

5 April 2013

Draft Revised National Bank Ordinance released for consultation

NB This document contains only those articles which have been revised

Chapter 1: Common Provisions

Art. 1 Objective

This Ordinance governs:

- a. the conduct of statistical surveys by the National Bank;
- b. the obligation of the banks to hold minimum reserves;
- c. the oversight of financial market infrastructures.

Art. 2 Definitions

¹ In this Ordinance:

- a. *Bank* means any person or company in possession of a licence in accordance with Article 3 of the Federal Act on Banks and Savings Banks of 8 November 1934;
- b. *Securities dealer* means any person or company in possession of a licence in accordance with Article 10 of the Federal Act on Stock Exchanges and Securities Trading of 24 March 1995;
- c. *Management of an investment fund* means any company within the meaning of Article 28 of the Collective Investment Schemes Act of 23 June 2006;
- d. *Representative of a foreign investment fund* means any person or company within the meaning of Article 123 of the Collective Investment Schemes Act of 23 June 2006;
- e. *Insurance company* means any institution within the meaning of Article 2 of the Federal Act of 17 December 2004 on the Oversight of Insurance Companies;
- f. *Occupational pension scheme* means any pension scheme that is inscribed, in accordance with Article 48 of the Federal Act of 25 June 1982 on Occupational Old Age, Survivors' and Invalidity Insurance, in the occupational pensions register held by the supervisory authority;
- g. *Investment and holding company* means any legal entity, company or public law institution, whose principal object is the ongoing administration of participations, and which meets the requirements laid down in the Annex to this Ordinance;
- h. *Financial market infrastructure* means a payment system, a securities settlement system, a central securities depository or a central counterparty;

- i. *Payment system* means any entity set up on the basis of formally agreed common rules and procedures, for the clearing and settlement of monetary claims and obligations;
- j. *Securities settlement system* means any entity set up on the basis of formally agreed common rules and procedures, for the clearing and settlement of transactions in financial instruments, especially securities;
- k. *Central securities depository* means any entity set up on the basis of formally agreed common rules and procedures, for the central custody of securities;
- l. *Central counterparty* means any entity set up on the basis of formally agreed common rules and procedures, which interposes itself between the counterparties to a contract traded in one or more markets, becoming the buyer to every seller and the seller to every buyer;
- m. *Operator* means any person or company providing a financial market infrastructure;
- n. *Indirect participant* means any company that uses the services of a financial market infrastructure via a direct participant;
- o. *Operational risk* means the risk that, as a result of inadequate or failed internal procedures or systems, human error, or external events, the functioning of the financial market infrastructure is impaired or financial losses are incurred;
- p. *General business risk* means the risk that the operator of a financial market infrastructure will incur losses that are not directly linked to the default of a participant or to other credit and liquidity risks. General business risk also includes the risk of financial losses arising from operational or strategic risks;
- q. *Capital* means fully eligible core capital in accordance with Article 18 of the Capital Adequacy Ordinance of 29 September 2006;
- r. *Net liquidity* means readily available assets, minus short-term liabilities;
- s. *Extreme but plausible market conditions* refer to historical price fluctuations over the last 30 years, to the extent that reliable data are available, and possible future price fluctuations.

² The National Bank shall define further terms in the Annex to this Ordinance and in the reporting forms.

³ The definitions used in the regulations of the Swiss Financial Market Supervisory Authority (FINMA) on bank accounting shall also apply.

Chapter 2: Statistical Surveys

Section 1: Scope of Application

Art. 5 Surveys

¹ The Annex to this Ordinance lays down the following for each survey:

- a. name of survey;
- b. coverage;
- c. whether it is to be conducted as a partial sample survey or a full sample survey;
- d. reporting institutions;
- e. whether, in the case of an institution divided into several organisationally independent units, the survey covers the domestic office (including domestic branches), the entire parent company (including foreign branches) or the entire group (including branches and subsidiaries in Switzerland and abroad);
- f. the intervals at which it is conducted (frequency);
- g. the deadline for submitting the data (submission deadline); and
- h. any other procedures.

