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*Draft*

# Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology

of ...

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*The Federal Assembly of the Swiss Confederation,*  
having considered the Federal Council Dispatch of 27 November 2019<sup>1</sup>,  
*decrees:*

I

The legislative instruments below are amended as follows:

## 1. Code of Obligations<sup>2</sup>

### *Art. 622 paras. 1 and 1<sup>bis</sup>*

<sup>1</sup> The shares may be either registered or bearer shares. They may be issued in the form of negotiable securities. The articles of association may stipulate that they may be issued as uncertificated or ledger-based securities in accordance with Article 973c or 973d, or as intermediated securities in accordance with the Intermediated Securities Act (FISA) of 3 October 2008<sup>3</sup>.

<sup>1bis</sup> Bearer shares are permitted only if the company has equity securities listed on a stock exchange or if the bearer shares are organised as intermediated securities in accordance with the FISA and are deposited with a custodian in Switzerland designated by the company or entered in the main register.

<sup>1</sup> BBl 2019 233

<sup>2</sup> SR 220

<sup>3</sup> SR 957.1

*Art. 973a margin titles*

G. Collective  
custody, global  
certificate and  
uncertificated  
securities

I. Collective  
custody of  
negotiable  
securities

*Art. 973c margin title and para. 1*

III. Uncertificated  
securities

<sup>1</sup> The obligor may issue uncertificated securities or replace fungible negotiable securities or global certificates that have been entrusted to a single bailee with uncertificated securities provided the conditions for issue or the articles of association provide therefor or the bailors have consented thereto.

*Art. 973d*

H. Ledger-based  
securities

I. Establishment

<sup>1</sup> A ledger-based security is a right which, in accordance with an agreement between the parties:

1. is registered in a securities ledger in accordance with paragraph 2; and
2. may be exercised and transferred to others only via this securities ledger.

<sup>2</sup> The securities ledger must meet the following requirements:

1. It uses technological processes to give the creditors, but not the obligor, power of disposal over their rights.
2. Its integrity is secured through adequate technical and organisational measures, such as joint management by several independent participants, to protect it from unauthorised modification.
3. The content of the rights, the functioning of the ledger and the registration agreement are recorded in the ledger or in linked accompanying data.
4. Creditors can view relevant information and ledger entries, and check the integrity of the ledger contents relating to themselves without intervention by a third party.

<sup>3</sup> The obligor must ensure that the securities ledger is organised in accordance with its intended purpose. In particular, it must be ensured that the ledger operates in accordance with the registration agreement at all times.

*Art. 973e*

II. Effects

<sup>1</sup> The obligor under a ledger-based security is entitled and obliged to render performance only to the creditor indicated in the securities ledger and subject to appropriate modification of the ledger.

<sup>2</sup> By rendering the performance due at maturity to the creditor indicated in the securities ledger, the obligor is released from the obligation even if the indicated creditor is not the actual creditor, unless the obligor is guilty of malice or gross negligence.

<sup>3</sup> When acquiring a ledger-based security in a securities ledger from the creditor indicated therein, the acquirer is protected even if the seller was not entitled to dispose of the ledger-based security, unless the acquirer acted in bad faith or with gross negligence.

<sup>4</sup> The obligor may raise against a claim deriving from a ledger-based security only those objections which:

1. are aimed at contesting the validity of the registration or derive from the securities ledger itself or its accompanying data;
2. he or she is personally entitled to raise against the current creditor of the ledger-based security; or
3. are based on the direct relations between the obligor and a former creditor of the ledger-based security, if the current creditor intentionally acted to the detriment of the obligor when acquiring the ledger-based security.

*Art. 973f*

III. Transfer

<sup>1</sup> The transfer of the ledger-based security is subject to the provisions of the registration agreement.

