

Ordinance

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

dated

The Swiss Federal Council,

ordains:

I

The legislative instruments below are amended as follows:

1. Management Salaries Ordinance of 19 December 2003¹

Art. 1 lit. h

¹ This Ordinance applies to:

- h. the Federal Audit Oversight Authority;

2. Auditor Oversight Ordinance of 22 August 2007²

Art. 2 Form of the application

¹ The application for authorisation is in electronic form. It must be signed. If no qualified electronic signature in accordance with the Federal Act of 18 March 2016 on Electronic Signatures³ exists, a release certification must be signed by hand and submitted in hard copy.

² If it is not possible to submit the application electronically, the application must be submitted in hard copy. It must be signed by hand.

¹ SR 172.220.12

² SR 221.302.3

³ SR 943.03

Art. 11a para. 1 lit. a

¹ The supervisory authority issues authorisations to state-supervised audit firms, as well as to lead auditors for the auditing in accordance with financial market legislation for the following supervision areas:

- a. Banks in accordance with the Banking Act of 8 November 1934 (BankA), financial market infrastructures, financial groups and public takeover offers in accordance with the Financial Market Infrastructure Act of 19 June 2015, securities firms in accordance with of the Financial Institutions Act of 15 June 2018 (FinIA) and central mortgage bond institutions in accordance with the Mortgage Bond Act of 25 June 1930;

Art. 11b para. 2

² The audit mandates in the supervision areas under Article 11a paragraph 1 letters a and c shall be included in the supervision area under Article 11a paragraph 1 letter a^{bis}.

Art. 11a^{bis} paras. 3 und 4

³ Lead auditors can count professional experience and auditing hours in the supervision area under Article 11a paragraph 1 letters a and c towards the authorisation under paragraph 1 or its retention under paragraph 2.

⁴ They may include a maximum of eight hours of training spent in the supervision areas under Article 11a paragraph 1 letters a and c.

3. Ordinance of 13 July 1911⁴ on Procedures for Bankruptcy Offices

Art. 15a para. 2

² The cantonal supervisory authorities shall ensure that the provisions of the Accounts Ordinance of 24 April 2002⁵ are adhered to by analogy.

Art. 31 para. 1

¹ The bare necessity goods shall be listed at the end of the inventory and identified by the individual item number in the inventory.

Art. 34

k. Registering a claim under Arts. 242 to 242b of the DEBA and handling of claims

¹ The claims registered under Articles 242 to 242b of the DEBA shall be entered on an ongoing basis in a separate section of the inventory and shall include details of the claimant, the inventory number of the claimed asset and any supporting

⁴ SR 281.32

⁵ SR 221.431

documentation. In the inventory itself, the "Comments" section shall refer to the fact of a claim having been registered with regard to these assets.

² The declarations by the debtor and the subsequent orders issued by the bankruptcy administration on the claimed assets and the results of any court proceedings are to be summarised at the end of the section.

Art. 38

Repealed

Art. 40 para. 2 lit. d

² Such special notices are to be issued under ordinary proceedings:

- d. to the competent child and adult protection authorities, if the debtor holds custody or acts as a representative, appointee or guardian and there are concrete indications that the interests of the children or the affected person could be damaged by the opening of bankruptcy proceedings;

Art. 45

4. Exclusion claims and claims on cryptobased assets
a. Order by the bankruptcy administration

¹ The order on the surrender of assets subject to the power of disposal of the bankrupt's estate and claimed by third parties (Arts. 242 and 242a of the DEBA and Art. 34 of this Ordinance) shall be issued following expiry of the deadline for registering claims (Art. 232 para. 2 no. 2 of the DEBA), irrespective of whether the third party has registered the claim itself or whether the debtor or other person has designated the asset as being subject to a third-party claim.

² The order shall also be issued in cases where the claim is not registered until after the auction of the claimed asset but before the distribution of the proceeds.

