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by BX Swiss AG

# Rules of the Prospectus Review Office of BX Swiss AG

Rules of the **Prospectus Review Office** of BX Swiss AG as of 20 July 2020

Effective date: 20 July 2020





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## **I. General provisions**

### **1. Purpose and scope**

- 1.1. Based on Article 35 et seq. of the Federal Act on Financial Services (Financial Services Act, FinSA) and in addition thereto, the Rules of the Prospectus Review Office of BX Swiss AG ("Review Office") define the prospectus requirements and the prospectus review procedure by the Review Office.

### **2. Procedural principles**

- 2.1. The procedure of the Review Office complies with the Federal Act on Administrative Procedure (Administrative Procedure Act, APA).
- 2.2. Communication between the applicants and the Review Office is generally handled electronically via the platform provided for this purpose.
- 2.3. Applications may also be submitted physically to the Review Office. It is mandatory to designate a contact person in the application and to indicate how the Review Office should contact the applicant (electronically by email or in writing by postal mail).
- 2.4. Decisions of the Review Office are sent electronically via the IncaMail emailing platform.
- 2.5. If the applicant does not agree to the electronic delivery of the decision via IncaMail, the decision will be sent by postal mail. Foreign applicants who do not agree to the electronic delivery of documents must name an address of service in Switzerland in their application, unless international law or the competent foreign authority permits direct delivery of documents in the respective country.

### **3. Periods**

- 3.1. The periods of the Review Office comply with the periods pursuant to Article 53 and Article 56 FinSA and Article 68 et seq. of the Ordinance on Financial Services (Financial Services Ordinance, FinSO). The periods begin
- a) with the electronic transmission of the prospectus or supplement to be approved via the online platform [www.regservices.ch](http://www.regservices.ch), or
  - b) in the case of a physical submission, upon receipt by the Review Office of the prospectus (or rectified prospectus) or the supplement to be reviewed.
- 3.2. Upon request and after consultation with the Review Office, prospectuses and supplements which are subject to approval may be reviewed and approved within a shortened period. For the review within a shortened period, further requirements may be set besides additional fees according to the List of Fees. There is no entitlement to a review of a prospectus within a shortened period.
- 3.3. The provisions on legal holidays pursuant to APA do not apply to the procedures of the Review Office, with the exemption of the following days (1 August, 24/25/26 December, 31 December, 1/2 January, Good Friday, Easter Monday, Whit Monday).



#### **4. Data protection**

- 4.1. Issuers and applicants who disclose data of employees or appointed natural persons (data subjects) to the Registration Office due to legal or regulatory obligations (legitimate interests), are responsible for the legality of the disclosure in compliance with the applicable laws.
- 4.2. Processing of the data of the data subjects is based on the legal requirements according to Article 51 et seq. FinSA.

## **II. Prospectus review and approval**

#### **5. General procedure**

- 5.1. The applicant submits an application to the Review Office either electronically (via [www.regservices.ch](http://www.regservices.ch)) or physically, including the documents specified in clause 7 below.
- 5.2. For applications submitted electronically, receipt of the application will be confirmed. The receipt of physical applications will be confirmed by email, provided the applicant has stated an email address for this purpose.
- 5.3. The Review Office decides on the approval or non-approval of the prospectus or supplement on the basis of the documents and information submitted and issues a decision within the meaning of Article 5 APA.
- 5.4. The name of the Review Office and the date of the review by the Review Office shall be visibly noted on the approved documents.

#### **6. Review criteria**

- 6.1. *Completeness*: The Review Office checks the prospectus for completeness according to the applicable scheme (Annex 1 - 5 FinSO).
- 6.2. *Coherence*: The coherence check is based on the following criteria:
  - a) Have any risks mentioned in the summary been included in the section on risk factors?
  - b) Does the information in the summary correspond to the information given elsewhere in the prospectus?
  - c) Do all possible figures on the use of issue proceeds correspond to the amount of the expected proceeds?
  - d) Do the financial figures stated in the prospectus correspond to those in the incorporated financial reports?
- 6.3. *Comprehensibility*: The comprehensibility check is based on the following criteria:
  - a) Does the prospectus contain a clear and detailed table of contents?
  - b) Is the prospectus free of unnecessary repetitions?
  - c) Is related information grouped together?
  - d) Is the font size used in the prospectus easy to read?



- e) Does the structure of the prospectus allow investors to understand its contents?
  - f) Are the components of mathematical formulae defined in the prospectus?
  - g) Is the language used in the prospectus not deliberately misleading?
- 6.4. The Review Office may also take into account other inspection criteria.

## **7. Application attachments to be submitted**

7.1. Together with the application for review or deposit, the applicant must submit the following documents:

- a) The prospectus or the supplement.
- b) Reference documents which are referred to (“incorporation by reference”).
- c) A declaration by the issuer or the party offering the securities, provided the prospectus is reviewed only after publication in accordance with Article 51 para. 2 FinSA.
- d) An address of service in Switzerland in case documents are to be sent abroad (e.g. an auditing firm, address of the applicant).
- e) If available, a “rule check” with information on where in the prospectus the information according to the applicable schemes (Annex 1-5 FinSO) can be found.

