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SWISS CAPITAL MARKETS LAW

NEWSLETTER NO. 1/2025

## SECURITIES



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# LIFT OF SWISS PROTECTIVE MEASURES AGAINST EU TRADING VENUES

**Reference: CapLaw-2025-02**

On 29 January 2025, the Swiss Federal Council (the Federal Council) decided to lift protective measures introduced when the European Union (EU) refused to recognize Swiss stock exchanges as equivalent, as of 1 May 2025. This article provides an overview of the situation so far, the decision of the Federal Council and its impact on the Swiss financial market and Swiss issuers.

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## 1) Background: Former Measures to Restrict Trading of the EU Against Switzerland

Under article 23(1) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 (Markets in Financial Instruments Regulation, MiFIR), EU investment firms have a trading obligation, allowing them to only trade shares on trading venues in the EU or in jurisdictions that are recognized by the EU as equivalent in accordance with article 25(4) Directive 2014/65/EU (so-called stock exchange equivalence, „*Börsenäquivalenz*"). Because the EU trading obligation also covers shares of companies with a registered seat in Switzerland (Swiss Shares) traded on Swiss exchanges, EU investment firms can only trade these equities on Swiss trading venues if the EU recognizes the Swiss exchanges as equivalent.

In December 2018, the European Commission extended the stock exchange equivalence for Switzerland until 30 June 2019 (see Commission Implementing Decision (EU) 2018/2047 of 20 December 2018 on the equivalence of the legal and supervisory framework applicable to stock exchanges in Switzerland in accordance with Directive 2014/65/EU of the European Parliament and of the Council). However, the European Commission then let the stock exchange equivalence definitively expire on 30 June 2019. Hence, the EU no longer recognized Swiss trading venues as equivalent to EU trading venues. This decision was made in the context of political tensions between the EU and Switzerland, primarily relating to the negotiation of a new framework agreement to govern their bilateral relations.

As a result, there was a significant risk that EU investment firms could no longer trade equities on Swiss trading venues. This was of great importance for the Swiss financial market, as most of the equity trading on the SIX Swiss Exchange, the largest Swiss stock exchange, is performed by foreign investment firms. As market participants domiciled in the EU or the European Economic Area (EEA) account for almost 60 percent of all foreign market participants admitted to the SIX Swiss Exchange (see dispatch of the Federal Council, BBl 2022 1673, p. 6), many market participants were restricted by the EU equity trading obligation when trading equities on Swiss trading venues.

## 2) Swiss Protective Measures

### a) Initial response to restrictive measures of the EU

To respond to the expected restrictive measures of the EU, the Swiss Federal Council passed the „Ordinance on the Recognition of Foreign Trading Venues for the Trading of Equity Securities of Companies with Registered Office in Switzerland" (Swiss Ordinance) on 30 November 2018 already in advance. The Swiss Ordinance required that Swiss Shares be traded exclusively on Swiss trading venues or on foreign trading venues recognized by the Swiss Financial Market Supervisory Authority (FINMA) as of 1 January 2019. As of 1 July 2019, when the EU no longer recognized Swiss trading venues as equivalent to EU trading venues, FINMA could not recognize trading venues in the EU and its members states as equivalent (the Swiss Protective Measures). The Swiss Ordinance included a grandfathering provision for shares of Swiss registered companies listed on a foreign stock exchange prior to 30 November 2018 with the express consent of the issuer given before said date, provided the issuer assumed the obligations associated with listing or admission to trading on the relevant stock exchange (see article 1(2) of the Swiss Ordinance and article 41a(2) of the Swiss Financial Market Infrastructure Act (FMIA) under current law).

The Swiss Protective Measures, apart from the exception for grandfathered Swiss Shares, restricted Swiss Shares from being admitted to an EU stock exchange or traded on an EU trading venue, and therefore ensured that the EU trading obligation did not apply for these shares and an exchange equivalence is no longer required in this regard. Put differently, the Swiss Protective Measures aimed to ensure that after the expiration of the EU stock exchange equivalence, there was no more trading in the EU in Swiss Shares that would entail corresponding share trading obligations. As a result, EU investment firms have been able to continue trading Swiss Shares on Swiss trading venues without violating the EU trading obligation, even without stock market equivalence.

By effectively restricting the trading of Swiss Shares to Swiss exchanges or foreign non-EU exchanges, the Swiss Protective Measures mitigated the impact of the EU's decision to no longer regard Swiss stock exchanges as equivalent. This was of great importance, as a loss of the trading volumes generated by EU investment firms would have had a significant adverse impact on the trading of Swiss Shares on Swiss trading venues and thus on the entire Swiss stock exchange infrastructure as a key element of the Swiss financial market.