<sup>2</sup> If the creditor of a ledger-based security is declared bankrupt, if his or her property is distrained or if a debt restructuring moratorium is authorised, the creditor's decisions regarding ledger-based securities are legally binding and effective against third parties, provided that they

1. were made beforehand;
2. have become irrevocable under the rules of the securities ledger or another trading facility; and
3. were actually recorded in the securities ledger within 24 hours.

<sup>3</sup> When a bona fide acquirer of a certificated security and a bona fide acquirer of the ledger-based security have a conflicting claim to the same right, the former takes precedence over the latter.

*Art. 973g*

IV. Collateral

<sup>1</sup> Collateral may be posted even without the transfer of the ledger-based security, if:

1. the collateral is visible in the securities ledger; and
2. it is ensured that only the collateral recipient can dispose of the ledger-based security in the event of default.

<sup>2</sup> In other respects:

1. the special lien on ledger-based securities is governed by the provisions on special liens that apply to certificated securities (Arts. 895–898 of the CC<sup>4</sup>).
2. the pledging of ledger-based securities is governed by the provisions on liens on debts and other rights as applicable for certificated securities (Arts. 899–906 of the CC).

*Art. 973h*

V. Cancellation

<sup>1</sup> The beneficiary of a ledger-based security may demand that the court cancel the security, provided that he or she furnishes credible evidence of his or her original power of disposal and of the loss thereof. Following cancellation of the instrument, the beneficiary may also exercise his or her right outside the ledger or, at his or her own expense, demand that the obligor allocate a new ledger-based security. In addition, Articles 982-986 apply *mutatis mutandis* to the procedure for and effect of cancellation.

<sup>2</sup> The parties may make provision for a simplified form of cancellation consisting in a reduction of the number of public calls for presentation or a curtailment of the time limits.

*Art. 973i*

VI. Information  
and liability

<sup>1</sup> The obligor under a ledger-based security or a right that is offered as such must inform each acquirer of:

1. the content of the ledger-based security;
2. the mode of operation of the securities ledger and the measures taken in accordance with Article 973*d* paragraphs 2 and 3 to protect the operation and integrity of the ledger.

<sup>2</sup> The obligor is liable for damage to the acquirer arising out of information that is inaccurate, misleading or in breach of statutory requirements, unless the obligor can prove that he or she acted with due

diligence.

<sup>3</sup> Agreements which limit or exclude this liability are void.

*Art. 1153 margin titles*

A. Requirements

I. In general

*Art. 1153a*

II. Equivalent  
instruments in  
securities ledgers

<sup>1</sup> The parties may issue documents of title to goods in the form of ledger-based securities. Articles 1154 and 1155 apply *mutatis mutandis*.

<sup>2</sup> The issuer's signature is not required if the instrument can be unambiguously attributed to him or her in another manner. The further content of the instrument, including any charges, must be recorded in the securities ledger itself or in the associated accompanying data.

## 2. Federal Act of 11 April 1889<sup>5</sup> on Debt Enforcement and Bankruptcy

*Art. 242a*

3a. Surrender of  
cryptobased assets

<sup>1</sup> The bankruptcy administration shall issue an order on the surrender of cryptobased assets over which the debtor has power of disposal at the time of the opening of bankruptcy proceedings, and which are claimed by a third party.

<sup>2</sup> The claim is justified if the debtor has undertaken to hold the cryptobased assets in readiness at all times for the third party, and provided that these are:

- a. allocated individually to the third party; or
- b. allocated to community ownership and it is clear which proportion of the community asset is due to the third party.

<sup>3</sup> If the bankruptcy administration considers the claim to be unjustified, it shall set a time limit of 20 days for the third party to bring an action before the court at the place of the bankruptcy proceedings. If the third party fails to bring action within that time limit, he or she shall forfeit the claim.

<sup>4</sup> The costs of surrender are borne by the claimant. The bankruptcy administration may demand a corresponding advance payment.

