



---

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

B-HBS1-ORD-300/E, Version, 27.01.1999

---

Ordinance on Stock Exchanges and Securities Trading

---

Unrestricted

The information contained in this document is given without warranty, implies no obligation of any kind on SWX and may be altered by SWX at any time without further notice. SWX shall be liable for any errors contained in this document only in the case of malice or gross negligence. SWX shall be under no obligation whatsoever to draw attention to such errors. Technical documentation must be used only in conjunction with the correct software version and may be used and copied only in accordance with the terms of the licence. All software described in the technical documentation is supplied on the basis of a licence agreement and may be used or copied only in accordance with the terms of the said licence agreement.

© Copyright Swiss Exchange SWX, Januar 1999. All rights reserved. All trademarks acknowledged.

## Table of Contents

Chapter 1: General Provisions .....	1
Art. 1 Subject matter .....	1
Art. 2 Securities dealers (Art. 2, letter d of SESTA).....	1
Art. 3 Categories of dealers (Art. 2, letter d of SESTA) .....	2
Art. 4 Standardization and suitability for mass trading (Art. 2, letter a of SESTA) .....	2
Art. 5 Derivatives (Art. 2, letter a of SESTA).....	3
Chapter 2: Stock Exchanges .....	3
Section 1: Organization.....	3
Art. 6 Body for the admission of securities (Art. 3, para.2, letters a and c, and Art. 4, para. 1 of SESTA).....	3
Art. 7 Management (Art. 3, para.2, letters a and c, and Art. 4, para. 1 of SESTA).....	3
Art. 8 Surveillance office (Art. 3, para. 2, letters a and c, Art. 4, para. 1 and Art. 6 of SESTA)....	3
Art. 9 Senior officials (Art. 3, para. 2, letter b of SESTA).....	3
Art. 10 Auditors (Art. 3, para. 2, letter a and Art. 4, para. 1 of SESTA) .....	4
Art. 11 Investigations (Art. 3, para. 2, letters a and c, Art. 4, para. 1 and Art. 6, para. 2 of SESTA).....	4
Art. 12 Foreign business (Art. 3, para. 2, letter a and Art. 35, para. 2 of SESTA) .....	4
Section 2: Approval of Stock Exchange Regulations.....	4
Art. 13 (Art. 4, para. 2 of SESTA) .....	4
Section 3: Requirements for Authorization of Foreign Stock Exchanges.....	4
Art. 14 (Art. 3, para. 3 and Art. 37 of SESTA) .....	4
Section 4: Exemption from the Act .....	5
Art. 15 (Art. 3, para. 4 of SESTA) .....	5
Section 5: Application of the Act to Institutions Similar to Stock Exchanges .....	5
Art. 16 (Art. 3, para. 4, of SESTA) .....	5
Chapter 3: Domestic securities dealers.....	5
Section 1: Requirements for authorization .....	5