7.2. In the case of foreign prospectuses pursuant to Art. 54 FinSA, the following additional documents must be submitted, depending on the prospectus:

- a) a copy of the ruling (or other confirmation) of the relevant foreign supervisory authority; and/or
- b) evidence within the meaning of Article 54 para. 1 FinSA.

## **8. Preliminary decisions**

8.1. The application must be labelled as an application for a preliminary decision.

8.2. Applicants may submit an application for a preliminary decision to the Review Office if

- a) a document is to be recognised as equivalent to a prospectus pursuant to Article 37 para. 1 section d and e FinSA.
- b) an accounting and financial reporting standard is to be generally recognised in accordance with Article 51 para. 3 FinSO that has not yet been recognised by the Review Office or a Swiss trading platform.
- c) a country or its jurisdiction is to be recognised in accordance with Article 51 para. 3 FinSO.
- d) a foreign trading venue is to be recognised in accordance with Article 47 para. 1 section b FinSO.

8.3. The application must be substantiated.



- 8.4. The Review Office decides on applications for preliminary decisions by means of a decision within the meaning of Article 5 APA.

## **9. Rectifications upon the request of the Review Office**

- 9.1. If the Review Office requests a rectification pursuant to Article 53 para. 3 FinSA, the applicant must resubmit the rectified prospectus to the Review Office for review within the set period.
- 9.2. The amendments must be presented to the Review Office in a detailed, clear and obvious manner (e.g. by enclosing a document with changes being marked).

## **10. Rectifications by the applicant during the review process**

- 10.1. The Review Office must be informed immediately if a prospectus is amended after its submission to the Review Office but prior to its approval by the Review Office.
- 10.2. The amendments must be presented to the Review Office in a detailed, clear and obvious manner (e.g. as a document with changes being marked). The Review Office may charge the additional expenditure incurred thereby in accordance with the List of Fees.

## **III. Publication of prospectuses and supplements to the prospectus**

- 11.1. The applicant decides where the prospectus to be reviewed is published (cf. Article 64 para. 3 FinSA). If the prospectus is to be published on [www.regservices.ch](http://www.regservices.ch), it must be stated in the application for review of the prospectus. In addition, the date of publication must be stated.
- 11.2. If the prospectus is to be published somewhere other than on the website of the Review Office, the place of publication must be communicated to the Review Office.
- 11.3. Prospectuses published on [www.regservices.ch](http://www.regservices.ch) generally remain on the public platform for at least 12 months. Depending on the type of prospectus, the publication period may be extended.

## **IV. Filing of final terms**

- 12.1. The deposit of final terms with the Review Office of BX Swiss may be performed manually via the online tool at [www.regservices.ch](http://www.regservices.ch), or automatically via the technical interface provided for this purpose.

## **13. Manual deposit via online tool**

- 13.1. Final terms may be deposited (or replaced) via the online tool of the Review Office. The final terms must meet the following conditions:
- a) PDF format.
  - b) The file name may only consist of the ISIN of the security described in the final terms. For each security, one PDF document must be deposited.
  - c) When depositing final terms, the type of filing must be specified:
    - (a) NE – NEW: New final terms.



- (b) IN – Increase: Increase of a security for which the final terms have already been deposited.
- (c) RP – Replacement (wrong final terms): Replacement of wrong final terms.
- (d) CB – Correction of meta data (reference to wrong base prospectus: Correction due to a reference to the wrong base prospectus.
- (e) CP – Correction of meta data (wrong PDF document): Replacement of a wrong, deposited PDF document.
- (f) CO – Continuation of a public offer under a new base prospectus: Reference to a new base prospectus if the issuance is continued under a new base prospectus.

#### **14. Automatic deposit via technical interface**

- 14.1. The Review Office publishes a specification with the technical requirements for the automated deposit of final terms.

#### **V. Means of legal redress**

- 15.1. An appeal within the meaning of Article 5 APA may be lodged with the Federal Administrative Court against decisions of the Review Office pursuant to Article 44 APA.

#### **VI. Fees**

- 16.1. The Review Office charges fees for its decisions and services in accordance with the fees stipulated by law in Annex 8 FinSO and the List of Fees of the Review Office.
- 16.2. If fees for decisions or services of the Review Office are not paid in due time, the Review Office may refuse further reviews, preliminary decisions, deposits, or publications.
- 16.3. If the Review Office determines during the review of prospectuses that further clarifications are necessary, in particular with external experts or other offices, the applicant may be charged additional fees. The applicant will be informed about this in advance and has the option of withdrawing their application.

#### **VII. Final provisions**

- 17.1. In the event of discrepancies between the different language versions, the German version shall take precedence.
- 17.2. These rules were approved by the board of directors of BX Swiss AG and enter into force on 20 July 2020