² If, in order to fulfil a statutory task, the National Bank urgently requires the data of a particular survey, it shall fix, for a limited period of time, a submission deadline and frequency deviating from the Annex for such survey.

Chapter 4: Oversight of Financial Market Infrastructures

Section 1: Determination of Systemically Important Financial Market Infrastructures and Business Processes

Art. 18 Disclosure obligation

¹ The disclosure obligation for financial market infrastructures specified in Article 20 paragraph 1 of the National Bank Act applies to:

- a. operators of payment systems which settle payments in excess of CHF 25 billion (gross) per financial year;
- b. operators of securities settlement systems, central securities depositories and central counterparties.

² The disclosure obligation already applies prior to the financial market infrastructure starting operations; however, for operators of payment systems only if it is to be expected that the value of payments stated in paragraph 1 (a) will be attained in the first year after the system starts operations.

Art. 19 Procedure

¹ The National Bank shall determine:

- a. whether a financial market infrastructure is important for the stability of the Swiss financial system under the terms of Article 20 paragraph 2 of the National Bank Act; and
- b. which of the systemically important financial market infrastructure's business processes are important for the stability of the Swiss financial system.

² The National Bank shall request from the operator the necessary information and documentation, and set the deadline and the format for their submission.

³ Before making a decision pursuant to paragraph 1, the National Bank shall provide the operator with the opportunity to state its position, and shall consult FINMA.

⁴ The National Bank shall inform the operator in writing of its decisions pursuant to paragraph 1.

⁵ Should an operator disagree with a decision of the National Bank it may, within 30 days, demand the issuance of a contestable order under the terms of Article 52 of the National Bank Act.

Art. 20 Criteria for systemically important financial market infrastructures

¹ A financial market infrastructure is important for the stability of the Swiss financial system if:

- a. the non-availability of the financial market infrastructure due, in particular, to technical or operational problems or financial difficulties on the part of the operator, could lead to serious losses, liquidity shortfalls or operational problems at financial intermediaries or other financial market infrastructures, or result in severe financial market disruption; or
- b. payment or delivery problems at one participant could spill over to other participants or linked financial market infrastructures, leading them to experience serious losses, liquidity shortfalls or operational problems, or resulting in severe financial market disruption.

² In determining whether a financial market infrastructure is important for the stability of the Swiss financial system, the National Bank shall, in particular, take the following factors into account:

- a. the transactions that are cleared or settled through the financial market infrastructure, in particular whether foreign exchange, money market, capital market or derivatives transactions are involved or transactions that serve to implement monetary policy;
- b. the transaction volumes and amounts cleared or settled through the financial market infrastructure;
- c. the currencies in which transactions are cleared or settled through the financial market infrastructure;
- d. the number, nominal value and currency of issue of the financial instruments held in central custody;
- e. the participants;
- f. links with other financial market infrastructures;
- g. the possibility of participants switching at short notice to another financial market infrastructure or to an alternative clearing and settlement arrangement in order to clear and settle transactions, and the associated risks;
- h. the credit and liquidity risks associated with the operation of the financial market infrastructure.

Art. 20a Criteria for systemically important business processes

A business process of a financial market infrastructure is systemically important if:

- a. the non-availability of the business process could lead to serious losses, liquidity shortfalls or operational problems at financial intermediaries or other financial market infrastructures, or result in severe financial market disruption; and
- b. the participants cannot substitute the business process at short notice.

Art. 21 Discharge from compliance with minimum requirements

The operator of a financial market infrastructure that is domiciled abroad can be discharged by the National Bank from compliance, in whole or in part, with the minimum requirements specified in Articles 22–34 and the obligations specified in Articles 35–37 if:

- a. the financial market infrastructure is subject to equivalent oversight by a foreign authority; and
- b. the authority is willing to collaborate with the National Bank under the terms of Article 21 of the National Bank Act.