---

Art. 17 Application for authorization (Art. 10, paras 2 and 5, Arts 12-14 and Art. 17, para. 1 of SESTA).....	5
Art. 18 Description of area of business (Art. 10, para. 2, letter a and para. 3 of SESTA) .....	6
Art. 19 Organization (Art. 10, para. 2, letter a and para. 3 of SESTA).....	6
Art. 20 Control system and internal auditing (Art. 10, para. 2, letter a and para. 3 of SESTA).....	6
Art. 21 Place of management (Art. 10, para. 2, letter a, and paras 3 and 5 of SESTA) .....	7
Art. 22 Minimum capital and security deposit (Art. 10, para. 2, letter b and para. 3 of SESTA)...	7
Art. 23 Information on senior staff and principal shareholders (Art. 10, para. 2, letter d, para. 3 and Art. 35, para. 2 of SESTA) .....	8
Art. 24 Registration in the commercial register (Art. 10, para. 2, letter a and para. 3 of SESTA) .	8
Section 2: Conduct of Business.....	8
Art. 25 Change in the requirements for authorization (Art. 10, para. 6 and Art. 35, para. 2 of SESTA).....	8
Art. 26 Risk control (Art. 10, para. 2, letter a of SESTA).....	9
Art. 27 Stock exchange membership (Art. 10, para. 2, letter a, para. 6 and Art. 35, para. 2 of SESTA).....	9
Art. 28 Acquisition and sale of significant financial interests (Art. 10, para. 2, letter d, para. 6 and Art. 35, para. 2 of SESTA) .....	9
Section 3: Provisions on Own Funds, Risk Spreading and Accounting.....	10
Art. 29 (Arts 12-14 and Art. 16 of SESTA) .....	10
Section 4: External Audit.....	10
Art. 30 Auditors (Art. 17 of SESTA).....	10
Art. 31 Extraordinary audits (Art. 17 of SESTA).....	11
Art. 32 Requirements for recognition (Art. 18, paras 1 and 2, and Art. 25, para. 1 of SESTA)..	11
Art. 33 Independence of auditors (Art. 18, para. 3 of SESTA).....	11
Art. 34 Duties of auditors (Art. 19 of SESTA).....	12
Art. 35 Duties in case of special events (Art. 19, paras 4 and 5 of SESTA).....	12
Art. 36 Relationship with the internal audit unit (Art. 17 of SESTA).....	12
Art. 37 Withdrawal of recognition (Art. 18, para. 1 and Art. 35, para. 1 of SESTA).....	12
Chapter 4: Foreign Securities Dealers.....	13
Section 1: General Provisions .....	13
Art. 38 Foreign securities dealers (Art. 10, paras 3 and 4 of SESTA).....	13
Art. 39 Obligation to seek authorization (Art. 10, paras 3 and 4, and Art. 38 of SESTA).....	13
Art. 40 Applicable law (Art. 10, paras 3 and 4 of SESTA).....	13
Section 2: Branches .....	14

---

Art. 41 Requirements for authorization (Art. 10, paras 3 and 4, and Art. 37 of SESTA) .....	14
Art. 42 Registration in the commercial register (Art. 10, paras 3 and 4 of SESTA).....	14
Art. 43 Several branches (Art. 10, paras 3 and 4 of SESTA) .....	14
Art. 44 Security deposits (Art. 10, paras 3 and 4 of SESTA) .....	15
Art. 45 Preparation of annual and interim accounts of the branch (Art. 10, paras 3 and 4 of SESTA).....	15
Art. 46 Publication of the annual report of the foreign securities dealer (Art. 10, paras 3 and 4 of SESTA).....	15
Art. 47 Audit report (Art. 10, paras 3 and 4 of SESTA) .....	15
Art. 48 Closure of a branch (Art. 10, paras 3 and 4 of SESTA) .....	15
Section 3: Representative Offices .....	16
Art. 49 Authorization requirements (Art. 10, para. 4 and Art. 37 of SESTA).....	16
Art. 50 Several representative offices (Art. 10, para. 4 of SESTA) .....	16
Art. 51 Annual report (Art. 10, para. 4 of SESTA) .....	16
Art. 52 Closure of a representative office (Art. 10, para. 4 of SESTA).....	16
Section 4: Foreign Members of a Stock Exchange .....	16
Art. 53 (Art. 10, para. 4 and Art. 37 of SESTA) .....	16
Chapter 5: Public Takeover Offers: Cancellation of Outstanding Equity Securities .....	17
Art. 54 Calculation of voting rights (Art. 33, para. 1 of SESTA).....	17
Art. 55 Proceedings (Art. 33 of SESTA) .....	17
Chapter 6: International Relations .....	17
Art. 56 Foreign control (Art. 37, Art. 10, para. 6 and Art. 35, para. 2 of SESTA).....	17
Chapter 7: Final Provisions.....	18
Art. 57 Amendments to laws heretofore in force.....	18
Art 58 Transitional provisions .....	19
Art. 59 Entry into force.....	20

# Ordinance on Stock Exchanges and Securities Trading

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

## Unofficial translation

*The Swiss Federal Council,*

based upon the Federal Act on Stock Exchanges and Securities Trading of 24 March 1995<sup>1</sup> (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 organization of stock exchanges (Arts 6-12);
- c. Provisions on the approval of stock exchange regulations (Art. 13);
- d. Requirements for authorization 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 organizations which are similar to stock exchanges (Arts 15 and 16);
- f. Requirements for authorization of domestic securities dealers, including provisions on conduct of business, own funds, risk spreading, accounting and external auditing (Arts 17-37);
- 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);
- j. Final provisions and transitional provisions (Arts 57 and 58).