*Art. 242b*

- 3b Access to data
- <sup>1</sup> If data is subject to the power of disposal of the bankrupt's estate, any third party that can prove a legal or contractual right to the data may demand access to such data.
- <sup>2</sup> If the bankruptcy administration considers the claim to be unjustified, it shall set a time limit of 20 days for the third party to bring an action before the court at the place of the bankruptcy proceedings. The data must not be destroyed before the court has issued its legally binding decision.
- <sup>3</sup> The costs of accessing the data are borne by the party demanding access. The bankruptcy administration may demand a corresponding advance payment.
- <sup>4</sup> The right to information under the federal or cantonal data protection provisions is reserved.

### 3. Federal Act of 18 December 1987<sup>6</sup> on International Private Law

*Art. 105 para. 2*

<sup>2</sup> In the absence of a choice of law, the pledging of claims is governed by the law of the state of the pledgee's habitual residence. The same applies to the pledging of other rights, provided that they are represented by an uncertificated security, a certificated security or an equivalent instrument; otherwise, the pledging of such rights is governed by the law applicable to them.

*Art. 106*

- b. Documents of title to goods and equivalent instruments
- <sup>1</sup> The law designated in Article 145a paragraph 1 determines whether an instrument represents goods.
- <sup>2</sup> If the goods are represented by a physical instrument, the rights in rem to both the instrument and the goods are governed by the law applicable to the instrument as movable property.
- <sup>3</sup> If several persons assert rights in rem relating to the goods, some directly, others on the basis of an instrument, the law applicable to the goods themselves determines which one of these rights prevails.

*Art. 108a*

- I. Definition
- The term securities held with an intermediary is to be understood in

the sense of the Hague Convention of 5 July 2006<sup>7</sup> on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary.

*Art. 145a*

1a Transfer by  
means of an  
instrument

<sup>1</sup> Whether a claim is represented by an instrument in paper or equivalent form and transferred by means of such instrument is determined by the law designated therein. If no law is designated in the instrument, the law of the state in which the issuer has its seat or, failing such, its habitual residence applies.

<sup>2</sup> As regards rights in rem to a physical instrument, the provisions of Chapter 7 are reserved.

#### **4. Financial Services Act of 15 June 2018<sup>8</sup>**

*Art. 3 lit. b*

For the purposes of this Act:

- b. *securities* are standardised certificated and uncertificated securities, in particular uncertificated securities in accordance with Article 973c of the Code of Obligations<sup>9</sup> (CO) and ledger-based securities in accordance with Article 973d of the CO, as well as derivatives and intermediated securities, which are suitable for mass trading;

#### **5. National Bank Act of 3 October 2003<sup>10</sup>**

*Art. 19 para. 1*

<sup>1</sup> In order to protect the stability of the financial system, the National Bank shall oversee systemically important central counterparties, central securities depositories, payment systems and DLT trading facilities in accordance with Article 22 (systemically important financial market infrastructures) of the Financial Market Infrastructure Act of 19 June 2015<sup>11</sup> (FinMIA).

*Art. 20 para. 1*

<sup>1</sup> Central counterparties, central securities depositories, payment systems and DLT trading facilities shall provide the National Bank, upon request, with all of the

<sup>7</sup> SR 0.221.556.1

<sup>8</sup> SR 950.1

<sup>9</sup> SR 220

<sup>10</sup> SR 951.11

<sup>11</sup> SR 958.1



information and documents it requires to identify risks for the stability of the financial system at an early stage and to assess systemic importance.

## 6. Banking Act of 8 November 1934<sup>12</sup>

*Art. 1b paras. 1 and 4 lit. d*

<sup>1</sup> The provisions of this Act apply by analogy to persons who operate primarily in the financial sector and who:

- a. on a commercial basis, accept public deposits of up to CHF 100 million or cryptobased assets as designated by the Federal Council or publicly offer to do so; and
- b. neither invest nor pay interest on these public deposits or assets.

