

Circular 2008/17

Exchange of information between SROs and FINMA

Exchange of information between SROs and FINMA regarding affiliations, exclusions and withdrawals of membership of financial intermediaries

Reference: FINMA Circ. 08/17 "Exchange of information between SROs and FINMA"
 Date: 20 November 2008
 Entry into force: 1 January 2009
 Last amendment: 20 October 2010 [Modifications are listed at the end of the document.]
 Concordance: previously AMLCA Circ. 2006/1 "Exchange of Information" of 10 April 2006
 Legal framework: FINMASA art. 7 sect. 1 lett. b, 29
 AMLA art. 2 sect. 3, 18 ss., 26, 27
 VBF art. 11
 Appendix: Legal framework and practice of FINMA

Adressees																					
BA			ISA			SE-STA		CISA					AMLA		Other						
Banks	Financial groups and -congl.	Other intermediaries	Insurers	Insurance groups and -congl.	Insurance intermediaries	Stock exch. and participants	Securities dealers	Fund management companies	SICAVs	Limited partnerships for CISs	SICAFs	Custodian banks	Asset managers CISs	Distributors	Representatives of foreign CISs	Other intermediaries	SROs	DSFIs	SRO-supervised institutions	Audit firms	Rating agencies
																	X	X	X		

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I. Introductory remarks

It is the task of FINMA to ensure that all those who operate as professional financial intermediaries in the non-banking sector either join a self-regulatory organisation (SRO) recognised by FINMA in a timely manner or are licenced by it. 1

In order to fulfil this task in an efficient manner, FINMA is also dependent on relevant information on possible illegal financial intermediaries from other authorities, market participants and SROs. SROs frequently have access to information regarding financial intermediaries joining, withdrawing or being expelled that is useful to FINMA for its supervisory tasks. 2

The basic exchange of information between SROs and FINMA is governed by art. 26 and 27 of the Anti-Money Laundering Act (AMLA; SR 955.0). FINMA is also authorised to request all information and documentation from the SROs to fulfil its tasks (art. 29 of the Financial Market Supervision Act [FINMASA; SR 956.1]). 3

This Circular is issued pursuant to the aforementioned legal provisions and specifies the exchange of information as required by law and expected by FINMA for the purpose of fulfilling the tasks incumbent upon it, this exchange of information pertaining to 4

- affiliations to an SRO including
 - withdrawal of an application for membership by the applicant,
 - rejection of an application for membership by an SRO,
- expulsion of a member by an SRO and
- withdrawal of a member from an SRO.

SROs must disclose to applicants and withdrawing or expelled members that they are making notification to FINMA of their decision. In addition, SROs are also expected to inform those concerned about the legal framework regarding the duty of subjection, art. 11 of the Ordinance of 18 November 2009 on the Professional Practice of Financial Intermediation (VBF; SR 955.071) and the penalty provisions applicable in the event that a financial intermediary operates without a licence. For a short summary of the framework and a description of FINMA's practice concerning withdrawals and expulsions, please refer to the annex to this Circular. 5

II. Affiliation of financial intermediaries to SROs

SROs are to report all new members in their quarterly reports to FINMA. Ad hoc notification to FINMA of affiliations may be in the interest of financial intermediaries when third parties inquire with FINMA about their regulatory status. 6

In addition to the quarterly reports, SROs are to notify FINMA immediately of financial intermediaries who it definitively knows to be or must assume of violating their obligations pursuant to art. 11 sect. 1 lett. b VBF. When filing a report the SRO is to include all relevant information known to it. 7

III. Withdrawal of an application for membership

SROs are to notify FINMA immediately of any withdrawn applications for membership and include the reasons given by the applicant for withdrawing the application. 8

If an SRO definitively knows or must assume that a financial intermediary, having withdrawn its application for membership, is or has been in violation of art. 11 sect. 1 lett. b VBF, it is to report this to FINMA in the context of reporting as described above, and to include all relevant information known to it. 9

IV. Rejection of an application for membership

If an SRO rejects an application for membership, it is to report this to FINMA immediately upon issuing its first-level ruling and to include the reasons, if any have been given, on which this ruling is based. 10

If an SRO definitively knows or must assume that a financial intermediary whose membership application has been rejected is or has been in violation of art. 11 sect. 1 lett. b VBF, it is to report this to FINMA in the context of reporting as described above, and to include all relevant information known to it. 11

V. Withdrawal of a member from an SRO

SROs are to report all withdrawals of members in their quarterly reports to FINMA. 12

In addition to the quarterly reports, SROs are to notify FINMA immediately of the lapse of membership by virtue of a member's cancellation of membership in the SRO in the event that the SRO definitively knows or must assume the ex-member of operating as a financial intermediary on a professional basis. The SRO is to include the ex-member's notice of cancellation of membership. 13