Art. 46

b. Setting a time limit for actions by third parties

If a third party is set a time limit under Article 242 paragraph 2 and Article 242a paragraph 3 of the DEBA, the communication must contain a precise description of the disputed assets and a warning that the claim will be considered forfeit if the deadline is not observed.

Art. 47

c. Protection of creditors' interests

¹ The bankruptcy administration shall inform the third party that the claim has been recognised and surrender the claimed asset only if it is ascertained that:

- a. the second creditors' meeting has not decided otherwise; and
- b. individual creditors do not demand the assignment of the estate's claims to the asset under Article 260 of the DEBA.

² The custody costs are borne by the bankrupt's estate or, following the assignment of claims under Article 260 of the DEBA, by the assignee creditor. The bankruptcy

administration can set a time limit for that creditor to provide unconditional assurance and security for the costs of continuing custody, subject to the threat of immediate surrender of the asset to the third party.

Art. 48 para. 2

² However, if the specific circumstances of the case make it desirable for the exclusion or surrender claim to be settled before the second creditors' meeting, either a special creditors' meeting can be called or the creditors can be sent a circular setting a reasonable time limit by which, if exclusion is avoided, they must inform the bankruptcy administration whether they wish to contest the claim under Article 260 paragraph 1 of the DEBA instead of the estate.

Art. 50 para. 2

² The claimant must bear all costs arising from the retrospectively submitted claims; the claimant can be required to make a corresponding advance payment.

Art. 51

dd. Exceptions

Articles 47–50 do not apply if:

- a. the third-party claim is to be considered as proven from the outset;
- b. the immediate surrender of the claimed asset is clearly in the interests of the estate; or
- c. the third party pays an appropriate deposit.

Art. 52

d. Setting a time limit for assignment of the estate's claims

If the assignment of the estate's legal claims is demanded, after the claims have been assigned and an attestation to that effect has been issued to the assignee creditors, the bankruptcy administration shall set the third party the time limit for claims prescribed in Article 242 paragraph 2 and Article 242a paragraph 3 of the DEBA, specifying the creditor against which, as representative of the bankrupt's estate, it must initiate court proceedings.

Art. 53

e. Conflict between rights of lien and claims under Articles 242 and 242a of the DEBA

If the surrender of assets under Articles 242 and 242a of the DEBA is demanded and simultaneously a general or special lien on those assets is claimed by a creditor in bankruptcy, the procedure is as follows:

- a. If the claim is recognised in the bankruptcy, any dispute between the claimant under Article 242 or 242a of the DEBA and the claimant of a right of lien must not be conducted within the bankruptcy proceedings.
- b. If, conversely, court proceedings ensue over a registered claim under Article 242 or 242a of the DEBA, the right of lien may be exercised through

a supplement to the schedule of claims only after a legally binding rejection of the claimant's claim.

Art. 54 margin title and para. 2

f. Conflict between rights of lien, claims under Articles 242 and 242a of the DEBA and bare necessity claims

² If assets claimed by third parties are recognised by the estate as bare necessity goods, there shall be no procedure under Articles 242 and 242a of the DEBA and the claimant shall be informed that the claim against the debtor must be exercised *outside* the bankruptcy proceedings.

Insert before No. IV

Art. 54a

⁵ Access to and surrender of data

¹ The order on access to and surrender of data that is subject to the power of disposal of the bankrupt's estate shall be issued:

- a. immediately after receipt of the request;
- b. where the claimed data has an asset value: after expiry of the time limit for registering claims (Art. 232 para. 2 no. 2 of the DEBA).

² Articles 46–54 apply by analogy.

Arts. 78 and 89

Repealed

Art. 96 introductory sentence and lit. c

In addition to Articles 32, 49, 70 and 93, the following special provisions apply to the summary proceedings:

- c. *Repealed*

4. Financial Services Ordinance of 6 November 2019⁶

Replacement of expressions

Throughout the entire Ordinance, the expression "trading venue" is replaced by "trading venue or DLT trading facility", with the requisite grammatical adjustments.

