N

Monthly Newsletter October 2025

Banking and Finance

Schellenberg Wittmer

Swiss Wholesale Energy Markets Regulation

Olivier Favre, Dusan Ivanovic

Key Take-aways

1.

New registration and reporting obligations regarding wholesale energy products will apply for market participants and brokers under the Swiss Federal Act on the Supervision and Transparency of Wholesale Energy Markets (BATE).

2.

The BATE introduces a general prohibition of insider dealing and market abuse for wholesale energy products irrespective of their status as securities.

3.

The BATE constitutes a paradigm shift from technical regulation of wholesale energy markets to a federal energy market regulation, extending to wholesale energy products and capturing own account trading.

1 Introduction

On 21 March 2025, the Swiss Parliament approved the proposal of the Swiss Federal Council to introduce a **Swiss Federal Act on the Supervision and Transparency of Wholesale Energy Markets** (*Bundesgesetz über die Aufsicht und Transparenz in den Energiegrosshandelsmärkten*, **BATE**). The BATE replicates certain parts of **Regulation (EU) No. 1227/2011** of 25 October 2011 on wholesale energy market **integrity and transparency (REMIT)** for the Swiss market. The go-live date of the BATE has yet to be determined.

As regards electricity products traded on EU markets, reports made under REMIT must at present also be submitted to the Swiss Federal Electricity Commission **(ElCom)** under the framework of the Federal Electricity Supply Ordinance **(ESA)**. This includes certain transactions concerning wholesale electricity products (e.g. electricity supply agreements in the wholesale market, derivatives with electricity as underlying), capacities in installations for the production and transmission of electricity and insider information regarding electricity products that must be published under REMIT

The BATE will, in a nutshell, (i) extend such **transparency requirements** by being applicable also to natural gas and to market participants trading electricity and/or natural gas products on Swiss markets, (ii) introduce a **registration requirement** with ElCom for such market participants trading electricity and/or natural gas products, (iii) introduce an obligation to **publish inside information** regarding such products, and (iv) **prohibit insider trading and market abuse** for trading such products.

2 Scope of Financial Market Laws for Wholesale Energy Products

2.1 Regulation of Spot vs. Derivatives Trading

Spot transactions in wholesale energy products are **not subject to financial market laws.** They are distinguished from derivatives transactions on the basis that their settlement must occur within one settlement cycle.

Some commodity derivatives are exempted from the regulation otherwise applicable to derivatives transactions under the Swiss Financial Market Supervision Act **(FinMIA)**. These **exempted** derivatives are: (1) commodity derivatives that are not traded on a trading venue (i.e. that are not traded on a regulated exchange, a multilateral trading facility or an organised trading facility in the sense of the FinMIA), provided that the transactions must be physically settled, (2) derivatives on **electricity or natural gas** as underlying assets, provided that they must be physically settled and traded on an organised trading facility in the sense of the FinMIA (so called “REMIT carve-out”) and (3) derivatives referencing **freight, inflation rates, climatic variables or official economic statistics**, provided that they are cash settled only upon default or termination.

Derivatives with energy products as underlying not falling into the scope of the above exemptions (e.g. to the extent they may be cash settled or if the trading occurs on a regulated market or multilateral trading facility) qualify as **derivatives in the sense of the FinMIA and as financial instruments** under Swiss law. As a result, the rules of derivatives regulation of the FinMIA (e.g. reporting requirements, risk mitigation obligations for uncleared transactions) must be taken into account. To the extent the products are fungible, they also qualify as securities in the meaning of Swiss law and, as a result, are subject to Swiss securities regulation.

However, in the absence of any Swiss trading venue, **no insider dealing prohibitions or market abuse rules are currently applicable** in the Swiss market.

The BATE replicates certain parts of REMIT for the Swiss market.

2.2 Own Account Trading vs. Client Transactions

To the extent trading occurs on own account and a firm is not predominantly active in the field of securities trading, the trading activity does not give rise to licensing or anti-money laundering **(AML)** requirements from a Swiss perspective.

However, where a market participant trades energy products **for the account of a client**, the following additional aspects need to be considered: (i) the trading activity may trigger the **status of a financial intermediary for AML purposes** to the extent it includes trades in commodities on an exchange or trades entered into off-exchange, provided that the commodities have such a high degree of standardisation that they can be liquidated at any time; (ii) if the products qualify as **securities** in the sense of Swiss law, any such client transactions for at least 20 clients not having the status of institutional clients with treasury operations would give rise to a licensing requirement as a securities firm; and (iii) if the relevant products qualify as **financial instruments** (e.g. cash settled OTC derivatives or any derivatives traded on a regulated exchange or on a multilateral trading facility), any client-transactions would have to comply with the **rules of conduct** of the Swiss Financial Services Act.

3 New Regulation Introduced with the BATE

3.1 Personal Scope

The new framework of the BATE will apply to: (a) Swiss or foreign market participants **entering into transactions or issuing orders to trade in markets involving Swiss wholesale energy products** (participants in the Swiss market); (b) Swiss market participants entering into transactions or issuing orders to trade in markets that relate to wholesale energy products as defined by EU regulations (participants in the European market); and (c) persons who **professionally broker transactions in Swiss wholesale energy products** (brokers in the Swiss market). However, the personal scope will not depend on reaching certain thresholds in terms of trading volumes.

3.2 Covered Transactions

Swiss wholesale energy products include contracts for the **supply or distribution of electricity or gas in Switzerland** (provided that contracts with **end users** in Switzerland only may be included if they have a **significant impact on the prices of Swiss wholesale energy products**), contracts for the **transportation of electricity or gas with a nexus to Switzerland** and **derivatives on electricity or gas** produced, traded or delivered in Switzerland, or on the transportation of electricity or gas with a nexus to Switzerland. To the extent the BATE cross-refers to EU rules, the scope of covered transactions is determined by reference to REMIT (together with the Swiss Wholesale Energy Products, the **Wholesale Energy Products)**.

