information may not be exploited, and
 2. documents the disclosure of insider information and the instruction pursuant to subparagraph 1.

Chapter 6: International Relations

Art. 56 Foreign control

(Art. 37, Art. 10 para. 6 and Art. 35 para. 2 SESTA)

¹ Stock exchanges and securities dealers organised according to Swiss law shall be considered as foreign-controlled, if foreign persons with significant interests in them hold over half the voting rights directly or indirectly, or otherwise exert a controlling influence on them.

² These shall be considered as foreign persons:

- a. natural persons who have neither Swiss nationality nor a residence permit conferring the right of establishment in Switzerland;
- b. legal entities and partnerships which have their registered office abroad or, if they have their registered office in Switzerland, are controlled by persons mentioned under letter a above.

³ Stock exchanges and securities dealers which subsequently come under foreign control must obtain the approval of FINMA. The same shall apply to foreign-controlled stock exchanges or securities dealers, if there is a change in the foreign persons with significant interests.

⁴ Members of the board of directors and the management of the stock exchange or securities dealer shall report all and any facts to FINMA) which point to foreign control of the stock exchange or securities dealer, or to a change in the foreign persons with significant interests.

⁵ Foreign-controlled banks shall be subject exclusively to the provisions of the Banking Act of November 8, 1934³⁹.

³⁹ SR 952.0

Chapter 7: Final Provisions

Art. 57 Amendments to laws heretofore in force

...⁴⁰

Art 58⁴¹ Transitional Provisions to Amendment of 10 April 2013

¹ The buyback of own equity securities at market price within an ongoing public buyback offer (buyback program) upon the coming into force of the amendments of April 10, 2013 is admissible subject to Article 55c, if the requirements pursuant to Article 55b paragraph 1 letters c-h are respected as of entry into force. Article 55b paragraphs 3 and 4 are applicable.

² The buyback of own equity securities at a fixed price or by the issuance of put-options within an ongoing public buyback offer (buyback program) upon the coming into force of the amendments of April 10, 2013 is admissible subject to Article 55c, if the requirements pursuant to Article 55b paragraph 2 letters c and d are respected as of entry into force. Article 55b paragraphs 3 and 4 are applicable.

Art. 59 Entry into force

¹ This Ordinance shall enter into force on February 1, 1997, subject to paragraph 2.

² The date of the entry into force of Articles 54, 55 and 58 paragraphs 8-11, shall be determined later.⁴²

⁴⁰ Die Änderungen können unter AS **1997** 85 konsultiert werden.

⁴¹ Fassung gemäss Ziff. I der V vom 10. April 2013, in Kraft seit 1. Mai 2013 (AS **2013** 1111).

⁴² Diese Bestimmungen wurden durch Art. 2 der V vom 13. Aug. 1997 (AS **1997** 2044) auf den 1. Jan. 1998 in Kraft gesetzt.