⁶ SR 950.11

Art. 47

No further prospectus needs to be published for the admission to trading of securities which have already been admitted to trading on another Swiss trading venue or another Swiss trading facility for distributed ledger technology securities (DLT trading facility).

5. Banking Ordinance of 30 April 2014⁷

Art. 4 parenthesis and para. 1 lit. a

(Art. 1a, Art. 1b para. 1 and Art. 3c para. 1 lit. b of the BankA)

¹ Persons operating in the financial sector are those who:

- a. provide or broker services for financial transactions, particularly those who conduct deposit or lending business, securities trading, capital investment business or portfolio management or who receive cryptobased assets in accordance with Article 5a for their own account or for the account of third parties;

Art. 5 para. 3 lit. b introductory section and c

The following are not considered deposits:

- b. bonds and other standardised debt certificates issued on a large scale; or non-certificated rights with the same function (uncertificated securities), if the creditors are informed at the time of the offer in one of the forms under Article 64 paragraph 3 of the Financial Services Act of 15 June 2018⁸ (FinSA) about:
- c. non-interest-bearing credit balances which solely serve the purpose of settling client transactions and are held on client accounts of:
 1. precious metal traders, portfolio managers or similar firms, provided settlement takes place within 60 days, or
 2. securities firms or trading facilities for distributed ledger technology securities (DLT trading facilities) in accordance with Article 73a of the Financial Market Infrastructure Act of 19 June 2015⁹ (FinMIA);

Art. 5a Cryptobased assets in accordance with Article 1b paragraph 1 of the BankA

(Art. 1b para. 1 of the BankA)

¹ Cryptobased assets within the meaning of Article 1b paragraph 1 of the BankA are assets in accordance with Article 16 number 1^{bis} letter b of the BankA (cryptobased assets in collective custody) which are actually used or intended by the organiser or

⁷ SR 952.02

⁸ SR 950.1

⁹ SR 958.1

issuer to be largely used as a means of payment for acquiring goods or services or as a means of money or value transfer.

² The following shall not be deemed to be cryptobased assets in accordance with paragraph 1:

- a. assets in the form of non-interest-bearing credit balances which solely serve the purpose of settling client transactions and are held on client accounts of:
 1. precious metal traders, portfolio managers or similar firms, provided settlement takes place within 60 days, or
 2. securities firms or DLT trading facilities;
- b. assets from domestic and foreign banks or other companies subject to state supervision;
- c. assets from institutional investors with professional treasury operations.

Art. 6 paras. 1 and 2

¹ A party is deemed to be engaging in commercial activity within the meaning of the BankA if it

- a. accepts more than 20 public deposits or cryptobased assets in collective custody over the long term; or
- b. publicly advertises that it accepts public deposits or cryptobased assets in collective custody, even if fewer than 20 public deposits or cryptobased assets are received as a result.

² Any party that accepts more than 20 public deposits or cryptobased assets in collective custody over the long term or that publicly advertises that it does so shall not be deemed to be engaging in commercial activity within the meaning of the BankA if it:

- a. accepts public deposits or cryptobased assets in collective custody amounting to a maximum of CHF 1 million;

Art. 7 Advertising

(Art. 1 para. 2, Art. 6a para. 3 of the BankA)

Parties that are prohibited from accepting public deposits or cryptobased assets in collective custody on a commercial basis may not advertise such activity in any way whatsoever.

Art. 7a para. 1 lit. b

¹ Persons in accordance with Article 1b of the BankA shall inform their clients in writing or in another form demonstrable by text:

- b. that the public deposits or cryptobased assets in collective custody are not covered by deposit insurance under Section 13 of the BankA.

Insert before Chapter 2 title

Art. 7b Representative offices
(Art. 2 of the BankA)

The representative office of a foreign institution that provides financial services in accordance with Article 3 letter c of the FinSA¹⁰ must:

- a. comply with the provisions of the FinSA;
- b. enter its client advisers in a register of advisers in accordance with Article 28 of the FinSA if they do not exclusively provide their services in Switzerland to professional or institutional clients in accordance with Article 4 of the FinSA.