Section 2: Minimum Requirements for Systemically Important Financial Market Infrastructures

Art. 22 Governance and organisation

¹ The operator shall have appropriate corporate governance rules and procedures in place. These shall include, in particular:

- a. an organisational structure and framework which define the tasks, responsibilities, powers and reporting duties of the board of directors, the senior management and the internal audit function;
- b. a risk management framework for the identification, measurement, management and monitoring of risk;
- c. a system of internal controls which shall, inter alia, ensure compliance with statutory, regulatory and internal company rules and regulations (compliance function).

² The operator shall have mechanisms in place for surveying participants' needs with regard to services provided by the financial market infrastructure.

³ A central counterparty shall have a risk committee, whose members shall include representatives of participants and indirect participants, as well as independent board members.

Art. 22a Board of directors, senior management and internal audit

¹ The members of the board of directors and senior management shall have an impeccable reputation and shall possess the experience and skills to perform their mandate. The board of directors shall have its performance regularly assessed.

² The board of directors shall also contain non-executive directors.

³ The board of directors shall set out the basic risk management principles. It shall approve the plans specified in Article 26 and Article 31 paragraph 4, as well as the business continuity strategy and plans specified in Article 32b paragraph 4.

⁴ The internal audit function shall be independent of the senior management and shall report to the board of directors or one of its committees. It shall be equipped with sufficient resources and shall have unlimited right of review as well as unrestricted access to all documentation, and to data carriers and information processing systems.

Art. 22b Documentation and retention

¹ The operator shall keep records on the services provided and the activities performed, and shall retain all records for a period of ten years.

² A central counterparty shall ensure, in particular, the standardised recording of all details of the transactions cleared by it, the positions of its participants, and its reports to legal entities that centrally collect and retain records of derivatives (trade repositories).

Art. 23 Contractual framework

¹ The contractual framework of the financial market infrastructure shall define, in particular:

- a. the participation requirements as well as the criteria for the suspension and exclusion of a participant;
- b. the rights and obligations of the operator and the participants;
- c. the rules and procedures for the operation of the financial market infrastructure;
- d. the rules and procedures for managing the default of a participant;
- e. the reciprocal rights and obligations arising from links with other financial market infrastructures;
- f. the obligations regarding the delivery of physical instruments or commodities.

² The operator shall regularly review the effectiveness and enforceability of the contractual framework in all relevant jurisdictions, and shall take measures to limit any legal risks.

Art. 23a Transparency

¹ The operator shall publicly disclose key aspects of all matters of significance to its activities on a regular basis, in particular:

- a. the design and operation of the financial market infrastructure;
- b. the organisational structure;
- c. the rights and obligations of the participants;
- d. the participation requirements as well as the criteria for the suspension and exclusion of participants;
- e. the rules and procedures in the event of a participant's default;
- f. the rules and procedures, as specified in Article 24b, to separately keep, record and transfer the collateral and positions of direct and indirect participants;
- g. the aggregate transaction volumes and amounts;
- h. the number, nominal value and currency of issue of the securities held in central custody;

- i. the prices and fees charged by the financial market infrastructure for the services it offers, including its conditions for discounts.

² The operator shall regularly publish information in accordance with the standards set by the relevant international bodies.

Art. 24 Access and exclusion

¹ The operator shall grant non-discriminatory and open access to its services.

² The operator may restrict access provided that this increases the safety or efficiency of the financial market infrastructure, and that such an effect cannot be brought about by any other means. In particular, the operator may make participation conditional upon fulfilment of operational, technical, financial and legal requirements.

³ If an operator restricts access for reasons of efficiency, it shall consult the Competition Commission.

⁴ The operator shall monitor compliance with the participation requirements on an ongoing basis.

⁵ The operator shall define the criteria and procedure for the suspension and exclusion of participants that no longer fulfil the participation requirements.

⁶ The operator shall immediately notify the participant of its suspension or exclusion.

Art. 24a Default of a participant

¹ The operator shall have rules and procedures to manage the default of a participant and to minimise the credit and liquidity risks for the financial market infrastructure and its participants. These rules and procedures shall enable the operator to meet its obligations when due.

² In particular, the rules and procedures shall define:

- a. the sequence in which the operator uses collateral and other financial resources to cover losses (default waterfall);
- b. how the operator allocates losses that are not covered by collateral and other financial resources;
- c. how the operator deals with liquidity shortfalls;
- d. how the operator replenishes collateral and other financial resources that were deployed to cover losses or to bridge liquidity shortfalls following the default of a participant.

