

[non-binding translation]

# **Directive on the Procedure of the Investigative and Sanction Bodies (Rules of Procedure)**

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## 1. Purpose / Application

- 1.1. This Directive (**Rules of Procedure, RP**) governs the procedure for investigating and sanctioning violations of the following regulations and their implementing provisions (**Regulations**) issued by the regulatory bodies of BX Digital AG (**BX Digital**):
  - a) Rules and directives relating to the trading facility (trading venue) of BX Digital and their implementing provisions;
  - b) Admission Rules, Additional Rules and directives regarding admission to trading and their implementing provisions.
- 1.2. Only sanctions contained in the Trading Rules applicable to the trading facility, the directives or the Admission Rules, Additional Rules and directives applicable to the trading facility will be imposed, and only against natural persons and legal entities subject to the provisions set out in clause 1.1 (**Party / Parties Concerned**).
- 1.3. In the event of contradictions, inconsistencies or ambiguities between provisions of individual rules, Additional Rules or directives, the more recent provisions shall take precedence.

## 2. Bodies

- 2.1. The investigative body for violations of the rules, directives and implementing provisions relating to the BX Digital trading facility is the Trading Surveillance Office (**TSO**).
- 2.2. The investigative body for violations of the Admission Rules, Additional Rules, directives and implementing provisions is the Admission Office of BX Digital.
- 2.3. Sanctions under these Rules of Procedure are imposed by the Sanction Commission (**SACO**) or the investigative bodies.
- 2.4. The bodies act and decide independently within the scope of their competences.

## 3. Recusal

- 3.1. Any conflicts of interest of employees of the investigative bodies or members of the SACO who are involved in sanction proceedings must be declared immediately. Recusal may be declared by the person concerned or requested by the parties to the proceedings. The request must be substantiated. The facts relating to the application for recusal must be credible. The person concerned shall comment on the application for recusal.
- 3.2. If the recusal is contested, the decision shall be made by the line manager in the case of BX Digital employees and by the Chairman in the case of members of the SACO. The deputy shall rule on any recusal on the part of the Chairman.

- 3.3. Anyone who has acted as an investigative body in a matter is excluded from the proceedings as a member of the SACO or the Appeal Body. Employees of the investigative body may be appointed as Secretary by the SACO.
- 3.4. Proceedings in which a person who is under a recusal obligation has taken part must be cancelled and repeated. Evidence that cannot be re-gathered or gathered only at a disproportionate time and expense may still be considered in the repeated proceedings.
- 3.5. In all other respects, the recusal provisions of the Swiss Supreme Court Act of 17 June 2005 (Swiss Supreme Court Act, **SSCA**) in their current valid version apply mutatis mutandis to the employees of the investigative bodies and the members of the SACO.

#### **4. Language**

- 4.1. The proceedings shall be conducted in German or, upon request, in English. The investigative body conducting the proceedings shall make the final decision on the language of the proceedings.
- 4.2. Submissions and documents must be submitted in German or English. Documents drafted in another language must be translated into German or English.

#### **5. Conduct of proceedings**

- 5.1. Proceedings shall be conducted in writing, unless otherwise instructed by the bodies.
- 5.2. Proceedings shall be conducted expeditiously.

#### **6. Deadlines**

##### **Setting deadlines**

- 6.1. The deadlines contained in these Rules of Procedure cannot be extended. If they are not observed, the rights are forfeited .
- 6.2. All other deadlines will be set by the bodies, taking into account the needs of the capital market and the right to be heard.
- 6.3. The bodies may extend deadlines set by them if there are sufficient grounds for doing so. The request to do so must be submitted before the deadline expires.
- 6.4. Deadlines will be extended only on the basis of a justified request and sufficient grounds.
- 6.5. If the Parties Concerned or their representatives have been prevented from acting prior to the given deadline through no fault of their own, the deadline shall be re-set if an application for extension is made within five trading days of the removal of the impediment, stating the reason.

- 6.6. If the request for a new deadline is granted, the time period for rectifying the non-performance of the legal act in question will begin with the delivery of this decision.

