

Vejledning:

Notat om WFE's medlemskriterier i forhold til "Vejledning om hvilke markeder danske UCITS kan investere på i henhold til §139 i lov om investeringsforeninger m.v."

17. august 2020



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Finanstilsynet har offentliggjort en revideret "Vejledning om hvilke markeder danske UCITS kan investere på i henhold til § 139 i lov om investeringsforeninger m.v." dateret 5. januar 2015.

Af vejledningen fremgår det, at bestyrelsen og investeringsforvaltningsselskabet løbende skal tage stilling til, om de af Finanstilsynet godkendte markeder i vejledningens bilag 1 samt øvrige markeder fortsat opfylder kriterierne i § 139, stk. 1, i lov om investeringsforeninger m.v. Bilag 1 indeholder blandt andet "Medlemmer af World Federation of Exchanges" (WFE¹) og "Medlemmer af Federation of European Securities Exchanges" (FESE²).

På Investeringsudvalgmødet den 16. marts 2015 blev det besluttet at nedsætte en ad hoc-arbejdsgruppe, som skulle se nærmere på medlemskriterierne for henholdsvis FESE og WFE i forhold til kriterierne i Finanstilsynets vejledning. Ad hoc-arbejdsgruppens opgave var at vurdere, om henholdsvis FESE's og WFE's medlemskriterier må anses at opfylde vejledningens krav. Arbejdsgruppen besluttede ikke at undersøge FESE's medlemskriterier nærmere, da de fleste af medlemsbørserne af FESE er MiFID-godkendte, og da de resterende medlemsbørser, foruden at være medlemmer af FESE, også er medlemmer af WFE. Resultatet af arbejdsgruppen var et notat indeholdende en vurdering af WFE's medlemskriterier i forhold til Finanstilsynets vejledning.

Notatet er i 2020 ajourført på grundlag af WFE's gældende medlemskriterier. Medlemskriterierne er modtaget fra WFE i juni 2020 og er vedlagt dette dokument som bilag.

WFE stiller krav om, at medlemsbørsernes tilsynsmyndigheder er medlemmer af IOSCO, og der er derfor flere steder henvisninger til IOSCOs "The Objectives and Principles of Securities Regulation (June 2010)". De stiller bl.a. krav til tilsynsmyndighedernes kompetencer for så vidt angår fastsættelse af krav til børserne.

Der gøres opmærksom på, at ansvaret for at vurdere om et marked opfylder vejledningens krav, påhviler den enkelte danske UCITS' bestyrelse og investeringsforvaltningsselskab.

¹ <https://www.world-exchanges.org/>

² <https://fese.eu/>



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<p>Markedet skal være reguleret. Her skal der tages stilling til følgende ifølge vejledningen:</p>		
<p>- om markedet og dets deltagere (medlemmer) er under tilsyn af en eller flere offentlige myndigheder eller selvregulerende organisationer, der er udpeget af eller på anden måde anerkendt af myndighederne i markedets hjemland. Markedet kan også være selvregulerende.</p>	<p>Apart from being regulated and supervised by an independent, public authority, exchanges should also have their own specific responsibilities to regulate the markets and market participants. The WFE member must be licensed as an exchange or CCP.</p> <p>In each jurisdiction, there should be a public capital markets authority to oversee the markets, including the exchange. Those capital markets authorities should be members of IOSCO, and this is true for both current members and candidate exchanges. For cash and derivative market exchanges, the self-regulatory aspects are distinguishing features of WFE exchanges.</p>	<p>Kriteriet anses for at være opfyldt, da et af WFE's medlemskrav er, at børserne er reguleret af en tilsynsmyndighed, der er medlem af IOSCO.</p>
<p>- i hvilken udstrækning udstedere og medlemmer af markedet, der er omfattet af markedets regler, er undertilsyn af markedet eller andre, og særligt om dette tilsyn omfatter tilsyn med egenkapitalens størrelse.</p>	<p>Apart from being regulated and supervised by an independent, public authority, exchanges should also have their own specific responsibilities to regulate the markets and market participants. The WFE member must be licensed as an exchange or CCP.</p> <p>In each jurisdiction, there should be a public capital markets authority to oversee the markets, including the exchange. Those capital markets authorities should be members of IOSCO, and this is true for both current members and candidate exchanges. For cash and derivative market exchanges, the self-regulatory aspects are distinguishing features of WFE exchanges.</p> <p>Regulator is a member of IOSCO.</p>	<p>Kriteriet anses for at være opfyldt, da WFE bl.a. oplyser, at ud over kravet om at være reguleret og undertilsyn af offentlige myndigheder, skal børserne også have deres eget regelsæt, som regulerer markedet og dets deltagere.</p> <p>Understøttende herfor er desuden WFE's krav om, at tilsynsmyndigheden er medlem af IOSCO. IOSCO arbejder med en række målsætninger, bl.a. "Principles for Market Intermediaries".</p>