### b) Introduction to FinMIA

With effect as of 1 January 2024, the Swiss Ordinance was adopted in the newly introduced article 41a to 41c FMIA. This was necessary as the Swiss Ordinance was issued by the Federal Council based directly on article 184(3) of the Federal Constitution, being reasonably limited in time, with a possibility for one extension (see article 7c(2) et seq. Government and Administration Organization Act).

According to article 41c(2) FMIA, the Federal Council publishes a list of jurisdictions that restrict its market participants in trading Swiss Shares on Swiss trading venues (the Restricted List). Inclusion in the Restricted List meant that trading venues from the included countries could not be recognized as equivalent to Swiss trading venues by FINMA. So far, only the EU and its member states have been included in the Restricted List.

The new article 41a et seqq. FMIA are limited in time as well, in particular until 31 December 2028. However, as the long-term goal has been to restore stock exchange equivalence between the EU and Switzerland from the start, the Swiss Protective Measures have always had a legitimate basis only when the EU did not recognize Swiss stock exchanges as equivalent.

## 3) Changes to MiFIR in 2024

In 2024, only a few months after article 41a et seqq. FMIA entered into force, the EU amended article 23(1) MiFIR through Regulation (EU) No 2024/791. This amendment significantly altered the scope of the trading obligation for shares. Under the new article 23(1) MiFIR, the obligation to trade on an EU trading venue is limited to shares with an International Securities Identification Number (ISIN) of the EEA. Consequently, Swiss Shares are no longer subject to the share trading obligations under MiFIR (but still under the Swiss Protective measures).

This change effectively meant that the trading obligation no longer included Swiss Shares, allowing them to be traded on EU trading venues under EU law once again. The amendment to the MiFIR was a crucial step towards restoring stock exchange equivalence between the EU and Switzerland, as it removed the regulatory barrier that had previously restricted the trading of Swiss Shares in the EU. Furthermore, it also removed the basis for the Swiss Protective Measures.

However, the European Securities and Markets Authority (ESMA) had changed its practice beforehand to apply the share trading obligation only to shares with an ISIN from EEA countries. The European Parliament and the Council of the EU expressly embedded the practice of ESMA in Regulation (EU) No 600/2014 (reasoning 21 to Regulation (EU) No 2024/791). When the Swiss Federal Council adopted its dispatch on the amendment to the FMIA, it knew of this change in the practice of ESMA but decided to hold on to the Restricted List as such change was not governed on EU Regulation level at the time (see dispatch of the Federal Council, BBl 2022 1673, p. 5 et seq. and 10).

## 4) Negative effects of lasting Swiss Protective Measures for Swiss issuers

With the Swiss Protective Measures having remained in force and the EU and its member states still being listed on the Restricted List even after the changes to the MiFIR, Swiss issuers have been disadvantaged compared to foreign issuers.

In particular, the Swiss Protective Measures restricted Swiss issuers from having their shares listed on an EU stock exchange, which has been a disadvantage namely for Swiss issuers

seeking a dual listing. For example, a Swiss issuer planning a public exchange offer for the shares of an EU issuer could not have sustained the existing listing of the target company on an EU trading venue. Such material disadvantage in negotiations between Swiss and EU issuers could only have been addressed, *e.g.*, by listing Global Depository Receipts (GDR) on the respective foreign trading venue or through a secondary listing of Swiss Shares in an EEA member state such as Norway (although the first Norwegian stock exchange, Oslo Børs ASA, only achieved formal recognition in January 2025). However, GDRs are hardly known or even unprecedented in many EU member states and a secondary listing in an EEA member state – which most often has no significant connection to the companies of such a transaction – is usually undesired. Hence, such alternative measures were rather theoretical considerations than practical solution driven based directly on economic grounds.

## 5) Lift of Swiss Protective Measures

On 29 January 2025, the Federal Council decided to remove the EU and its member states from the Restricted List and therefore lift the Swiss Protective Measures as of 1 May 2025 (see press release of the Federal Council „Federal Council to remove EU from stock exchange protection list as of 1 May 2025" of 29 January 2025). The Restricted List has been removed from the website of FINMA as early as February 2025, with no jurisdiction being left included on the list. The decision of the Federal Council follows requests from the foreign affairs committees of both the National Council and the Council of States as well as the economic affairs and taxation committee of the National Council to lift the Swiss Protective Measures (see press release of the foreign affairs committee of the National Council of 14 January 2025, <https://www.parlament.ch/press-releases/Pages/mm-apk-n-2025-01-14.aspx>; press release of the foreign affairs committee of the Council of States of 21 January 2025, <https://www.parlament.ch/press-releases/Pages/mm-apk-s-2025-01-21.aspx>; press release of the economic affairs and taxation committee of the National Council of 21 January 2025, <https://www.parlament.ch/press-releases/Pages/mm-wak-n-2025-01-21.aspx?lang=1031>, all links last accessed 20 February 2025).