### Art. 2 Securities dealers

(Art. 2, letter d of SESTA)

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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, 1994<sup>2</sup>;
- c. Insurance companies within the meaning of the Insurance Supervision Act of June 23, 1978<sup>3</sup>;
- d. Occupational pension funds to which Article 71 of the Federal Act on Provision for Retirement, Surviving Dependents and Invalidity of June 25, 1982<sup>4</sup> is applicable and which are subject to supervision.

## Art. 3 Categories of dealers

(Art. 2, letter d of SESTA)

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

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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 with third parties for the settlement of transactions; or
- b. hold securities of these clients in safe custody themselves or with third parties in their own name.

<sup>6</sup> The following are not considered as clients within the meaning of paragraph 5:

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

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

## Art. 4 Standardization and suitability for mass trading (Art. 2, letter a of 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 standardized and suitable for mass trading, provided that they are not created specially for individual counterparties.

<sup>2</sup> SR 951.31

<sup>3</sup> SR 961.01

<sup>4</sup> SR 831.40

## Art. 5 Derivatives

(Art. 2, letter a of 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: Organization

### Art. 6 Body for the admission of securities

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

---

<sup>1</sup> Issuers and investors must be adequately represented in the body responsible for the admission of securities.

<sup>2</sup> 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 of SESTA)

---

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

### Art. 8 Surveillance office

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

---

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

<sup>2</sup> The surveillance office must be provided with adequate staff and facilities.

<sup>3</sup> The appointment of the head of the surveillance office shall be subject to the approval of the Federal Banking Commission (Banking Commission).

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

### Art. 9 Senior officials

(Art. 3, para. 2, letter b of 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. 10 Auditors

(Art. 3, para. 2, letter a and Art. 4, para. 1 of SESTA)

---

<sup>1</sup> The stock exchange shall appoint recognized auditors for securities dealers to verify every year whether the stock exchange meets the commitments arising from the Act, the present Ordinance and its own regulations.

<sup>2</sup> The auditors shall submit their reports to the body in charge of supervision, regulation and control, the surveillance office and the Banking Commission.

## Art. 11 Investigations

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

---

In the event of suspected breaches of the law or any other irregularities, the Banking Commission may instruct the stock exchange, the auditors or other experts to carry out the necessary investigations.

## Art. 12 Foreign business (Art. 3, para. 2, letter a and Art. 35, para. 2 of SESTA)

---

The stock exchange shall inform the Banking Commission 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 of SESTA)

---

<sup>1</sup> In deciding on the approval of stock exchange regulations, the Banking Commission shall verify in particular whether they:

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

<sup>2</sup> Before taking its decision, it may consult the Competition Commission. The latter shall give an opinion on whether the regulations are neutral with regard to competition and whether they favour anticompetitive agreements.

## Section 3: Requirements for Authorization of Foreign Stock Exchanges

### Art. 14 (Art. 3, para. 3 and Art. 37 of SESTA)

---

<sup>1</sup> Stock exchanges organized under foreign law must seek authorization from the Banking Commission before providing securities dealers in Switzerland with access to their facilities.

<sup>2</sup> The Banking Commission shall grant the authorization, 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 the Banking Commission, if any breaches of the law or other irregularities by Swiss securities dealers come to their notice; and
  - 3. are in a position to grant the Banking Commission administrative assistance.

<sup>3</sup> The Banking Commission may refuse authorization pursuant to Article 37 of the Act.

## Section 4: Exemption from the Act

### **Art. 15** (Art. 3, para. 4 of SESTA)

---

<sup>1</sup> 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 jeopardized.

<sup>2</sup> The Banking Commission 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, of SESTA)

---

The Banking Commission shall decide whether institutions which are similar to stock exchanges shall be subjected to the provisions of the Act in whole or in part.