Art. 14f heading, para. 1 introductory sentence and para. 4

Custody of public deposits and cryptobased assets

¹ As regards the received public deposits and cryptobased assets in collective custody, persons in accordance with Article 1b of the BankA must:

⁴ Cryptobased assets must be held as follows:

- a. in Switzerland;
- b. in the form in which they were received.

⁵ In justified individual cases, FINMA may grant exemptions from the requirement under paragraph 4 letter a.

Art. 17a para. 1

¹ The minimum capital of persons in accordance with Article 1b of the BankA shall be 3% of the received public deposits and the received cryptobased assets in collective custody, but at least CHF 300,000. It must be fully paid up and held permanently. It may not be lent to holders of a qualified participation or to natural or legal persons related to them, nor invested in participations controlled by them.

6. Capital Adequacy Ordinance of 1 July 2012¹¹

Art. 148k para. 1^{bis}

^{1bis} The transitional period under paragraph 1 is extended until 31 December 2023.

¹⁰ SR 950.1

¹¹ SR 952.03

7. Financial Institutions Ordinance of 6 November 2019¹²

Replacement of expressions

In Articles 74 and 75, the expression "trading venue" is replaced by "trading venue or DLT trading facility", with the requisite grammatical adjustments.

Art. 24 para. 1

¹ The portfolio manager shall ensure that the assets entrusted to it for management are held in safekeeping, segregated per client, with a bank in accordance with the BankA¹³, a securities firm in accordance with the FinIA, a trading facility for distributed ledger technology securities (DLT trading facility) in accordance with the FinMIA¹⁴ or other institution that is subject to supervision equivalent to that in Switzerland.

Art. 70a Eligible capital (Art. 46 of the FinIA)

¹ Securities firms may include the following as capital in accordance with Article 70 paragraphs 1 to 3:

- a. paid-up share capital plus, in the case of partnerships, alternative capital instruments;
- b. disclosed reserves;
- c. retained earnings;
- d. the quarterly profits after deduction of the estimated profit distribution amount;
- e. subordinated bonds that are only repayable with the consent of FINMA.

² The capital under paragraph 1 letters a to c can be included in full.

³ 70% of the quarterly profits may be included after deducting the estimated profit distribution, subject to the existence of a complete income statement in accordance with FINMA's implementing provisions based on Article 42 of the Banking Ordinance of 30 April 2014¹⁵ or of a complete income statement in accordance with an international standard recognised by FINMA, even if the income statement has not been audited. Where justified, FINMA can require an attestation.

⁴ The following must be deducted in full from the eligible capital under paragraph 1 letters a to d:

- a. the loss carried forward and the loss for the current financial year;

¹² SR 954.11

¹³ SR 952.0

¹⁴ SR 958.1

¹⁵ SR 952.02

- b. the value of any participations in the context of the individual entity calculation;
- c. goodwill, including any goodwill included in the valuation of significant interests in financial sector entities outside the scope of consolidation, and intangible assets;
- d. deferred tax assets (DTAs) that depend on future profitability, whereby offsetting against corresponding deferred tax liabilities within the same geographical and material tax jurisdiction is permitted.

⁵ If the capital under paragraph 1 letters a to d exceeds CHF 1.5 million after the deductions under paragraph 4, 40% of the subordinated bonds may be included for the excess amount.

Heading preceding Art. 82

Section 6: Representative Offices

(Art. 58 paras. 1 and 2 and Article 59 of the FinIA)

Art. 82

¹ The representative office of a foreign financial institution that provides financial services in accordance with Article 3 letter c of the FinSA¹⁶ must:

- a. comply with the provisions of the FinSA;
- b. enter its client advisers in a register of advisers in accordance with Article 28 of the FinSA if they do not exclusively provide their services in Switzerland to professional or institutional clients in accordance with Article 4 of the FinSA.

