



Federal Act on Stock Exchanges and Securities Trading

(Stock Exchange Act, SESTA)

unofficial translation

Unrestricted

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Federal Act on Stock Exchanges and Securities Trading

954.1

(Stock Exchange Act, SESTA)
of March 24, 1995

Version: January 1, 2009

Unofficial translation

The Federal Assembly of the Swiss Confederation, based upon Articles 31^{bis}, 31^{quater}, 64 and 64^{bis} of the Federal Constitution¹, after having examined the Message of the Federal Council dated February 24, 1993², decides:

Chapter 1: General Provisions

Art. 1 Objective

This Act sets the conditions for the establishment and operation of stock exchanges as well as for the professional trading in securities, in order to ensure transparency and equality of treatment of investors³. It provides the framework to ensure the proper functioning of the securities markets.

Art. 2 Definitions

For the purposes of this Act,

- a. "Securities" shall mean standardized certificates which are suitable for mass trading, rights not represented by a certificate with similar functions (book-entry securities) and derivatives;
- b. A "stock exchange" shall mean any organization which is set up for the purpose of securities trading and which enables the simultaneous exchange of offers of securities among a number of securities dealers, as well as the execution of transactions; trading systems which facilitate the exchange of electricity are also deemed to be stock exchanges;
- c. "Listing" shall mean admission to trading on the principal or second exchange;
- d. A "securities dealer" shall mean any natural person, legal entity or partnership who buys and sells securities, in a professional capacity, on the secondary market, either for its own account with the intent of

AS 1997 68

¹ [BS 1 3; AS 1980 380, 1996 2502]

² BBl 1993 I 1369

³ All references to persons in this Act shall refer to both genders.

reselling them within a short period of time or for the account of third parties, or makes public offers of securities to the public on the primary market, or creates derivatives and offers them to the public;

- e. A "public takeover offer" shall mean any offer to purchase or exchange shares, participation or bonus certificates or any other participation rights ("equity securities") which is made publicly to the holders of shares or other equity securities of Swiss companies whose equity securities are, in whole or in part, listed on an exchange in Switzerland.

Art. 2a Trading of Electricity on a Stock Exchange

¹ The Federal Council shall issue provisions concerning the trading of electricity on a stock exchange.

² It may empower the Swiss Financial Market Supervisory Authority (FINMA)⁴, in agreement with the Electricity Commission, to issue provisions on matters of limited scope, specifically on issues that are largely technical in nature.

Chapter 2: Stock Exchanges

Art. 3 Authorization

¹ The operation of a stock exchange is subject to authorization by FINMA.⁵

² Authorization shall be granted if:

- a. the stock exchange through regulations and its organizational structure ensures compliance with the provisions of this Act;
- b. the stock exchange and its senior officials are able to show that they have the necessary professional knowledge and give an assurance of proper business conduct;
- c. the governing bodies meet such minimum requirements as the Federal Council may set out.

³ The Federal Council shall set out the requirements to be met by foreign stock exchanges which intend to operate in Switzerland but have no registered office here.

⁴ The Federal Council may subject organizations which are similar to exchanges, in whole or in part, to this Act or exempt certain exchanges or similar organizations from the application of this Act whensoever justified by the objectives of the Act.

⁵ In the event that the requirements for authorization are altered subsequently, the stock exchange must seek the approval of FINMA for the continuation of its operations.

⁴ Term pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1). This amendment was made throughout the entire Act.

⁵ Version pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

Art. 4 Self-regulation

¹ The stock exchange must undertake to ensure that it has an organizational structure in respect of its operations, administration and supervision that is appropriate to its activities.

² A stock exchange must submit its regulations and any amendments thereof to FINMA for approval.

Art. 5 Market Organization

¹ The stock exchange shall issue regulations which shall organize the market so as to achieve efficiency and transparency.

² The stock exchange shall maintain a daily chronological record of all transactions executed on it and of all transactions reported to it. In it, it shall in particular record the time of the transaction, the dealers who participated therein, the securities traded, the number or nominal value of the securities traded and the price.

³ The stock exchange shall ensure that all information necessary to maintain a transparent market is made public. This shall apply, in particular, to the prices at which securities have been traded, the volume of securities traded both on and off exchange, and the companies which are not subject to the obligation to make an offer pursuant to Articles 32 and 52 or for which the threshold has been raised above 33 1/3 percent.

Art. 6 Market Supervision

¹ The stock exchange shall supervise price formation, execution and settlement of transactions in such a manner so as to ensure that insider trading, price manipulation and other breaches of law may be detected.

