

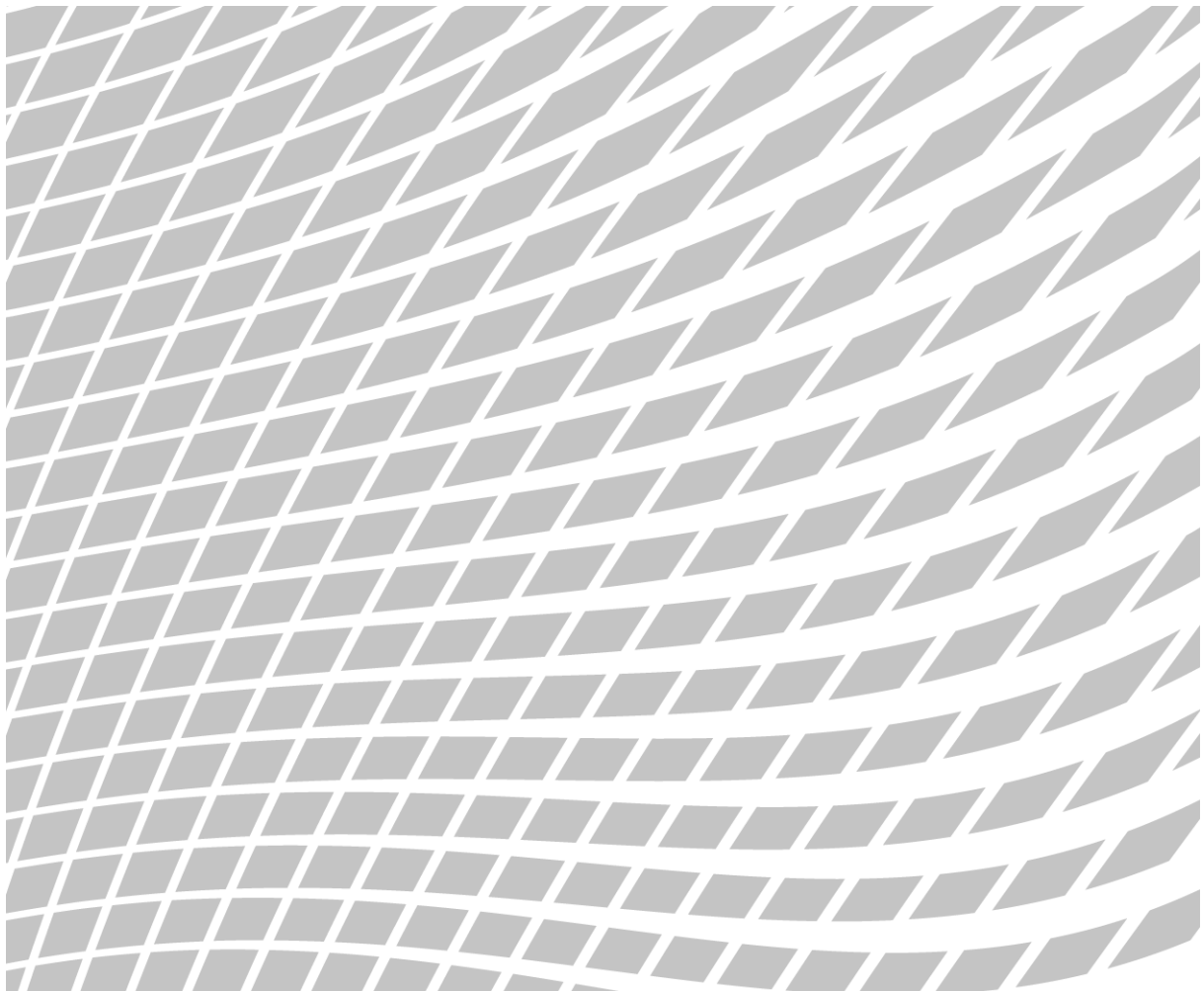
18 Dezember 2008 (status: 23 November 2011)

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# **Regulations on the organisation of the Swiss Financial Market Supervisory Authority FINMA**

## **(FINMA Organisational Rules)**

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*The Board of Directors of the Swiss Financial Market Supervisory Authority FINMA*

hereby issues the organisational rules set down below, based on Article 9 para. 1 let. 1 of the Federal Act on the Swiss Financial Market Supervisory Authority (FINMASA) of 22 June 2007:

## **Section 1: General provisions**

### **Art. 1 Subject**

These Rules define the framework for the organisation, tasks and responsibilities of the Board of Directors, the Executive Board and the internal audit unit and apply in addition to the provisions of FINMASA.