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<p>Markedet skal være reguleret. Her skal der tages stilling til følgende ifølge vejledningen:</p>		
<p>- om tilsynsmyndigheden eller den selvregulerende organisation har kompetence til at stille krav til gennemsigtighed ved prisfastsættelse, kurser, transaktioner og spreads, herunder skal der være regler med henblik på at hindre markedsmisbrug, herunder insiderhandel og kursmanipulation.</p>	<p>Regulator is a member of IOSCO. IOSCO "The Objectives and Principles of Securities Regulation (June 2010)": https://www.iosco.org/library/publications/publication.aspx?id=120 A. Principles Relating to the Regulator, C. Principles for the Enforcement of Securities Regulation og E: Principles for Issuers</p>	<p>Kriteriet synes at være opfyldt. WFE stiller krav om, at tilsynsmyndigheden er medlem af IOSCO. IOSCO arbejder med en række målsætninger og principper. Bl.a. "Principles relating to the regulator" og "Principles for the Enforcement of Securities Regulation". Tilsynsmyndigheden må derfor anses for at have de nødvendige kompetencer til at udstede regler med de nævnte krav.</p> <p>WFE stiller desuden krav om, at medlemmer skal arbejde for fair, velfungerende markeder, der er neutrale over for alle deltagere.</p>
<p>-om tilsynsmyndigheden eller den selvregulerende organisation har kompetence til at fastsætte betingelser for at udstede »contract notes« eller tilsvarende.</p>	<p>Regulator is a member of IOSCO. IOSCO "The Objectives and Principles of Securities Regulation (June 2010)": https://www.iosco.org/library/publications/publication.aspx?id=120 A. Principles Relating to the Regulator og C. Principles for the Enforcement of Securities Regulation</p>	<p>Kriteriet synes at være opfyldt.</p> <p>WFE stiller krav om, at tilsynsmyndigheden er medlem af IOSCO. IOSCO arbejder med en række målsætninger og principper, bl.a. "Principles relating to the regulator" og "Principles for the Enforcement of Securities Regulation". Tilsynsmyndigheden må derfor anses for at have de nødvendige kompetencer til at udstede regler med de nævnte krav.</p>
<p>-om tilsynsmyndigheden eller den selvregulerende organisation har kompetence til at sanktionere markedsdeltagernes overtrædelse af regler eller standarder på markedet.</p>	<p>Regulator is a member of IOSCO. IOSCO "The Objectives and Principles of Securities Regulation (June 2010)":</p>	<p>Kriteriet synes at være opfyldt.</p> <p>WFE stiller krav om, at tilsynsmyndigheden er medlem af IOSCO. IOSCO arbejder med en række målsætninger og principper bl.a. "Principles relating to the regulator" og "Principles for the Enforcement of Securities Regulation".</p>