² Whenever there is a suspicion of any breach of law or exchange regulations or any other irregularities, the stock exchange shall inform FINMA. FINMA shall order the necessary investigations.

Art. 7 Admission of Securities Dealers

The stock exchange shall issue regulations regarding the admission, duties and expulsion of securities dealers, which regulations shall reflect, in particular, the principle of equal treatment.

Art. 8 Admission of Securities

¹ The stock exchange shall issue regulations regarding the admission of securities to listing.

² The regulations shall contain provisions relating to the negotiability of securities and shall set out the information which shall be furnished to investors in order to enable them to form an opinion about the characteristics of the securities and the quality of the issuer.

³ The stock exchange shall take into account internationally recognized standards.

^{3bis} It shall make the admission of equity securities and bonds contingent upon compliance with Articles 7 and 8 of the Audit Oversight Act of 16 December 2005.

⁴ The stock exchange shall admit securities to listing upon the fulfillment of the conditions set out in the regulations.

Art. 9 Appeal Board

¹ The stock exchange shall set up an independent appeal board with which an appeal may be lodged regarding the rejection of an application for admission as a securities dealer or for the listing of securities or the expulsion of a securities dealer or the delisting of a security. The stock exchange shall set out rules governing the organization and procedures of such board.

² The organizational structure, the rules of procedure and the nomination of members shall be subject to the approval of FINMA.

³ The right to civil action, which may be taken only after the appeal procedure has been exhausted, remains reserved.

Chapter 3: Securities Dealers

Art. 10 Authorization

¹ Whosoever intends to carry out the activities of a securities dealer shall be subject to authorization by FINMA.

² Authorization shall be granted if :

- a. the organization and internal rules of the applicant are such as to ensure compliance with the duties under this Act;
- b. the applicant has the required minimum capital or has provided the required security;
- c. the applicant and its senior staff can show that they have the required professional knowledge; and
- d. the applicant, its senior staff and the principal shareholders can give an assurance of proper business conduct.

³ The Federal Council shall set the minimum requirements for authorization to be granted. It shall, in particular, set the minimum capital requirement in respect of legal entities and the amount of the security required in respect of natural persons and partnerships.

⁴ The Federal Council shall set out the conditions for authorization to be granted to securities dealers who intend to operate in Switzerland but have neither a registered office nor a branch here.

⁵ If a securities dealer is part of a financial group or financial conglomerate, the conditions for authorization of the Banking Act of 8 November 1934⁶ on financial groups and financial conglomerates apply mutatis mutandis.

⁶ In the event that the conditions for such authorization are altered subsequently, the securities dealer shall seek the approval of FINMA for the continuation of its operations.

⁷ Only natural persons, legal entities or partnerships which have received authorization from FINMA to operate as securities dealers may use the term "securities dealer" in their company name or in the description of their business purpose or in any business advertisement.

Art. 10^{bis} Payment Systems and Securities Settlement Systems

¹ FINMA may subject the operator of a system pursuant to Article 19 of the National Bank Act of 3 October 2003⁷ to the provisions of the Stock Exchange Act and issue that operator with a securities trading licence.

² It shall issue the securities trading licence only on condition that both the conditions for authorization of this Act and the extended duties to provide information and minimum requirements laid down by the National Bank are complied with on a permanent basis.

³ It may exempt a system operator from certain provisions of the Act and order that the operator be subject to more lenient or more stringent conditions to take account of the operator's particular business activities and risk situation.

Art. 11 Rules of conduct

¹ A securities dealer has vis à vis his clients :

- a. a duty of disclosure; he shall in particular inform them of the risks associated with certain types of transactions;
- b. a duty of diligence; he shall in particular ensure the best possible execution of his clients' orders and that they are able to retrace the steps taken in the execution of their orders;
- c. a duty of loyalty; he shall ensure that in the event of any potential conflict of interests his clients interests are not adversely affected.

² In discharging these duties the clients' business expertise and professional knowledge shall be taken into account.

Art. 11a⁸ Pledge agreements

Article 17 of the Banking Act of 8 November 1934⁹ shall apply accordingly.

⁶ SR 952.0

⁷ SR 951.11

⁸ Inserted pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

⁹ SR 952.0

Art. 12 Own funds

¹ A securities dealer must have a sufficient amount of own funds available.

² The Federal Council shall set out the minimum own funds requirement, taking into account the risks associated with a securities dealer's operations, including off-balance sheet transactions. The Federal Council shall determine the extent to which banks must also meet the minimum own fund requirement.