VI. Expulsion of a member from an SRO

SROs are to notify FINMA immediately after issuing a first-level ruling, provided that the appeal, if any, has been deprived of its suspensive effect, or after the final first-level ruling or arbitration decision in other cases, upon the expulsion ruling including the reasons, if any, on which it is based. 14

Legal framework and practice of FINMA

I. Legal framework

A. Financial intermediation on a professional basis in the non-banking sector

The Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector (AMLA; SR 955.0) defines the duties of financial intermediaries. In the non-banking sector only financial intermediaries operating on a professional basis are subject to the provisions of the Anti-Money Laundering Act (art. 2 sect. 3 AMLA). The conditions under which financial intermediaries are deemed to be operating on a professional basis are set out in the VBF. 1

B. Duties to be complied with when changing from a non-professional to a professional financial intermediary activity

Art. 11 VBF defines the duties with which a natural or legal person must comply who changes from a non-professional to a professional financial intermediary activity and as such falls under the AMLA for the first time: 2

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- The financial intermediary must immediately comply with the duties of due diligence pursuant to chapter 2 of the AMLA (art. 11 sect. 1 lett. a VBF);
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- Within two months upon operating on a professional basis, the financial intermediary must either join a self-regulatory organisation (SRO) recognised by FINMA or make application for a business licence with FINMA (art. 11 sect. 1 lett. b VBF).
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In addition, until they have affiliated to an SRO or have been granted a licence by FINMA, such financial intermediaries are prohibited from: 3

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- entering into new business relationships subject to supervision (art. 11 sect. 2 lett. a VBF);
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- carrying out activities in relation to existing business relationships subject to supervision that are not essential to maintain the value of the assets (art. 11 sect. 2 lett. b VBF).
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C. Supervision by FINMA

Financial intermediaries pursuant to art. 2 sect. 3 AMLA who are not members of an SRO are subject to direct supervision by FINMA. Pursuant to art. 18 sect. 2 AMLA, FINMA may conduct on-the-spot inspections or instruct an audit firm to carry out such inspections. 4

D. Measures imposed to restore legal compliance

Pursuant to art. 31 ss. FINMASA and art. 20 AMLA, in the event of violations of the AMLA and illegal activities in particular, FINMA is empowered to initiate the requisite measures to restore legal compliance including having illegal financial intermediaries liquidated or struck off the Commercial Register. 5

Legal framework and practice of FINMA

E. Penalty provisions sanctioning financial intermediation without a licence

Anyone who engages in financial intermediation on a professional basis in the non-banking sector pursuant to art. 2 sect. 3 AMLA without being affiliated to an SRO or without being licensed by FINMA as provided for in art. 14 AMLA in association with art. 11 sect. 1 lett. b VBF is deemed to be operating illegally and is liable to a custodial sentence of up to three years or the payment of a fine (art. 44 FINMASA). 6

II. Practice of FINMA

A. Withdrawal of a member from an SRO

If a financial intermediary cancels its membership in an SRO, upon the legal effective date of the lapse of membership the financial intermediary must have joined another SRO recognised by FINMA or have made application with FINMA for a licence to operate as a professional financial intermediary as provided for in art. 14 AMLA so that it can continue to legally engage in financial intermediation on a professional basis (art. 2 sect. 3 AMLA). 7

B. Expulsion of a member from an SRO

If an SRO expels a member, the latter must be affiliated to another SRO or having filed a request for a licence with FINMA pursuant to Art. 14 AMLA within two months upon the final decision of expulsion in an analogous manner to art. 28 sect. 2–4 AMLA, provided that it intends to continue acting as a financial intermediary in the sense of art. 2 sect. 3 AMLA. 8

During the two-month period the financial intermediary may continue to operate without any restrictions being imposed, provided that FINMA has not enacted any measures as provided for in art. 31 ss. FINMASA and art. 20 AMLA. 9

With the lapse of the two-month period upon the expulsion ruling becoming final, operating as a financial intermediary on a professional basis is illegal if the financial intermediary is not affiliated with an SRO or has not made application for a licence with FINMA. Pursuant to art. 31 ss. FINMASA and art. 20 AMLA, operation may be suspended by FINMA and is subject to punishment by virtue of art. 44 FINMASA. 10

List of modifications



The title “Federal Act of 10 October 1997 on Combating Money Laundering and Terrorist Financing in the Financial Sector (AMLA)” (SR 955.0) replaces “Federal Act of 10 October 1997 on Combating Money Laundering in the Financial Sector (AMLA)” (SR 955.0). This amendment was inserted in margin no. 1 of the appendix.

The title “Ordinance of 18 November 2009 on the Professional Practice of Financial Intermediation (VBF)” replaces “Ordinance of the Swiss Financial Market Supervisory Authority of 20 August 2002 on the Professional Practice of Financial Intermediation as defined in the Anti-Money Laundering Act (VBAF-FINMA)” (SR 955.20). This modification is incorporated into this document.