



Federal Act on Stock Exchanges and Securities Trading (Stock Exchange Act, SESTA)

unofficial translation

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SESTA)

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Federal Act on Stock Exchanges and Securities Trading

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

Version: October 1, 1999

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 standardised 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;
- 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 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;

AS 1997 68

¹ SR 101

² BBl 1993 I 1369

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

- 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.

Chapter 2: Stock Exchanges

Art. 3 Authorization

¹ The operation of a stock exchange is subject to authorization by the Supervisory Authority.

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 the Supervisory Authority for the continuation of its operations.

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 the Supervisory Authority 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 the Supervisory Authority. The Supervisory Authority 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.

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 the Supervisory Authority.

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 the Supervisory Authority.

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 group operating in the financial sector, the Supervisory Authority may require adequate supervision of the group on a consolidated basis by the foreign supervisory authorities as well as their approval for the setting-up of such dealer's operations in Switzerland.

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

⁷ Only natural persons, legal entities or partnerships which have received authorization from the Supervisory Authority 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. 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. 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

A securities dealer shall comply with the provisions on own funds and the spreading of risk on a consolidated basis if it constitutes an economic unit with one or more other companies operating in the financial sector or if for any other reason it appears that the securities dealer is under a legal duty or in actual fact compelled to assist such other company.

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 The Supervisory Authority 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 recognized auditors to examine as to whether the reporting requirement is complied with; the company must provide the 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.

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

³ The 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.

⁴ Banks shall be subject to the provisions of the Federal Act on Banks and Savings Institutions⁴.

⁴ SR 952.0

Art. 17 Audit

¹ The securities dealer is required to have his operations examined annually by recognized auditors. Such auditors shall also be at liberty to carry out interim audits without notice.

² It shall afford the auditors access to all such documents as may be necessary for their audit, and shall furnish them with all the information needed in the discharge of their audit duties.

³ The costs of the audit shall be borne by the securities dealer.

Art. 18 Auditors

¹ Only recognized bank auditors or an auditing firm recognized by the Supervisory Authority as auditors for securities dealers may be appointed to carry out an audit. The Ordinance shall set out the conditions for such recognition.

² Such recognized auditors themselves may not be securities dealers.

³ The auditors shall be independent of the management and the Board of Directors of the securities dealer whose operations are to be audited.

Art. 19 Duties of the auditors

¹ The auditors shall verify that the securities dealer has fulfilled his legal obligations and that he has complied with the requirements for authorization and his own internal regulations.

² The auditors shall draw up a report on the results of the audit and shall forward such report to the audited securities dealer and the Supervisory Authority.

³ The Supervisory Authority shall issue rules relating to the scope of the audit and the contents of the audit report.

⁴ If the auditors, in the course of the annual or an interim audit, discover any breach of legal provisions or any other irregularities, they shall set a reasonable time-limit within which the securities dealer must rectify the matter and they shall add an appropriate comment to this effect in the audit report.

⁵ The auditors shall forthwith notify the Supervisory Authority in the event that:

- a. the deadline set pursuant to para. 4 has not been met;
- b. the auditors are of the opinion that it would serve no purpose to set such a deadline; or
- c. the auditors discover any breach of criminal law or serious irregularities.

⁶ The auditors shall keep confidential all information which has come into their possession in the course of their audit, except in their dealings with the Supervisory Authority.

Chapter 4: Disclosure of Shareholdings

Art. 20 Obligation to notify

¹ Whosoever, directly, indirectly or in concert with third parties, acquires or sells, for his own account, 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 5, 10, 20, 33 1/3, 50 or 66 2/3 of the voting rights, whether or not such rights may be exercised, shall be obliged to 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 to be an acquisition for the purposes of this Act.

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

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

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

⁵ The Supervisory Authority shall issue rules relating to the scope of the obligation to notify, the treatment of share acquisition rights, the calculation of voting rights as well as the time limits within which the obligation to notify must be met and the companies must publish changes in the ownership of their shares pursuant to para. 1. The Takeover Board (Art. 23) shall have the right to put forward proposals.

⁶ Whosoever intends to acquire securities may obtain a ruling from the Supervisory Authority as to whether it 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 Swiss Code of Obligations⁵.

Art. 23 Takeover Board

¹ The Supervisory Authority 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 the Supervisory Authority 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 the Supervisory Authority.

³ The Takeover Board shall, in each case, ensure compliance with the rules applicable to public takeover offers. The Takeover Board may demand from offerors and offeree companies all information and documents which it may require. It issues recommendations to the persons concerned and may publish such recommendations.

⁴ In the event that its recommendations are rejected or not complied with, the Takeover Board shall inform the Supervisory Authority. The latter may render a decision on the matter .

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 auditor recognized by the Supervisory Authority 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.

⁵ SR 220

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.

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 auditor 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.

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.

