**Audit points for compliance with market conduct rules**

**Overview**

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| **Subject** | **Business risks / risk management: compliance with market conduct rules** |
| **Audit depth** | [Audit/critical assessment][[1]](#footnote-2) |
| **Regulations**  (non-exhaustive list) | Art. 3 para. 2 let. a Banking Act (BA)  Arts. 9, 50 and 51 Financial Institutions Act (FinIA)  Art. 12 Banking Ordinance (BO)  Arts. 12, 66-68, 74 and 75 Financial Institutions Ordinance (FinIO)  Arts. 38-39, 142-143 Financial Market Infrastructure Act (FMIA)  Arts. 36-37, 122-128 Financial Market Infrastructure Ordinance (FMIO)  Arts. 1-5 FINMA Financial Market Infrastructure Ordinance (FMIO-FINMA)  FINMA Circular 2008/4 “Securities journals” (FINMA Circ. 08/4)  FINMA Circular 2018/2 “Duty to report securities transactions” (FINMA Circ. 18/2)  FINMA Circular 2013/8 “Market conduct rules” (FINMA Circ. 13/8) |
| **Sign-offs:** | |  |  |  |  | | --- | --- | --- | --- | | **Sign-offs** | **Name** | **Function** | **Date** | | Prepared by: | [Name] | [Assistant / Senior / Manager / Senior Manager / Partner] | [DD MM YYYY] | | Reviewer: | [Name] | [Senior / Manager / Senior Manager  / Partner] | [DD MM YYYY] | |

**This is the standard work programme that is to be implemented for every audit in this field, under the terms of the audit strategy (Margin no. 28ff FINMA Circ. 13/3). It is the audit team’s responsibility to adapt the standard work programme to the audited institution’s specific situation (size, business model, organisation, processes, risk exposure etc.). If the specified audit procedures are not carried out in full, the underlying rationale must be explained in the working paper.**

**Overall conclusion**

| **Topic** | **Information/description** |
| --- | --- |
| Overall conclusion | |  |  | | --- | --- | | **Confirmation in audit report:** | **Conclusion:** | | Confirmation that the internal rules and methods/processes used to identify, measure, manage and control risks in market conduct were adequate and applied effectively where the audit depth was “audit”. | ***Yes*** *(Audit/critical assessment) /* ***No*** | | Confirmation that the methods/processes used to fulfil the record keeping and reporting duties were adequate and applied effectively where the audit depth was “audit”. | ***Yes*** *(Audit/critical assessment) /* ***No*** | |
| Summary of significant findings / notices of reservations and recommendations (see details below) | [Summary of significant findings / notices of reservations and recommendations] |
| Audit areas, results and work performed by Internal Audit relied on by the audit firm (including audit firm’s own assessment) | [Description] |