#### **Calculation of deadlines**

- 6.7. Deadlines are calculated on the basis of trading days on the BX Digital trading facility.
- 6.8. No recess is taken into account.
- 6.9. The period of allowable time begins on the day following receipt of notification by the parties involved in the proceedings.

#### **Compliance with deadlines**

- 6.10. An act is deemed to have been performed on time if it has been undertaken by 24:00 (CET) on the deadline date.
- 6.11. For the purpose of preserving deadlines, submissions may be made physically or by electronic means. In the case of physical submissions, the deadline is deemed to have been met if the submission is handed to the Swiss postal service or to an express courier by the deadline.
- 6.12. If a document with an original signature is required for validity, this must be submitted immediately if the submission was made electronically.

### **7. Statute of limitations**

- 7.1. No sanction proceedings may be initiated if the alleged violation of the regulations as described in clause 1.1 was committed more than three years in the past. The period for initiation begins:
- a) the day on which the violation occurred;
  - b) for omission, on the day on which or by which an act should have been performed.
- 7.2. Sanction proceedings are deemed to have been initiated with the actions of the investigative bodies vis-à-vis the Parties Concerned in accordance with clause 1.1. If a sanction notice has been issued by the investigative body or a decision by the Sanctions Commission before the end of this period, the statute of limitations shall no longer apply, irrespective of its legal force. No sanction may be imposed if more than two years have passed since the initiation of sanction proceedings.

### **8. Register of sanctions**

- 8.1. BX Digital will keep a register of all sanctions that have become legally enforceable. The corresponding entries must be deleted ten years after the decision has acquired legal force.
- 8.2. The register is not publicly accessible.

- 8.3. Third parties holding the appropriate legal rights will, should they enforce such rights, be provided with the relevant extract from the register.
- 8.4. An entry in the register will no longer be taken into account in the assessment of subsequent sanctions if three years have elapsed between the previous sanction acquiring legal force and the time of the latest violation of the rules. The time of the latest violation of the rules is defined as:
- a) the day on which the violation occurred;
  - b) for omission, the day on which the or by which an act should have been performed.

## **9. Destruction of records of proceedings**

Records of proceedings will be destroyed ten years after the decision has acquired legal force.

## **10. Secret consultation**

The bodies will arrive at their decisions following confidential consultations.

## **11. Costs**

- 11.1. The bodies charge procedural costs for their expenses.
- 11.2. Any special expenditures, such as the costs of expert opinions and the costs of processing records, may be passed on in full or in part by the bodies to the Parties Concerned, provided that:
- a) sanctions have been imposed; or
  - b) the Parties Concerned were responsible for those costs being incurred owing to a violation of procedural obligations.
- 11.3. As a general rule, any costs for legal counsel or other such assistance are to be borne by the Parties Concerned.
- 11.4. If proceedings must be repeated, those parties to the proceedings which caused the repetition may be required to pay all or some of the additional costs of the proceedings, regardless of the outcome of those proceedings.

## **12. Preliminary inquiry/investigations**

### **General principles**

- 12.1. The bodies shall give equal consideration to exculpatory and inculpatory circumstances.

- 12.2. All objects and information suitable to determine the facts of the case are deemed to be evidence. All such objects and information are subject to free evaluation.
- 12.3. The bodies may appoint experts. The Persons Concerned will be granted the opportunity to state their position on the person appointed as expert, the commissioning of the expert and the content of the expert opinion. As a general rule, expert opinions are presented in written form.
- 12.4. The bodies may interrogate the Persons Concerned and third parties.
- 12.5. The interrogation may be recorded on audio or video storage medium. The bodies must inform the Parties Concerned in advance that a recording will be made. If, by way of exception, no audio or video recording is made of the interview, a detailed written record must be made.
- 12.6. BX Digital will make the objects and information serving as evidence in the sanction proceedings available to the Persons Concerned. BX Digital may provide copies of the original documents and audio and video recordings to the Persons Concerned upon request and against reimbursement of costs.
- 12.7. Documents containing data about third parties will be anonymised before being made available.
- 12.8. Evidence that has not been available to the Persons Concerned may not be taken into account in the sanction proceedings.