³ The operator shall review and test these rules and procedures at least annually, involving the parties concerned.

Art. 24b Segregation and portability

¹ A central counterparty shall keep separate records and accounts, enabling it to distinguish:

- a. its own assets and positions from the collateral and positions of its participants;
- b. collateral and positions of a direct participant from those of other direct participants; and
- c. collateral and positions of indirect participants from those of a direct participant.

² A central counterparty shall offer a direct participant the choice between keeping and recording the collateral and positions of the indirect participants connected via the direct participant either jointly (omnibus client segregation) or separately (individual client segregation).

³ A central counterparty shall have procedures for the transfer of collateral and positions held by the defaulting participant for an indirect participant to another participant indicated by the indirect participant, provided:

- a. the transfer is enforceable in the relevant jurisdictions; and
- b. the other participant has contractually agreed with the indirect participant to assume the latter's collateral and positions.

⁴ If a transfer pursuant to paragraph 3 is not possible, the central counterparty shall provide procedures offering comparable protection for the collateral and positions of the indirect participants.

⁵ A central securities depository shall segregate the securities held in central custody for one participant from those of all other participants and from its own assets. It shall support the segregation of a direct participant's securities from the securities of indirect participants connected via the direct participant.

Art. 25 Means of payment

¹ Where possible and practicable, the financial market infrastructure shall settle payments by transferring sight deposits at a central bank.

² Alternatively, the financial market infrastructure shall use a means of payment with no or only low credit and liquidity risks. The operator shall minimise and monitor these risks on an ongoing basis.

Art. 25a Finality

¹ The rules of the financial market infrastructure shall determine the point in time after which:

- a. a payment order or securities transfer order is unconditional and irrevocable;
- b. a payment or securities transfer is settled.

² The financial market infrastructure shall settle payments and securities transfers in real time, but at the latest by the end of the value day.

Art. 25b Financial market infrastructures for exchange-of-value settlement

The operator of a financial market infrastructure that settles transactions involving the settlement of two linked obligations shall enable the participants to eliminate their principal risk by ensuring that the settlement of one obligation occurs if and only if the settlement of the other obligation is guaranteed.

Art. 25c Central securities depositories

¹ A central securities depository shall have rules, procedures and controls to minimise the risks associated with the safekeeping and transfer of securities.

² A central securities depository shall hold the securities in an immobilised or dematerialised form by recording them in a securities account.

³ The rules of the central securities depository shall prohibit participants from overdrawing their securities accounts.

⁴ A central securities depository shall reconcile its records on a daily basis to ensure that the number of securities issued with the central securities depository is equal to the number of securities recorded in the participants' securities accounts.

Art. 26 Recovery and orderly wind-down of systemically important business processes

¹ The operator shall identify scenarios that might jeopardise its viability as a going concern, and shall prepare a plan to ensure:

- a. the recovery or orderly wind-down of systemically important business processes in the event of impending insolvency or other scenarios jeopardising its viability as a going concern;
- b. the orderly wind-down of systemically important business processes in the event of a voluntary cessation of business.

² The plan shall, in particular, describe the measures to be taken by the operator as well as the resources required to implement these measures. The plan shall take into consideration the length of time required for the participants to connect to an alternative financial market infrastructure.

Art. 27 Risk management principles

¹ The operator shall have a concept for the integrated identification, measurement, management and monitoring of all risks, especially legal, credit, liquidity and operational risks.

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² In defining the procedures and tools to manage credit and liquidity risks, the operator shall take into account their impact on the participants and the financial system. In particular, it shall aim to prevent procyclical effects.

³ The operator shall provide tools and incentives for the participants to continuously manage and contain the risks arising for themselves or for the financial market infrastructure.

Art. 28 Management of credit risk

¹ The operator shall identify, measure, manage and monitor its credit risk through the use of appropriate procedures and tools.