| **No.** | **Topic:** | **Procedures for audit depth  “critical assessment”:** | **Additional procedures for audit depth “audit”:** | **Procedures performed/findings** | **WP ref.:** |
| --- | --- | --- | --- | --- | --- |
| *Confirmation that the internal rules and methods/processes used to identify, measure, manage and control risks in market conduct were adequate and applied effectively where the audit depth was “audit”.*  *Bestätigung, dass die internen Weisungen und Methoden / Prozesse zur Identifikation, Messung, Bewirtschaftung und Überwachung der Risiken im Bereich Marktintegrität angemessen waren und im Falle der Prüftiefe „Prüfung“ effektiv angewendet wurden.*  *Confirmation que les directives internes et méthodes / processus relatifs à l’identification, la mesure, la gestion et la surveillance des risques dans le domaine des règles de comportement dans le marché ont été appropriés et en cas d’étendue d’audit « audit » effectivement appliqués.* | | | | | |
|  | **Risk analysis** | Assess the adequacy of the internal risk analysis of market conduct linked to the institution’s business model through enquiry and review of relevant documents. |  |  |  |
|  |  | Assess the adequacy of the institution’s risk analysis by focusing on risks inherent in:   * own account dealing (flow trading, professional trading, proprietary trading)[[2]](#footnote-3) * trading in the institution’s own equity instruments * the institution’s involvement in algo or high-frequency trading * the institution’s involvement in brokerage services (trading on behalf of clients) * the various types of services offered to clients (asset management, investment advisory, external asset, execution-only clients) * dealing with clients who are potential primary insiders (e.g. owner, member of the Board of Directors) at publicly listed companies * the institution’s in-house financial research set-up (e.g. properly implemented “Chinese walls”, need-to-know principles, wall-crossings, documentation of the contacts with the issuers) * market-making in the institution’s own products and for third parties * the various types of products traded (standardised products, e.g. shares/non-standardised products, e.g. FX, commodities, swaps/leveraged products, e.g. options/highly leveraged products, e.g. CFD) * different organisational areas/departments (specific teams, desks, traders, clients) with exceptionally high profitability in trading or with strongly fluctuating profits/losses * supervision of the activities of clients with direct market access (DMA) or direct electronic access (DEA). |  |  |  |
|  |  | Verify if the risk analysis is reviewed on a yearly basis. |  |  |  |
|  |  | Assess whether the Executive Board is adequately involved in reviewing and (if necessary) amending the risk analysis, tasks which take place at least yearly, and whether the risk analysis is systematically approved. |  |  |  |
|  | **Adequacy of organisational measures and internal rules taking risk analysis into account** | *Assess the adequacy of the organisational measures based on and derived from risk analysis through enquiry and review of relevant documents.* |  |  |  |
|  |  | Assess the adequacy of the institution’s organisation and processes (design), as well as the internal rules and directives on managing market conduct risk.  More precisely, assess whether the organisational measures and rules adequately reflect the regulatory requirements and take the institution’s risk situation into account.  Assess if the institution implemented adequately enhanced measures in case of an increased risk situation, specifically:   * Assess if appropriate measures are in place to ensure i) the existence of Chinese walls and confidentiality perimeters, ii) the elaboration and maintenance of watch lists and restricted lists. * Assess the existence of a directive governing the supervision of transactions made by Board of Directors members, executive management and the institution’s staff. * Assess the existence of adequate technical measures to record all phone conversations and other electronic communications (e.g. chat history, emails) of relevant staff members working at the institution’s trading desks and whether this monitoring is appropriate. * Assess whether the institution has implemented an adequate training programme on market conduct risk. |  |  |  |
|  | **Controls to prevent and detect market abuse** | *Assess or verify whether controls to prevent and detect market abuse based on the control design and processes involved are carried out properly.* |  |  |  |
|  |  | Understand and identify whether adequate controls to prevent and detect market abuse are in place and assess their design effectiveness through enquiry with management and other staff, as well as reviewing internal reports. The assessment should include a review of:   * reporting measures to prevent and detect market abuse submitted to executive management; * appropriateness of systems and controls to detect market abuse (clients/custodians) in regulated and non-regulated markets, including an appropriate documentation of all transactions subject to examination because of indication of possible abuse; * appropriateness of staff training programmes on market abuse including senior/top management; * measures to control the trading activities of Board of Directors members, executive management and staff; * existence and regular updating of watch lists and restricted lists; * supervision of transactions made by the institution’s Board of Directors members, executive management and staff; * existence and adequacy of information barriers (if applicable). | Execute tests to assess the operating effectiveness of internal controls performed to prevent and detect market abuse and/or perform substantive testing of:   * reporting to executive management about the prevention and detection of market abuse; * appropriate controls to detect market abuse (clients/custodians) in regulated and non-regulated markets (e.g. documented controls whether best performing areas of business/custodians/clients have been examined with regard to market conduct); * staff training programmes on market abuse; * phone calls and other electronic communications are stored and monitored appropriately; * breaches of regulations and internal rules on market conduct lead to appropriate sanctions against staff members; * compliance with watch lists and restricted lists; * measures to control transactions made by the institution’s Board of Directors members, executive management and staff; * adherence to information barriers (if applicable); * the institution’s compliance with its reporting duty to FINMA in the event of suspicious transactions (in accordance with Art. 29 para. 2 FINMASA). |  |  |
|  |  | Read the minutes and reporting to the Executive Board and assess whether monitoring is appropriate and if the necessary measures have been defined. |  |  |  |
| *Confirmation that the methods/processes used to fulfil the recordkeeping and reporting duties were adequate and applied effectively where the audit depth is “audit”.*  *Bestätigung, dass die Methoden / Prozesse zur Einhaltung der Erfordernisse im Bereich der Journal- und Meldepflichten angemessen waren und im Falle der Prüftiefe „Prüfung“ effektiv angewendet wurden.*  *Confirmation que les méthodes / processus relatifs au respect des obligations de tenue du journal et de déclarer ont été appropriés et en cas d’étendue d’audit « audit » effectivement appliqués.* | | | | | |
|  | **Adequacy of organisational measures and internal rules on adherence to recordkeeping and reporting requirements according to Arts. 38 and 39 FMIA and Arts. 50 and 51 FinIA** | Assess the adequacy of the institution’s organisation and processes (design), as well as its internal rules and directives on managing recordkeeping and reporting requirements.  Assess the adequacy of the internal rules and directives on managing the traceability (recordkeeping, time stamps, etc.) of orders and transactions in non-regulated markets (such as FX, PM, etc.). |  |  |  |
|  | **Controls to ensure adherence to recordkeeping and reporting requirements accordingy to Arts. 38 and 39 FMIA and Arts. 50 and 51 FinIA** | *Assess or verify whether controls to adhere to recordkeeping and reporting requirements and the processes involved are carried out properly.*  Assess through inquiry with management and the review of internal reports whether controls of the recordkeeping and reporting requirements are carried out properly, as well as assessing their design effectiveness.  Assess the adequacy of the institution’s systems and processes to fulfil the obligation to report securities and derivative transactions and their timely submission to the relevant trading venues. | Perform test of controls in relation to:   * the effectiveness of the institution’s internal controls to monitor the completeness, correct content and timeliness of reporting (recordkeeping controls and reporting requirements), including rejections of reports by the relevant trading venue (reporting requirements).   Perform substantive test of details on a sample basis in relation to:   * the completeness, correct content (securities, derivatives and other instruments) and layout of the record (journal), including any exceptions; * the completeness and correct content (securities subject to the reporting obligation and, in particular, financial instruments derived from such securities ) of the transactions reported to the relevant trading venues. |  |  |

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1. Margin nos 33. and 34 FINMA Circ. 13/3. [↑](#footnote-ref-2)
2. **Flow trading** is the very short-term sale or purchase of products as a counterparty for clients without any intention to hold or even adopt a risk position on the products. The aim of flow trading is to generate a low-risk return through bid-offer spreads. Positions can be kept in the portfolio for more than a day, but the material risks must be hedged by no later than the end of the trading day.

   **Professional trading** is a trading strategy whereby a trader acts as the market maker for the client (as with flow trading) without having to close its positions every day. In professional trading, positions are held in the short term and within predefined limits. Positions are also taken which have no direct connection to client business.

   **Proprietary trading** is a trading unit distinct from any other trading activity. It does not conduct any client business and generates returns exclusively through taking positions. Proprietary trading involves no client contact and there is no dealing in the broker market. [↑](#footnote-ref-3)