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Federal Act on Intermediated Securities (Federal Intermediated Securities Act, FISA)

of 3 October 2008 (Status as of 1 February 2021)

The Federal Assembly of the Swiss Confederation,

based on Articles 98 paragraph 1 and 122 paragraph 1 of the Federal Constitution¹, and having considered the Federal Council Dispatch dated 15 November 2006²,
decrees:

Chapter 1 Purpose, Scope and Definitions

Art. 1 Subject-matter and purpose

¹ This Act regulates the custody of certificated and uncertificated securities by custodians and their transfer.

² It ensures the protection of property rights of investors. It contributes to legal certainty in international contexts, to the efficient settlement of securities transactions and to the stability of the financial system.

Art. 2 Scope of application

¹ This Act applies to intermediated securities that are credited to a securities account by a custodian.

² It does not affect any provision regarding the registration of registered shares in the share register.

Art. 3 Intermediated securities

¹ Intermediated securities within the meaning of this Act are personal or corporate rights of a fungible nature against an issuer which³:

- a. are credited to a securities account; and

AS 2009 3577

¹ SR 101

² BBl 2006 9315

³ Footnote not relevant to the English text.

- b. may be disposed of by the account holder in accordance with the provisions of this Act.

^{1bis} An intermediated security within the meaning of this Act shall also be deemed to be any financial instrument held in custody in accordance with foreign law and any right to such a financial instrument, if it has a comparable function in accordance with such foreign law.⁴

² Intermediated securities are effective against the custodian and any third party; they are beyond the reach of other creditors of the custodian.

Art. 4 Custodians

¹ A custodian within the meaning of this Act maintains securities accounts in the name of persons or groups of persons.

² The following are deemed to be custodians:

- a. banks within the meaning of the Banking Act of 8 November 1934⁵;
- b.⁶ securities firms within the meaning of Article 41 of the Financial Institutions Act of 15 June 2018⁷;
- c.⁸ fund management companies within the meaning of Article 32 of the Financial Institutions Act, insofar as they maintain unit accounts;
- d.⁹ central securities depositories within the meaning of Article 61 of the Financial Market Infrastructure Act of 19 June 2015¹⁰;
- e. the Swiss National Bank within the meaning of the National Bank Act of 3 October 2003¹¹;
- f.¹² Swiss Post within the meaning of the Postal Services Organisation Act of 17 December 2010¹³; and

⁴ Inserted by Annex No 14 of the Financial Market Infrastructure Act of 19 June 2015, in force since 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).

⁵ SR **952.0**

⁶ Amended by Annex No II 17 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

⁷ SR **954.1**

⁸ Amended by Annex No II 17 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

⁹ Amended by Annex No 14 of the Financial Market Infrastructure Act of 19 June 2015, in force since 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).

¹⁰ SR **958.1**

¹¹ SR **951.11**

¹² Amended by No 19 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Feb. 2021 (AS **2021** 33; BBl **2020** 233).

¹³ SR **783.1**

g.¹⁴ DLT trading facilities under Articles 73a to 73f of the Financial Market Infrastructure Act of 19 June 2015¹⁵ in relation to immobilised ledger-based securities under Articles 973d to 973i of the Code of Obligations¹⁶.

³ Foreign banks, foreign securities firms and other foreign financial institutions, as well as central securities depositories and other financial intermediaries that maintain securities accounts in the course of their business activity are also deemed custodians.¹⁷

Art. 5 Definitions

In this Act:

- a. *sub-custodian* means a custodian which maintains securities accounts for other custodians;
- b. *account holder* means a person or group of persons in whose name a custodian maintains a securities account;
- c. *investor* means an account holder other than a custodian, or a custodian holding intermediated securities for its own account;
- d. *qualified investor* means a custodian; an insurance company subject to prudential supervision; a public-law entity, a pension fund or a company with professional treasury management;
- e. *certificated securities in collective custody* means certificated securities within the meaning of Article 973a of the Code of Obligations¹⁸;
- f. *global certificate* means a certificated security within the meaning of Article 973b of the Code of Obligations;
- g.¹⁹ *uncertificated securities* means rights within the meaning of Article 973c of the Code of Obligations;
- h.²⁰ *ledger-based securities* means rights within the meaning of Article 973d of the Code of Obligations.

¹⁴ Inserted by No I 9 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Feb. 2021 (AS 2021 33; BBl 2020 233).