## **Section 2: Board of Directors**

### **Art. 2 Tasks of the Board of Directors**

<sup>1</sup> The Board of Directors is the strategic body of FINMA. It is FINMA's supreme governing body, overseeing and controlling the Executive Board.

<sup>2</sup> The Board of Directors performs the following tasks in particular:

- a. It sets out FINMA's strategic goals and submits them to the Federal Council for approval.
- b. It issues the ordinances delegated to FINMA and decides on the new circulars to be issued. It delegates regulatory matters of minor material importance to the Executive Board.
- c. It appoints the Chief Executive Officer (CEO) and his<sup>1</sup> deputy and terminates the CEO's employment if he no longer satisfies the prerequisites for the performance of his office. The election of the CEO and the termination of his employment require the approval of the Federal Council.
- d. It decides on the appointment and termination of the members of the Executive Board. The CEO has the right to submit motions.

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<sup>1</sup> No gender-neutral language is used in this text for reasons of easier readability. Any masculine forms are to be generally construed to infer the feminine and vice versa.

- e. It defines the provisions for the employment of staff members in an ordinance. In addition, it defines the principles on which the employee pension scheme is based.
- f. It decides on petitions submitted by its committees, its members and the Executive Board.
- g. It oversees the Executive Board and approves the Rules Governing the Conduct of Business.
- h. It decides on the organisational structuring into divisions.
- i. It issues a Code of Conduct that is applicable to the Board of Directors and all staff members.
- j. It appoints an internal audit unit and oversees the internal audit process.
- k. It issues Organisational Rules, the guidelines for the implementation of regulatory principles, and the guidelines on information disclosure and communication.
- l. It approves the financial planning, the budget proposals and the annual financial statements, and establishes the applicable accounting standards in accordance with the principles of Article 18 FINMASA.
- m. It prepares the annual report and submits it to the Federal Council for approval prior to publication.

<sup>3</sup>The Board of Directors decides on business matters of substantial importance. Matters of substantial importance are defined in particular as:

- a. matters of considerable consequence for financial markets or of systemic importance as evidenced at one or more of the supervised institutions;
- b. matters of particular interest for the general public;
- c. matters that result in establishing rules of practice or a change thereto;
- d. matters involving a high liability risk for FINMA or having a long-term effect on FINMA's reputation;
- e. matters that are designated as such by at least three members of the Board of Directors.

<sup>4</sup>Where there is doubt concerning matters reserved to the Board of Directors on account of their substantial importance, the Chairman of the Board of Directors shall decide on the matter after consultation with the CEO.

<sup>5</sup> Involved parties are not entitled to request that the matter in question be dealt with by the Board of Directors.

### Art. 3 External contacts of the Board of Directors

<sup>1</sup> The Chairman and any other designated members of the Board of Directors are to maintain contact with relevant persons, authorities and organisations in Switzerland and abroad, insofar as such contacts are required for the performance of their tasks and are in FINMA's interests.

<sup>2</sup> The mandate to maintain and coordinate these contacts is to be discussed and agreed between the Chairman of the Board of Directors and the CEO.

<sup>3</sup> The Board of Directors and the CEO are to be informed of any external contacts that take place.

### Art. 4 Board of Director Committees

<sup>1</sup> The Board of Directors shall establish from among its members an audit committee, an appointment and remuneration committee, and a takeover committee. If necessary, other persons may be involved.

<sup>2</sup> Unless provided for otherwise, the committees perform advisory tasks and submit proposals to the Board of Directors. They shall be presided over by a chairman who maintains contact with the Board of Directors and the Executive Board.

<sup>3</sup> The Board of Directors may establish ad-hoc committees from among its members to prepare items of business or may delegate such tasks to individual members, in particular to specialists in specific areas of expertise.

<sup>4</sup> The Board of Directors is to assign the mandates in writing.