## Chapter 3: Domestic securities dealers

---

### Section 1: Requirements for authorization

#### **Art. 17 Application for authorization**

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

---

<sup>1</sup> The securities dealer shall submit an application for authorization to the Banking Commission. This application shall contain all the information necessary for the purposes of assessment, specifically:

- a. area of business (Art. 18);
- b. organization (Art. 19);
- c. control system and internal audit (Art. 20);
- d. place of management (Art. 21);

- e. minimum capital or security deposit (Art. 22);
- f. senior staff and principal shareholders (Art. 23);
- g. own funds and risk spreading (Art. 29);
- h. external audit (Art. 30).

<sup>2</sup> 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 area of business**

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

---

<sup>1</sup> 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.

<sup>2</sup> In particular, he shall state:

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

<sup>3</sup> The factual and geographical description of the area of business must be consonant with the financial resources and the operating organization.

<sup>4</sup> He shall inform the Banking Commission which Swiss or foreign stock exchanges he wishes to join.

<sup>5</sup> If the securities dealer intends to operate a subsidiary, a branch or a representative office abroad, he shall supply the Banking Commission 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 organizational 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.

## **Art. 19 Organization**

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

---

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

<sup>2</sup> 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.

<sup>3</sup> For the purposes of identifying, limiting and monitoring the risks pursuant to Article 26, paragraph 2, the securities dealer shall define in regulations or internal directives:

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

## Art. 20 Control system and internal auditing

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

---

<sup>1</sup> The securities dealer shall ensure an effective internal control system.

<sup>2</sup> In particular, he 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.

<sup>3</sup> The Banking Commission may exempt a securities dealer from the obligation to appoint an internal audit unit in justified individual cases.

## Art. 21 Place of management

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

---

<sup>1</sup> The securities dealer must effectively be managed from Switzerland. General directives and decisions within the framework of group supervision remain reserved, 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.

<sup>2</sup> The persons entrusted with the management of the securities dealer must be domiciled at a place 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 of SESTA)

---

<sup>1</sup> The securities dealer must have a minimum capital of CHF 1.5 million, which must be fully paid up. 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 recognized by the Banking Commission; this shall also apply when an existing company is transformed into a securities dealer.

<sup>2</sup> 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.

<sup>3</sup> The credit balances pursuant to paragraph 2 can only be counted as capital if it emerges from a written declaration 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 the said capital falls below the minimum amount.

<sup>4</sup> The Banking Commission 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.

<sup>5</sup> In justified individual cases, the Banking Commission may fix another minimum amount.

<sup>6</sup> Banks shall be subject to the provisions of the Ordinance on Banks of May 17, 1972<sup>5</sup>.

---

<sup>5</sup> SR 952.02

## **Art. 23 Information on senior staff and principal shareholders**

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

---

<sup>1</sup> The securities dealer must provide information on senior staff and principal shareholders in his application for authorization. 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.

<sup>2</sup> With regard to principal shareholders, the application for authorization shall contain in addition:

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

<sup>3</sup> 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.

<sup>4</sup> 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 of SESTA)**

---

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

## Section 2: Conduct of Business

### **Art. 25 Change in the requirements for authorization**

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

---

<sup>1</sup> The securities dealer shall report any change in the requirements for authorization to the Banking Commission, 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. with regard to the subsidiary, branch or representative office abroad, a change in the auditing firm or the competent foreign supervisory authority.

<sup>2</sup> A change in the senior staff must only be reported to the auditors.

<sup>3</sup> 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 the Banking Commission has approved such amendments.

## **Art. 26 Risk control**

(Art. 10, para. 2, letter a of SESTA)

---

<sup>1</sup> In particular, the securities dealer must identify, limit and monitor market, credit, default, settlement, liquidity and image risks as well as operational and legal risks.

<sup>2</sup> With respect to transactions entailing risks, the management shall assemble all the documents necessary for decision-making and monitoring. These documents must also allow the auditors to form a reliable opinion on the conduct of business.