Art. 13 Risk diversification

¹ A securities dealer must diversify his risks in an appropriate manner.

² The Federal Council shall set the limits of such risks and the add-ons to the own funds necessary to cover them and shall determine the extent to which such rules are applicable to banks.

Art. 14 Consolidation

The provisions of the Banking Act of 8 November 1934 on financial groups and financial conglomerates apply *mutatis mutandis*.

Art. 15 Daily record and reporting requirements

¹ The securities dealer shall keep a daily record of orders received and of transactions carried out in which all information necessary to enable the reconstruction of the transactions and the supervision of his operations shall be recorded.

² The securities dealer must report all the information necessary to ensure a transparent market.

³ FINMA shall determine the type of information to whom it shall be reported and the manner in which it shall be communicated.

⁴ The Federal Council may impose the reporting requirement pursuant to para. 2 upon persons and companies which buy and sell securities in a professional capacity but without using a securities dealer when the objective of this Act so requires. Any such company must instruct a licensed audit company¹⁰ to examine as to whether the reporting requirement is complied with; the company must provide Supervisory Authority with the information it requires.

Art. 16 Accounts

¹ The securities dealer shall prepare annual accounts and publish them or make them available to the public.

¹⁰ Term pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1). This amendment was made throughout the entire Act.

²The accounts shall be prepared in accordance with the provisions of the law on joint stock companies, subject to any derogations by the Federal Council.

³The Federal Council may set out detailed rules for the layout of the annual accounts, may require supplementary information to be provided in the notes to the annual accounts, may require the preparation and publication of interim results and balance sheets and may impose a duty to prepare consolidated accounts.

⁴Banks shall be subject to the provisions of the Federal Act on Banks and Savings Institutions¹¹.

Art. 17¹² Audit

Articles 18 and 23 of the Banking Act of 8 November 1934¹³ apply accordingly.

Art. 18 and Art. 19¹⁴

Chapter 4: Disclosure of Shareholdings

Art. 20 Obligation to notify

¹ Whosoever directly, indirectly or in concert with third parties acquires or sells for their own account shares or purchase or sale rights relating to shares in a company incorporated in Switzerland whose equity securities are listed in whole or in part in Switzerland and thereby attains, falls below or exceeds the threshold percentages of 3, 5, 10, 15, 20, 25, 33⅓, 50 or 66⅔ of voting rights, whether or not such rights may be exercised, must notify the company and the stock exchanges on which the equity securities in question are listed.

² The conversion of participation or bonus certificates into shares and the exercise of conversion or share acquisition rights shall be considered equivalent to an acquisition for the purposes of this Act. Similarly, the exercise of sale rights shall be considered equivalent to a sale for the purposes of this Act.

^{2bis} Especially transactions involving financial instruments which economically enable the acquisition of equity securities in view of a public takeover offer shall constitute an indirect acquisition.

³ A group organized pursuant to an agreement or otherwise shall comply with the obligation to notify laid down in para. 1 as a group and shall disclose:

¹¹ SR 952.0

¹² Version pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

¹³ SR 952.0

¹⁴ Rescinded pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

- a. its total holdings;
- b. the identity of its members;
- c. the nature of the agreement;
- d. the representation.

⁴ If a company or stock exchange has reason to believe that a shareholder is in breach of the obligation to notify, it shall inform FINMA of such fact.

^{4bis} At the request of FINMA, the company or one of its shareholders, the judge may suspend for a period of up to five years the exercise of the voting rights by the person who has breached the obligation to notify when buying or selling their holding. If the person has breached the obligation to notify when acquiring a holding in view of a public takeover offer (Chapter 5), the Takeover Board (Art. 23), the offeree company or its shareholders may request from the judge the suspension of the voting rights.

⁵ FINMA shall issue rules relating to the scope of the obligation to notify, the treatment of share acquisition and sale rights, the calculation of voting rights and the time limits within which the obligation to notify must be fulfilled and a company must publish changes in its ownership structure pursuant to para. 1. The Takeover Board shall have the right to put forward proposals. Taking into account internationally recognised standards, FINMA may provide for exceptions to reporting or publication obligations for banks and securities dealers.

⁶ Whosoever intends to acquire securities may obtain a ruling from FINMA as to whether or not they will be subject to the obligation to notify.

Art. 21 Duty of the company to inform

The company shall be obliged to publish the information which it receives in respect of changes in the voting rights.

