

Securities law: prospectus and trading

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The Financial Services Act, in force since 1 January 2020, requires a prospectus for public offers of securities in Switzerland and for the admission of securities to trading on a trading venue, which must be reviewed and approved by a review body before publication.¹ Because the Act applies to asset tokens that qualify as securities, a project that sells such tokens to the public must prepare a prospectus unless an exemption applies. The exemptions include offers made only to professional clients, offers to fewer than 500 investors and offers with a minimum investment or denomination of 100,000 francs. Many token sales were structured to fit within those exemptions.

The Act also sets rules of conduct for financial service providers. A provider that advises clients on tokens that qualify as financial instruments, or that executes orders for them, must classify its clients, inform them about the risks and check the appropriateness or suitability of its services. Crypto service providers that deal only in payment tokens are not subject to those rules, since payment tokens are not financial instruments under the Act. Because the line between the two regimes follows the token classification, a provider that offers both types of token must apply the rules of conduct to part of its business.

Trading in tokens that qualify as securities requires a licence under the Financial Market Infrastructure Act if it takes place on a multilateral platform. A platform that brings together the buying and selling interests of several participants in securities is a trading venue, which requires a licence as a stock exchange or as a multilateral trading facility.² Traditional trading venues are open only to regulated participants such as banks and securities firms. Crypto markets are organised differently, since investors trade directly on the platform without an intermediary. For that reason the DLT Act created the new category of the DLT trading facility, which Chapter II examines.

1 Notes

1. Federal Act of 15 June 2018 on Financial Services (FinSA, SR 950.1), [droit-bilingue.ch](https://www.droit-bilingue.ch): Art. 35 para. 1 (prospectus required for a public offer of securities in Switzerland and for admission to trading on a trading venue), Arts. 36–38 (exceptions by type of offer, type of security and for admission to trading), Arts. 51–52 (review obligation; review body). Adopted together with the FinIA (SR 954.1), which is in force since 1 January 2020 ([droit-bilingue.ch](https://www.droit-bilingue.ch)). ↩
2. Financial Market Infrastructure Act (FinMIA, SR 958.1), Art. 26 lit. b and c, [fedlex.admin.ch](https://www.fedlex.admin.ch) (English version as of 1 August 2021): a stock exchange and a multilateral trading facility are institutions for multilateral securities trading whose purpose is the simultaneous exchange of bids between several participants and the conclusion of contracts based on non-discretionary rules, the stock exchange with and the multilateral trading facility without listing of securities. ↩

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