## **Art. 27 Stock exchange membership**

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

---

Every year, within 60 days of the close of the financial year, the securities dealer shall provide the Banking Commission with the names of the Swiss and foreign stock exchanges of which he 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 of SESTA)

---

<sup>1</sup> Every natural person or legal entity shall be obliged to notify the Banking Commission before acquiring or selling, either directly or indirectly, a significant interest in a securities dealer organized 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.

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

<sup>3</sup> The securities dealer shall notify the Banking Commission of the persons who meet the criteria pursuant to paragraph 1, as soon as he has knowledge thereof.

<sup>4</sup> Within 60 days of the close of the financial year, the securities dealer shall provide the Banking Commission 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.

<sup>5</sup> 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 the Banking Commission is already in possession of them as a result of an earlier report.

## Section 3: Provisions on Own Funds, Risk Spreading and Accounting

### **Art. 29** (Arts 12-14 and Art. 16 of SESTA)

---

<sup>1</sup> The provisions of the Ordinance on Banks of May 17, 1972<sup>6</sup> on own funds (Art. 11 ff.), risk spreading (Art. 21 ff.) and annual accounts (Art. 23 ff.) shall also apply to securities dealers.

<sup>2</sup> In justified individual cases, the Banking Commission may exceptionally:

- a. grant special facilities;
- b. tighten the provisions relating to own funds and risk spreading. In particular, it may require the securities dealer to draw up statements on own funds pursuant to Article 13b of the Bank Ordinance of May 17, 1972 at shorter intervals.

<sup>3</sup> In the case of securities dealers not subject to the Federal Act on Banks and Savings Institutions<sup>7</sup>, the level of own funds must be at least three quarters of the annual full costs, insofar as the level of own funds required under Article 12 of the Ordinance on Banks of May 17, 1972, is lower.<sup>8</sup>

<sup>4</sup> 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 Ordinance on Banks.<sup>9</sup>

## Section 4: External Audit

### **Art. 30 Auditors**

(Art. 17 of SESTA)

---

<sup>1</sup> The securities dealer shall appoint recognized auditors at the beginning of the financial year to examine his business activities and the annual accounts.

<sup>2</sup> The securities dealer shall obtain the consent of the Banking Commission before appointing auditors for the first time or mandating new auditors. The Banking Commission shall refuse its consent if the auditors designated do not offer the guarantee of a proper audit under the given circumstances.

<sup>3</sup> If the securities dealer intends to change his auditors, he shall inform the Banking Commission of the reasons.

<sup>4</sup> In the event of a change in the auditors, the securities dealer shall provide the newly appointed auditors with the latest audit report.

<sup>5</sup> Should the auditors not carry out the audit of a securities dealer properly, the Banking Commission may require the dealer to appoint other auditors at the start of the next financial year.

---

<sup>6</sup> SR 952.02

<sup>7</sup> SR 952.0

<sup>8</sup> Inserted as a result of Note II of the Ordinance of 8 December 1997.

<sup>9</sup> Inserted as a result of Note II of the Ordinance of 8 December 1997.

## Art. 31 Extraordinary audits

(Art. 17 of SESTA)

---

The Banking Commission may order extraordinary audits. If it designates the auditors for this purpose itself, it may authorize them to ask the securities dealer for an advance payment to defray the costs.

## Art. 32 Requirements for recognition

(Art. 18, paras 1 and 2, and Art. 25, para. 1 of SESTA)

---

<sup>1</sup> Auditors within the meaning of the Act may only be recognized auditors for banks and fiduciary companies which

- a. are legal entities; and
- b. have a paid-up share capital of at least CHF 1 million.

<sup>2</sup> Furthermore, limited liability companies must have at least four partners.

