

Guidelines

on submitting applications for recognition of **foreign trading venues under Article 41 FMIA**

Version of 22 October 2020

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; SR 958.1). 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, however, rule out the possibility 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.

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"¹ includes stock exchanges² and multilateral trading facilities³, i.e. all comparable, foreign-regulated trading venues regardless of their specific status (e.g. regulated exchanges, multilateral trading venues).

Recognition must be obtained before any business is conducted with supervised Swiss participants. Those who grant such direct access to their facilities without

¹ See Article 26 let. a FMIA.

² 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."

³ 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.

being in possession of the necessary recognition are liable to prosecution (Art. 44 FINMASA; SR 956.1).

I. 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 invoicing address in Switzerland

Applicants seeking recognition as a foreign trading venue must indicate a domicile for service in Switzerland (Art. 11b para. 1 APA; SR 172.021). A domicile for service is an address in Switzerland to which a Swiss authority may deliver a decree or decision. This may be a Swiss law firm or any other person who is authorised to receive deliveries in Switzerland.

In addition, the applicant must designate an invoicing address for the receipt of the invoice and a contact partner in Switzerland. Further details for invoicing purposes (e.g. reference number) may also be supplied.

Applications for recognition should demonstrate that all the recognition requirements laid down in Article 41 FMIA have been met, whereby the following details and/or documentation should be provided.

2. Appropriate supervision and regulation

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 has no objections to cross-border activities being conducted by the foreign trading venue;

- give an assurance that it will inform FINMA about any breaches of the law or other irregularities committed by supervised Swiss participants; and
- give an assurance that it will provide FINMA with assistance (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;
- description of regulatory status abroad (e.g. stock exchange, multilateral trading facility);
- an extract from the Commercial Register (or a similar document);
- documents regarding its organisation (articles of association, organisational regulations, organisation chart);
- a declaration stating whether equity securities within the meaning of Article 1 para. 1 of the Ordinance on the Recognition of Foreign Trading Venues for the Trading of Equity Securities of Companies with Registered Office in Switzerland of 30 November 2018 (SR 958.2) are traded on the foreign trading venue and/or are to be traded in the foreseeable future (confirmation from the applicant, list of equity securities traded on the foreign trading venue);
- the contact details of the foreign trading venue and 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 of the individual responsible within the authority (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.

II. Information and reporting requirements

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

II.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.

II.2 Reporting changes in circumstances to FINMA

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

- new contact details of the recognised foreign trading venue;
- 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.

III. Organised trading facilities (OTFs)

The FMIA does not define any recognition requirements for foreign operators of foreign OTFs. If they so wish, operators may submit an application for recognition to FINMA. However, this does not include foreign operators of OTFs who provide services to Swiss participants in order to fulfil their trading venue obligations for trading derivatives, as prescribed in the 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 should be noted, however, that the duty to trade via a trading venue or organised trading facility (Art. 112-115 FMIA) is not yet applicable. Consequently, there are at present no de facto recognition requirements for foreign OTFs.

Since Articles 112-115 FMIA came into force (1 August 2017), the principles for the recognition of foreign trading venues (Art. 41 FMIA) have applied by extension to recognition procedures for foreign operators of OTFs.

IV. Ordinance on the Recognition of Foreign Trading Venues for the Trading of Equity Securities of Companies with Registered Office in Switzerland

The recognition discussed in these guidelines under Article 41 FMIA does not constitute recognition pursuant to Article 1 f. of the Ordinance on the Recognition of Foreign Trading Venues for the Trading of Equity Securities of Companies with Registered Office in Switzerland of 30 November 2018. Both recognition obligations are independent of one another; a trading venue domiciled abroad may require two recognitions. Information about the recognition process under this Ordinance of 30 November 2018 can be requested from FINMA: exchangesupervision@finma.ch