² The operator shall have sufficient collateral, as specified in Article 28a, to cover current and potential credit exposures to each participant with a high level of confidence. It shall regularly assess compliance with this requirement.

Art. 28a Collateral

¹ To cover risk, the operator shall only accept liquid collateral with low credit and market risks.

² The operator shall value collateral prudently. It shall apply haircuts which are also appropriate under extreme but plausible market conditions and validate them regularly.

³ The operator shall avoid concentration risk in the collateral. In order to diversify the collateral, it shall define concentration limits and monitor compliance with these limits.

⁴ The operator shall ensure that it can access the collateral in a timely manner. This applies, in particular, to collateral which is:

- a. held in custody abroad;
- b. issued by foreign issuers; or
- c. denominated in foreign currency.

Art. 28b Financial resources and default waterfall of central counterparties

¹ A central counterparty shall limit its credit exposure to its participants by collecting collateral as specified in Article 28a in the form of initial margin, variation margin and default fund contributions.

² A central counterparty shall mark the participants' collateral and positions to market, and shall collect margin (initial and variation margin) at least once daily when predefined thresholds are exceeded. In addition, it shall have the authority and capability to make intraday margin calls.

³ The initial margin and the default fund contributions shall cover current and potential credit exposures under a wide range of scenarios. These scenarios shall include, but not be limited to, the default of the participant or group of participants as well as the default of the

two participants or two groups of participants against which a central counterparty has the largest potential credit exposure under extreme but plausible market conditions. A group of participants consists of all participants affiliated to the same parent company.

⁴ In order to cover any losses from a participant's default, a central counterparty shall use collateral and capital in the following sequence:

- a. margin of the defaulting participant;
- b. default fund contributions of the defaulting participant;
- c. dedicated capital of the central counterparty, which needs to be substantial relative to the central counterparty's total capital;
- d. default fund contributions of the non-defaulting participants;
- e. other capital of the central counterparty.

Art. 28c Calculating a central counterparty's margin

¹ The initial margin of a participant shall cover the potential credit exposure arising from its default for a central counterparty due to expected price movements over an appropriate time horizon with a confidence level of at least 99.5% for over-the-counter derivatives and 99% for other financial instruments.

² The appropriate time horizon pursuant to paragraph 1 corresponds to the period from the last variation margin payment up to the expected close-out or hedging of the positions in the event of a participant's default. This horizon shall be at least five business days for over-the-counter derivatives and at least two business days for other financial instruments.

³ A central counterparty shall base its initial margin calculation on price movements in the financial instruments underlying the positions over at least the previous 12 months. It may choose other and additional periods if these result in higher initial margin.

⁴ If a central counterparty nets the positions of a participant when calculating that participant's initial margin, then the assumptions applied with regard to the correlations in the financial instruments underlying these positions shall also be appropriate under extreme but plausible market conditions.

⁵ The variation margin shall cover the current credit exposure arising from realised price movements, taking into account the predefined thresholds.

Art. 28d Risk control at central counterparties

¹ A central counterparty shall assess:

- a. by means of daily back tests, whether the initial margin meets the requirements set out in Article 28c paragraph 1;
- b. by means of daily stress tests, whether the margin and the default fund contributions meet the requirements set out in Article 28b paragraph 3;

- c. on a monthly basis, how initial margin changes when the assumptions and parameters underlying its calculation vary;
- d. on a monthly basis, the scenarios, models, assumptions and parameters underlying the stress tests;
- e. at least annually and in a comprehensive manner, its credit risk management model and the implementation thereof.

² In the event that a central counterparty identifies shortcomings when performing the tests set out in paragraph 1, it shall make adjustments so as to meet the requirements.

Art. 29 Management of liquidity risk

¹ The operator shall identify, measure, manage and monitor its liquidity risk through the use of appropriate procedures and tools.

² The operator shall have sufficient liquid resources as set out in paragraph 4 to effect its payment obligations in all currencies when due, under a wide range of stress scenarios. As regards the liquid resources set out in paragraph 4, the operator shall apply haircuts which are also appropriate under extreme but plausible market conditions.