<sup>3</sup> The Banking Commission shall recognize the auditors, if it meets the following requirements in addition:

- a. The auditors shall deal exclusively with auditing and the activities directly related thereto, such as controls, liquidations and reorganizations. They shall not engage in actual banking or securities trading operations, or in asset management.
- b. The organization of the business shall ensure the proper and permanent execution of audit mandates; said organization shall be precisely defined in the articles of association or partnership agreements, or in a set of regulations.
- c. The members of the management shall enjoy a good reputation and the majority shall have a thorough knowledge of auditing, banking, finance, legal matters or securities trading.
- d. The senior auditors shall enjoy a good reputation and have a thorough knowledge of the auditing profession and securities trading, attested by a Swiss diploma as a certified accountant, an equivalent foreign diploma or other relevant qualifications and experience.
- e. The auditors shall undertake to limit themselves to providing services for third parties and to refrain from engaging in transactions for their own account and at their own risk, unless these are necessary for the operation of an audit or fiduciary firm (e.g. investment of own funds).
- f. The auditors shall supply proof that they will receive audit mandates from at least five securities traders. The Banking Commission shall set a reasonable time-limit for the furnishing of such proof.
- g. The auditors shall have a professional indemnity insurance appropriate to their business activities.

<sup>4</sup> The Banking Commission may impose additional professional requirements on the auditors, if this is necessitated by the business activities of the securities dealer.

<sup>5</sup> It shall draw up a list of recognized auditors and make this available to interested parties.

## Art. 33 Independence of auditors

(Art. 18, para. 3 of SESTA)

---

<sup>1</sup> Members of the board of directors and the management as well as the employees of an auditing firm must be independent of the securities dealer to be audited and of companies related to said dealer.

<sup>2</sup> The auditors must accept neither administrative and accounting assignments from the securities dealer to be audited nor other duties which are incompatible with the audit mandate.

<sup>3</sup>The annual fees to be expected from the mandates of a securities dealer and its related companies under normal circumstances must not amount to more than 10 percent of the total annual fee income of an auditing firm; the Banking Commission may grant exceptions in justified individual cases.

## Art. 34 Duties of auditors

(Art. 19 of SESTA)

---

<sup>1</sup> Recognized auditors shall be obliged:

- a. to carry out the audit with the diligence of a prudent and experienced auditor;
- b. to notify the Banking Commission without delay of any changes in their articles of association and rules of organization as well as any changes in the composition of their governing bodies and senior auditing staff;
- c. to entrust the responsibility for audits only to auditors whose names have been communicated to the Banking Commission and who meet the necessary requirements;
- d. to submit the audit report to the responsible body of the securities dealer and, provided that the dealer is a legal person, also to the auditors stipulated under the Swiss Code of Obligations; and
- e. to send the Banking Commission their annual report each year.

<sup>2</sup> The Banking Commission may ask for information concerning the reasons for the resignation of members of the management and senior auditors.

## Art. 35 Duties in case of special events

(Art. 19, paras 4 and 5 of SESTA)

---

<sup>1</sup> If the auditors have set a securities dealer a time-limit for the restoration of proper procedures, they must conduct a subsequent audit immediately after the specified period has elapsed. Should it emerge that obligations have not been complied with, they shall submit a special report on the subsequent audit to the Banking Commission without delay.

<sup>2</sup> Notifications by the auditors within the meaning of Article 19, paragraph 5 of the Act must be made in writing.

## Art. 36 Relationship with the internal audit unit

(Art. 17 of SESTA)

---

<sup>1</sup> The internal audit unit of the securities dealer shall submit its reports to the external auditors and furnish the latter with all the information needed to discharge their audit duties.

<sup>2</sup> The internal audit unit and the external auditors shall coordinate their activities and avoid overlapping as far as possible.

## Art. 37 Withdrawal of recognition

(Art. 18, para. 1 and Art. 35, para. 1 of SESTA)

---

If an auditing firm no longer meets the requirements for recognition or grossly infringes its legal obligations or internal regulations, the Banking Commission shall withdraw recognition from it.

## Chapter 4: Foreign Securities Dealers

---

### Section 1: General Provisions

#### Art. 38 Foreign securities dealers

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

---

<sup>1</sup> A foreign securities dealer shall be considered as any company organized according to foreign law which:

- a. holds a licence 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.

<sup>2</sup> 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 organize itself according to Swiss law and shall be subject to the provisions governing domestic securities dealers.

