

[non-binding translation]

## **Participant Rules of the BX Swiss AG**

### **1. Purpose and subject matter**

- 1.1. On the basis of the Financial Market Infrastructure Act (FMIA), the Participant Rules govern the requirements, admission, suspension, termination, rights and obligations of the participants of the BX Swiss AG (hereinafter “BX”).
- 1.2. The Participant Rules ensure the equal treatment of securities dealers as well as the transparency and functionality of trading on the BX.

### **2. Participants**

- 2.1. Participants of the BX are domestic or foreign securities dealers who have a corresponding licence from the Swiss Financial Market Supervisory Authority (FINMA).
- 2.2. Foreign participants may join the BX as Remote Participants (foreign exchange participants). Pursuant to Article 34 paragraph 2 section c) and Article 40 of the FMIA, Remote Participants require a corresponding authorisation from the FINMA.
- 2.3. The BX differentiates between the following categories of participants and Remote Participants:
  - a) Trading Participants,
  - b) Market Makers (MM),
  - c) Designated Market Makers (DMM), and
  - d) Reporting Participants.
- 2.4. Trading Participants
  - a) are authorised to participate in trading for their own account and for account of a third party;
  - b) may limit the participation in trading to individual product groups or segments;
  - c) apply for admission as a Trading Participant on the BX.
- 2.5. Market Makers (MM)
  - a) are Trading Participants who undertake to ensure a liquid market for certain instruments;
  - b) enter into a Market Maker Agreement with the BX.
- 2.6. Designated Market Makers (DMM)
  - a) are Market Makers who are the exclusive Market Makers for certain instruments;
  - b) enter “Tradable Quotes” through a separate interface assigned to them;
  - c) enter into a Designated Market Maker Agreement with the BX.
- 2.7. Reporting Participants
  - a) are all other Swiss securities dealers or Remote Participants on a Swiss stock exchange who are authorised pursuant to Article 40 of the FMIA, as well as
  - b) other securities dealers who are subject to the reporting requirement;
  - c) are not Trading Participants of the BX;
  - d) are given access by the BX to the systems for the compliance with the reporting requirement pursuant to the FMIA.

### **3. Admission as Trading Participant or Remote Participant**

- 3.1. For the admission as Trading Participant, the following requirements must be met:
- a) licence from the FINMA as securities dealer or authorisation from the FINMA as Remote Participant;
  - b) technical and operational requirements for the connection to the exchange system of the BX;
  - c) payment of a security deposit set by the BX;
  - d) if required by the BX, participation in a clearing house which is recognised by the BX or have access to one via a general clearing member;
  - e) participation in a settlement agent which is recognised by the BX or have access to one via a custodian bank.
- 3.2. The application for admission as Trading Participant on the BX must be submitted in writing.
- 3.3. In the application, the applicant confirms to have read, understood and accepted the rules of the BX and undertakes to comply with them and all future provisions of the BX.
- 3.4. The following documents (copies thereof) must be enclosed with the application:
- a) licence as securities dealers or authorisation as Remote Participant from the FINMA,
  - b) statutes and articles of association,
  - c) organisation rules, organisational chart and other rules,
  - d) latest annual report and latest audited annual financial statements including the report of the auditing firm,
  - e) certified excerpt of the commercial registry or an equivalent document verifying the domicile, business purpose and authorised signatories,
  - f) proof of payment of the security deposit or a guarantee from a clearing house or settlement agent which is recognised by the BX (original document),
  - g) if required by the BX, verification that the applicant has access to a clearing house which is recognised by the BX,
  - h) verification that the applicant has access to a settlement agent which is recognised by the BX.
- 3.5. The BX informs the applicant about its decision on the admission in writing. An explanation is provided if the admission is rejected.
- 3.6. The BX announces the admission publicly and particularly informs the other Trading Participants.

### **4. Admission as Market Maker / Designated Market Maker**

- 4.1. The BX can admit a Trading Participant to be listed as a Market Maker (MM) or Designated Market Maker (DMM). The relating rights and obligations are laid down in an additional written agreement (Market Maker Agreement or Designated Market Maker Agreement).
- 4.2. According to its requirements or upon request of the Market Maker, the BX determines the product groups, segments or instruments
- a) for which trading can or should be supported by a market making; the BX can approve one or more Market Makers per instrument;
  - b) for which the Trading Participant can get registered as exclusive market maker (Designated Market Maker).

