

Circular 2018/2

Duty to report securities transactions

Duty to report securities transactions

Reference: FINMA Circ. 18/2 "Duty to report securities transactions"
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 Concordance: former FINMA Circ. 08/11 "Duty to report securities transactions" of 20 November 2008
 Legal framework: FINMASA Article 7 para. 1 let. b
 SESTA Articles 1 and 15 para. 2
 FMIA Article 39
 FMIO Article 37
 SESTO Article 31
 FMIO-FINMA Articles 2, 3, 4 and 5

| Addressees | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|------------|-----------------------------|----------------------|----------|-----------------------------|----------------|--------------------|---------------|------------------------|---------------------------------|--------------------|-----------------|--------------|---------------------------|--------|-------------------------------|--------|-----------------|--------------------|--------------|----------------------------|----------------------|------|-------|-----------------------------|-------------|-----------------|--|
| BankA | | | ISA | | SESTA | FMIA | | | | CISA | | | | AMLA | | Other | | | | | | | | | | | |
| Banks | Financial groups and congl. | Other intermediaries | Insurers | Insurance groups and congl. | Intermediaries | Securities dealers | Trading venue | Central counterparties | Central securities depositories | Trade repositories | Payment systems | Participants | Fund management companies | SICAVs | Limited partnerships for CISs | SICAFs | Custodian banks | Asset manager CISs | Distributors | Representatives of foreign | Other intermediaries | SROs | DSFIs | SRO-supervised institutions | Audit firms | Rating agencies | |
| | | | | | | X | X | | | | | X | | | | | | | | | | | | | | | |

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I. Background and purpose

Article 39 of the Financial Market Infrastructure Act (FMIA; SR 958.1) sets out the duty of participants admitted to a trading venue under Article 34 para. 2 FMIA to report all the information necessary for transparent securities trading (“reporting duty”). 1

Securities dealers that engage in activities requiring authorisation in Switzerland but are not admitted as participants to a trading venue are required under Article 15 para. 2 of the Stock Exchange Act (SESTA; SR 954.1) to report all the information necessary to ensure a transparent market. 2

The trading supervisory body must have access to records of reportable transactions for the purpose of supervision (see Article 31 FMIA) so as to ensure that the trading venue can notify FINMA in the event of suspected violations of the law. 3

This circular explains the duty to report under Article 39 FMIA and Article 37 of the Financial Market Infrastructure Ordinance (FMIO; SR 958.11), Article 15 para. 2 SESTA and Article 31 of the Stock Exchange Ordinance (SESTO; SR 954.11) as well as Articles 2-5 of the FINMA Financial Market Infrastructure Ordinance (FMIO-FINMA; SR 958.111). 4

II. Scope of application

This circular applies to all trading venue participants under Article 34 para. 2 FMIA and to all other Swiss and foreign securities dealers under Article 2 let. d SESTA and Articles 2 and 3 SESTO (hereinafter referred to collectively as “participants”). 5

III. Definition of terms

Transactions: 6

Contracts entered into between participants to trade securities as defined in Margin no. 9 below or derivatives as defined in Margin nos. 9 and 10 below that have as their underlying at least one security admitted to trading on a Swiss trading venue. This definition includes both the execution of orders and the forwarding of orders for subsequent execution.

| | |
|---|----|
| Forwarding of orders: | 7 |
| <p>An order is forwarded when the participant involves a further participant for the purpose of executing the order or the transaction and acts in respect of that further participant in its own name for the account of a third party, in the name of a third party for the account of a third party or purely as an intermediary. This results in a chain of orders and/or transactions between the participants involved.</p> | |
| Admission to trading on a trading venue: | 8 |
| <p>The legal definition of the term “trading venue” can be found in Article 26 FMIA, that of “admission to trading” in Articles 35 and 36 FMIA.</p> | |
| Securities: | 9 |
| <p>Securities under Article 2 let. b FMIA in conjunction with Article 2 para. 1 FMIO that are admitted to trading on a trading venue in Switzerland. This definition also includes standardised derivatives suitable for mass trading such as exchange-traded derivatives (ETDs), warrants and structured products, including exchange-traded products (ETPs, a cover-all term for collateralised exchange-traded commodities (ETCs) and exchange-traded notes (ETNs)).</p> | |
| Derivatives: | 10 |
| <p>Derivatives under Article 2 let. c FMIA in conjunction with Article 2 para. 2 FMIO that are not securities as defined in Margin no. 9 above.</p> | |
| Swiss and foreign securities: | 11 |
| <p>Swiss securities</p> <p>Securities issued by a company with its registered office in Switzerland or listed in Switzerland.</p> <p>Foreign securities</p> <p>Securities issued by a company with its registered office outside Switzerland and not listed in Switzerland.</p> <p>Listing:</p> <p>Defined in Article 2 let. f FMIA.</p> <p>Primary listing</p> <p>If a company is not yet listed on any other exchange when it applies for a listing on a Swiss exchange, its only option is a primary listing.</p> <p>Secondary listing</p> <p>Listing of securities in a country other than the one where the company first had its shares listed.</p> <p>The following possibilities therefore exist:</p> | |

| Issuing company with registered office in Switzerland | Primary listing in Switzerland | Secondary listing on a trading venue in Switzerland | Classification |
|---|--------------------------------|---|--------------------|
| Yes | No | No | Swiss securities |
| Yes | No | Yes | Swiss securities |
| Yes | Yes | Yes | Swiss securities |
| No | Yes | No | Swiss securities |
| No | No | Yes | Foreign securities |
| No | No | No | Foreign securities |

IV. Principles of the duty to report

The duty to report applies to all participants as of their admission to a trading venue or their authorisation under Article 10 SESTA and ceases to apply when such admission or authorisation ends.