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Markedet skal være reguleret. Her skal der tages stilling til følgende ifølge vejledningen:		
	https://www.iosco.org/library/pub-docs/pdf/IOSCOPD561.pdf A. Principles Relating to the Regulator og C. Principles for the Enforcement of Securities Regulation	Tilsynsmyndigheden må derfor anses for at have de nødvendige kompetencer til at udstede regler med de nævnte krav.
-om tilsynsmyndigheden eller den selvregulerende organisation har kompetence til at afslå ansøgninger, inddrage medlemskab og afnotere værdipapirer og pengemarkedsinstrumenter.	Regulator is a member of IOSCO. IOSCO "The Objectives and Principles of Securities Regulation (June 2010)": https://www.iosco.org/library/pub-docs/pdf/IOSCOPD561.pdf C. Principles for the Enforcement of Securities Regulation	Kriteriet synes at være opfyldt. WFE stiller krav om, at tilsynsmyndigheden er medlem af IOSCO. IOSCO arbejder med en række målsætninger og principper, bl.a. "Principles relating to the regulator" og "Principles for the Enforcement of Securities Regulation". Tilsynsmyndigheden må derfor anses for at have de nødvendige kompetencer til at udstede regler med de pågældende krav.
-om markedet har acceptable clearing- og afviklingssystemer til rådighed for transaktioner på markedet.	To qualify for membership, the WFE requires that exchanges meet 12 Principles. Principle 6 and 7 describes the criteria for clearing and settlement.	Kriteriet er opfyldt baseret på WFEs medlemskriterier for clearing og afvikling.
-hvad risikoen er for tab, hvis en deltager eller et medlem af markedet går konkurs.	To qualify for membership, the WFE requires that exchanges meet 12 Principles. Principle 10 describes the criteria for risk assessment: 10.1 The candidate has a management plan to evaluate risks regularly.	Kriteriet er opfyldt baseret på WFEs medlemskriterier.



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<p>Markedet skal være reguleret. Her skal der tages stilling til følgende ifølge vejledningen:</p>		
	<p>10.2 To ensure the integrity of services and the ability of participants to meet their obligations, risk management tools are deployed. (This may be done by the candidate, a subsidiary company, or an independent provider. Typically, these include position limits for participants by instrument and counterparty, minimum capital and solvency requirements, margin requirements for investors, mark-to-market systems for portfolios, default rules, reserve and guarantee funds, etc.)</p> <p>10.3 Participants and others with access to the market environment report on their compliance with the candidate's rules and regulations, including these risk parameters, as frequently as management thinks useful for its business.</p> <p>10.4 Risk mitigation is built into the industry structure. (Risk is reduced, for example, through information and market data requirements and dissemination, limitations of access, compliance procedures, and the exchange environment actors' ability to enforce rules and regulations.)</p>	
<p>-hvordan markedet undersøger og behandler klager.</p>	<p>WFE requirements concerning disputes and complaints:</p> <p>12. RESOLUTION OF DISPUTES AND HANDLING OF COMPLAINTS</p> <p>12.1 The dispute and complaint resolution facilities in place in this jurisdiction are accessible, expeditious, and offer prompt resolution.</p> <p>12.2 The dispute and complaint resolution procedures are based on due process and fairness. (Compensation may be offered, depending on the jurisdiction and the origin of the</p>	<p>Kriteriet anses for opfyldt.</p>



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<p>Markedet skal være reguleret. Her skal der tages stilling til følgende ifølge vejledningen:</p>		
	<p>dispute, and in many cases compensation funds are available to cover defaults.) 12.3 Call centres and internet access facilities for receiving complaints are efficient, as is the availability of qualified staff. 12.4 The candidate tracks and communicates on disputes and complaints received, its handling, and its resolution. (They often offer ombudsman services to guide parties in difficulty through these processes, as well as arbitration councils made up of market professionals to hear complaints not otherwise resolved. Depending upon local law and the nature of the dispute, the candidate may only be the first step in resolution of a dispute.)</p>	
<p>-om markedet har regelmæssige og påregnelige åbningstider.</p> <p>-tilstrækkelig ofte offentliggøre priser og volumen, og det skal tydeligt fremgå, hvor disse oplysninger offentliggøres.</p> <p>-Markedet skal endvidere have regler for, i hvilket omfang og hvor hurtigt udstedere af værdipapirer og pengemarkedsinstrumenter, der er optaget til handel på markedet, skal offentliggøre prisfølsomme oplysninger, og hvor disse oplysninger skal offentliggøres.</p>	<p>To qualify for membership, the WFE requires that exchanges meet 12 Principles.</p> <p>Principle 5 describes the criteria for trading.</p> <p>5.1 The responsibilities of the candidate and participants are documented and made known. 5.2 The market model and trading rules are documented and made publicly available. (The model should be based on the principle of transparency and equality of treatment for participants and investors of the same class. As business evolves and trading rules are adapted, any redistribution of responsibilities needs to be clarified.) 5.3 The processing, queuing, and display of quotations and prices are equitable for all classes of participants.</p>	<p>Kriterierne er opfyldt baseret på WFEs medlemskriterier for handel.</p>