- 4.3. The Market Maker undertakes to ensure a liquid market for the instruments in question by providing bid and ask prices with minimum volumes and by not exceeding a maximum bid-ask spread. The instrument-specific parameters are determined by the BX and laid down in the Market Maker Agreement.
- 4.4. The Designated Market Maker undertakes to continuously submit quotes for the instruments in question and while doing so, to comply with the agreed maximum spreads and minimum volumes. The instrument-specific parameters are determined by the BX and laid down in the Designated Market Maker Agreement. Exemptions only exist, if providing quotes is unreasonable, in which case the Designated Market Maker is obligated to immediately inform the BX, particularly in the event of:
  - a) special circumstances at the Designated Market Maker (e.g. technical faults, power failure, etc.);
  - b) special market situations due to extraordinary market movements in the primary market or in the underlying;
  - c) serious disruptions of the economic and political situation (e.g. terror attacks, crash situations);
  - d) instruments suspended from trading;
  - e) other circumstances laid down in the Designated Market Maker Agreement.
- 4.5. The BX has the right to measure the quality of the market making according to self-defined parameters, and to publish it.
- 4.6. The BX may grant more favourable conditions to Market Makers than to other Trading Participants for the calculation of fees in compliance with Article 34 paragraph 2 of the FMIA.

## **5. Admission as Reporting Participant**

- 5.1. Upon application, participants may be admitted as Reporting Participants.
- 5.2. Reporting Participants are authorised to report off-order-book trades (trade reports) and transmissions of orders (transaction reports) to the reporting office of the BX.
- 5.3. The BX provides the Reporting Participant with a login and password for the entry of the reports into the BX systems.
- 5.4. Reporting Participants may make the report to the BX or to a Trade Data Monitor (TDM) which is recognised by the BX.
- 5.5. Reports to the BX are made according to the rules for the reporting office and the corresponding directives.
- 5.6. Reporting Participants are obligated to pay the set reporting fees.

## **6. Maintaining admission to trading**

- 6.1. Trading Participants undertake to
  - a) comply with the admission requirements pursuant to the Participant Rules for as long as they remain participants;
  - b) comply with and enforce internally the applicable domestic and foreign laws on stock exchange, the regulatory and supervisory provisions as well as the regulations on their implementation and the rules of conduct;
  - c) comply with and enforce internally the rules and provisions of the BX, in particular the present Participant Rules;

- d) to provide the BX, in compliance with the banking secrecy, with any information or any requested documents which are required to maintain an orderly market and/or to enforce the laws and decrees relevant to the stock exchange and trading as well as the rules of the BX.
- 6.2. Trading Participants undergo the decision and ruling process of the independent appeal body pursuant to Article 37 of the FMIA in all provided cases, as the right to appeal at the civil court after the appeal proceedings remains reserved.

## **7. Appropriate organisation and registration obligations**

- 7.1. Trading Participants shall use the BX system in compliance with the rules of the BX and in particular shall refrain from manipulating or modifying the exchange system and its interfaces, and from misusing or passing on the BX software or data received from the BX system.
- 7.2. Trading Participants shall always have enough staff members with an adequate professional expertise and of good repute for trading available and shall issue and adopt internal directives for the compliance with rules and provisions of the BX, and implement corresponding controls.
- 7.3. Trading Participants shall appoint the persons responsible for the compliance with the rules of the BX and report them to the BX, namely the person responsible for trading, the person responsible for compliance, the person responsible for technology/IT, and the business manager.
- 7.4. Trading Participants shall register and report authorised traders and ensure their required specialist expertise and good repute. The respective trader confirms to have taken note of and comply with the rules of the BX. The BX may suspend or withdraw existing registrations at any time. The BX allocates an identification number to each registered trader, with which all entries into the system are recorded. The identification number is personal but may be passed on to other registered traders for representation purposes, while the Trading Participants ensure the traceability of the representation.
- 7.5. Trading Participants shall immediately report to the BX all changes to the information submitted to the BX in the context of these rules, in particular regarding persons responsible, authorised traders, participant numbers at clearing houses and depository number at settlement agents.