<sup>4</sup> The following provisions remain reserved:

- d. The provisions on privileged deposits (Art. 37a) and immediate payment (Art. 37b) do not apply to public deposits or cryptobased assets as designated by the Federal Council that are accepted by the persons stipulated in paragraph 1; the depositors shall be informed of this fact before they place the deposit.

*Art. 4sexies*

FINMA may set a maximum amount in individual cases for cryptobased assets held by the bank as custody assets for custody account holders where this appears appropriate owing to the risks associated with the business. In particular, it shall take into account the function of the cryptobased assets, the technology underlying such assets, and risk-mitigating factors.

*Art. 16 no. 1bis*

Custody assets within the meaning of Article 37d of the Act are:

- <sup>1bis</sup> cryptobased assets, where the bank has undertaken to hold these in readiness at all times for the custody account holder, and where these are:
1. allocated individually to the custody account holder; or
  2. allocated to community ownership and it is clear which proportion of the community asset is due to the custody account holder.

*Art. 37d*

<sup>1</sup> Custody assets as defined in Article 16 are segregated in accordance with Articles 17 and 18 of the Federal Act of 3 October 2008 on Intermediated Securities<sup>13</sup>.

<sup>12</sup> SR 952.0

<sup>13</sup> SR 957.1

As regards custody assets in collective custody, Article 19 of the Federal Intermediated Securities Act applies in the event of a shortfall.

## 7. Financial Institutions Act of 15 June 2018<sup>14</sup>

*Art. 6 para. 2*

<sup>2</sup> Authorisation to operate as a securities firm under Article 41 letter a also authorises an entity to operate as a manager of collective assets, a portfolio manager and a trustee.

*Art. 16*            Ombudsman

Financial institutions that provide financial services under Article 3 letter c of the Financial Services Act of 15 June 2018<sup>15</sup> (FinSA) must affiliate to an ombudsman as stipulated in the provisions of Title 5 of the FinSA at the latest on assuming their activity.

*Art. 41 lit. b no. 3*

A securities firm is an entity that, on a commercial basis:

- b. trades in securities for its own account on a short-term basis, operates primarily on the financial market and:
  3. operates an organised trading facility under Article 42 of the Financial Market Infrastructure Act of 19 June 2015<sup>16</sup>; or

*Art. 67 para. 2*

<sup>2</sup> The provisions of the BankA on the protection of deposits and dormant assets apply by analogy to securities firms under Article 41 letter a.

## 8. Anti-Money Laundering Act of 10 October 1997<sup>17</sup>

*Art. 2 para. 2 lit. d<sup>bis</sup> to d<sup>quater</sup>*

<sup>2</sup> Financial intermediaries are:

- d<sup>bis</sup> central counterparties and central securities depositories in accordance with the Financial Market Infrastructure Act of 19 June 2015<sup>18</sup> (FMIA);

<sup>14</sup> SR 954.1

<sup>15</sup> SR 950.1

<sup>16</sup> SR 958.1

<sup>17</sup> SR 955.0

<sup>18</sup> SR 958.1

- d<sup>ter</sup> payment systems that require authorisation from the Swiss Financial Market Supervisory Authority (FINMA) in accordance with Article 4 paragraph 2 of the FinMIA;
- d<sup>quater</sup> trading facilities for DLT securities in accordance with Article 73a of the FinMIA (DLT trading facilities);

*Art. 3 para. 5*

<sup>5</sup> FINMA, the Federal Gaming Board (FGB), the Federal Department of Justice and Police (FDJP), the Federal Customs Administration (FCA) and the self-regulatory organisations shall determine what constitutes a considerable financial value within the meaning of paragraphs 2 and 3 in their respective fields and adjust such values as required.