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<p>Markedet skal være reguleret. Her skal der tages stilling til følgende ifølge vejledningen:</p>		
	<p>5.4 Orders for trading are recorded and follow a well-defined and efficient path.</p> <p>5.5 To the extent that the candidate has different market segments, the specific model and rules are clearly defined.</p> <p>5.6 Rules are set for market openings and closings, as well as for block trades where relevant.</p> <p>5.7 Rules establish clear criteria for trading halts and interruptions of market activities in extreme conditions, when judged useful for the orderliness of the market.</p> <p>5.8 Broker-dealers have set responsibilities in trading, differing when they act as agents or principals. (They must be honest and fair to all participants and investors, act with care and diligence in executing client instructions, know their clients, and provide them with complete and timely information on order execution. They must also comply with all applicable legislation and regulation.)</p> <p>5.9 The candidate is able to produce and furnish non-public information to the capital market supervisory agency, to assure that enforcement of the rules takes place.</p> <p>5.10 Trades executed are final, and a clear policy for trading errors and cancellations is in place.</p> <p>5.11 Transaction prices are disclosed promptly to the market.</p> <p>5.12 IT systems provide for order and transaction audit trails, which if needed could be made available to investors contesting an operation, and to relevant regulators. This often goes via the broker-dealer.</p>	



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<p>Markedet skal være reguleret. Her skal der tages stilling til følgende ifølge vejledningen:</p>		
	<p>5.13 Pre- and post-trade order and transaction information are provided on a timely basis.</p> <p>5.14 Rules ensure that beyond normal transparency requirements, market information is confidential, so that participants and investors are not front run.</p> <p>5.15 Off-exchange trading in listed securities are reported to a licensed exchange or to another relevant entity, so that a complete picture of securities market activity can be obtained.</p>	
<p>-om markedet er tilstrækkelig likvidt, herunder om værdipapirer og pengemarkedsinstrumenter kan købes og sælges inden for en rimelig tid til »best execution« og i tilstrækkelige mængder.</p>	<p>Significant means that, in addition to being important based on its size, a market should also be dedicated to supporting, directly or indirectly, the formation of investment capital or the management of investment and economic risks, and be an important factor within the home country's economy.</p> <p>It is important to keep some variety in the metrics of measuring "significance." Exchanges offering mainly cash equity services should conduct market operations such that they have important business with respect to at least one of the following metrics in line with the measurements of current members: market capitalization, trading turnover, market share (of at least 10% in contested markets), or the market capitalization/GDP ratio.</p> <p>A fixed-income exchange is evaluated based on the fair and transparent operations it conducts with these instruments; its significance to the local bond market must be shown. The futures and options exchanges in membership must</p>	<p>Ved at WFE fremmer standarder for almindeligt anerkendte principper for værdipapirhandelsforretningsadfærd, må vi formode, at "best execution" også er opfyldt. Ad hoc-arbejdsgruppen vurderer endvidere, at likviditetskravet er opnået ved opfyldelse af krav om minimum ét af følgende: "market capitalization, trading turnover, market share (of at least 10% in contested markets), or the market capitalization/GDP ratio".</p>



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	demonstrate that their contracts lead in these segments. Importance to the local market is what needs to be shown, and the point is to demonstrate leadership in the public, regulated marketplace.	
- om der er procedurer og restriktioner for hjemtagelse af likvide midler til Danmark.		Dette punkt findes mere relevant i forhold til porteføljemanagerens overordnede risikovurdering, der foretages før købet af et værdipapir, finder sted. Dette kan f.eks. finde sted ved valutarestriktioner og udbytter.
Markedet skal være registreret hos eller anerkendt af en offentlig myndighed eller en selvregulerende organisation, som enten er udpeget af eller på anden måde anerkendt af myndighederne i markedets hjemland.	From WFEs Initial membership Criteria: "Apart from being regulated and supervised by an independent, public authority, exchanges should also have their own specific responsibilities to regulate the markets and market participants. The WFE member must be licensed as an exchange. In each jurisdiction, there should be a public capital markets authority to oversee the markets, including the exchange. Those capital markets authorities should be members of IOSCO, and this is true for both current members and candidate exchanges. For cash and derivative market exchanges, the self-regulatory aspects are distinguishing features of WFE exchanges."	Kriteriet anses for at være opfyldt. Det kræves af WFE's medlemskriterier, at medlemmerne er reguleret af en offentlig myndighed, og at myndigheden er medlem af IOSCO.
Offentligheden skal have direkte eller indirekte adgang til at kunne handle de værdipapirer og pengemarkedsinstrumenter, som er optaget til handel på det pågældende marked.	From WFEs Initial membership Criteria: "Exchanges should pursue purposes that are in the public interest, having as a goal to be fair, orderly and neutral to protect all public participants. In fulfilment of its public good	Kriteriet synes at være opfyldt, idet der står: "In fulfilment of its public good responsibilities, an exchange must remain neutral and fair to all actors." Det forudsættes også at gælde adgangskrav, da markedet ellers ikke kan betragtes som fair og neutralt.



