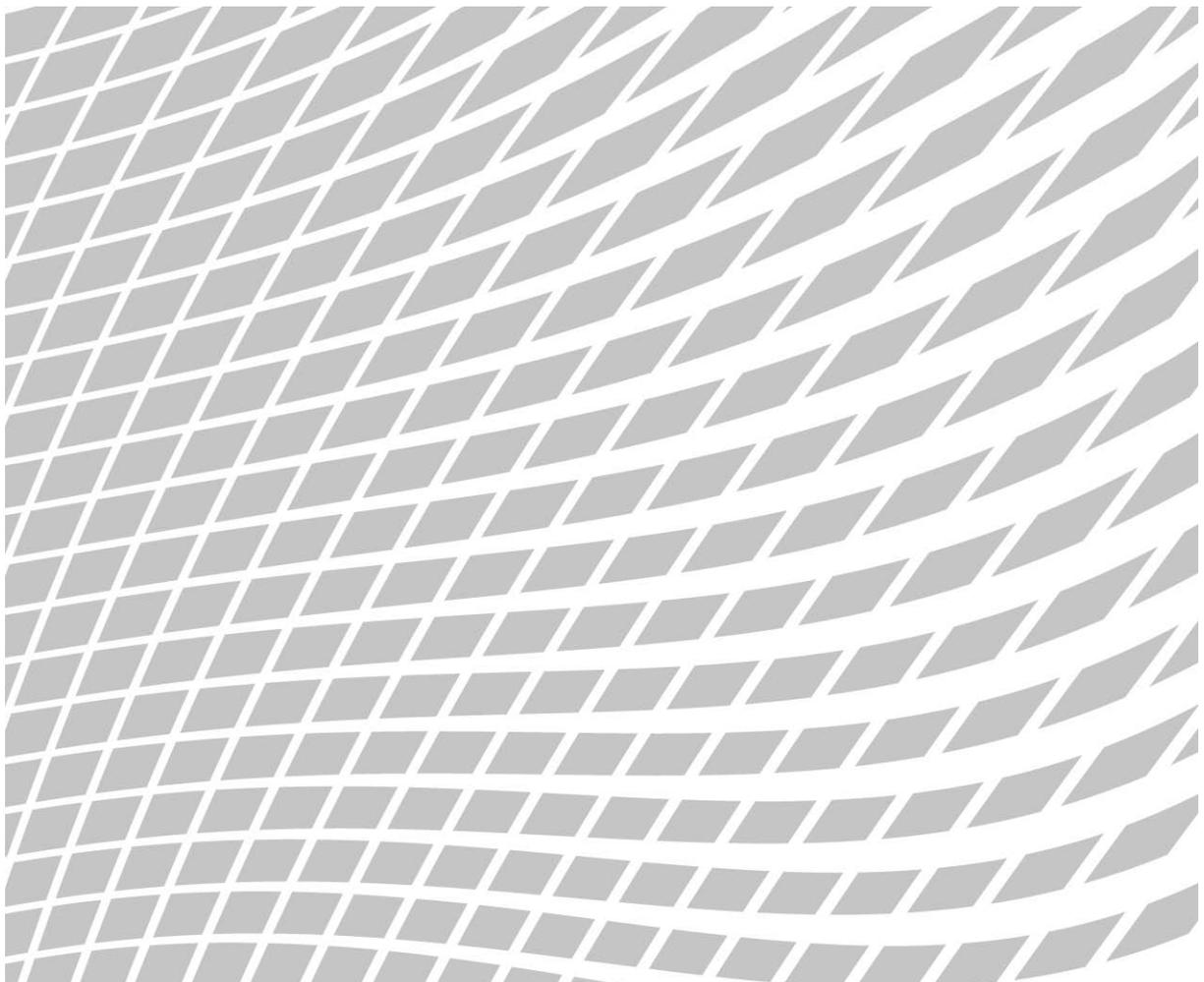


11 June 2010

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## **Key points of the Financial Intermediation Circular**

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**FINMA is opening the consultation period for the Circular on Financial Intermediation pursuant to the Anti-Money Laundering Act. The Circular contains the implementing provisions for the Ordinance on the Professional Practice of Financial Intermediation (VBF), which came into force on 1 January 2010. It is aimed at financial intermediaries of the para-banking sector and self-regulatory organisations recognised by FINMA. The deadline for submitting comments on the draft Circular is 12 July 2010.**

The new Ordinance on the Professional Practice of Financial Intermediation (VBF; SR 955.071, available in German, French and Italian) came into force on 1 January 2010. The object of the Ordinance is to determine the criteria a person needs to meet in order to be considered a financial intermediary under Article 2 para. 3 of the Anti-Money Laundering Act (AMLA; CC 955.0), and to define the requirements for the professional practice of financial intermediation (Art. 1 VBF). Art. 12 VBF authorises FINMA to issue the implementing provisions for the Ordinance. FINMA sees the Circular as an appropriate means of publishing the implementing provisions.