² The prohibition on establishing a representative office of a foreign fund management company in accordance with Article 58 paragraph 2 of the FinIA¹⁷ applies exclusively to the office's activities in relation to the administration and management of investment funds.

8. Anti-Money Laundering Ordinance of 11 November 2015¹⁸

Art. 4 paras. 1 and 1^{bis}

¹ A service related to payment transactions in accordance with Article 2 paragraph 2 letter b of the AMLA exists, in particular, if the financial intermediary:

- a. transfers liquid financial assets to a third party on behalf of its customer and hence takes possession of such assets, has them credited to its own account or

¹⁶ SR 950.1

¹⁷ SR 954.1

¹⁸ SR 955.01

issues instructions for the transfer of the assets in the name and on behalf of the customer;

- b. assists the transfer of virtual currencies to a third party, insofar as it has a long-term business relationship with the customer or insofar as it has power of disposal over virtual currencies for the customer and does not provide the service exclusively for appropriately supervised financial intermediaries;
- c. issues or manages cashless means of payment, and its customer uses these to make payments to third parties;
- d. carries out transfers of money or value.

^{1bis} Cashless means of payment include, in particular:

- a. credit cards;
- b. traveller's cheques;
- c. virtual currencies which are actually used or intended by the organiser or issuer to be used as a means of payment for acquiring goods or services or as a means of money and value transfer.

9. FINMA Ordinance on the Levying of Supervisory Fees and Duties of 15 October 2008¹⁹

Art. 3 para. 1 lit. a^{quater}

¹ As far as possible, FINMA shall allocate its costs directly to the following supervision areas:

^{aquater}. trading venues and trading facilities for distributed ledger technology securities (DLT trading facilities) (Art. 15 para. 2 lit. a^{ter} of the FINMASA);

Art. 19a para. 1 lit. e introductory sentence, f and g, para. 2

¹ The annual basic fee for financial market infrastructures is:

- e. for payment systems authorised by FINMA in accordance with Article 4 paragraph 2 of the Financial Market Infrastructure Act of 19 June 2015²⁰ (FinMIA):
- f. for DLT trading facilities that do not provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA:
 - 1. CHF 300,000 per DLT trading facility with a balance sheet total of more than CHF 50 million,
 - 2. CHF 100,000 per DLT trading facility with a balance sheet total of CHF 25-50 million,

¹⁹ SR 956.122

²⁰ SR 958.1

3. CHF 15,000 per DLT trading facility with a balance sheet total of less than CHF 25 million;
- g. for DLT trading facilities that provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA:
 1. CHF 550,000 per DLT trading facility with a balance sheet total of more than CHF 50 million,
 2. CHF 225,000 per DLT trading facility with a balance sheet total of CHF 25-50 million,
 3. CHF 100,000 per DLT trading facility with a balance sheet total of less than CHF 25 million.

² For small DLT trading facilities in accordance with Article 58k of the Financial Market Infrastructure Ordinance of 25 November 2015²¹, the annual basic fee is:

- a. CHF 7,500 if they do not provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA;
- b. CHF 50,000 if they provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA.

Article 39c Transitional provision to the amendment of 18 June 2021

FINMA reviews the basic fees in accordance with Article 19a paragraph 1 letters f and g two years after their entry into force, and submits a report to the Federal Council.

10. Financial Market Infrastructure Ordinance of 25 November 2015²²

Art. 2 para. 1

¹ Securities are deemed to be standardised and suitable for mass trading if they are publicly offered for sale in the same structure and denomination or are placed with more than 20 clients, insofar as they have not been created especially for individual counterparties.

Art. 12 para. 2 lit. f and g

² The following services are also deemed to be essential:

- f. in the case of trading facilities for distributed ledger technology securities (DLT trading facilities) that do not provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA:
 1. all activities conducted with the aim of ensuring fair, efficient and orderly trading,
 2. the operating of matching and market data distribution systems;

²¹ SR 958.11

²² SR 958.11

- g. in the case of DLT trading facilities that provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA:
 - 1. the services under letter f,
 - 2. the central custody of DLT securities or the clearing and settlement of transactions in DLT securities,
 - 3. the initial recording of DLT securities in a securities account,
 - 4. the reconciliation of holdings.