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<p>Markedet skal være reguleret. Her skal der tages stilling til følgende ifølge vejledningen:</p>		
	<p>responsibilities, an exchange must remain neutral and fair to all actors. Questions can arise because of the changing ownership structure of exchanges and also new entrants into the trading space, but neutrality and fairness remain key criteria for WFE members."</p>	
<p>-om udenlandske investorer må investere på markedet, og om der er regler, der forhindrer udenlandske investorer i at hjemtage deres investering eller afkast heraf.</p>		<p>Punktet "om udenlandske investorer må investere på markedet" anses for at være en naturlig del af en porteføljemanagers overvejelser inden et køb af et værdipapir foretages.</p> <p>Med hensyn til hjemtagelse af investeringer/afkast vurderer ad hoc-arbejdsgruppen, at dette indgår i den samlede risikovurdering før en position tages. Det er derfor ad hoc-arbejdsgruppens vurdering, at dette punkt har mindre betydning i forhold til estimeringen om et marked anses for at være "offentligt".</p> <p>Kriteriet må antages at være indirekte opfyldt. IOSCO arbejder med en række målsætninger. Disse vurderes også at sikre udenlandske investorer.</p>



Bilag til vejledning:

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WFE membership criteria

17. august 2020

WFE MEMBERSHIP CRITERIA

1. ORGANISATION OF THE CANDIDATE
1.1 The corporate purposes of the candidate are recognized in a specific national law.
1.2 The founding documents or rules of the candidate clearly states; A. The entity's business purposes, powers, rights and obligations B. The applicable corporate governance regime C. The primary rules and regulations for the conduct of business
1.3 The staff are fit and properly qualified for responsibilities held.
1.4 The governing body establishes performance standards and ensures that management fulfils its responsibilities to its stakeholders.
1.5 The candidate has the resources available to meet ongoing costs, and have investments, contingency reserves or insurance policies to meet assessed risk obligations.
1.6 The candidate has annual financial accounts which are audited by an external, independent and properly qualified chartered accountant, and be prepared in accordance with official, internationally accepted accounting standards, or by default local GAAP.
2. REGULATORY FRAMEWORK
Public laws & regulations and private rules & processes address;
2.1 Market access and participation
2.2 Listing and/or admission of securities to trading
2.3 Timely, relevant and continuous disclosure of listed companies' information
2.4 Trading
2.5 Order rules for entry, display, and execution which establish priority, transparency and supervision of market activities
2.6 Regulatory oversight and enforcement
2.7 Clearing of trades
2.8 Settlement of payment and transfer of title
2.9 Enforcement of rules
2.10 Settlement of disputes
2.11 Emergency and summary powers
2.12 Business continuity planning
3. EQUAL OPPORTUNITY FOR MARKET ACCESS
3.1 The obligations and rights of participants are disclosed to the public.
3.2 Access is fair and equally applied among classes of qualified participants. (Examples of this distinction would include clearing participants, and those who choose to have other firms clear their trades. Another example is liquidity-providers, who make specific commitments to the market and in return have certain privileges.)
3.3 Access is open. (All parties meeting the financial and operational qualifications, and committing to the rules and regulations of the candidate should be admitted.)
3.4 Procedures encourage participants' adherence to the integrity, financial soundness and authority of the market mechanism.
3.5 The candidate's rules and/or regulations set minimum professional qualifications, capital markets experience, business structure and financial adequacy of participants. (They also specify the rights and obligations of participants utilizing the services of the candidate, and the manner in which a failure to do so will be investigated and subject to disciplinary procedures.)