### Art. 5 Convening meetings of the Board of Directors

<sup>1</sup> Meetings of the Board of Directors shall be convened by the Chairman and, if he is unavailable, by the Vice-Chairman.

<sup>2</sup> Each member of the Board of Directors and the CEO are entitled to request at any time that a meeting of the Board of Directors be convened.

<sup>3</sup> The Chairman of the Board of Directors is to set out the items for discussion after consultation with the CEO, decide on the particular confidentiality of each item of business, and set the agenda for the meeting.

<sup>4</sup> As a general rule, invitations to the meeting participants are to be sent out ten days prior to the meeting, stating the items of business to be dealt with and attaching the necessary documentation. The person responsible for a particular item of business is to ensure that the documentation is sent to the participants in good time.

<sup>5</sup> This period of notice may be less than ten days or the participants may waive the provision of forwarding documentation prior to the meeting provided that there are cogent reasons for doing so.

## Art. 6 Chairing of meetings

<sup>1</sup> The meetings of the Board of Directors shall be presided over by the Chairman.

<sup>2</sup> Each member of the Board of Directors may request in writing up to fourteen days prior to the meeting that an item of business be placed on the agenda and is to include a written explanation for this request.

<sup>3</sup> If the Chairman is unable to attend or preside over a meeting, the meeting shall be presided over by the Vice-Chairman, and if he is unable to attend, by another member of the Board of Directors.

<sup>4</sup> For business requiring a decision to be taken, a motion must be tabled by the respective responsible member of the Executive Board with the CEO's approval.

## Art. 7 Attendance at meetings of the Board of Directors

<sup>1</sup> The CEO and the members of the Executive Board shall attend the meetings of the Board of Directors as a general rule and present in person the business items from their areas of responsibility.

<sup>2</sup> The Chairman may, of his own accord or at the request of a Board member or the CEO, invite other persons to attend meetings of the Board of Directors.

## Art. 8 Quorum, voting and elections

<sup>1</sup> The Board of Directors is deemed to constitute a quorum when the majority of its members are present.

<sup>2</sup> Resolutions are passed by a majority of the votes cast by the members present.

<sup>3</sup> In the event of a tie vote the Chairman shall cast the tie-breaking vote.

<sup>4</sup> Resolutions on business that has not been tabled on the agenda or for which the required information has not been provided ahead of the meeting may not be adopted unless all members present agree.

## Art. 9 Chairman's resolutions and resolutions by circular

<sup>1</sup> In exceptional cases that do not tolerate delay and where the importance of the business requires it, the Chairman may of his own accord or at the request of the Executive Board take the necessary decisions (Chairman's resolutions) in lieu of the Board of Directors.

<sup>2</sup> The Board of Directors shall be informed of such Chairman's resolutions as soon as possible.

<sup>3</sup> In urgent cases resolutions may be passed via circular (including fax and email) provided no member of the Board of Directors demands, within three working days of the motion in question being dispatched, that the matter be deliberated in a meeting.

<sup>4</sup> Circular resolutions may only be passed by a majority of the votes cast by all the members of the Board of Directors.

## Art. 10 Minutes

<sup>1</sup> Minutes shall be kept of the meetings of the Board of Directors and contain a summary of the deliberations relevant to the resolutions and the wording of all resolutions adopted.

<sup>2</sup> The minutes shall be taken by the Secretary of the Board of Directors. If he is absent, the Chairman shall designate a replacement.

<sup>3</sup> The minutes shall be signed by the Chairman and the Secretary.

<sup>4</sup> The minutes shall be approved and passed by the Board of Directors and shall be subsequently sent to the Executive Board, except in cases of confidential or secret business matters.

<sup>5</sup> Circular resolutions and Chairman's resolutions shall be included in the minutes of the next meeting.

## Art. 11 Abstention rules and incompatibility

<sup>1</sup> The members of the Board of Directors must have relevant specialist knowledge and be independent of the institutions they supervise. They may not be members of the executive board or chairman / vice-chairman of the board of directors of any supervised institution.

<sup>2</sup> Acceptance of membership in another executive body of a supervised institution shall be subject to the consent of the FINMA Board of Directors. Membership in any executive bodies is subject to public disclosure.