*Art. 12 lit. a*

The following bodies shall supervise compliance by financial intermediaries with the duties set out in Chapter 2:

- a. for financial intermediaries under Article 2 paragraph 2 letters a to d<sup>quater</sup>, FINMA;

*Art. 17 para. 1 lit. a and c*

<sup>1</sup> Ordinances specifying the duties of due diligence defined in Chapter 2 and under the gambling legislation shall be issued by:

- a. FINMA, for financial intermediaries under Article 2 paragraph 2 letters a to d<sup>quater</sup>;
- c. the FDJP, for financial intermediaries under Article 2 paragraph 2 letter f;

*Art. 22a para. 2 lit. a*

<sup>2</sup> FINMA shall pass on the data received from the FDF to:

- a. the financial intermediaries under its supervision in accordance with Article 2 paragraph 2 letters a and b to d<sup>quater</sup>;

*Art. 26a para. 1*

<sup>1</sup> For financial intermediaries under Article 2 paragraph 3 that are a domestic group company of a financial intermediary under Article 2 paragraph 2 letters a to d<sup>quater</sup>, FINMA may stipulate that compliance with the duties set out in Chapter 2 be demonstrated in the audit report for the group.

*Art. 41 para. 2*

<sup>2</sup> It may authorise FINMA, the FGB, the FDJP and the FCA to issue implementing provisions on matters of limited importance, particularly on matters of a primarily technical nature.

## **9. Federal Intermediated Securities Act of 3 October 2008<sup>19</sup>**

*Art. 4 para. 2 lit. f and g*

The following are deemed to be custodians:

- f. Swiss Post within the meaning of the Postal Services Organisation Act of 17 December 2010<sup>20</sup>; and
- g. DLT trading facilities under Articles 73a to 73f of the Financial Market Infrastructure Act of 19 June 2015<sup>21</sup> in relation to immobilised ledger-based securities under Articles 973d to 973i of the Code of Obligations<sup>22</sup>.

*Art. 5 lit. g and h*

In this Act:

- g. *Relevant to the German, French and Italian text only*
- h. *ledger-based securities* means rights within the meaning of Article 973d of the Code of Obligations.

*Art. 6 para. 1 lit. c and d and paras. 2 and 3*

<sup>1</sup> Intermediated securities are created:

- c. *Relevant to the German, French and Italian text only;*
- d. when ledger-based securities are transferred to a custodian and the respective rights are credited to one or more securities accounts.

<sup>2</sup> *Relevant to the German, French and Italian text only.*

<sup>3</sup> On being transferred to a custodian, the ledger-based securities shall be immobilised in the securities ledger.

*Art. 7 paras. 1 and 2*

*Relevant to the German, French and Italian text only*

<sup>19</sup> SR 957.1  
<sup>20</sup> SR 783.1  
<sup>21</sup> SR 958.1  
<sup>22</sup> SR 220

*Art. 9 para. 1*

<sup>1</sup> A custodian may hold intermediated securities, certificated securities, uncertificated securities and ledger-based securities with a sub-custodian in Switzerland or abroad. The account holder's consent is not required.

*Art. 11 para. 3 lit. b*

<sup>3</sup> The following are deemed to be available securities:

- b. certificated securities, ledger-based securities or global certificates that the custodian holds directly, or uncertificated securities entered in its main register; and

*Art. 17 para. 1 lit. b and para. 4*

<sup>1</sup> If a custodian is subject to proceedings for compulsory liquidation, the liquidator shall exclude from the custodian's estate up to the number of intermediated securities credited to the securities accounts maintained by the custodian for its account holders:

- b. certificated securities, ledger-based securities or global certificates that the custodian holds directly, or uncertificated securities entered in its main register; and

<sup>4</sup> Intermediated securities and claims for delivery of intermediated securities excluded from the custodian's estate shall be:

- a. *Relevant to the French text only*
- b. delivered to the account holder in the form of certificated securities; or
- c. transferred to the account holder in the form of ledger-based securities.