3.6 Foreign participants are granted access when allowed by local law, and when the local standards are met.
3.7 The candidate and/or the supervisory agency are able to monitor; <ul style="list-style-type: none"> - Order flow of all participants on its systems - Participants' capital adequacy - Position limits - Collateral quantity and quality - Internal compliance rules - Books and records - Internal risk management - Business continuity plans - Market conduct, as well as the behaviour of individuals acting on behalf of participants.
3.8 Participants have measures and rules in place for the protection of their clients' assets. (These must be segregated from the financial intermediary's own money.)
3.9 Investors trading on the exchange receive independent transaction confirmations, as well as statements of account.
3.10 In the event of the intermediary going bankrupt, client assets receive priority during the court-run liquidation for sums not held in trust.
3.11 Market participant/broker and professionals are only allowed to access the central market environment at the end of a structured trading process which addresses the rights and responsibilities inherent in accessing the candidate's systems, as well as such subjects as professional integrity, public responsibility, and business ethics.
4. LISTING/ADMISSION TO TRADING
4.1 Listing requirements address; <ul style="list-style-type: none"> - Listing authority, its role, responsibilities and powers - Exchange's corresponding role, responsibilities and powers - Types of securities that can be listed or admitted to trading
4.2 For options and futures, there are specific obligations required of the candidate in terms of instruments admitted to trading status. (e.g. adequate margin requirements)
4.3 For securities, there are minimum criteria to meet. (For example, details on the issuer, the size of the corporation, its historical profitability, its free float and shareholder spread, and its debt arrangements. Depending on local law, exchange listing requirements may have a role to play in setting and/or in informing the markets on listed companies' governance practices.)
4.4 Issuers make public, complete and timely initial and on-going disclosure to the market of all relevant company information, including financial affairs materially affecting its prospects, and of the risks inherent in the security. Information to be disclosed in extraordinary circumstances is also stipulated, and includes changes as a consequence of corporate actions, new business developments, profit warnings, and similar events having a material effect on the value of these securities.
4.5 Issuers present financial information, which would preferably be in accordance with IFRS.
4.6 The procedures and timetable for suspending and delisting a security are set and made known.
4.7 Listing standards are subject to revision over time, to ensure that they remain relevant to market conditions and needs.
4.8 When possible, foreign issuers are subject to the same rules. (WFE recognizes that it is often not possible to harmonize rules set by regulatory regimes across a variety of home country jurisdictions, and that some flexibility is required by the exchange to accommodate this. Ideally, all issuers would be held to the same standard.)

5. TRADING

5.1 The responsibilities of the candidate and participants are documented and made known.

5.2 The market model and trading rules are documented and made publicly available. (The model should be based on the principle of transparency and equality of treatment for participants and investors of the same class. As business evolves and trading rules are adapted, any redistribution of responsibilities needs to be clarified.)

5.3 The processing, queuing, and display of quotations and prices are equitable for all classes of participants.

5.4 Orders for trading are recorded and follow a well-defined and efficient path.

5.5 To the extent that the candidate has different market segments, the specific model and rules are clearly defined.

5.6 Rules are set for market openings and closings, as well as for block trades where relevant.

5.7 Rules establish clear criteria for trading halts and interruptions of market activities in extreme conditions, when judged useful for the orderliness of the market.

5.8 Broker-dealers have set responsibilities in trading, differing when they act as agents or principals. (They must be honest and fair to all participants and investors, act with care and diligence in executing client instructions, know their clients, and provide them with complete and timely information on order execution. They must also comply with all applicable legislation and regulation.)

5.9 The candidate is able to produce and furnish non-public information to the capital market supervisory agency, to assure that enforcement of the rules takes place.

5.10 Trades executed are final, and a clear policy for trading errors and cancellations is in place.

5.11 Transaction prices are disclosed promptly to the market.

5.12 IT systems provide for order and transaction audit trails, which if needed could be made available to investors contesting an operation, and to relevant regulators. This often goes via the broker-dealer.