Chapter 5: Public Takeover Offers

Art. 22 Scope of the Act

¹ The provisions of Chapter 5 (Arts. 22 – 33) and Articles 52 and 53 shall apply to public takeover offers for holdings in Swiss companies whose equity securities are, in whole or in part, listed on a stock exchange in Switzerland (offeree companies).

² Companies may, prior to their equity securities being admitted to official listing on a stock exchange in accordance with para. 1, state in their articles of association that an offeror shall not be bound by the obligation to make a public offer pursuant to Articles 32 and 52.

³ A company may at any time adopt a provision pursuant to para. 2 in its articles of association, provided that this does not prejudice the interests of shareholders within the meaning of Article 706 of the Code of Obligations¹⁵.

¹⁵ SR 220

Art. 23 Takeover Board

¹ FINMA shall after consulting the stock exchanges, appoint a commission for public takeover offers (Takeover Board). This Takeover Board shall consist of expert representatives of securities dealers, listed companies and investors. The organizational structure and procedures of the Takeover Board shall be submitted to FINMA for approval.

² The rules which are to be issued by the Takeover Board pursuant to this Act shall be submitted to the approval of FINMA.

³ The Takeover Board shall, in each case, ensure compliance with the rules applicable to public takeover offers (takeover matters).¹⁶

⁴ It shall report to FINMA once a year on its activities.¹⁷

⁵ The stock exchanges shall bear the costs of the Takeover Board. The Takeover Board may levy fees on the offerors and offeree companies.

Art. 24 Duties of the offeror

¹ The offeror shall publish the offer in a prospectus containing true and complete information.

² The offeror shall treat all holders of equity securities of the same class equally.

³ The offeror's obligations shall be incumbent upon all who act in concert with the former.

Art. 25 Review of the offer

¹ The offeror shall, prior to publication, submit the offer to an auditing company licensed by FINMA or to a securities dealer for review.

² The reviewing entity shall verify that the offer is in conformity with the law and the implementing provisions.

Art. 26 Right of rescission of the seller

The seller may repudiate a contract or rescind an executed sale if such contracts were concluded or fulfilled pursuant to a prohibited offer.

Art. 27 Announcement of the result of the offer and extension of the offer period

¹ The offeror shall publish the result of the public takeover offer upon expiry of the offer period.

¹⁶ Version pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

¹⁷ Version pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

² In the event that the conditions of the offer are met, the offeror shall be under an obligation to extend the offer period for those holders of shares and other equity securities who have not yet accepted the offer.

Art. 28 Additional rules

The Takeover Board shall set out additional rules relating to:

- a. the announcement of an offer prior to its publication;
- b. the contents and the publication of the prospectus as well as the conditions to which an offer can be subjected;
- c. the rules of fairness applicable to public takeover offers;
- d. the review of the offer by an auditing company or a securities dealer;
- e. the offer period and any extension thereof, the conditions under which the offer may be withdrawn or modified and the period within which a seller may withdraw;
- f. actions taken in concert with third parties;
- g. its procedures.¹⁸

Art. 29 Duties of the offeree companies

¹ The board of directors of the offeree company (Art. 22 para. 1) shall submit a report to the holders of equity securities setting out its position in relation to the offer. The information provided by the offeree company shall be true and complete. The board of directors of the offeree company shall publish such report.

² From the moment an offer is published until the result is announced, the board of directors of the offeree company shall not enter into any legal transactions which would have the effect of altering significantly the assets or liabilities of the company. Decisions taken by the general meeting of shareholders are not subject to this restriction and may be implemented irrespective of whether they were adopted before or after publication of the offer.

³ The Takeover Board shall issue rules concerning the report to be issued by the board of directors of the offeree company and any measures which are directed, in an improper manner, at frustrating an offer or preventing it from being successful.

Art. 30 Competing offers

¹ If competing offers are made for the equity securities of the offeree company, the holders of equity securities in the offeree company must be free to choose which offer they accept.

² The Takeover Board shall issue rules relating to competing offers and their effect upon the first offer.

¹⁸ Inserted pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

Art. 31 Obligation to notify

¹ The offeror or whosoever has, directly, indirectly or acting in concert with third parties, holdings which give him at least 3 percent of the voting rights, whether or not such rights may be exercisable, of the offeree company or, as the case may be, of another company whose equity securities are being offered in exchange shall, from the time an offer is published until the expiry of the offer period, be obliged to notify the Takeover Board and the stock exchanges on which the securities are listed of any acquisition or sale of equity securities of such company.

² A group organized pursuant to an agreement or otherwise shall comply with the obligation to notify referred to in para. 1 as a group.