³ When selecting stress scenarios, the operator shall, in particular, take into account the following stress events and combinations thereof:

- a. the default of the participant or group of participants generating the largest aggregate payment obligation for the financial market infrastructure;
- b. additionally, for a central counterparty, the default of the two participants or two groups of participants generating the largest aggregate payment obligation for the central counterparty;
- c. the default of the largest liquidity provider in each of the five currencies in which the financial market infrastructure has the largest payment obligations;
- d. the occurrence of extreme but plausible market conditions.

⁴ Liquid resources in a currency shall comprise:

- a. cash in this currency deposited at a central bank or a creditworthy financial institution;
- b. cash in other currencies that can be converted into this currency in a timely manner through foreign exchange transactions;
- c. contractually committed and approved unsecured lines of credit in this currency at a creditworthy financial institution that are available without any further credit decision;
- d. collateral as specified in Article 28a and assets, both of which can be converted into cash in this currency in a timely manner through sales;

- e. collateral as specified in Article 28a and assets, both of which can be converted into cash in this currency in a timely manner by means of contractually committed and secured lines of credit or contractually committed repo lines with central banks or creditworthy financial institutions.

⁵ The operator shall diversify its liquidity providers and avoid concentration risk for collateral and assets set out in paragraph 4 (d) and (e).

⁶ The operator shall assess:

- a. by means of daily stress tests, whether the requirement set out in paragraph 2 is met;
- b. at least on a quarterly basis, the creditworthiness of the liquidity providers and their ability to meet their obligations.

Art. 30 Management of custody and investment risks

¹ The operator shall identify, measure, manage and monitor its custody and investment risks through the use of appropriate procedures and tools.

² If the operator places own assets or collateral and assets of participants in the custody of a third party, it shall minimise the associated risks. In particular, it shall place the collateral and assets concerned with supervised and creditworthy financial institutions and take measures to ensure that, if necessary, it can access the collateral and assets immediately.

³ The operator's investment strategy shall be consistent with the risk management strategy and allow only liquid investments with minimal credit and market risks. The operator shall avoid risk concentrations and disclose the investment strategy vis-à-vis its participants, in particular regarding the possible re-use of the collateral they have provided.

Art. 31 Management of general business risk

¹ The operator shall identify, measure, manage and monitor its general business risk through the use of appropriate procedures and tools.

² In order to cover losses from general business risk, the operator shall hold capital and net liquidity. Such capital and net liquidity shall be calculated so as to ensure that the plan specified in Article 26 can be implemented, and shall in any case be sufficient to cover current operating expenses for at least six months.

³ Collateral and other dedicated financial resources, in particular capital as specified in Article 28b paragraph 4 (c), which are used to cover losses from participant defaults or from other credit or liquidity risks in accordance with Articles 28, 28b, 28c and 29, cannot be used to satisfy the requirement set out in paragraph 2.

⁴ The operator shall have at its disposal a plan to raise additional capital in case the requirement set out in paragraph 2 is no longer fulfilled.

Art. 32 Management of operational risk

The operator shall identify, measure, manage and monitor its operational risk through the use of appropriate procedures and tools, particularly in order to ensure information security and business continuity, taking into account recognised standards.

Art. 32a Information security

¹ The operator shall apply a company-wide approach and maintain an appropriate organisational structure with regard to planning, implementing, monitoring and improving the management of tasks and activities relating to information security (information security management).

² The operator shall set appropriate targets with regard to the availability, integrity, confidentiality, auditability, authenticity, accountability and non-repudiation of information, particularly data in connection with transactions that are cleared or settled via the financial market infrastructure (information security objectives).

³ The operator shall take organisational and technical measures to ensure that the information security objectives are met during normal operations, during development and maintenance activities, and in times of increased transaction volumes. In particular, it shall take precautions enabling it to:

- a. identify, analyse and evaluate internal and external threats to information security and, if necessary, implement appropriate protective measures;
- b. ensure the physical security of the data processing facilities;
- c. ensure the secure and continuous operation of the data processing facilities;
- d. control, record and evaluate access to information and to the data processing facilities;
- e. protect data from loss, leakage, unauthorised access, and other processing risks such as negligence, fraud, poor administration and inadequate recordkeeping;
- f. ensure the secure storage and transmission of sensitive data;
- g. ensure the correct and complete processing of transactions;
- h. record and check transactions at all key stages of processing, in particular regarding input to and output from the data processing system;
- i. record and monitor interventions in the data processing system, such as software and parameter changes;
- j. record and evaluate processing errors and system disruptions promptly and in standardised form.

