**Overview**

|  |  |
| --- | --- |
| **Audit field:** | **Conduct rules /Market behavior and market conduct**  |
| **Audit depth:** | [Audit/critical assessment] |
| **Regulations**(non-exhaustive list) | CISA 14 and 20, CISO 12 and 12aFinIA 9 and 11, FinIO 12, 39, 41, 55 and 57FMIA 38 – 39, 58 – 59, 73, 142 – 143, FMIO 36 – 37, 122 – 128, FMIO-FINMA 1 – 5FINMA Circular 2013/8 Market conduct rules  |
| **Sign-offs:** |

|  |  |  |  |
| --- | --- | --- | --- |
| **Sign-offs:** | **Name:** | **Function:** | **Date:** |
| Preparer:  | [Name] | [Assistant/Senior/Manager/Senior Manager/Partner] | [DD MM YYYY] |
| Reviewer: | [Name] | [Senior/Manager/Senior Manager /Partner] | [DD MM YYYY] |

 |

**This is a standard audit program. It is the audit team’s responsibility to adapt the standard program to the audited institution’s specific situation (size, business model, organization, processes, risk exposure, etc.). If the audit points are not carried out in full, the underlying rationale must be explained in the working paper.**

**Overall conclusion**

| **Topic:** | **Information/description:** |
| --- | --- |
| Overall assessment |

|  |  |
| --- | --- |
| **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*** |

 |
| Summary of significant findings / notices of reservation and recommendations (For details, see below.) | [Summary of significant findings / Notices of reservations and recommendations] |
| Audit field, results and work performed by Internal Audit relied on by the audit firm (including audit firm’s own assessment) | [Description] |

**Audit points– Market behavior and market conduct**

| **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 Marktverhalten 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)[[1]](#footnote-1)
* trading in the institution’s own equity instruments
* the institution’s involvement in algo or high frequency trading
* the various types of services offered to clients (asset management, advisory, execution only)
* dealing with clients who are potential primary insiders (e.g. owner, BoD member) 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)
* the various types of products traded (standardized products, e.g. shares/non-standardized products, e.g. FX, commodities, swaps/leveraged products, e.g. options/highly leveraged products, e.g. CFD)
* different organizational areas/departments (specific teams, desks, traders, clients) with exceptionally high profitability in trading or with strongly fluctuating profits/losses
 |  |  |  |
|  |  | Verify if the risk analysis is reviewed on a yearly basis. | . |  |  |
|  |  | Assess the adequacy of the involvement of executive management in reviewing and amending (if necessary) the risk analysis on at least a yearly basis and approving it.  |  |  |  |
|  | **Adequacy of organizational measures and internal rules taking risk analysis into account**  | *Assess the adequacy of the organizational measures based on and derived from risk analysis through enquiry and review of relevant documents.* |  |  |  |
|  |  | assess the adequacy of the institution’s organization and processes (design), as well as the internal rules and directives on managing market conduct risk. More precisely, assess whether the organizational measures and rules adequately reflect the regulatory requirements and take the institution’s risk situation into account, i.e. adequately address the risk situation identified in the risk analysis in case of low risk. Assess if the institution implemented adequately enhanced measures in case of an increased risk situation, notably: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 BoD members, executive management and the institution’s staff.Assess whether the institution has implemented an adequate training program 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.* |  |  |  |
|  |  | Obtain an understanding 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 programs on market abuse including senior/top management.
* measures to control the trading activities of BoD members, executive management and staff;
* existence and regular update of watch lists and restricted lists;
* supervision of transactions made by the institution’s BoD 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 systems and 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 integrity);
* staff training programs on market abuse;
* breaches of regulation and internal rules on market abuse lead to appropriate sanctions against staff members;
* compliance with watch lists and restricted lists;
* measures to control transactions made by the institution’s BoD members, executive management and staff;
* adherence to information barriers (if applicable).
* the institution’s reporting duty to FINMA in the event of suspicious transactions (in accordance with Art. 29 para. 2 FINMASA).
 |  |  |
|  |  | Read the minutes and reporting to executive management and assess whether monitoring is appropriate and if the necessary measures have been defined.  |  |   |  |

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

1. **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-1)