Art. 31 Obligation to notify

¹ The offeror or whosoever has, directly or indirectly or acting in concert with third parties, holdings which give him at least 5 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 Supervisory Authority may grant exemptions from the obligation to make an offer, in particular in the following cases:

- a. where the transfer of voting rights occurs within a group organised 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.

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 The Supervisory Authority 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 Supervisory Authority, the offeree company or one of its shareholders, the court may by way of an interim relief suspend the voting rights of any person who is in breach of the obligation to make an offer.

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.

Chapter 6: Supervisory Authority

Art. 34 Organization

The Federal Banking Commission shall be the Supervisory Authority (Supervisory Authority). The organization shall be structured in accordance with Article 23 of the Federal Act on Banks and Savings Institutions⁶.

Art. 35 Duties

¹ The Supervisory Authority shall take such decisions as may be necessary to implement this Act and its implementing provisions and it shall supervise compliance with the legal and regulatory provisions.

² Persons and companies which are subject to supervision shall provide the Supervisory Authority with all information and documents which the latter may request in order to carry out its duties. Additionally, this obligation shall apply to:

- a. persons who hold a qualified participation in the capital of a stock exchange or a securities dealer;
- b. auditors;
- c. persons and companies which are subject to a duty of disclosure;
- d. offerors in public takeover offers;
- e. offeree companies.

³ In the event that the Supervisory Authority becomes aware of any breach of the Act or any other irregularities it shall take all measures necessary to restore proper conditions and remove any irregularities. It shall issue such decrees as may be necessary to this effect. The Supervisory Authority may:

⁶ SR 952.0

- a. suspend temporarily a securities dealer from engaging in any legal transactions and making payments as well as receiving payments in the event of imminent threat to the interests of his creditors;
- b. prohibit temporarily or permanently any person who as a senior official of a securities dealer trades in securities and who is in serious breach of his duties under this Act, its implementing provisions or his internal regulations from trading in securities.

⁴ If an enforceable decree of the Supervisory Authority has, after formal notice has been given, not been complied with within the time limit set, the Supervisory Authority may, pursuant to para. 2, itself carry out the actions decreed; the defaulting persons or companies shall bear the costs of such action.

⁵ In the event of a refusal to obey an enforceable decree of the Supervisory Authority, the Supervisory Authority may publish such decree in the Swiss Official Commercial Gazette (SOCG) or otherwise make it public in any other form. Such an action must be preceded by a warning.

⁶ If the Commission becomes aware of any criminal acts it shall forthwith notify the competent authorities for criminal prosecution. These authorities are under a duty to provide mutual legal assistance.

Art. 36 Withdrawal of authorization

1 The Supervisory Authority shall withdraw the authorization of a stock exchange and a securities dealer if it no longer fulfills the conditions of such authorization or it is in serious breach of its legal duties or internal regulations.

2 Upon the withdrawal of authorization, legal entities and limited partnerships shall be dissolved and, in the case of sole proprietorships, their registration in the Commercial Register shall be cancelled. The Supervisory Authority shall appoint a liquidator and supervise his activities. The Supervisory Authority may resolve not to order the dissolution of securities dealers which are also subject to the Federal Act on Banks and Savings Institutions⁷, provided that their banking licence does not also have to be withdrawn.

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.

⁷ SR 952.0

Art. 38 Administrative Assistance

¹ The Supervisory Authority may request from foreign supervisory authorities in charge of stock exchanges and securities dealers such information and documents as may be necessary for the enforcement of this Act.

² It may forward publicly inaccessible information and documents to foreign supervisory authorities only if the said foreign authorities:

- a. use such information exclusively for the purpose of direct supervision of the stock exchanges and the trading in securities;
- b. are bound by official or professional secrecy; and
- c. do not, without the prior consent of the Swiss Supervisory Authority or by virtue of a general authorization clause in an international treaty, forward such information to competent authorities and to other bodies which carry out supervisory functions in the public interest. Forwarding information to criminal authorities is not permitted if mutual assistance in criminal matters would be excluded. The Supervisory Authority shall decide in consultation with the Federal Office for Police matters.

³ The Federal Act on Administrative Proceedings⁸ shall be applicable insofar as the information to be forwarded by the Supervisory Authority concerns the clients of a securities dealer. It shall not be permitted to forward any information on persons who are manifestly not involved in the subject matter of the investigation.

Art. 38a Cross-Frontier Inspections

¹ The Banking Commission, in implementation of this law, may itself undertake inspections in foreign establishments of stock exchanges and securities dealers for whose consolidated supervision it is responsible within the framework of home country control, or entrust auditing firms to perform such work.

² The Banking Commission may permit foreign supervisory authorities responsible for stock exchanges and securities dealers to carry out direct inspections at Swiss establishments of foreign stock exchanges and securities dealers insofar as these authorities:

- a. are responsible for the consolidated supervision of the stock exchanges and securities dealers subject to audit within the framework of home country control;
- b. shall use the information obtained exclusively for the direct supervision of stock exchanges and securities dealers;
- c. are bound by official or professional secrecy; and
- d. will not transmit this information to competent authorities or bodies which are entrusted with supervisory activities in the public interest without the consent of the Banking Commission. The transmission of information to penal authorities is not permitted whenever legal assistance in penal matters would be excluded. The Banking Commission shall decide after consulting with the competent authority.