³ The Takeover Board may subject any person to the same obligation who, from the time an offer is published until the expiry of the offer period, purchases or sells, directly, indirectly or acting in concert with third parties, a certain percentage of the equity securities of the offeree company or of another company whose equity securities are being offered in exchange.

⁴ In the event that the company or the stock exchanges have reason to believe that a shareholder is in breach of his obligation to notify, they shall inform the Takeover Board of such fact.

⁵ The Takeover Board shall issue rules as to the form and time limit allowed for notification and as to the percentage relevant for the application of para. 3.

Art. 32 Obligation to make an offer

¹ Whosoever, directly, indirectly or acting in concert with third parties, acquires equity securities which, added to equity securities already owned, exceed the threshold of 33 1/3 percent of the voting rights of an offeree company whether or not such rights may be exercisable shall be under an obligation to make an offer to acquire all listed equity securities of the company. An offeree company may raise this threshold in its articles of association to 49 percent of the voting rights.

² In justified cases, the Takeover Board may grant exemptions from the obligation to make an offer, in particular in the following cases:¹⁹

- a. where the transfer of voting rights occurs within a group organized pursuant to an agreement or otherwise. In such a case, only the group as such shall be subject to the obligation to make an offer;
- b. where the threshold is exceeded as a result of a decrease in the total number of voting rights of the company;
- c. where the threshold is exceeded only temporarily;
- d. where the securities have been acquired without consideration or on exercise of pre-emptive rights pursuant to a share capital increase;
- e. where the securities have been acquired for reorganization purposes.

³ The obligation to make an offer shall not apply if the voting rights have been acquired as a result of a donation, succession or partition of an estate, matrimonial property law or execution proceedings.

¹⁹ Version pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

⁴ The price offered shall be at least as high as the stock exchange price and shall not be lower than 25 percent of the highest price paid by the offeror for equity securities of the offeree company in the preceding twelve months.

⁵ If the offeree company has issued several classes of equity securities, there must be an appropriate relationship among the prices offered for the various classes of equity securities.

⁶ FINMA shall issue rules relating on the obligation to make an offer. The Takeover Board shall have the right to put forward proposals.

⁷ At the request of the Takeover Board, the offeree company or one of its shareholders, the court may suspend the exercise of voting rights of any person who is in breach of the obligation to make an offer.²⁰

Art. 33 Cancellation of outstanding equity securities

¹ An offeror, who upon expiry of the offer period, holds more than 98 percent of the voting rights of the offeree company may, within three months petition the court to cancel the outstanding equity securities. For this purpose, the offeror shall commence an action against the company. The remaining shareholders may participate in these proceedings.

² The company shall reissue such equity securities and allot them to the offeror either against payment of the offer price or fulfilment of the exchange offer in favour of the holders of the equity securities which have been cancelled.

Art. 33a²¹ Duties of the Takeover Board

¹ The Takeover Board shall issue the decisions necessary for the enforcement of the provisions of this chapter and its implementing provisions and shall monitor compliance with the statutory and regulatory provisions. It may publish the decisions.

² Persons and companies subject to an obligation to notify pursuant to Article 31, as well as persons and companies who pursuant to Article 33b paras 2 and 3 may have the status of party, must provide all information and surrender any documents to the Takeover Board which the latter requires to perform its duties.

³ If the Takeover Board becomes aware of breaches of the provisions of this chapter or of other irregularities, it will ensure that an orderly situation is restored and that the irregularities are remedied.

⁴ If the Takeover Board becomes aware of any common law crimes and offences or infringements of this Act, it shall notify the competent prosecuting authorities.

²⁰ Version pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

²¹ Inserted pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

Art. 33b²² Procedures before the Takeover Board

¹ Subject to the following exceptions, the procedures of the Takeover Board are governed by the provisions of the Federal Act on Administrative Proceedings of December 20, 1968²³.

² In procedures with regard to takeover matters, the following have party status:

- a. the offeror;
- b. persons who act in concert with the offeror; and
- c. the offeree company.

³ Shareholders holding at least 2 percent of the voting rights of the offeree company, whether exercisable or not, also have the status of party if they claim such status from the Takeover Board.

⁴ The statutory provisions on legal holidays do not apply to procedures of the Takeover Board in takeover matters.

⁵ The submission of legal documents by fax or by electronic means is permitted in correspondence with the Takeover Board and is recognized with regard to the meeting of time limits.

Art. 33c²⁴ Appeal procedure before FINMA

¹ An appeal against decisions of the Takeover Board may be lodged with FINMA within a period of five trading days.