<sup>3</sup> The abstention rules apply in the event of conflicts of interest or the appearance thereof. Existing or potential conflicts of interest must be disclosed.

<sup>4</sup> The members of the Board of Directors shall, as a matter of principle, not hold any shares in supervised institutions. Details are set out in the Code of Conduct.

<sup>5</sup> The members of the Board of Directors shall abstain from voting on business matters in the following cases:

- a. matters concerning supervised institutions for whom they worked until a year prior thereto;
- b. matters concerning supervised institutions in which they hold shares under their own management or that grant them privileges that would constitute a relationship of dependency.

<sup>6</sup> Members of the Board of Directors that must abstain from voting pursuant to paragraph 5 above may be informed of the respective business in advance and may take part in the attending discussion, however not in any decision-making.

<sup>7</sup> The members of the Board of Directors shall also abstain from voting on business matters in the following cases:

- a. matters in which they have any other direct personal interest;
- b. matters in which persons are involved, or have a personal interest, with whom they have a close personal relationship;
- c. matters in which they were formerly actively involved themselves;
- d. matters in relation to which they might be biased for any other reason.

<sup>8</sup> Members of the Board of Directors that must abstain from voting pursuant to paragraph 7 above may not be informed of the respective business and may not take part in the attending discussion or in any decision-making.

<sup>9</sup> Members of the Board of Directors are to report all existing or potential conflicts of interest to the Secretary of the Board of Directors for the attention of FINMA's Compliance group. Following from this, Compliance will examine prior to the Board meetings whether any grounds for abstention exist.

<sup>10</sup> Where abstention is disputed, the Board of Directors shall decide on it in the absence of the respective member concerned.

<sup>11</sup> Where the legal or actual prerequisites for the exercise of a board of director membership no longer exist, the respective board member shall submit his resignation, even if his term of office has not yet been concluded.

## Art. 12 Secretary of the Board of Directors

<sup>1</sup>The Secretary of the Board of Directors reports in this function to the Chairman of the Board of Directors.

<sup>2</sup>The following tasks are incumbent upon the Secretary of the Board of Directors:

- a. taking minutes at the Board of Director meetings;
- b. handling the administrative organisation of Board of Director meetings;
- c. supporting the Chairman in his preparations for meetings;
- d. performing the tasks assigned to him by the Chairman and the Board of Directors.

<sup>3</sup>Where the Secretary of the Board of Directors is unable to perform his tasks, the Chairman of the Board of Directors shall appoint a person to replace him.

## Art. 13 Right to receive information and duty to provide information

<sup>1</sup>Each member of the Board of Directors is entitled to request information from the Executive Board on all technical matters; this shall, however, be subject to compliance with the rules of abstention in conflicts of interest.

<sup>2</sup>The Executive Board shall inform the Board of Directors on a regular basis about operational issues, the course of business operations, and emerging developments.

## Section 3: Executive Board

### Art. 14 Position and function

<sup>1</sup>The Executive Board performs the tasks that are not reserved to the Board of Directors or the audit unit. It acts as a collective body with joint responsibility for FINMA's operating activities.

<sup>2</sup>The following main tasks are incumbent upon the Executive Board:

- a. conducting FINMA's business operations;

- b. preparing the necessary materials for decisions on items of business that fall under the remit of the Board of Directors and reporting to the Board of Directors regularly and, in the case of extraordinary events, immediately;
- c. implementing the resolutions passed by the Board of Directors and its committees;
- d. taking decisions on regulatory matters of minor material importance;
- e. operating appropriate steering and control systems and reporting regularly to the Board of Directors on their effectiveness.
- f. Operating appropriate steering and control systems and reporting regularly to the Board of Directors on their effectiveness.

<sup>3</sup>The Executive Board issues rulings on all matters that do not fall to the Board of Directors. In a few cases of lesser importance, the Executive Board may transfer this competence to the divisions.

<sup>4</sup>The Executive Board shall issue Rules Governing the Conduct of Business that set out the powers of delegation.

## Art. 15 Composition

<sup>1</sup>The Executive Board is comprised of the CEO and other members.

<sup>2</sup>The CEO is the head of the Executive Board: the members of the Executive Board report to the CEO.