³ During the conduct of cross-border direct inspections, only data necessary for a consolidated supervision over stock exchanges and securities dealers may be investigated. In relation to securities dealers, this shall encompass, in particular, data as to whether a securities dealer throughout the group:

- a. is appropriately organised;

⁸ SR 172.021

- b. appropriately identifies, limits and monitors risks inherent in its business activity;
- c. is managed by and employs persons who offer guarantees for the proper conduct of business activities;
- d. complies with capital-adequacy and risk-diversification provisions on a consolidated basis; and
- e. adequately complies with reporting duties vis-à-vis the supervisory authorities.

⁴ Insofar as foreign supervisory authorities responsible for stock exchanges and securities dealers during their direct inspections within Switzerland wish to have access to information which relates to specific customers of securities dealers, the Banking Commission shall gather the information itself and shall transmit it to the authorities requesting it. The procedure shall follow the Law on Administrative Procedure. The transmittal of information concerning persons who are clearly not involved in the matter to be investigated is not permitted.

⁵ The Banking Commission may accompany the foreign supervisory authorities responsible for stock exchanges and securities dealers on their direct inspections within Switzerland of charge a Stock-Exchange-Law audit firm to do so. The stock exchange and securities dealer in question may demand that they be accompanied.

⁶ Establishments within the meaning of this article are deemed to be:

- a. subsidiary companies, branches or representative offices of stock exchanges and securities dealers;
- b. other enterprises, provided that their activity is included in the consolidated supervision by a supervisory authority for stock exchanges and securities dealers.

⁷ Establishments organised in accordance with Swiss law are to provide foreign supervisory authorities responsible for stock exchanges and securities dealers and the Banking Commission with information necessary for carrying out direct inspections or administrative assistance by the Banking Commission and grant access to their books and records.

Chapter 8: Appeal Procedure

Art. 39

There shall be a right of appeal in administrative matters to the Federal Supreme Court against the decrees issued by the Supervisory Authority.

Chapter 9: Penal Provisions

Art. 40 Operations without authorization

Whosoever intentionally:

- a. operates a stock exchange without authorization;

- b. engages in the business of a securities dealer without authorization, shall be punished with a fine of up to CHF 200,000 .

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 intentionally or negligently breaches the reporting obligation to which he is subject pursuant to Article 15 shall be punished with a fine of up to CHF 50,000 .

Art. 42 Breach of duty by the offeree company

Whosoever intentionally:

- a. fails to submit a report to the holders of equity securities setting out his position in relation with the offer or fails to publish such 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 200,000 .

Art. 43 Breach of professional secrecy

¹ Whosoever:

- a. discloses a secret which has been confided to him in his capacity as a member of a governing body, employee, mandatary or liquidator of a stock exchange or a securities dealer, as a member of one of the governing bodies or employee of recognised auditors, or of which he has become aware in any such capacity; or
- b. attempts such breach of professional secrecy by inducement,

shall be punished by imprisonment or with a fine;

² Whosoever breaches professional secrecy after termination of office or his employment, shall nevertheless remain liable to punishment.

³ The federal and cantonal provisions relating to the duty to testify and the duty to provide information to the authorities remain reserved.

Art. 44 Penal prosecution

¹ The provisions of Part Two of the Federal Act on Penal Administrative Law⁹ shall be applicable to offences within the meaning of Articles 40, 41 and 42.

² The Federal Department of Finance shall be the authority responsible for prosecution and adjudication pursuant to the provisions of Penal Administrative Law.

³ The cantons shall be responsible for the prosecution and adjudication of any breaches of Article 43.

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 Code¹⁰ shall be amended as follows:

Art. 161^{bis}

...¹¹

Art. 47 Amendment to the Banking Act

The Federal Act on Banks and Savings Institutions¹² shall be amended as follows:

Article 23 para. 1, 2, 4 and 5

....¹³

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.

² The 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.

⁹ SR 313.0

¹⁰ SR 311.0

¹¹ Text contained in said Federal Law

¹² SR 952.0

¹³ Text contained in said Federal Law

³ The 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 the Supervisory Authority within three months of the coming into force of this Act and submit their internal regulations to it.

² The Supervisory Authority 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 the Supervisory Authority 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. The Supervisory Authority may on a case by case basis extend or shorten this period if special circumstances so require.

² The Supervisory Authority 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

¹ Whosoever, 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.

² The 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 auditors.

Art. 55 Referendum and coming into force

¹ This Act is subject to an optional referendum.

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

Coming into force: 1 February 1997¹⁴

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 1998¹⁵

¹⁴ BRB of 2 December 1996 (AS 1997 84)

¹⁵ Art. 1 of Ordinance of 13 August 1997 (AS 1997 2044)