Art. 13 para. 1, lit. a, f and g and para. 1^{bis}

¹ The minimum capital shall amount to:

- a. for trading venues: CHF 1 million;
- f. for DLT trading facilities that do not provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA: CHF 1 million;
- g. for DLT trading facilities that provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA: CHF 5 million.

^{1bis} For trading venues and DLT trading facilities, where justified, FINMA can stipulate a minimum amount that is up to 50% higher.

Art. 24 para. 1 lit. b, para. 2 and para. 2^{bis}

¹ An appropriate regulatory and supervisory organisation shall encompass the following bodies in particular:

- b. a body that fulfils supervisory tasks;

² The body that fulfils the regulatory tasks of the trading venue must be independent of the business management of the trading venue and largely independent of the participants and issuers, both organisationally and with respect to personnel. It must have sufficient organisational, personnel and financial resources.

^{2bis} The body that fulfils the supervisory tasks of the trading venue must be independent of the business management of the trading venue and independent of the participants and issuers, both organisationally and with respect to personnel. It must have sufficient organisational, personnel and financial resources.

Heading after Art. 58

Chapter 4a: DLT Trading Facilities

Section 1: Definitions

Art. 58a Multilateral trading and non-discretionary rules
(Art. 73a para. 1 of the FinMIA)

The definitions for multilateral trading and non-discretionary rules under Articles 22 and 23 apply by analogy to DLT trading facilities.

Art. 58b Commercial activity
(Art. 73a para. 2 of the FinMIA)

¹ A DLT trading facility is operating commercially if it:

- a. thereby generates gross earnings of more than CHF 50,000 per calendar year;
- b. per calendar year, has a business relationship with more than 20 participants in accordance with Article 73c paragraph 1 letter e of the FinMIA (private participants) or with at least one participant in accordance with Article 73c paragraph 1 letters a to d of the FinMIA; or
- c. has unlimited power of disposal over third-party DLT securities that exceed CHF 5 million at any given time.

² If a threshold under paragraph 1 is exceeded, the DLT trading facility must report this to FINMA within 10 days. It must submit an application for authorisation as provided for in the FinMIA to FINMA within 60 days.

³ Provided the protective purpose of the FinMIA is not affected, FINMA may prohibit the applicant from exercising the activities reserved to a DLT trading facility until the decision is made on the application for authorisation.

Section 2: Requirements

Art. 58c Applicability of certain requirements for trading venues
(Art. 73b of the FinMIA)

¹ Unless otherwise specified in this Section, Articles 24 to 32 and Article 35 apply by analogy to DLT trading facilities.

² Instead of the option under Article 30 paragraph 2 letter f to cancel, amend or correct any transaction in exceptional cases, a DLT trading facility must have a mechanism in place that achieves an economically equivalent effect.

Art. 58d Record-keeping and reporting duty
(Art. 73c para. 3 of the FinMIA)

¹ Private participants are exempt from the record-keeping duty under Article 38 of the FinMIA and the reporting duty under Article 39 of the FinMIA.

² Articles 36 and 37 of this Ordinance apply by analogy to the other participants.

Art. 58e Admission and exclusion of participants

(Art. 73c paras. 4 and 5 of the FinMIA)

¹ The DLT trading facility shall regulate in the regulations in accordance with Article 73c paragraph 5 of the FinMIA whether and which private participants will be admitted.

² The granting of non-discriminatory access in accordance with Article 18 of the FinMIA is not binding for private participants.

Art. 58f Admission of DLT securities and other assets

(Art. 73d of the FinMIA)

¹ The DLT trading facility shall regulate in the regulations in accordance with Article 73d of the FinMIA which DLT securities and other assets will be admitted to its services. It may specify the admitted DLT securities and assets individually in the regulations or define them according to their type and function.