#### **Preliminary inquiry**

- 12.9. In the context of a preliminary inquiry, the investigative body will examine whether or not sufficient indications exist to conduct a formal investigation.

#### **Investigation**

- 12.10. If there are sufficient indications of a violation of regulations as described in clause 1.1, the investigative body will initiate an investigation. The Persons Concerned will be notified in writing of the initiation and object of the investigation. Furthermore, the Persons Concerned will be informed in writing that the results of the investigation might lead to a sanction notice, a sanction decision or a abandonment of the investigation. No appeal may be lodged against the opening of an investigation.
- 12.11. As part of the investigation, the investigative body will ascertain the facts of the matter to the extent necessary to justify a sanction notice or a proposal to the SACO. The Parties Concerned will have the opportunity to state their position in writing during the investigation. The sanction proposal or sanction notice will be sent to the Parties Concerned for their comments.
- 12.12. In the event of violations of the regulations mentioned in clause 1.1, SACO shall inform the supervisory authority of the initiation and conclusion of investigations.

### **Conclusion of the investigation**

- 12.13. An investigation by the investigative bodies ends with the abandonment of the proceedings, the issuance of a sanction notice or the lodging of a proposal for sanctions with the SACO.
- 12.14. The Parties Concerned will be notified in writing of the abandonment of an investigation.
- 12.15. The Parties Concerned and the SACO shall be notified in writing of the sanction notice.
- 12.16. The investigative body's proposal for sanctions will be submitted to the SACO with the records underlying the proposal and the statement of the Party Concerned . The Parties Concerned will be notified that the sanction proposal has been submitted to the SACO.

### **Sanction notice procedure**

- 12.17. The TSO may issue a sanction notice against a trader employed by a participant if the sanction takes the form of a reprimand, a suspension or exclusion from trading.
- 12.18. If the Persons Concerned have admitted the facts of the case during the preliminary investigation or if the facts have been sufficiently clarified in another way, the Admission Office may punish violations of regulations in accordance with clause 1.1 lit. b with a sanction notice if the sanction consists of a reprimand or a fine of up to CHF 5,000.
- 12.19. The sanction notice includes:
- a) a presentation of the facts of the case;
  - b) a statement of the rules that have been violated;
  - c) a brief statement of grounds;
  - d) the sanction;
  - e) an indication that the notice will be published;
  - f) the cost;
  - g) the means of legal redress.

## **13. Proceedings of the Sanctions Commission**

### **Commencement of proceedings**

- 13.1. Upon receipt of the sanction proposal and the supporting documentation by the SACO, the Chairman will forward the proposal and documentation to the Parties Concerned, unless this has already been done by the investigative bodies.



- 13.2. The Chairperson may set a deadline for further statement of position and for a further exchange of written submissions.
- 13.3. The statement of position submitted by the Parties Concerned must comprise a proposal, the grounds for the proposal, and supporting evidence.

#### **New facts**

- 13.4. The SACO will also admit facts and evidence which, at reasonable effort and expense, might have been put forward during the investigative phase. If such facts and evidence are submitted, the related additional effort may be taken into account in the calculation of costs.
- 13.5. If the SACO admits new facts or evidence, the other parties to the proceedings will be given the opportunity to state their position.

#### **Procedures**

- 13.6. Decisions of the SACO are taken by a simple majority of the members appointed for the procedure in question. These members are obliged to vote. In the event of a tie (in particular if a member recuses himself/herself), the Chairman has the casting vote. If the Chairman is also recused, he shall appoint a deputy in advance.
- 13.7. The Chairman or the deputy appointed in individual cases will lead the Commission and the proceedings. He may instruct a member or the Secretary to arrange for expert reports.
- 13.8. The SACO will arrive at its decision essentially on the basis of the documentation sub-mitted. The Chairman may summon the parties to a verbal hearing.