² The appeal must be made in writing to FINMA, stating the grounds. In the event of an appeal, the Takeover Board will forward its files to FINMA.

³ Article 33b is applicable to the procedure for appeals lodged with FINMA.

Art. 33d²⁵ Appeal procedure before the Federal Administrative Court

¹ An appeal against decisions of FINMA in takeover matters may be lodged with the Federal Administrative Court in accordance with the Administrative Court Act of June 17, 2005.²⁶

² The appeal must be lodged within ten days of notification of the decision. The appeal has no suspensive effect.

²² Inserted pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR **956.1**).

²³ SR **172.021**; BBI 2007 4644

²⁴ Inserted pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR **956.1**).

²⁵ Inserted pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR **956.1**).

²⁶ SR **173.32**

Chapter 6: Supervision²⁷

Art. 34²⁸

Art 34^{bis}²⁹ Cooperation with other Supervisory Authorities and the Swiss National Bank

¹ FINMA has the power to transmit information and documentation that are not in the public domain to the other Swiss financial market supervisory authorities and to the Swiss National Bank where required by these institutions to fulfil their remit.

² The Supervisory Authority shall collaborate with the National Bank in supervising the operators of payment and securities settlement systems that are subject to the present Act. It shall coordinate its activities with the National Bank and shall hear the latter's view before issuing a decision.

Art. 35³⁰ Duty to provide information

Persons subject to an obligation to notify pursuant to Article 31, as well as persons who pursuant to Article 33b paras 2 and 3 may have the status of party, must provide all information and surrender any documents to FINMA which the latter requires to perform its duties.

Art. 35a³¹ Ban on performing securities trading activities

FINMA may permanently or temporarily ban from performing securities trading activities persons who in their capacity as responsible employees of a securities dealer engage in securities trading and grossly infringe this Act, the implementing provisions or internal rules.

²⁷ Version pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

²⁸ Rescinded pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

²⁹ Inserted pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

³⁰ Version pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

³¹ Inserted pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

Art. 36³² Consequences of the withdrawal of authorization

If FINMA withdraws from a securities dealer the authorization to conduct business, in the case of legal entities and general or limited partnerships this shall result in dissolution, and in the case of sole proprietorships in cancellation of their entry in the commercial register. FINMA shall appoint a liquidator and supervise his activities. FINMA may resolve not to order the dissolution of securities dealers which are also subject to the Banking Act of 8 November 1934³³, provided that their banking license does not also have to be withdrawn.

Art. 36a³⁴ Application of the Provisions on Bank Insolvency

Articles 25–39 of the Banking Act of 8 November 1934³⁵ apply accordingly.

Chapter 7: International Relations

Art. 37 Authorization of foreign stock exchanges and securities dealers

Authorization of a foreign stock exchange or of a stock exchange controlled by foreign domiciles may be refused if the countries in which the foreign stock exchange has its registered office or the controlling foreign persons are domiciled do not afford Swiss stock exchanges genuine access to their markets and do not offer them the same competitive opportunities as they do to the local stock exchange. The same rule shall apply for the authorization of securities dealers.

Art. 38 Administrative Assistance

¹ FINMA may request from foreign financial market supervisory authorities such information and documents as may be necessary for the enforcement of this Act.

² It may forward publicly inaccessible information and case-related documents to foreign financial market supervisory authorities only where:

³² Version pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

³³ SR 952.0

³⁴ Inserted pursuant to para. II 2 of the Federal Act of Oct. 3, 2003 (AS 2004 2767; BBI 2002 8060). Version pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

³⁵ SR 952.0

- a. this information is used solely to enforce regulations governing stock markets, securities trading and securities traders, or is forwarded to other authorities, courts or bodies for this purpose;
- b. the applicant authorities are bound by official or professional secrecy, notwithstanding provisions on the public nature of proceedings and the notification of the general public about such proceedings.

³ Subject to paras. 4 and 5, should the information that FINMA is to pass on concern individual clients of securities traders, the Federal Act on Administrative Proceedings of 20 December 1968 shall apply.

⁴ Administrative assistance proceedings shall be carried out swiftly. FINMA shall observe the principle of proportionality. The transmission of information on persons evidently not involved in the matter under investigation is prohibited.

⁵ The decision of FINMA on the transmission of information to the foreign financial market supervisory authority may be challenged by the client before the Federal Administrative Court within ten days. Article 22a of the Federal Act on Administrative Proceedings of 20 December 1968³⁶ does not apply.

