Recognition as a foreign trading venue under the new Swiss financial market regulation

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- **Foreign trading venues are financial market infrastructures under FinfraG**
- **They must submit a request for recognition by FINMA until 31 December 2016**
- **Trading/business activity can be continued until FINMA has published its recognition decision**

1. Introduction

All trading venues domiciled abroad must obtain recognition from the Swiss Financial Market Supervisory Authority ("FINMA") before granting Swiss participants, supervised by FINMA, direct access to their facilities. The new requirement applies to foreign trading venues with an existing FINMA authorization as well as those that did not require a license by the regulator but are now subject to the Swiss Financial Market Inftrastructure Act ("FinfraG").

2. Financial market infrastructures

Before 1 January 2016, and the entering into force of the FinfraG, foreign trading venues could operate in Switzerland as a foreign stock exchange. FinfraG introduced the term "financial market infrastructures" and – as a consequence – earlier provisions of the Stock Exchange and Securities Trading Act (SESTA) and the respective ordinance (SESTO) no longer existed. The law has become more limiting on foreign trading venues operating in Switzerland.

3. Recognition process

The recognition process begins with a written application addressed to FINMA, followed by FINMA deciding whether additional information/documents, hearings, complementary instructions, etc. are required.

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In principle, the application must be filed in a Swiss official language (French, German, Italian), but FINMA may allow an applicant to file a request in English, with a reasonable request. The application should contain at least the details listed in section I of the guidelines on submitting applications for autorization as a foreign exchange ("Guidelines"):

- the contact details of the trading venue;
- the contact details of the home supervisory authority of the trading venue; and
- the power of attorney for the Swiss legal representatives.

The main requirement for a foreign trading venue to be recognized by FINMA in Switzerland is that it be subject to an equivalent supervision outside of Switzerland. EU based/supervised trading venues, for instance, are considered as being based in a jurisdiction with adequate regulation and supervision, under Art. 41 para. 2 FinfraG (requirement for a deemed recognition).

Further, the authority supervising the trading venue must provide a written confirmation to FINMA that

- it supervises the foreign trading venue;
- it has no objections to the contemplated crossborder activity of the trading venue;
- it will notify FINMA in the event of any legal violations or other irregularities attributable to Swiss securities dealers; and
- it is in a position to provide administrative assistance to FINMA if necessary.

4. Preparation of application letter

The foreign trading venue (or its Swiss counsel) must prepare an application letter to FINMA with the following information:

- Contact details of the foreign trading venue: Company name (full legal name), registered office, address, phone number, fax number, e-mail, website.
- Contact details of the competent prudential supervisory authority of the foreign trading venue: Name, address, phone number, fax number, e-mail and website; link (on official website), registration or supervisory status, where available.
- Description of the foreign trading venue, such as its business background, regulation and regulatory status (e.g., temporary registration), features/functionalities of the foreign trading venue, traded products, eligible participants.
- Description of the reasons and intentions for obtaining recognition in Switzerland for granting access to Swiss participants.

5. Timing

Foreign trading venues with an autorization or recognition at the time FinfraG entered into force (1 January 2016) must submit a new request for recognition by 31 December 2016.

The recognition procedure is limited to the analysis of new requirements under FinfraG.

They are, however, permitted to continue their trading/business activity until FINMA has published the decision on their request.

Foreign trading venues that were not regulated under Swiss law prior to FinfraG and are now subject to the new Swiss regulations must notify FINMA about their status by 30 June 2016.

They are also required to submit a request for recognition by 31 December 2016.

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