5.13 Pre- and post-trade order and transaction information are provided on a timely basis.

5.14 Rules ensure that beyond normal transparency requirements, market information is confidential, so that participants and investors are not front run.

5.15 Off-exchange trading in listed securities are reported to a licensed exchange or to another relevant entity, so that a complete picture of securities market activity can be obtained.

6. CLEARING OF TRADES

6.1 The responsibilities of the clearer and its participants are documented and known.

6.2 The clearing model and rules are documented and known. (As business evolves and clearing rules are adapted, the redistribution of responsibilities needs to be explained.)

6.3 The clearing house's business model is equitable for all classes of participants.

6.4 Trades are final before they are cleared.

6.5 Title to the securities are clear, which in legal terms is indefeasible and unencumbered.

6.6 Measures to prevent and to deal with mistakes are set and publicly known.

6.7 IT systems provide for audit trails, which would be made available to investors who may be contesting an order, and relevant regulators as needed.

6.8 Post-clearing information is provided on a timely basis to participants and investors.

6.9 The cash and securities belonging to the investor at all times are properly segregated.

6.10 Securities lending and borrowing facilities, which allow the seller and buyer to cover any time gaps in this processing, are facilitated by the clearing house or other organizations if permitted by law.

7. SETTLEMENTS OF TRADES: PAYMENT OF FUNDS AND TRANSFER OF TITLE

7.1 The responsibilities of the settlement house and its participants are documented and known.

7.2 The settlement model and rules are documented and publicly available. (As business evolves and rules are adapted, changes in responsibilities need to be clarified.)

7.3 The provider of settlement services demonstrates that the business model is equitable for all classes of participants.

7.4 Title of securities to be settled must be clear. (In most jurisdictions, securities are fully dematerialized, but it is not a WFE membership criterion that they must always be so.)

7.5 Information about individual transfers and holdings in the possession of the settlement house remain confidential.

7.6 Measures to prevent and deal with settlement mistakes are documented and publicly available.

7.7 IT systems enable the settlement house to recreate transaction audit trails, to be made available if needed to investors and relevant regulators.

7.8 Post-settlement information is provided on a timely basis to the relevant investors, and participants, and to issuers if the rules require.

7.9 Only the beneficial owner of securities accounts, and parties to whom authorization has been given expressly, have access to the accounts.

7.10 Until a transaction occurs, nothing interferes with the owner's exercise of rights to the securities held.

7.11 Once settlement is effected, the buyer and seller are notified promptly.

7.12 At all times, the property of investors is clearly segregated in their own accounts or in their brokers' subaccounts.

7.13 The length of the settlement cycle is set by the candidate together with the local financial authorities, in response to the dictates of the market and in alignment with global best practices. (To reduce risk, this is a question of several business days at most.)

7.14 For smooth market operations, the candidate or the settlement house provide some form of guarantee to market participants. (This may take the form of stand-by bank lines of credit, insurance policies or compensation or guarantee funds held in reserve.)

8. DEPOSITORY SERVICES

8.1 The responsibilities of the depository and its participants are established and known.

8.2 The depository's rules are documented and publicly available. (As business evolves and the rules are changed, new responsibilities need to be explained.)

8.3 The provider of depository services demonstrates that its rules are equitable for all classes of participants, and that they receive fair treatment.
8.4 Rules are in place to ensure that information in the possession of the depository is kept confidential.
8.5 Measures to prevent and to handle mistakes in the depository's records follow well-established and publicly known rules and regulations.
8.6 IT systems enable the depository to recreate transaction audit trails, which if needed could be made available to investors, issuers, and relevant regulators.
8.7 Information on title must be provided on a timely basis to the relevant investors, issuers and participants.
8.8 Only the beneficial owner of securities accounts, and parties to whom authorization has been given expressly by such owners, have access to the depository accounts.
8.9 Until a market transaction is completed, nothing interferes with the owner's exercise of rights to the securities held.
8.10 Each investor's assets are segregated from those of his agent and other investors, and should be accessed only in accordance with the rules of the depository.
8.11 The depository has the capacity to recognize a pledge of securities as collateral, if the local law allows.
9. TECHNICAL INFRASTRUCTURE
9.1 Candidate IT systems have adequate capacity planning and implementation to meet the growing needs of participants, including in relation to orders, the messaging sent alongside orders, clearing and settlement instructions, corporate information, and the like.
9.2 Back-up and disaster recovery systems and contingency procedures are in place.
9.3 Before implementation and periodically afterwards, the market and system interfaces are tested to identify vulnerabilities in design and development. (These would include the risk of unauthorized access, internal failures, human errors, attacks and natural catastrophes.)
9.4 Interfaces and messaging standards adopt accepted global protocols wherever possible.
9.5 Rules for connectivity are included in contractual agreements with participants. (Participants should only be granted access for the activities for which they are authorized.)
9.6 The IT systems preserve the privacy of information relating to any participant or investor, such that it is not disclosed to another investor or participant except with proper authorization or in accordance with the candidate's rules.
9.7 The candidate defines its responsibilities in contractual form with users of its IT systems, including coverage of operations failures.
10. RISK ASSESSMENT
10.1 The candidate has a management plan to evaluate risks regularly.