<sup>3</sup>As a rule, the members of the Executive Board lead a particular division.

## Art. 16 Deputisation

<sup>1</sup>A deputy must be designated for the CEO at all times.

## Art. 17 Committees

<sup>1</sup>The Executive Board forms standing and / or ad-hoc committees together with other experts.

<sup>2</sup> The Rules Governing the Conduct of Business shall define how the standing committees are convened and organised and what powers they are assigned.

## Art. 18 Organisation

<sup>1</sup> As an operating body, FINMA is divided into various divisions at the primary management level. Depending on their size and span of control, these divisions are in turn divided into sections and groups.

<sup>2</sup> The following divisions are distinguished:

- a. Banks
- b. Insurance
- c. Markets
- d. Enforcement
- e. Strategic Services
- f. Operations

## Section 4: Common provisions

### Art. 19 Signatory powers

<sup>1</sup> The principle of joint signature by two signatories shall apply.

<sup>2</sup> Any two members of the Board of Directors may sign jointly on behalf of the Board, provided that one of them is either the Chairman or the Vice-Chairman.

<sup>3</sup> Rulings of the Board of Directors shall be signed by the Chairman or Vice-Chairman together with the CEO or the relevant member of the Executive Board.

<sup>4</sup> Letters to Federal Councillors shall be signed by the Chairman of the Board of Directors after consultation with the Board of Directors.

<sup>5</sup> Ordinances and circulars issued by FINMA shall enter into force with the joint signature of the Chairman and the CEO.

<sup>6</sup> Letters of minor significance may be signed by the Chairman of the Board of Directors alone.

<sup>7</sup> The Rules Governing the Conduct of Business shall establish any further provisions.

## **Section 5: Internal audit unit**

### **Art. 20 Organisation**

<sup>1</sup> The internal audit unit reports directly to the Board of Directors.

<sup>2</sup> The effectiveness of the internal audit unit and its collaboration with external auditors shall be subjected to assessment on a regular basis by the audit committee.

<sup>3</sup> It may be tasked with the performance of special audits and controls by the Chairman of the Board of Directors, the audit committee or a majority of the Board of Directors at the request of a member of the Board of Directors or the CEO.

### **Art. 21 Mandate**

<sup>1</sup> The internal audit unit shall draw up a risk-oriented annual plan of its audit activities in consultation with the audit committee. This annual plan is subject to approval by the Board of Directors.

<sup>2</sup> The internal audit unit shall endeavour to ensure a high level of quality in its audits by way of continuous professional development and compliance with national and international standards in the industry.

### **Art. 22 Tasks and powers**

<sup>1</sup> The internal audit unit shall provide independent and objective audit and advisory services that are designed to create added value and improve business processes. It supports the organisation in achieving its objectives by applying a systematic and targeted approach to assess the effectiveness of risk management, internal steering and control systems, and governance processes, and helps to improve them.

<sup>2</sup> It is responsible for verifying compliance with legal, regulatory and other internal provisions. It reports on material and personal shortcomings in the operational organisation.

<sup>3</sup> It is responsible for assessing the reliability of documents, reports and other information and data collected within the supervisory authority.

<sup>4</sup>The internal audit unit shall have unlimited power to perform audits, provided that this is necessary for the fulfilment of its duties. To this end, it shall be entitled to receive all information and to be allowed access to all documents and any other records.

<sup>5</sup>The tasks, powers and responsibilities of the internal audit unit are to be set out in an Audit Charter subject to approval by the audit committee.

### Art. 23 Reporting

<sup>1</sup>The internal audit unit shall maintain continuous contact with the audit committee and shall report to it regularly on the findings of the audits conducted by it. It shall inform the audit committee immediately where it notices any events of particular importance.

<sup>2</sup>Units or individuals mentioned in reports shall be generally given the opportunity to comment on the reports before they are passed on.

### Final provisions

#### Art. 24 Entry into force

These Rules shall enter into force on 1 January 2009.

Bern, 18 December 2008

SWISS FINANCIAL MARKET SUPERVISORY AUTHORITY

Signed

Dr. Eugen Haltiner  
Chairman

Signed

Dr. Patrick Raaflaub  
CEO