¹⁵ SR 958.1

¹⁶ SR 220

¹⁷ Amended by Annex No II 17 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

¹⁸ SR 220

¹⁹ Amended by No I 9 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Feb. 2021 (AS 2021 33; BBl 2020 233).

²⁰ Inserted by No I 9 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Feb. 2021 (AS 2021 33; BBl 2020 233).

Chapter 2 Creation, Extinction and Conversion of Intermediated Securities

Art. 6 Creation

¹ Intermediated securities are created:

- a. when a custodian accepts certificated securities for collective custody and credits them to one or more securities accounts;
- b. when a custodian accepts a global certificate for custody and credits the respective rights to one or more securities accounts;
- c.²¹ when a custodian registers uncertificated securities in the main register and credits the respective rights to one or more securities accounts; or
- d.²² when ledger-based securities are transferred to a custodian and the respective rights are credited to one or more securities accounts.

² For each issue of uncertificated securities, a single custodian shall maintain the main register. The main register shall provide details of the issue, the quantity, and the nominal value of the uncertificated securities issued; it shall be public.²³

³ On being transferred to a custodian, the ledger-based securities shall be immobilised in the securities ledger.²⁴

Art. 7 Conversion

¹ Unless otherwise provided by the terms of issue or the issuer's articles of association, an issuer may, at any time and without the account holder's consent, convert certificated securities in collective custody, global certificates or uncertificated securities held or registered as a basis for intermediated securities into another form.²⁵ It shall bear the conversion cost.

² Insofar as provided by the terms of issue or the issuer's articles of association, an account holder may at any time require the issuer to deliver certificated securities in the quantity and of the kind corresponding to intermediated securities credited to the account holder's securities account based on a global certificate or uncertificated

²¹ Amended by No 19 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Feb. 2021 (AS 2021 33; BBl 2020 233).

²² Inserted by No 19 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Feb. 2021 (AS 2021 33; BBl 2020 233).

²³ Amended by No 19 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Feb. 2021 (AS 2021 33; BBl 2020 233).

²⁴ Inserted by No 19 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Feb. 2021 (AS 2021 33; BBl 2020 233).

²⁵ Amended by No 19 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Feb. 2021 (AS 2021 33; BBl 2020 233).

securities.²⁶ The account holder shall bear the cost of this conversion unless the terms of issue or the issuer's articles of association provide otherwise.

³ The custodian shall ensure that the conversion of the securities does not alter the total number of the personal and corporate rights issued.

Art. 8 Extinction and delivery in general²⁷

¹ An account holder may at any time require the custodian to deliver certificated securities in the quantity and of the kind corresponding to intermediated securities credited to the account holder's securities account provided that:

- a. certificated securities are held by the custodian or a sub-custodian; or
- b. the account holder is entitled to delivery of certificated securities under Article 7 paragraph 2.

² The account holder shall be entitled to the delivery of certificated securities in accordance with the custom and usage of the market on which the securities are traded.

³ The custodian shall ensure that the delivery to the account holder occurs only after the corresponding securities have been debited to the latter's securities account.

Art. 8a²⁸ Delivery of bearer shares in companies limited by shares without listed equity securities

In the case of companies limited by shares without listed equity securities whose bearer shares are organised as intermediated securities, the custodian designated by the company in accordance with Article 697j paragraph 5 of the Code of Obligations²⁹ shall ensure that the securities are only delivered:

- a. on the custodian ceasing its duties³⁰: to the custodian in Switzerland designed as the replacement by the company;
- b. on the conversion of the bearer shares into registered shares: to the company;
- c. on the destruction of the bearer shares: to the company.

²⁶ Amended by No I 9 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Feb. 2021 (AS 2021 33; BBI 2020 233).

²⁷ Amended by No I 4 of the FA of 21 June 2019 on the Implementation of the Recommendations of the Global Forum on Transparency and the Exchange of Information for Tax Purposes, in force since 1 Nov. 2019 (AS 2019 3161; BBI 2019 279).

²⁸ Inserted by No I 4 of the FA of 21 June 2019 on the Implementation of the Recommendations of the Global Forum on Transparency and the Exchange of Information for Tax Purposes, in force since 1 Nov. 2019 (AS 2019 3161; BBI 2019 279).

²⁹ SR 220

³⁰ Corrected by the Federal Assembly Drafting Committee (Art. 58 para. 1 ParlA; SR 171.10).