## **10. Financial Market Infrastructure Act of 19 June 2015<sup>23</sup>**

*Art. 2 lit. a no. 5a, b, b<sup>bis</sup> and j*

For the purposes of this Act, the following terms have the following meanings:

- a. *Financial market infrastructure:*
  - 5a. a trading facility for DLT securities (DLT trading facility; Art. 73a);
- b. *Securities:* standardised certificated and uncertificated securities, in particular uncertificated securities in accordance with Article 973c of the Code of Obligations<sup>24</sup> (CO) and ledger-based securities in accordance with Article 973d of the CO, as well as derivatives and intermediated securities, which are suitable for mass trading;

<sup>23</sup> SR 958.1

<sup>24</sup> SR 220

b<sup>bis</sup> *DLT*<sup>25</sup> *securities*: securities in the form of:

1. Ledger-based securities (Art. 973d CO); or
  2. other uncertificated securities that are held in distributed electronic registers and use technological processes to give the creditors, but not the obligor, power of disposal over the uncertificated security;
- j. *Insider information*: confidential information whose disclosure would significantly affect the prices of securities admitted to trading on a trading venue or DLT trading facility which has its registered office in Switzerland.

*Art. 16 para. 2*

<sup>2</sup> The terms "stock exchange", "multilateral trading facility", "MTF", "central counterparty", "CCP", "securities settlement system", "SSS", "central securities depository", "CSD", "trade repository", "TR", "DLT trading system", "DLT trading facility" and "DLT exchange" may be used in connection with the provision of financial services only to designate a corresponding financial market infrastructure subject to this Act.

*Art. 22 para. 1 introductory sentence*

<sup>1</sup> Central counterparties, central securities depositories, payment systems and those DLT trading facilities that provide central custody, clearing or settlement services are deemed to be systemically important:

*Art. 25 para. 1*

<sup>1</sup> FINMA shall inform the SNB of authorisation requests submitted by central counterparties, central securities depositories, payment systems and those DLT trading facilities that provide central custody, clearing or settlement services.

*Art. 43 para. 1*

<sup>1</sup> Anyone who operates an organised trading facility requires authorisation as a bank, securities dealer or DLT trading facility, or authorisation or recognition as a trading venue.

*Heading after Art. 73*

## **Chapter 4a DLT Trading Facilities**

*Art. 73a*          **Definitions**

<sup>1</sup> A DLT trading facility is a commercially operated institution for multilateral trading of DLT securities whose purpose is the simultaneous exchange of bids

<sup>25</sup> Distributed ledger technology

between several participants and the conclusion of contracts based on non-discretionary rules and which meets at least one of the following criteria:

- a. It admits participants in accordance with Article 73c paragraph 2 letter e.
- b. It holds DLT securities in central custody based on uniform rules and procedures.
- c. It clears and settles transactions in DLT securities based on uniform rules and procedures.

<sup>2</sup> The criterion of a commercial basis is deemed satisfied by an independent economic activity pursued on a permanent, for-profit basis.

*Art. 73b*            Applicability of certain requirements for trading venues

DLT trading facilities are subject to the following requirements for trading venues:

- a. self-regulation (Art. 27);
- b. organisation of trading (Art. 28);
- c. pre- and post-trade transparency (Art. 29);
- d. guarantee of orderly trading (Art. 30);
- e. supervision of trading (Art. 31);
- f. collaboration between trading supervisory bodies (Art. 32);
- g. suspension of trading (Art. 33 para. 2);
- h. appeal body (Art. 37).

*Art. 73c*            Admission of participants and their duties

<sup>1</sup> The following may be admitted as participants in a DLT trading facility:

- a. securities firms as defined in Article 41 of the FinIA<sup>26</sup>;
- b. other parties supervised by FINMA in accordance with Article 3 of the FINMASA<sup>27</sup> as well as parties supervised by a foreign authority, provided that the DLT trading facility ensures that they fulfil equivalent technical and operational conditions to securities firms;
- c. the SNB;
- d. the Bank for International Settlements;
- e. other natural persons and legal entities, provided that they declare that they are participating in their own name and for their own account.