⁶ Provided judicial assistance in criminal matters is permitted, FINMA may, in agreement with the Federal Office of Justice, consent that transmitted information may be forwarded to criminal prosecution authorities for a purpose other than that stated in para. 2a. The Federal Act on Administrative Proceedings of 20 December 1968 is applicable.

Art. 38a³⁷ Cross-Frontier Inspections

¹ Insofar as foreign supervisory authorities responsible for stock exchanges and securities dealers wish, in the course of direct inspections within Switzerland, to have access to information which concerns individual clients of securities dealers, FINMA shall gather such information itself and shall transmit it to the applicant authorities.

² The procedure is in accordance with the Federal Act on Administrative Proceedings of December 20, 1968³⁸.

³ The transmission of information on persons evidently not involved in the matter under investigation is prohibited.

³⁶ SR 172.021

³⁷ Inserted pursuant to annex to the Federal Act of April 22, 1999 (AS 1999 2405; BBI 1998 3847). Version pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

³⁸ SR 172.021; BBI 2007 4644

Chapter 8:³⁹ ...

Art. 39

Chapter 9: Penal Provisions⁴⁰

Art. 40⁴¹

Art. 41 Breach of obligations to notify

¹ Whosoever intentionally:

- a. fails to notify a qualified shareholding in a listed company (Arts. 20 and 51);
- b. as the owner of a qualified shareholding in the offeree company fails to disclose the purchase or sale of equity securities of that company (Art. 31),

shall be punished with a fine.

² The amount of the fine shall not be more than double the purchase price or the sale proceeds. The amount of the fine shall be calculated based upon the difference between the new shareholding held by the person who is subject to an obligation to notify and the last shareholding declared.

³ Whosoever acts negligently shall be punished with a fine of up to CHF 1,000,000.⁴²

⁴ In the event of a repeat breach within five years of the legally binding conviction, the fine shall amount to at least CHF 10,000.⁴³

³⁹ Rescinded pursuant to Annex para. 146 of the Federal Administrative Court Act of June 17, 2005, in force since Jan. 1, 2007 (SR 173.32).

⁴⁰ With effect from Jan. 1, 2007 the threatened fines and the statutes of limitation are to be interpreted and converted in application of Art. 333 paras 2-6 of the Swiss Penal Code (SR 311.0) in the version of the Federal Act of Dec. 13, 2002 (AS 2006 3459)

⁴¹ Rescinded pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

⁴² Version pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

⁴³ Inserted pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

Art. 42⁴⁴ Breach of duty by the offeree company

¹ Whosoever intentionally:

- a. fails to submit the mandatory report to the holders of equity security setting out his position in relation with the offer or fails to publish such a report (Art. 29 para 1);
- b. includes untrue or incomplete information in such report (Art. 29 para 1)

shall be punished with a fine of up to CHF 500,000.

² Whosoever acts negligently shall be punished with a fine of up to CHF 150,000.

³ In the event of a repeat breach within five years of the legally binding conviction, the fine shall amount to at least CHF 10,000.

Art. 42a⁴⁵ Breach of securities dealer's duties

¹ Whosoever intentionally:

- a. fails to keep an orderly daily record pursuant to Article 15 or does not retain books of account, vouchers and documents as prescribed by the regulations;
- b. breaches the reporting obligation to which he is subject pursuant to Article 15

shall be punished with a fine of up to CHF 500,000.

² Whosoever acts negligently shall be punished with a fine of up to CHF 150,000.

³ In the event of a repeat breach within five years of the legally binding conviction, the fine shall amount to at least CHF 10,000.

Art. 43⁴⁶ Breach of professional secrecy

¹ Whosoever intentionally:

- a. discloses a secret which has been confided to him in his capacity as an organ, employee, mandatory or liquidator of a stock exchange or a securities dealer, as an organ or employee of an auditing company, or of which he has become aware in any such capacity;
- b. attempts such breach of professional secrecy by inducement

shall be punished by imprisonment of up to three years or pecuniary penalty.

² Whosoever acts negligently shall be punished with a fine of up to CHF 250,000.

³ In the event of a repeat breach within five years of the legally binding conviction, the pecuniary penalty shall amount to at least 45 daily rates.

⁴⁴ Version pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

⁴⁵ Inserted pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

⁴⁶ Version pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

⁴ Whosoever breaches professional secrecy after termination of office or his employment, shall nevertheless remain liable to punishment.

⁵ The federal and cantonal provisions relating to the duty to testify and the duty to provide information to the authorities remain reserved.