#### Art. 39 Obligation to seek authorization

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

---

<sup>1</sup> A foreign securities dealer shall be subject to authorization by the Banking Commission, 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 sub-para 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).

<sup>2</sup> If the Banking Commission 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.

#### Art. 40 Applicable law

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

---

<sup>1</sup> 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.

<sup>2</sup> The Banking Commission 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 facilities and such action does not conflict with any international treaty.

## Section 2: Branches

### Art. 41 Requirements for authorization

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

---

<sup>1</sup> The Banking Commission shall grant the foreign securities dealer authorization to set up a branch, if:

- a. the foreign securities dealer is adequately organized 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 the Banking Commission without delay, should circumstances arise which could seriously jeopardize client assets at the branch;
- e. the competent foreign supervisory authorities are in a position to offer the Banking Commission administrative assistance;
- f. the branch is organized in keeping with its business activities and has regulations which precisely define the scope of business and provide for an administrative organization 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.

<sup>2</sup> The Banking Commission may refuse authorization pursuant to Art. 37 of the Act.

<sup>3</sup> If the foreign securities dealer is part of a group operating in the financial sector, the Banking Commission may make authorization conditional upon the requirement that it is subject to appropriate supervision on a consolidated basis by foreign supervisory authorities.

<sup>4</sup> 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 of SESTA)

---

The foreign securities dealer may only apply for registration of the branch in the commercial register if the Banking Commission has authorized the establishment of the branch.

### Art. 43 Several branches

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

---

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

- a. obtain authorization for each of them;
- b. designate one of them to be in charge of relations with the Banking Commission.

<sup>2</sup> These branches must jointly meet the requirements of the Act and the present Ordinance. One audit report shall suffice.

## **Art. 44 Security deposits**

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

---

The Banking Commission 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 of SESTA)

---

<sup>1</sup> 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.

<sup>2</sup> 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 in point of fact compelled to assist such companies.

<sup>3</sup> Paragraph 2 shall also apply to off-balance-sheet business.

<sup>4</sup> The branch shall submit its annual and interim accounts to the Banking Commission in triplicate. Publication shall not be required.

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

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

---

<sup>1</sup> 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 the Banking Commission.

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

## **Art. 47 Audit report**

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

---

<sup>1</sup> The auditors shall draw up their report in one of Switzerland's official languages and shall submit it to the head of the branch and the Banking Commission.

<sup>2</sup> The branch shall forward the audit report to the unit of the foreign securities dealer responsible for the business activities of the branch.

## **Art. 48 Closure of a branch**

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

---

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

---

## Section 3: Representative Offices

### Art. 49 Authorization requirements

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

---

<sup>1</sup> The Banking Commission shall grant the foreign securities dealer authorization 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.

<sup>2</sup> The Banking Commission may refuse authorization pursuant to Art. 37 of the Act.

<sup>3</sup> 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 of SESTA)

---

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

- a. obtain authorization for each of them;
- b. designate one of them to be in charge of relations with the Banking Commission.

### Art. 51 Annual report

(Art. 10, para. 4 of SESTA)

---

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

### Art. 52 Closure of a representative office

(Art. 10, para. 4 of SESTA)

---

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

## Section 4: Foreign Members of a Stock Exchange

### Art. 53 (Art. 10, para. 4 and Art. 37 of SESTA)

---

<sup>1</sup> The Banking Commission shall grant an authorization 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 the Banking Commission administrative assistance.

<sup>2</sup> The Banking Commission may refuse authorization pursuant to Art. 37 of the Act.

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

## Chapter 5: Public Takeover Offers: Cancellation of Outstanding Equity Securities

---

### Art. 54 Calculation of voting rights

(Art. 33, para. 1 of 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 of SESTA)

---

<sup>1</sup> 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.

<sup>2</sup> 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.

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

<sup>4</sup> 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 6: International Relations

---

## Art. 56 Foreign control

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

---

<sup>1</sup> Stock exchanges and securities dealers organized 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.

<sup>2</sup> As foreign persons shall be considered:

- 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.

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

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

<sup>5</sup> Foreign-controlled banks shall be subject exclusively to the provisions of the Federal Act on Banks and Savings Institutions<sup>10</sup>.