<sup>2</sup> Participants domiciled in Switzerland must provide FINMA with all information and documents that it requires to carry out its tasks. The DLT trading facility must

<sup>26</sup> SR 954.1

<sup>27</sup> SR 956.1

ensure that foreign-domiciled participants provide the relevant information and documents if FINMA so requires.

<sup>3</sup> The provisions on the record-keeping duty (Art. 38) and the reporting duty (Art. 39) of participants also apply to participants in a DLT trading facility. The Federal Council may make exceptions for participants under paragraph 1 letter e.

<sup>4</sup> The Federal Council shall regulate the details regarding the admission, duties and exclusion of participants.

<sup>5</sup> The DLT trading facility shall issue regulations on the admission, duties and exclusion of participants, thereby observing in particular the principle of equal treatment.

<sup>6</sup> It shall monitor compliance with the regulations and impose the sanctions provided for contractually in the event of violations.

*Art. 73d* Admission of DLT securities and other assets

<sup>1</sup> The DLT trading facility shall issue regulations on the admission of DLT securities to trading and to the other services it provides. In particular, it shall set out therein the requirements to be met by the DLT securities and the issuers or third parties in connection with the admission. The duty to publish a prospectus is governed exclusively by Articles 35–57 of the Financial Services Act of 15 June 2018<sup>28</sup>.

<sup>2</sup> A DLT trading facility that, in addition to DLT securities, admits other assets to trading or to its other services shall issue regulations on the admission of such assets.

<sup>3</sup> The Federal Council may:

- a. require that DLT securities be admitted to DLT trading facilities only if they meet certain minimum requirements, in particular as regards their integrity and the availability of public information;
- b. specify which DLT securities and other assets must not be admitted to DLT trading facilities in order to protect financial market participants or the stability or integrity of the financial system.

<sup>4</sup> The DLT trading facility shall monitor compliance with the regulations and impose the sanctions provided for contractually in the event of violations.

*Art. 73e* Additional requirements

<sup>1</sup> For DLT trading facilities that are open to participants under Article 73c paragraph 1 letter e, the Federal Council may set requirements for the protection of these participants in addition to the requirements under Articles 73b–73d.

<sup>2</sup> For DLT trading facilities that provide central custody, clearing and settlement services, the Federal Council shall set requirements in addition to those under Articles 73a–73d, in particular with regard to:



- a. the central custody, clearing and settlement of DLT securities;
- b. collateral;
- c. capital adequacy;
- d. risk diversification;
- e. ancillary services;
- f. liquidity;
- g. procedure in the event of a participant's default;
- h. segregation.

<sup>3</sup> The Federal Council shall base the requirements under paragraph 2 on the requirements for central securities depositories (Arts. 61–73).

<sup>4</sup> Where necessary in order to take account of technology-specific risks, the Federal Council may authorise FINMA to draw up the requirements under paragraph 2.

<sup>5</sup> The competence of the SNB to specify special requirements for systemically important DLT trading facilities by virtue of Article 23 is reserved.

#### *Art. 73f* Easing of requirements for small DLT trading facilities

<sup>1</sup> For reasons of proportionality and while taking into account the protective purpose of this Act, the Federal Council may ease the requirements for small DLT trading facilities under Articles 6–21, 27–33 and 37, in particular the requirements on:

- a. separation of the bodies responsible for business management from those responsible for overall management, supervision and control (Art. 8);
- b. the provision of ancillary services not subject to authorisation or approval by virtue of the financial market legislation (Art. 10);
- c. the independence of the self-regulatory organisation (Art. 27 para. 2) and of the appeal body (Art. 37 para. 1).