⁶ The cantons shall be responsible for the prosecution and adjudication of any breaches of this provision. The general provisions of the Swiss Penal Code⁴⁷ shall apply.

Art. 44⁴⁸

Chapter 10: Final Provisions

Art. 45 Implementing provisions

The Federal Council shall issue implementing provisions to this Act.

Art. 46 Amendment to the Penal Code

The Swiss Penal Code⁴⁹ shall be amended as follows:

Art. 161^{bis}
....
50

Art. 47 Amendment to the Banking Act

The Federal Act on Banks and Savings Institutions⁵¹ shall be amended as follows:

Article 23 para. 1, 2, 4 and 5
....
52

Art. 48 Cantonal laws

¹ Upon the coming into force of this Act, any cantonal provisions restricting the right to establish new stock exchanges shall be repealed.

⁴⁷ SR 311.0

⁴⁸ Rescinded pursuant to Annex para. 16 of the Financial Market Supervision Act of June 22, 2007, in force since Jan. 1, 2009 (SR 956.1).

⁴⁹ SR 311.0

⁵⁰ Text contained in said Federal Law

⁵¹ SR 952.0

⁵² Text contained in said Federal Law

²The cantonal provisions relating to securities trading shall cease to be applicable to stock exchanges or securities dealers which have been granted authorization under this Act.

³The cantonal provisions relating to stock exchanges shall be repealed within one year and the cantonal provisions relating to securities dealers shall be repealed within three years of the coming into force of this Act.

Art. 49 Transitional provisions relating to stock exchanges

¹ Existing stock exchanges shall report to FINMA within three months of the coming into force of this Act and submit their internal regulations to it.

² FINMA shall, in principle, take a decision with respect to authorization within one year of the coming into force of the Act.

Art. 50 Transitional provisions relating to securities dealers

¹ Existing securities dealers shall report to FINMA within three months from the coming into force of this Act, and shall comply with the requirements set out in the Act within two years of its coming into force. FINMA may on a case by case basis extend or shorten this period if special circumstances so require.

² FINMA shall, in principle, take a decision with respect to authorization within three years of the coming into force of this Act.

³ Any foreign person or foreign-controlled securities dealer which was admitted to a Swiss stock exchange on December 31, 1992, shall not be subject to the reciprocity requirement set out in Article 37.

Art. 51 Disclosure of shareholdings in companies with listed equity securities

Whosoever, upon the coming into force of this Act, holds a shareholding which gives him at least 5 percent of the voting rights of a joint stock company incorporated in Switzerland whose equity securities are listed on a stock exchange, shall, within three years, notify such shareholding to the company and to any stock exchange on which the equity securities are listed.

Art. 52 Obligation to make an offer

Whosoever, upon the coming into force of this Act, owns directly, indirectly or acting in concert with third parties equity securities which give him more than 33 1/3 percent but less than 50 percent of the voting rights of an offeree company, shall, if he acquires equity securities and thereby exceeds the threshold of 50 percent of the voting rights, be under an obligation to make an offer to acquire all the equity securities listed.

Art. 53 Obligation to offer for companies already listed

Companies which are already listed on a stock exchange may, within two years of the coming into force of this Act, adopt a provision in their articles of association in accordance with Article 22 para. 2. In such a case, Article 22 para. 3 shall not be applicable.

Art. 54 Cancellation of outstanding equity securities

¹Whosoever, upon the coming into force of this Act, holds, as a result of a previous public takeover offer, more than 98 percent of the voting rights of a company may, within six months of the coming into force of this Act, apply for a cancellation of the outstanding equity securities pursuant to Article 33.

²The owners of equity securities which have been cancelled shall be entitled to a fair price which shall be calculated based upon a report by the auditing company.

Art. 55 Referendum and coming into force

¹This Act is subject to an optional referendum.

²The Federal Council shall determine the date upon which this Act shall enter into force.

Coming into force: 1 February 1997⁵³

Coming into force of Article 2 letter e, 20 paras 1-4 and 6, 21, 22, 23 paras 3-5, 24-27, 29 paras 1 and 2, 30 paragraph 1, 31 paras 1-4, 32 paras 1-5 and 7, 33, 35 paragraph 2 letters d and e, 41 paragraph 1 letters a and b and paragraph 2, 42 and 51-54:1 January 1998⁵⁴

⁵³ BRB of 2 December 1996 (AS 1997 84)

⁵⁴ Art. 1 of Ordinance of 13 August 1997 (AS 1997 2044)