⁴ The operator shall regularly monitor the appropriateness of, and compliance with, the information security objectives set out in paragraph 2.

Art. 32b Business continuity

¹ The operator shall apply a company-wide approach to maintaining or recovering business processes, in particular those business processes which are systemically important, in a timely manner in the event of damage or disruption.

² The operator shall define the necessary resources (premises, employees, technical facilities, data, external providers) for the individual business areas and assess the impact of any complete or partial loss or disruption of each of these resources with regard to business processes, in particular systemically important business processes (business impact analysis). The assessment shall include any interdependency among business areas and any dependency on external service providers.

³ Based on the business impact analysis, the operator shall define the maximum acceptable time before business processes are recovered, as well as the required degree of recovery (recovery objectives) and the associated resource requirements. The maximum acceptable time for recovery in the case of systemically important business processes, even in the event of major damage or disruption (e.g. non-availability of a business-critical building including staff), shall be two hours.

⁴ The operator shall define the procedure by which it aims to meet the recovery objectives set out in paragraph 3 (business continuity strategy), and shall draw up plans that describe in detail the action to be taken and the persons responsible (business continuity plans).

⁵ At least once a year and subsequent to any major modifications, the operator shall review and test the business continuity plans with regard to their implementation and effectiveness, and to ensure that they are up to date. Such tests shall, if necessary, also involve participants and important service providers.

Art. 32c Data centres

¹ The operator shall have at its disposal at least two data centres that meet high standards, particularly with regard to physical security, fire protection, power supply, cooling systems and telecommunications infrastructure.

² The operator shall decide on the location of the data centres based on a risk analysis, and ensure that the data centres have different risk profiles and provide protection even in the event of a major incident adversely affecting a large geographical area.

³ The data centres and precautions taken to ensure their operation shall be appropriate for the fulfilment of the information security and recovery objectives specified in Articles 32a and 32b. Should one of the data centres become inoperable, the operator shall ensure that, in particular, systemically important business processes can be continued within two hours at another data centre without the loss of any processing steps confirmed to participants.

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Art. 32d Outsourcing

¹ If the operator outsources significant functions, it shall select its service providers with care and instruct and monitor them appropriately.

² The operator shall, with regard to any outsourced functions, remain responsible for compliance with the minimum requirements under Articles 22–34.

³ The outsourcing contract shall, in particular, specify:

- a. the services to be rendered by the service provider;
- b. the possibilities for the National Bank, the operator or a mandated external party to examine – in full and without hindrance – the functions outsourced to the service provider.

Art. 33 Management of risk from indirect participation

The operator shall identify, measure, manage and monitor risks to the financial market infrastructure that may arise from indirect participation.

Art. 34 Management of risk from links between financial market infrastructures

¹ The operator shall identify, measure, manage and monitor risks arising from links to other financial market infrastructures.

² If a central securities depository or securities settlement system establishes a link with another central securities depository or another securities settlement system:

- a. the central securities depository or securities settlement system shall collect collateral as specified in Article 28a to cover the credit risk arising out of the granting of credit to the other central securities depository or securities settlement system;
- b. the central securities depository or securities settlement system shall permit the re-use of securities provisionally received from the other central securities depository or securities settlement system only after the original transfer is unconditional and irrevocable;
- c. the operator of the central securities depository or securities settlement system shall, in the case of indirect links, identify, measure, manage and monitor the risks arising due to intermediary financial institutions.

³ If a central counterparty enters into a link with another central counterparty, it shall cover the resulting current and potential credit exposure with a high confidence level through the collection of collateral as specified in Article 28a from the other central counterparty.