## **8. Audit**

- 8.1. Trading Participants commission at their own expense an auditing firm which is recognised by the supervisory authority, or, upon written request, their internal audit function, to annually assess the compliance with the legal provisions and the compliance with the rules and decrees of the BX, and to inform the BX in a report about the audit results. The auditors must be authorised to give the BX, at any time upon request, an interim report on the compliance with the regulations. Additionally, the auditors shall be instructed, where appropriate in analogous application of the legal provisions on audits, to suggest measures and provisions for the elimination of existing conditions contrary to regulations, and to notify the BX if the measures cannot be implemented in due time, or if setting a time limit appears to be futile.
- 8.2. The following documents must be enclosed with the request to commission the internal audit function:
  - a) last annual report;

- b) signed excerpt of the decision of the audit committee or the board of directors regarding the authorisation of the internal audit function carrying out the participant's audit;
  - c) proof of the independence of the internal audit function;
  - d) proof of the specialised training as auditor of at least one of the auditors in charge of the internal audit;
  - e) proof of the training as IT auditor of at least one of the auditors in charge of the audit;
  - f) names of the persons including the function and name of the organisational unit which is responsible that any necessary corrective measures are promptly adopted;
  - g) information on which supervisory authorities the participant is subject to;
  - h) written confirmation that a copy of the annual audit report has been sent both to the audit committee of the participant and to the supervisory auditing firm of the participant.
- 8.3. Should the audit instructions not be met satisfactorily, the BX may order an audit to be carried out by a third audit company at the expense of the Trading Participant.

## **9. Fees**

- 9.1. Trading Participants shall pay all fees charged by the BX in due time, in particular the nonrecurring admission fee, the annual participant fee, other periodic fees as well as the trading and reporting fees according to the List of Fees and price lists of the BX.

## **10. Security deposit**

- 10.1. Trading Participants must provide a security deposit which serves as collateral for the correct settling of the securities transactions concluded among the Trading Participants.
- 10.2. The amount of the security deposit shall be set by the BX, at its sole discretion while respecting the principle of equal treatment, according to the following criteria, although a higher security deposit or emergency measures may be demanded in exceptional and duly substantiated cases:
- a) scope of the deposit: CHF 50,000 – CHF 1,000,000
  - b) calculation formula: average on-exchange trading volume at the BX per day over the last six months multiplied by the duration of the settlement cycle (for example, multiplied by three days at T+3 or multiplied by two days at T+2);
  - c) new entrants: estimated trading volume;
  - d) calculation interval: twice a year;
  - e) amount changes: advance notice of 20 business days.
- 10.3. Should a Trading Participant in case of price declines fail to comply with the requested completion of the security deposit in due time, the Trading Participant will remain suspended from trading until the request is met.
- 10.4. The security deposit may be provided:
- a) by depositing cash, with public or first-class bonds listed at a third-party bank agreed upon with the BX for the account of the BX Swiss AG;
  - b) with a security deposited at a clearing house which is recognised by the BX or at a settlement agent upon first request.
- 10.5. The deposited securities or guarantees may be liquidated by the BX:
- a) in case of a buy-in;

- b) fees or refunds in case of a late delivery or late payment of trades or other settlement issues;
  - c) in case of claims which led to a suspension;
  - d) to settle outstanding obligations after the termination of the participation.
- 10.6. Should a Trading Participant terminate the participation, the security deposit is being refunded, provided that the BX does not assert any receivables or claims.
- 10.7. Other Trading Participants or their legal successors may only assert claims from the BX for the security deposit provided to the BX, if these claims arose from transactions which were concluded between the involved Trading Participants on the basis of the existing rules of the BX.
- 10.8. These transactions particularly include all on-order-book and off-order-book securities listed on the BX or admitted to trading.

## **11. Suspension**

- 11.1. Following a notification, the BX may suspend a Trading Participant of all trading, or of trading of individual instruments or segments for the following reasons:
- a) breach of the obligations for maintaining admission or breach of decrees of the BX or a central counterparty (CCP);
  - b) repeated late delivery or late payment of trades or other settlement issues;
  - c) late payment to BX, or to other participants from buy-in procedures, or to CCPs;
  - d) late payment of subsequent payments for the security deposit;
  - e) initiation of deferred payment, inheritance or liquidation proceedings, or criminal or regulatory proceedings of the supervisory authority against the Trading Participant or against its supreme bodies;
  - f) continuous non-use of the exchange system; and
  - g) in the course of sanction proceedings.
- 11.2. The suspension of a Trading Participant effects the blocking of access to the exchange system and the deletion of orders.

## **12. Termination of participation**

- 12.1. A termination or exclusion of a participant may take place namely:
- a) upon request of the participant or upon termination by the BX in compliance with a notice period of a six months to the end of a calendar year;
  - b) as a result of cessation of payment, insolvency or liquidation;
  - c) if legal actions must be taken to enforce the compliance of a Trading Participant with the decision of arbitration proceedings;
  - d) on the basis of a decision of the sanction commission.
- 12.2. The termination or exclusion marks the end of the participation. Even after the termination of participation, the participants are still obligated to fulfil obligations and comply with claims of the BX from possible pending issues in accordance with the rules of the BX.
- 12.3. The BX reserves the right to use the deposit as security after the termination of participation until all outstanding obligations are fulfilled.
- 12.4. The BX announces the termination or exclusion of a participant publicly and in particular informs the other Trading Participants of the termination or exclusion.