<sup>2</sup> DLT trading facilities are deemed to be small if they pose a low risk in terms of the protection of financial market participants and the proper functioning and stability of the financial system, in particular because the number of participants, the trading volume, the volume of custody assets or the clearing and settlement volume is limited. The Federal Council shall set thresholds.

#### *Art. 89 paras. 1 and 2 introductory sentence*

<sup>1</sup> Insofar as this is possible and to the extent that they are concerned, FINMA shall inform central counterparties, central securities depositories, payment systems and those DLT trading facilities that provide comparable central custody, clearing or settlement services, in Switzerland and abroad, of the insolvency measures it intends to take against a participant and which limit the participant's power of disposal. It shall also inform them of the precise time of entry into effect of the measures.

<sup>2</sup> The orders given to a central counterparty, central securities depository, payment system or a DLT trading facility that provides comparable central custody, clearing or settlement services by a participant against which such an insolvency measure has been taken shall be legally enforceable and binding on third parties if:

*Art. 142 para. 1 lit. a and c*

<sup>1</sup> Any person who has insider information and who knows or should know that it is insider information or who has a recommendation that he or she knows or should know is based on insider information behaves improperly if he or she:

- a. exploits it to acquire or dispose of securities admitted to trading on a trading venue or DLT trading facility which has its registered office in Switzerland or to use derivatives of such securities;
- c. exploits it to recommend to another to acquire or dispose of securities admitted to trading on a trading venue or DLT trading facility which has its registered office in Switzerland or to use derivatives of such securities.

*Art. 143 para. 1*

<sup>1</sup> A person behaves improperly if he or she:

- a. publicly disseminates information which he or she knows or should know gives false or misleading signals regarding the supply, demand or price of securities admitted to trading on a trading venue or DLT trading facility which has its registered office in Switzerland;
- b. carries out transactions or acquisition or disposal orders which he or she knows or should know give false or misleading signals regarding the supply, demand or price of securities admitted to trading on a trading venue or DLT trading facility which has its registered office in Switzerland.

*Art. 154 para. 1 lit. a and c and paras. 3 and 4*

<sup>1</sup> A custodial sentence not exceeding three years or a monetary penalty shall be imposed on any person who as a body or a member of a managing or supervisory body of an issuer or of a company controlling or controlled by them, or as a person who due to their holding or activity has legitimate access to insider information, if they gain a pecuniary advantage for themselves or for another with insider information by:

- a. exploiting it to acquire or dispose of securities admitted to trading on a trading venue or DLT trading facility which has its registered office in Switzerland or to use derivatives of such securities;
- c. exploiting it to recommend that another acquire or dispose of securities admitted to trading on a trading venue or DLT trading facility which has its registered office in Switzerland or to use derivatives of such securities.

<sup>3</sup> Any person who gains a pecuniary advantage for themselves or for another by exploiting insider information or a recommendation based on insider information disclosed or given to them by a person referred to in paragraph 1 or acquired through a felony or misdemeanour in order to acquire or dispose of securities admitted to trading on a trading venue or DLT trading facility which has its registered office in Switzerland or in order to use derivatives of such securities shall be liable to a custodial sentence not exceeding one year or to a monetary penalty.

<sup>4</sup> Any person who is not a person referred to in paragraphs 1 to 3 and yet who gains a pecuniary advantage for themselves or for another by exploiting insider information or a recommendation based on insider information in order to acquire or dispose of securities admitted to trading on a trading venue or DLT trading facility which has its registered office in Switzerland or to use derivatives of such securities shall be liable to a fine.

*Art. 155 para. 1 introductory sentence*

<sup>1</sup> A custodial sentence not exceeding three years or a monetary penalty shall be imposed on any person who, with the intention of gaining a pecuniary advantage for themselves or for another, substantially influences the price of securities admitted to trading on a trading venue or DLT trading facility which has its registered office in Switzerland in that they:

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<sup>1</sup> This Act is subject to an optional referendum.

<sup>2</sup> The Federal Council shall determine the commencement date.