² If the DLT trading facility admits derivatives designed as DLT securities, only products without fair value or leverage components may be admitted to trading.

³ DLT securities and other assets which significantly hinder the implementation of the provisions of the Anti-Money Laundering Act of 10 October 1997²³, or which could adversely affect the stability and integrity of the financial system may not be admitted. FINMA can define these DLT securities and assets in more detail.

⁴ The DLT trading facility shall make provision in the regulations for revoking the admission of DLT securities and other assets.

⁵ The requirements under Article 34 apply by analogy.

Art. 58g Minimum requirements for the admission of DLT securities and regular auditing

(Art. 73d para. 3 of the FinMIA)

¹ DLT securities may be admitted by the DLT trading facility if the distributed ledger meets at least the requirements under Article 973d paragraph 2 of the CO²⁴.

² If the distributed ledger is not operated by the relevant DLT trading facility itself, the facility shall audit the ledger before admitting the relevant DLT securities and regularly thereafter, but at least once a year, for compliance with the requirements under paragraph 1.

³ It shall inform its participants of the audits performed and of the findings.

²³ SR 955.0

²⁴ SR 220

Art. 58h Disclosures on transactions
(Art. 73d of the FinMIA)

¹ The DLT trading facility shall monitor all transactions conducted on its systems with admitted DLT securities. It shall disclose this data free of charge to all approved DLT trading facilities.

² If the DLT securities admitted for trading on the DLT trading facility are based on securities which are also admitted for trading on a Swiss trading venue, the DLT trading facility shall disclose to that trading venue, free of charge, all transactions with these DLT securities.

³ The trading venues and DLT trading facilities shall use this data exclusively to fulfil their tasks in the area of trade monitoring.

⁴ FINMA may regulate the details of these disclosures.

Art. 58i Duty of information
(Art. 73e para. 1 of the FinMIA)

¹ DLT trading facilities with private participants shall provide them with the associated prospectus or key information document for each DLT security admitted to the DLT trading facility.

² They shall inform these participants of the following aspects of the distributed ledger for the relevant DLT securities:

- a. its governance; and
- b. its technical risks, specifically the risk of loss.

³ Moreover, they shall immediately publish information on the transactions in other assets carried out on the DLT trading facility, in particular the price, the volume and the time of the transactions.

Art. 58j Other requirements relating to services in the area of central custody, clearing or settlement
(Art. 73e para. 2 of the FinMIA)

¹ Unless otherwise specified in this Section, the requirements for central securities depositories under Articles 62 to 73 of the FinMIA and 52 to 58 of this Ordinance apply by analogy for DLT trading facilities that provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA.

² The segregation in accordance with Article 69 of the FinMIA may take place in the distributed ledger underlying the DLT securities or in the systems of the DLT trading facility.

³ A DLT trading facility may also enable the settlement of payments in another manner than that provided for in Article 65 paragraph 1 of the FinMIA if it involves a FINMA-supervised institution for the purpose.

⁴ For a DLT trading facility, liquidity in a currency in accordance with Article 67 paragraph 1 of the FinMIA also includes cryptobased assets, insofar as the payment obligation is to be fulfilled in the same virtual currency.

⁵ In derogation from Article 52, the DLT trading facility does not have to set up a user committee.

Section 3: Special requirements for small DLT trading facilities

Art. 58k Small DLT trading facilities (Art. 73f of the FinMIA)

¹ A DLT trading facility is deemed to be small if the following thresholds are undercut in relation to DLT securities:

- a. Annual trading volume: CHF 250 million;
- b. Custody volume: CHF 100 million; and
- c. Annual settlement volume: CHF 250 million.

² If a threshold is reached or exceeded, the DLT trading facility must report this to FINMA within 10 days. It must submit a modified application for authorisation as provided for in the FinMIA to FINMA within 90 days.

