



REGULATORY ENVIRONMENT FOR ENERGY TRADING IN SWITZERLAND

DR. ANDREAS HÜNERWADEL

October 2006

Switzerland, and in particular the canton of Zug, is known for its healthy tax climate. This, among other reasons, has made Zug a preferred location for international commodity trading houses. Due to the ongoing liberalisation and privatisation of the electricity markets in Europe, the commodities so traded are no longer limited to oil and gas but increasingly comprise electricity (in physical and derivative form). Switzerland, through its central location and its excellent infrastructure is a natural hub for energy trading in Europe. Switzerland has no energy exchange of its own, but the energy trading houses located in Switzerland have access as trading members to any European energy exchange accredited with the Swiss Federal Banking Commission (SFBC), the competent regulatory authority in Switzerland.

This article highlights certain aspects of the Swiss regulatory environment for energy trading. The Markets in Financial Instruments Directive (MiFID), which will have to be implemented by the European member states by the end of 2007, will impact on the applicable Swiss rules and regulations, although Switzerland is not a member of the European Union. Accordingly, the regulatory regime is under reconstruction and it is therefore advisable to request a no-action letter or a ruling from the SFBC prior to engaging in energy trading activities in Switzerland.

As a general rule it can be stated that trading of physical energy is outside the scope of the SFBC and the relevant legislation. Accordingly, buying and selling of physical energy in the OTC-market or through the spot-market of a regulated European energy exchange does not require a license from the SFBC.

W E N G E R & V I E L I

DUFOURSTRASSE 56, P.O. BOX 1285, CH-8034 ZURICH, PHONE: +41 (0)44 563 33 33, FAX: +41 (0)44 563 33 66

WE PROVIDE EXTENSIVE LEGAL ADVICE AND REPRESENTATION PRIMARILY IN THE FOLLOWING FIVE PRACTICE AREAS

- FINANCIAL SERVICES (BANKING LAW, STOCK EXCHANGE AND SECURITIES LAW, INVESTMENT FUND LAW)
- TRANSACTIONS (MERGERS AND ACQUISITIONS, PRIVATE EQUITY AND CAPITAL MARKETS)
- LITIGATION/ARBITRATION
- COMPETITION LAW AND INTELLECTUAL PROPERTY LAW
- TAX

A Swiss trader who wishes to trade energy derivatives (futures and options) on a European energy exchange will have to apply for a license as a broker/dealer with the SFBC. The time necessary to obtain a license ranges between 2 to 6 months depending on the complexity and the quality of the application.

The regulatory situation with regard to energy derivatives trading in the OTC-market requires a case by case analysis. A decisive factor in the evaluation will be, whether in the end a physical delivery of energy or rather a financial settlement is intended by the contracting parties. While e.g. transactions in derivatives for the sole purpose of hedging physical positions is generally regarded to be outside the regulatory scope, trading in physical energy for the purpose of obtaining speculative gains from arbitrage may be considered to fall within the regulatory scope. Depending on the activity (dealing for the own account, dealing for clients, market making, etc.), various exemptions exist.

DISCLAIMER

DIESE PUBLIKATION DIENT LEDIGLICH DER ALLGEMEINEN INFORMATION ÜBER DAS DARIN BEHANDELTE THEMA UND DARF WEDER ALS RECHTSBERATUNG VERSTANDEN WERDEN NOCH KANN SIE EINE SOLCHE ERSETZEN. BITTE LESEN SIE UNSEREN **DISCLAIMER** UNTER [HTTP://WWW.WENGERLAW.CH/EN/LEGAL/DISCLAIMER/INDEX.ASP](http://www.wengerlaw.ch/en/legal/disclaimer/index.asp). SÄMTLICHE URHEBERRECHTE BLEIBEN VORBEHALTEN (SIEHE: [HTTP://WWW.WENGERLAW.CH/EN/LEGAL/COPYRIGHT/INDEX.ASP](http://www.wengerlaw.ch/en/legal/copyright/index.asp)).

THIS PUBLICATION PROVIDES GENERAL INFORMATION WITH REGARD TO ITS SUBJECT MATTER ONLY. IT DOES NOT CONSTITUTE LEGAL ADVICE AND IS NOT INTENDED TO REPLACE SUCH ADVICE. PLEASE REFER TO OUR DISCLAIMER UNDER [HTTP://WWW.WENGERLAW.CH/EN/LEGAL/DISCLAIMER/INDEX.ASP](http://www.wengerlaw.ch/en/legal/disclaimer/index.asp). ALL COPYRIGHTS ARE RESERVED (SEE: [HTTP://WWW.WENGERLAW.CH/EN/LEGAL/COPYRIGHT/INDEX.ASP](http://www.wengerlaw.ch/en/legal/copyright/index.asp)).