10.2 To ensure the integrity of services and the ability of participants to meet their obligations, risk management tools are deployed. (This may be done by the candidate, a subsidiary company, or an independent provider. Typically, these include position limits for participants by instrument and counterparty, minimum capital and solvency requirements, margin requirements for investors, mark-to-market systems for portfolios, default rules, reserve and guarantee funds, etc.)

10.3 Participants and others with access to the market environment report on their compliance with the candidate's rules and regulations, including these risk parameters, as frequently as management thinks useful for its business.

10.4 Risk mitigation is built into the industry structure. (Risk is reduced, for example, through information and market data requirements and dissemination, limitations of access, compliance procedures, and the exchange environment actors' ability to enforce rules and regulations.)

11. SUPERVISION, SURVEILLANCE AND ENFORCEMENT

11.1 The candidate ensures that within their jurisdictions, adequate measures are taken and means provided for this work. (WFE members have varying powers and involvement in these areas but when the member is the front-line authority for the supervision and surveillance of its markets, it must have staff, procedures, information and IT systems in place to ensure that it is able to discharge its supervisory and regulatory responsibilities adequately at all times.)

11.2 The candidate keeps the regulatory authority informed when issues are identified that may have market-wide implications.

11.3 The public regulatory agency provides back-up to candidates' supervisory and surveillance responsibilities by having broad inspection and enforcement authority, and adequate oversight of actors in the market. Its enforcement of applicable regulations must be – and be seen to be – effective.

11.4 Divisions of regulatory responsibilities between the candidate and its regulator, the roles and powers of each party, are formalized, comprehensive, and communicated to the public. The same is true for the division of responsibilities between the candidate and external providers of after-trade services, if any.

11.5 (In case when the banking supervisor is separate from the capital markets authority) Regulatory co-ordination between the regulators is fostered.

11.6 The candidate and capital markets regulator(s) inform one another of capital markets rules and legislative violations.

11.7 To enable accurate investigations to take place, records of transaction messages, orders, and bargains dealt, financial statements, and data regarding indications of market interest, quotations, orders, and trades in the system itself, all are preserved for a reasonable period of time. (Today this means many years, and is usually done in both electronic and paper form. These records should be furnished promptly upon request by the regulatory authorities. Document preservation should be planned in writing.)

12. RESOLUTION OF DISPUTES AND HANDLING OF COMPLAINTS

12.1 The dispute and complaint resolution facilities in place in this jurisdiction are accessible, expeditious, and offer prompt resolution.

12.2 The dispute and complaint resolution procedures are based on due process and fairness. (Compensation may be offered, depending on the jurisdiction and the origin of the dispute, and in many cases compensation funds are available to cover defaults.)

12.3 Call centres and internet access facilities for receiving complaints are efficient, as is the availability of qualified staff.

12.4 The candidate tracks and communicates on disputes and complaints received, its handling, and its resolution. (They often offer ombudsman services to guide parties in difficulty through these processes, as well as arbitration councils made up of market professionals to hear complaints not otherwise resolved. Depending upon local law and the nature of the dispute, the candidate may only be the first step in resolution of a dispute.)

FINDINGS AND RECOMMENDATIONS:

Findings/recommendations

Should this candidate proceed to the next stage of the application process?