## Chapter 7: Final Provisions

---

### Art. 57 Amendments to laws heretofore in force

---

1 The Banking Ordinance of May 17, 1972<sup>11</sup> shall be amended as follows:

Art. 2a, letter c

*Repealed*

Art. 7, paragraph 1

...

Art. 7, paragraph 2

*Repealed*

Art. 9

...

Art. 40

...

Art. 40a

---

<sup>10</sup> SR 952.02

<sup>11</sup> SR 952.02. The following amendments have been incorporated into said Ordinance.

...

Art. 50a, paragraph 1

...

Art. 51a, paragraph 3

...

2. The Investment Fund Ordinance of October 19, 1994<sup>12</sup> shall be amended as follows:

Art. 23

...

Art. 56, paragraph. 4

...

## Art 58 Transitional provisions

---

<sup>1</sup> Existing securities dealers and all banks within the meaning of the Federal Act on Banks and Savings Institutions<sup>13</sup> must report to the Banking Commission within three months of the entry into force of the Act. They shall state in this report whether they wish to maintain their securities trading business after the expiry of the transitional period of two years pursuant to Article 50, paragraph 1 of the Act.

<sup>2</sup> Statutory auditors of existing banks within the meaning of the Federal Act on Banks and Savings Institutions which wish to maintain securities trading business as defined by the Act must inform the Banking Commission within six months of the entry into force of the Act whether the bank meets the requirements for authorization of securities dealers pursuant to the Act and the present Ordinance.

<sup>3</sup> Statutory auditors of existing banks within the meaning of the Federal Act on Banks and Savings Institutions which no longer wish to conduct securities trading business as defined by the Act must confirm to the Banking Commission within two years of the entry into force of the Act that the bank no longer engages in securities trading.

<sup>4</sup> For agricultural credit cooperatives (Raiffeisen banks), the report and the statements pursuant to paras 1 and 2 and the confirmation pursuant to paragraph 3 shall be made via the Swiss Association of Agricultural Credit Cooperatives.

<sup>5</sup> The Banking Commission shall also communicate to the relevant cantonal supervisory authority any decisions on authorizations for securities dealers who are subject to cantonal supervision upon the entry into force of the Act.

<sup>6</sup> Every natural person or legal entity who upon the entry into force of the Act has a significant interest in an existing securities dealer pursuant to Article 23, paragraph 4 must report this to the Banking Commission no later than one year after the entry into force of the Act and provide the information stipulated in Article 28, paragraphs 1 and 2.

<sup>7</sup> Auditors and senior auditors recognized under the Federal Act on Banks and Savings Institutions shall upon the entry into force of the Act also be considered as recognized pursuant to the Act and the present Ordinance.

<sup>8</sup> Only Article. 54 of the Act shall be applicable to a public takeover offer for which the offeror published a prospectus before the entry into force of the Act.

<sup>9</sup> If the offeror published the prospectus for a public takeover offer before the entry into force of the Act and this first offer triggers competing offers, at least one of which involves the publishing of a prospectus after the entry into force of the Act, Articles

---

<sup>12</sup> SR 951.311 The following amendments have been incorporated into said Ordinance.

<sup>13</sup> SR 952.0

---

22-33 as well as Articles 42 and 52 shall not be applicable to any of the public takeover offers.

<sup>10</sup> Whosoever, on the basis of a public takeover offer, has taken over a company's equity securities acquired by an offeror and holds more than 98 percent of the voting rights of said company may also apply for cancellation of the outstanding equity securities pursuant to Article 54 of the Act.

<sup>11</sup> If the cancellation of the outstanding equity securities is requested pursuant to Article 54 of the Act, Articles 54 and 55 of the present Ordinance shall also be applicable.

## **Art. 59 Entry into force**

---

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

<sup>2</sup> The date of the entry into force of Articles 54, 55 and 58, paragraphs 8-11, shall be determined later.<sup>14</sup>

---

<sup>14</sup> These articles were brought into force on January 1, 1998, by Art.2 of Ordinance (AS 1997 2044) of August 13, 1997.