Section 3: Assessment of Compliance with Minimum Requirements

Art. 35 Obligation to provide information

The operator shall provide the National Bank or any third party designated by the latter with all the information and documentation that it requires for the assessment of compliance with the minimum requirements.

Art. 36 Reporting obligations

¹ The operator shall submit the following documentation and information to the National Bank:

- a. the annual report;
- b. the contractual framework;
- c. the organisational principles;
- d. the minutes of the board of directors' meetings;
- e. the internal and external auditors' reports;
- f. information on the participants;
- g. data on the clearing and settlement of financial instruments and the central custody of securities;
- h. the plan specified in Article 26, to ensure the recovery or orderly wind-down of systemically important business processes, and the plan specified in Article 31 paragraph 4, to raise additional capital;
- i. the results of the risk controls specified in Articles 27–32a and Articles 33–34;
- j. information on the availability of the data processing system, as well as on system failures and disruptions, including their causes and the action taken (operating statistics and production report);
- k. the business impact analysis, the business continuity strategy and the business continuity plans specified in Article 32b paragraphs 2–4;
- l. the results of the tests of the business continuity plans specified in Article 32b paragraph 5;
- m. a report on the course of the exclusion procedure in the case of default of a participant;
- n. a report on compliance with the minimum requirements.

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² The operator shall inform the National Bank in good time about any significant planned changes with regard to:

- a. the ownership structure;
- b. the corporate objectives, corporate strategy and services offered;
- c. the corporate governance and organisation specified in Article 22;
- d. the means of payment used;
- e. the requirements for participation in the financial market infrastructure;
- f. the risk management, in particular the procedures and tools for managing credit and liquidity risks;
- g. the management of operational risk, in particular the business continuity strategy, and the organisational and technical measures taken to fulfil the information security objectives;
- h. agreements with third parties whose services are important for the operation of the financial market infrastructure.

³ The operator shall inform the National Bank immediately about:

- a. significant legal disputes;
- b. events that significantly impair compliance with the information security objectives specified in Article 32a;
- c. any non-compliance with the requirements regarding the management of credit and liquidity risks in accordance with Articles 28, 28b, 28c, 28d and 29.

⁴ The operator shall inform the National Bank, FINMA and other responsible supervisory authorities immediately of any suspension or exclusion of a participant.

⁵ The National Bank shall, in consultation with the operator, define the frequency, deadlines and formats for the submission of the documents and the provision of the information set out in paragraphs 1–4.

Art. 37 On-site assessments

¹ In order to assess compliance with the minimum requirements, the National Bank may undertake on-site assessments of the financial market infrastructure or charge a third party with the performance of such assessments.

² The operator shall have the adequacy and effectiveness of its risk management reviewed regularly by a qualified internal or external body. The National Bank may set requirements regarding the scope and depth of the assessments.

³ The operator shall have the adequacy and effectiveness of the procedures and tools used for the management of operational risk reviewed annually by a qualified external body. The National Bank shall, in consultation with the operator, define the scope and depth of the assessments.

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Art. 38 Recommendations

¹ Should a financial market infrastructure not satisfy the minimum requirements set out in this chapter, the National Bank shall issue a recommendation to the operator.

² Before issuing its recommendation, the National Bank shall consult FINMA and provide the operator with the opportunity to state its position.

Chapter 6: Final Provisions

Art. 41 Transitional provisions relating to the amendments of [date]

The National Bank shall, in consultation with the operator, specify from when the individual minimum requirements specified in Articles 22–34 and the obligations specified in Articles 35–36 are to be fulfilled. The minimum requirements must be fulfilled at the latest 12 months after the amendments of [date] enter into force.

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Amendments in the Annex:

Name of survey:	Cashless payment transactions – customer payments at banks
Coverage:	Customer payments initiated at or received by banks within a given quarter. Broken down into incoming and outgoing payments, by domestic and cross-border payments and by currency. Outgoing payments in Swiss francs also broken down by type of order
Type of survey:	Partial sample survey
Reporting institutions	The 26 major banks in the Swiss payment system
Reporting entity:	Domestic office
Frequency:	Quarterly
Submission deadline after survey date:	1 month
Special provisions:	–