### **13. Confidentiality**

- 13.1. The BX, its bodies, employees and commissaries are subject to the obligation of professional secrecy pursuant to Article 147 of the FMIA.
- 13.2. The BX treats all participant related information it receives on the basis of the Participant Rules as confidential. Other contrary statutory obligations or provisions of the BX remain excepted. Confidential information will only be published with the consent of the participant.
- 13.3. The use of anonymised data (e.g. price information and turnover of securities), which does not allow conclusions about the participants it was derived from, does not violate the obligation of confidentiality.
- 13.4. The use of consolidated trading data is not subject to the obligation of confidentiality.
- 13.5. The BX may disclose data to third parties (e.g. settlement agents), provided that they are bound by comparable provisions regarding obligations to secrecy or confidentiality.
- 13.6. Subject to mandatory legal regulations, the BX may provide supervisory authorities, trading surveillance offices of other stock exchanges and law enforcement authorities with information regarding the participants and may obtain such information from them.
- 13.7. Market data (static and dynamic data) are the property of the BX, which the BX may process and disseminate.
- 13.8. With the submission of the application for admission or registration, the participants and traders agree that the BX
  - a) may disclose or obtain such information from third parties, while taking into account clause 13.1 to 13.7;
  - b) may utilise service providers, data centres and data retention arrangements in Switzerland and in the EU/EEA including the UK;
  - c) may store and process the information in Switzerland and in the EU/EEA including the UK; and
  - d) may store and process the information pursuant to Swiss and foreign data protection legislation which is recognised by Switzerland as being appropriate.

### **14. Data privacy**

- 14.1. Participants who pass on the data of employees or commissioned natural persons (data subjects) to the BX in consequence of statutory or regulatory obligations (legitimate interests) are responsible for the lawfulness of the disclosure in compliance with the applicable laws.
- 14.2. They must fully inform the data subjects about the disclosure and use of their data. In particular, they must inform data subjects about the following:
  - a) the processing of the data by the BX;
  - b) the possible use of the data in the course of an investigation or sanction proceedings pursuant to the rules of the BX;
  - c) the possible disclosure of the data to the FINMA, the trading surveillance offices (Article 32 of the FMIA), the law enforcement authorities and the courts.
- 14.3. The aforementioned types of processing of data of the data subjects are based on the statutory obligations pursuant to Article 27 ff. of the FMIA.

## **15. Liability**

- 15.1. The BX, its bodies and employees are not liable, with the exception of gross negligence and wrongful intent, for damage or loss, lost profit or additional expenditures which a participant, clients of the participant, or third parties sustain,
- a) if the trading platform of the BX or systems connected to it, such as clearing, settlement or data processing, malfunction in whole or in part for technical reasons;
  - b) for damage or loss resulting from orders of the BX or measures taken by the BX in the context of special situations;
  - c) for data loss, incorrect or incomplete data processing or dissemination;
  - d) for faulty manipulation or incorrect handling by participants or third parties;
  - e) as a result of a suspension or termination of a participation and the suspension or exclusion of the participant; and
  - f) for the rejection or incorrect execution of a trade by a clearing house or settlement agent.
- 15.2. The provisions of the rules of the BX apply to the processing of the securities transactions in daily trading. Every Trading Participant is liable for the obligations assumed by its respective representatives on its behalf. The participant is obligated to take the necessary precautions, particularly to implement appropriate internal directives, systems, controls and processes for risk mitigation, monitoring and loss prevention.

## **16. Possibilities for appealing**

- 16.1. The participant may appeal the following decisions of the BX or sanctions commission of the BX at the independent appeal body:
- a) refusal of admission;
  - b) refusal or withdrawal of a trader's registration;
  - c) suspension and other disciplinary actions;
  - d) termination/exclusion.
- 16.2. The right to appeal at the civil court after the appeal proceedings remains reserved.

## **17. Final provisions**

- 17.1. Contracting parties and licensees of the Berner Börsenverein (BVV) are automatically admitted as Trading Participants at the BX. Other securities dealers according to the rules of the Berner Börsenverein are automatically admitted as Reporting Participants at the BX.
- 17.2. These Participant Rules were adopted by the regulatory body and approved by the FINMA on 23 August 2018. They enter into force on 1 November 2018.