#### **Decision**

- 13.9. The decision of the SACO includes:
  - a) the names of the participating members of the SACO;
  - b) a presentation of the facts of the case;
  - c) the statement of the regulations that have been violated;
  - d) the grounds;
  - e) the sanction;
  - f) an indication that the sanction will be published;
  - g) the cost;
  - h) the means of legal redress.
- 13.10. Decisions must be signed by the Chairman and a member or the Secretary.

- 13.11. The decision will be sent to the parties to the proceedings.
- 13.12. In arriving at its decision, the SACO is not bound by the sanction proposals submitted by the investigative bodies.

#### **Regulatory authority held by the Sanctions Commission**

- 13.13. The SACO may regulate its own organisation and its proceedings (incl. fees) insofar as this is not already covered by other regulations.

### **14. Appeal**

#### **General principles**

- 14.1. Appeals are permissible only against the final decisions of the bodies.
- 14.2. Appeals generally are accorded suspensive effect.
- 14.3. To safeguard the security markets' ability to function properly, to ensure transparency or to safeguard the equal treatment of market participants, the Sanctions Commission may revoke the suspensive effect of any appeal. This right ends with the filing of an appeal to the Appeal Board .

#### **Sanction notices by the Investigative Bodies**

- 14.4. The Party Concerned may lodge an appeal with the SACO against investigative body sanction notices within ten trading days .
- 14.5. Upon receipt of the appeal, the Chairman of the SACO will set a deadline for the Parties Concerned to submit grounds for the appeal. Once the grounds for the appeal have been received, the investigative body will be invited to present its position before the SACO.
- 14.6. The appeal may challenge all deficiencies relating to the investigation, to the proceedings themselves or to the sanction notice.
- 14.7. Appeals against sanction notices are ruled on by the SACO, which is accorded full cognisable authority in this regard. The SACO may refer the matter back to the responsible investigative body for regular sanction proceedings or instruct the responsible investigative body to conduct further investigations. If the SACO opts to rule on its own, its decision need not be bound by the sanction notice or the petition filed by the appellant.

#### **Decisions by the Sanctions Commission**

- 14.8. Decisions of the SACO may be appealed to the Appeal Board in accordance with Art. 37 of the Financial Market Infrastructure Act within 30 trading days of notification of the decision.

## **15. Informing the public**

- 15.1. The investigative body dealing with the case will not inform the public whether or not an investigative body has initiated a preliminary inquiry into a particular matter.
- 15.2. In cases involving a possible breach of regulations within the meaning of clause 1.1 b), the Admission Office will notify the public of the opening of an investigation after notifying the Parties Concerned pursuant to clause 13.10. In the case of proceedings involving accounting, the public is not informed until after dispatch of the sanction notice to the issuer. In exceptional cases, the investigative body may refrain from informing the public that an investigation has been initiated.
- 15.3. The Admission Office will inform the Parties Concerned and the public if an investigation that was previously announced publicly is halted.
- 15.4. The Admission Office will inform the public when an investigation involving a sanction notice that has acquired legal force has been concluded, provided initiation of the investigation was previously published. In other cases, the Admission Office will generally inform the public of the conclusion of the investigation.
- 15.5. BX Digital publishes legally binding sanction notices on its website. The publication is made in anonymised form.
- 15.6. The public will always be informed of any investigation concluded with a legally binding sanction decision, provided initiation of the investigation was previously published. In other cases, the public will generally be informed of the conclusion of the investigation.
- 15.7. Legally binding decisions of the SACO are published on the BX Digital website. Publications are made in anonymous form. The SACO may communicate the sanction decision against a participant to the public in shortened, non-anonymised form at the request of TSO..
- 15.8. To safeguard the security markets' ability to function properly, to ensure transparency or to safeguard the equal treatment of market participants, SACO decisions may be published regardless of whether or not they are legally enforceable. In such cases, it must be stated that the parties involved have the option of taking the matter further.

## **16. Final provisions**

These Rules were issued by the Regulatory Board, approved by FINMA on 12 March 2025 and enter into force on 1 April 2025.