The definition of derivative **does not cross-refer to the definition of a derivative product under the FinMIA.** Therefore, the commodities exempted from the derivatives regulation under the FinMIA (e.g. physically settled products regarding electricity or natural gas traded on an organised trading facility or traded otherwise as OTC derivatives) fall into the scope of the BATE even if they are outside the scope of the derivatives regulation of the FinMIA.

Spot transactions in wholesale energy products are not subject to financial market laws.

3.3 Obligation to register with ElCom

The BATE includes a number of obligations for entities in scope, *inter alia* an obligation to **register with ElCom** as supervisory authority, an obligation to provide ElCom with the information necessary for market supervision regarding transactions in and trading orders for Wholesale Energy Products, and an obligation to publish insider information.

3.4 Publication of Insider Information

As soon as they become aware of it, participants in the Swiss market must **make public on an ElCom authorized platform all insider information** they possess concerning companies or investments: (a) owned or controlled by the market participant itself, its parent company or an associated company; or (b) for whose operational matters the market participant itself or one of the companies under letter a is responsible in whole or in part.

The BATE defines insider information as confidential and precise information relating directly or indirectly to Wholesale Energy Products and which, if it were to become known, would likely have a **significant impact on the price of the product**, in particular fundamental data on facilities.

3.5 Reporting to ElCom

3.5.1 Participants in the Swiss Market

Participants trading Wholesale Energy Products in the Swiss market must **report** to ElCom (a) information on transactions in, and orders relating to, Wholesale Energy Products; and (b) basic data about their facilities.

To the extent the Wholesale Energy Products are derivatives in the sense of the Swiss derivatives regulation, such transactions are already reported to a **derivatives trade repository** under the rules of the FinMIA. For these products, **no additional reporting** must be made to ElCom under the BATE.

3.5.2 Participants in the EU Market

Participants in the European market must provide ElCom with the **information that they are required to provide to the EU authorities or the authorities of an EU member state** in accordance with EU regulations **simultaneously and in identical form**.

This extends the obligation previously applicable in a way that they will, going forward, also apply to natural gas.

3.5.3 Algorithmic Trading

Participants in the Swiss and EU market conducting **algorithmic trading** must **notify** this to ElCom. Upon request of ElCom, they must submit to ElCom detailed information about the **trading strategies and their systems and risk controls**.

3.5.4 Exemptions

The following information does not have to be reported to ElCom: (a) information that has **already been published** on an ElCom authorized platform for insider information; (b) information that has already been **published on a transparency platform registered with and approved by ACER in accordance with EU** regulations; and (c) information that has already been **submitted** to ElCom.

3.6 Prohibition of Insider Dealing & Market Abuse

In line with the prohibition of insider dealing in securities trading, the BATE prohibits, subject to administrative and, to the extent that the actions are aimed at achieving an economic benefit, criminal sanctions: (a) **using insider information** in order to purchase or sell Wholesale Energy Products for own account or for the account of third parties; (b) **passing on insider information to another person** outside the scope of an employment relationship or the execution of a mandate; and (c) **using insider information in order to give a recommendation to another person** for the purchase or sale of Swiss Wholesale Energy Products.

This prohibition applies to natural persons and legal entities **that know or should have known that the relevant information is insider information**, including persons who are organs or members of the management or the board of directors of a Swiss market participant, persons controlling the capital of a Swiss market participant or having access to the relevant insider information as a result of their role and persons who have obtained the insider information illegally. Unlike the insider dealing prohibition for securities trading, also the attempt to use the insider information constitutes a breach of the prohibition under the BATE.

The prohibition of insider dealing does not apply to Swissgrid or the Swiss operator of the gas transportation network, to the extent they use information in view of ensuring a safe and efficient electricity network.

The BATE also introduces a **prohibition of market abuse**, e.g. the dissemination of information that is false or misleading or entering into transactions or placing orders for transactions regarding Swiss Wholesale Energy Products (e.g. sham transactions) that are intended to give a false or misleading signal for the supply, the demand or the price of such products.

To the extent the breach of the insider dealing or market abuse prohibition under the BATE also breaches such rules under the FinMIA, the rules of the FinMIA prevail.

3.7 Sanctions

Administrative **enforcement actions** that may result from a **breach of the BATE** are taken by the ElCom and may include: requests for information about the activities, reinstating the legal position, receipt of an order stating the breach, the publication of any such decisions of ElCom, the disgorgement of profits, a prohibition of an activity in the sector and a prohibition of a specific activity. In the event of a **serious breach,** the sanctions may include **penalties for up to 15 per cent of the annual turnover** of the previous business year in Switzerland. Also, a breach of the prohibition of insider dealing or market abuse may result in **criminal sanctions.**

Olivier Favre
Partner
olivier.favre@swlegal.ch

Philippe Borens
Partner
philippe.borens@swlegal.ch

Caroline Clemetson
Partner
caroline.clemetson@swlegal.ch

Grégoire Tribolet
Partner
gregoire.tribolet@swlegal.ch

Schellenberg Wittmer Ltd
Attorneys at Law

Zurich
Löwenstrasse 19
P. O. Box 2201
8021 Zurich / Switzerland
T +41 44 215 5252
www.swlegal.com

Geneva
15bis, rue des Alpes
P. O. Box 2088
1211 Geneva 1 / Switzerland
T +41 22 707 8000
www.swlegal.com

Singapore
Schellenberg Wittmer Pte Ltd
50 Raffles Place, #40-05
Singapore Land Tower
Singapore 048623
www.swlegal.sg