The VBF and the brief commentary issued by the Federal Finance Administration (FFA) on the Ordinance largely adopt the practice of the former Anti-Money Laundering Control Authority. In view of this, the decision was taken not to prepare an explanatory report. The new Ordinance nevertheless contains a number of changes with regard to the scope of application of AMLA. These changes and the associated content of the Circular are described below. The margin numbers (mn.) indicated refer to the margin numbers in the Circular:

- The **transfer of assets as an accessory service** to a main contractual service is now excluded from the scope of AMLA (Art. 1 para. 2 let. c VBF). The Circular specifies the conditions under which the transfer of assets qualifies as an accessory service (mn. 10 ss).
- The operation of pillar 3a **pension funds** is now excluded from the scope of AMLA for insurance companies as well as bank foundations (Art. 1 para. 2 let. d VBF, mn. 17);
- The **practice for affiliates** is now regulated in the Ordinance. The exclusivity clause now only applies to transfers of money and assets (Art. 1 para. 2 let. f VBF). The exclusivity clause in the **practice for affiliates** will now also apply if the affiliate is a professional financial intermediary (mn. 21);
- **Accessory lending** is exempted from the scope of AMLA (Art. 3 let. f VBF). The Circular specifies the conditions under which lending qualifies as accessory lending (mn. 38 ss.).
- In addition to on-exchange trading, **off-exchange trading in commodities** for the account of third parties is now also deemed to constitute financial intermediation within the meaning of Art. 2 para. 3 AMLA, provided the commodities are sufficiently standardised that they can be liquidated at any time (Art. 5 para. 2 let. b VBF, mn. 63);
- **Securities trading** is now only covered by AMLA if it is carried out within the meaning of the Stock Exchange Act (Art. 2 para. 2 let. d AMLA). Other securities trading – specifically securities trading below the threshold for professional practice – involves negligible volumes and is no longer covered by Art. 2 para. 3 AMLA (Art. 5 para. 3 VBF). However, the activities of client traders within the meaning of Art. 3 para. 5 of the Stock Exchange Ordinance remain subject to Art. 2 para. 3 let. b, e and g AMLA (mn. 73);

- **Accessory money exchange** is now excluded from the scope of AMLA (Art. 5 para. 4 VBF). The Circular specifies the conditions under which money exchange qualifies as accessory money exchange (mn. 75 s.).
- The **number of contracting parties** criterion for determining professional practice has been amended: the threshold is now 20 contracting parties rather than the previous figure of 10 (Art. 7 para. 1 let. b VBF, mn. 117);
- **Transfers of money and assets** are now always deemed to be on a professional basis regardless of the volume involved (Art. 9 VBF, mn. 124).

The Circular also envisages the following changes to the scope of application:

- Lending between **cooperatives** and their members and between associations and their members is not subject to AMLA if the lending is in connection with the cooperative or association's non-commercial purpose or a mutual self-help objective (mn. 34). This brings the practice into line with the corresponding rules for cooperatives and associations in Circular 2008/3 Public Deposits with Non-banks.
- Certain tasks undertaken by **notaries** in connection with property purchases are deemed to be specific to the profession and are therefore not subject to AMLA. To simplify and standardise the process compared with earlier regulations, any payments made by notaries to third parties that are required to ensure that a property transfer is transacted smoothly are now deemed to be specific to the profession and are therefore not subject to AMLA. This also includes the payment of an estate agent's commissions to a third party by the notary (mn. 106).
- The threshold for **professional activity** is reached, among other ways, if transactions with a total volume exceeding CHF 2 million are executed within a single calendar year (Art. 7 para. 1 let. d VBF). The execution of a single, isolated transaction is not deemed to constitute professional financial intermediation even if it exceeds CHF 2 million. However, activity is deemed to be professional from the second transaction within the meaning of Art. 7 para. 1 let. d VBF if the total volume of these transactions exceeds CHF 2 million (mn. 119).

This Circular is based on Art. 12 VBF, which authorises FINMA to issue the implementing provisions for the Ordinance, and the brief commentary of the Federal Finance Administration (FFA) on the Ordinance. **The deadline for submitting comments is 12 July 2010.** FINMA is planning for the Circular to come into force in October 2010.