The Federal Council justified its decision by stating that an overall assessment had shown that the effect of the Swiss Protective Measures against the EU is currently no longer necessary due to the recent changes to MiFIR (see above, section 3). The decision was based on the recognition that the changes to MiFIR had addressed the primary concern of ensuring that Swiss Shares could be traded on EU trading venues in accordance with EU law. The Federal Council also admitted that the current legal situation can lead to negative effects for Swiss companies in individual cases (*e.g.* in the context of mergers with EU companies).

The Federal Council therefore concluded that the Swiss Protective Measures are no longer necessary at present and should be lifted in favor of Swiss companies. Such lift marks the end of protective measures between the EU and Switzerland that have been in place since 2019.

The lift of Swiss Protective Measures on 1 May 2025 will end the ban on trading venues in the EU and its members states not being recognized by FINMA as equivalent to Swiss trading

venues. As a consequence, Swiss issuers may again list their shares on an EU stock exchange. This is of particular interest for Swiss issuers that are evaluating strategic alternatives involving a dual listing in the EU, *e.g.* in connection with a transaction involving an EU target company.

## 6) Remaining requirement for recognition of foreign trading venues

### a) General requirement for recognition

Despite the lift of the Swiss Protective Measures, the requirement for recognition of foreign trading venues by FINMA in accordance with article 41a FMIA remains in place. Article 41a(1) FMIA states that trading venues require recognition if equity securities of companies having their registered office in Switzerland are traded there or if they otherwise facilitate trading of such securities and if, cumulatively, such securities are listed on a stock exchange in Switzerland or are traded on a Swiss trading venue. Therefore, for dual listings of Swiss Shares in the EU (as for any other country outside of Switzerland), recognition of the respective trading venue by FINMA will generally still be necessary.

### b) Exception

As already mentioned, there is an exception from the requirement of recognition for grandfathered shares listed on a foreign stock exchange prior to 30 November 2018 with an express consent of the issuer given before said date, provided the issuer assumes the obligations associated with listing or admission to trading on the relevant stock exchange (see above, section 2).

### c) Requirements to obtain recognition

Article 41b(1) FMIA states by law that FINMA shall grant recognition on request if the foreign trading venue (i) is subject to appropriate regulation and supervision and (ii) does not have its registered office in a jurisdiction that restricts its market participants in trading equity securities of companies having their registered office in Switzerland on Swiss trading venues and thereby significantly adversely affects the trading in such equity securities on Swiss trading venues.

As trading venues in the EU usually fulfill the requirement of appropriate regulation and supervision and since the changes to MiFIR in 2024 (see above, section 3), the EU and its member states are no longer restricting its market participants in trading equity securities of companies having their registered office in Switzerland on Swiss trading venues in accordance with requirement (ii), FINMA must grant recognition to EU trading venues on request in the future.

FINMA does not publish guidance on applications for recognition in accordance with article 41a FMIA – other than for applications for (separate) recognition as a foreign trading venue in accordance with article 41 FMIA (see FINMA, Wegleitung für Gesuche betreffend die Anerkennung als ausländischer Handelsplatz nach Art. 41 FinfraG vom 7. Februar 2025) – but informs on request.

Furthermore, in accordance with article 41b(2) FMIA, FINMA may also grant recognition to a foreign trading venue without being requested to do so if that foreign trading venue fulfils the mentioned requirements. We expect this to be of practical importance (see below, section 7).

### d) Limitation in time

The article 41a et seqq. FMIA are limited in time until 31 December 2028 and, barring any setbacks, are expected to expire on said date. After such potential expiration, as up to 2019, Switzerland would again not restrict dual listings and impose a recognition requirement for foreign trading venues, respectively.

## 7) Outlook

We expect at least the major trading venues in the EU to be recognized by FINMA on or shortly after 1 May 2025, as in the past, FINMA had recognized many (non-EU) trading venues without being requested to do so as well. In the absence of any existing recognition, FINMA has so far been flexible in recognizing foreign stock exchanges swiftly. As a result, provided that projects such as dual listings are properly planned and implemented by issuers, the ongoing recognition requirement should cause no delays in the process.

Given that the EU maintained the trading obligation for EU shares and did not recognize Swiss stock exchanges as equivalent, EU law still places Swiss stock exchanges at a disadvantage to a certain degree. It remains to be seen whether the new bilateral treaties between the EU and Switzerland, which are set to be finalized this spring but are not expected to be submitted to parliament before 2026, will address that issue as well.

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