³ The trading facility shall no longer be deemed to be small after 90 days from the time at which a threshold is reached or exceeded. The DLT trading facility may, however, continue to apply the eased requirements for small DLT trading facilities until FINMA makes its decision on the authorisation application.

⁴ Where this serves the protective purpose of the FinMIA, FINMA may prohibit the DLT trading facility from admitting further participants until the decision is made on the application for authorisation.

Art. 58l Easing of requirements for small DLT trading facilities (Art. 73f of the FinMIA)

¹ In derogation from the FinMIA and from this Ordinance, the following eased requirements apply for small DLT trading facilities:

- a. In derogation from Article 8 paragraph 2 second sentence of the FinMIA and Article 8 paragraph 2 second sentence of this Ordinance, it is sufficient if the majority of the members of the bodies responsible for overall management, supervision and control are not members of the body responsible for business management.
- b. If the provision of ancillary services not subject to authorisation or approval by virtue of financial market legislation increases the risks of a DLT trading facility, FINMA may require exclusively organisational measures (Art. 10 para. 3 of the FinMIA). If the DLT trading facility also operates an organised

trading facility (Art. 43 of the FinMIA), FINMA may require additional capital and sufficient liquidity.

- c. The business continuity requirements may also be met by having another authorisation holder take over the operation of the DLT trading facility in the event of disruptions (Art. 13 para. 1 of the FinMIA). The strategy and business impact analysis in accordance with Article 14 of this Ordinance may make provision for the operation of the DLT trading facility to be transferred to a third party.
- d. The regulatory tasks delegated to the DLT trading facility may also be carried out by a non-independent body (Art. 27 para. 2 of the FinMIA).
- e. An independent appeal body is not necessary (Art. 37 of the FinMIA).
- f. An internal audit is not necessary (Art. 8 para. 1 lit. c of this Ordinance).

² For small DLT trading facilities that provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA, the following eased requirements apply in addition, in derogation from the FinMIA:

- a. The capital requirements do not apply (Art. 66 of the FinMIA).
- b. The liquidity requirements do not apply (Art. 67 of the FinMIA).

Art. 58m Duty of information for small DLT trading facilities
(Art. 73f of the FinMIA)

Before establishing a business relationship, small DLT trading facilities shall inform their clients, in writing or in another form demonstrable by text, of the specific eased requirements which the small DLT trading facility is applying.

Art. 58n Minimum capital for small DLT trading facilities
(Art. 73f of the FinMIA)

For small DLT trading facilities, the minimum capital requirement is:

- a. CHF 500,000 if they do not provide services in accordance with Article 73a paragraph 1 letter b or c;
- b. 5% of the DLT securities in custody, but at least CHF 500,000 if they provide services in accordance with Article 73a paragraph 1 letter b or c.

Art. 58o Prohibition on lending
(Art. 73f of the FinMIA)

Small DLT trading facilities may not grant loans.

Art. 126 introductory sentence and lit. d and e

Securities transactions which are intended to stabilise the price of a security that has been admitted to trading on a trading venue or DLT trading facility in Switzerland and

which fall under Article 142 paragraph 1 letter a and Article 143 paragraph 1 of the FinMLA are permissible if:

- d. they are reported to the trading venue or DLT trading facility at the latest on the fifth trading day following their execution and published by the issuer at the latest on the fifth trading day after the expiry of the deadline under letter a; and
- e. the issuer informs the public at the latest on the fifth trading day following the exercising of an overallocation option (greenshoe) about the timing of the exercising, as well as the number and type of the securities concerned.

Art. 131 para. 5^{bis}

The duty to exchange collateral applies from 1 January 2024 for non-centrally cleared OTC derivatives transactions that are options on individual equities, index options or similar equity derivatives such as derivatives on baskets of equities.

II

This Ordinance comes into force on 1 August 2021.

On behalf of the Swiss Federal Council

President of the Swiss Confederation: Guy
Parmelin

Federal Chancellor: Walter Thurnherr