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Each individual transaction by a participant in the transaction chain, from order generation to forwarding and execution (e.g. client → participant 1 → participant 2 → trading venue / execution outside trading venue) must be reported. Where orders are forwarded, the first participant with which a client holds an account or custody account must report the required information on the beneficial owner (or submit a full report in the European Union format, see Margin no. 31).

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The further participants in a transaction chain report the participant that forwarded the order in place of the beneficial owner. Where orders are forwarded, each participant in the transaction chain must additionally report the unique transaction identification code (trade ID) provided by the trading venue. If there is more than one trade ID due to partial execution, all trade IDs must be reported. The participants are also entitled to entrust a single participant or a suitable third party with the task of submitting an individual report or a full report on the entire transaction chain (Art. 37 para. 5 FMIO).

Client orders executed internally must also be reported. Collective orders must be reported both when executed via a trading venue and when definitively allocated to clients. A direct placement to the client without booking to the nostro account requires only one report. The report on internal client allocations must be submitted before the close of trading on the following trading day at the latest. If a single report is submitted in consolidated form for several partial executions, this report may show the average price.

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V. Reportable transactions

The duty to report covers all of a participant's transactions in securities as defined in Margin no. 9 above as well as all transactions in derivatives where at least one underlying has a weighting of more than 25% and is a security as defined in Margin no. 9. If this 25% threshold is exceeded by the sum of several underlyings but not by one single underlying, the duty to report does not apply. 15

Where changes to the composition of the underlyings through discretionary decisions during the term of a derivative are excluded (passive management), the status at the time the derivative was created (i.e. whether or not the threshold was exceeded) applies to all transactions in that derivative. 16

Participants are additionally entitled to report transactions in derivatives that are not subject to any duty to report under this circular. 17

Transactions executed by participants via a trading venue in Switzerland as defined in Article 26 FMIA may be reported after the fact before the close of trading on the following trading day. 18

Transactions must be reported in Swiss francs, irrespective of whether the price is quoted in Swiss francs or a foreign currency. Prices must be converted into Swiss francs at a recognised reference exchange rate or the exchange rate prevailing on a liquid currency trading platform at the time of the transaction. 19

The duty to report covers both participants' own-account transactions and their transactions for clients (see Art. 37 para. 3 FMIO and Art. 31 para. 3 SESTO). Definitions of own-account and client trading can be found in FINMA Circular 2008/5 "Securities dealers" (Margin nos. 21 and 50). 20

VI. Exemptions from the duty to report

Transactions in securities and in derivatives with securities as their underlyings that are executed outside Switzerland do not have to be reported, subject to the conditions outlined in Margin nos. 22-26 below. 21

A. Transactions executed outside Switzerland in Swiss securities and in derivatives with Swiss securities as their underlyings

Participants under Article 34 para. 2 let. c FMIA (foreign participants) and foreign branches of Swiss securities dealers are not required to report transactions executed outside Switzerland in Swiss securities and in derivatives with Swiss securities as their underlyings, 22

provided that they fulfil the duty to report in the country in question and that the conditions specified in Article 37 para. 4 let. a FMIO or Article 31 para. 4 let. a SESTO are met.

Where there is no agreement to exchange information under Article 37 para. 4 let. a FMIO or Article 31 para. 4 let. a SESTO, foreign participants may also report transactions executed outside the trading venue and outside Switzerland in Swiss securities and in derivatives with Swiss securities as their underlyings to a foreign disclosure office recognised by the trading venue (see Margin no. 33). 23

B. Transactions executed outside Switzerland in foreign securities and in derivatives with foreign securities as their underlyings

All participants and foreign branches of Swiss securities dealers are exempt from the duty to report transactions in foreign securities and in derivatives with foreign securities as their underlyings in Switzerland if such transactions are executed via a recognised foreign trading venue or a recognised foreign organised trading facility (OTF) (see Art. 37 para. 4 let. b FMIO and Art. 31 para. 4 let. b SESTO)¹. 24

Transactions executed between a foreign participant and a foreign counterparty outside a trading venue and outside Switzerland in foreign securities and in derivatives with foreign securities as their underlyings are additionally not covered by the duty to report in Switzerland. Foreign participants may also report other transactions executed outside a trading venue and outside Switzerland in foreign securities and in derivatives with foreign securities as their underlyings to a foreign disclosure office recognised by the trading venue (see Margin no. 33). 25

Furthermore, foreign participants and foreign branches of Swiss securities dealers are not required to report transactions executed outside Switzerland in foreign securities and in derivatives with foreign securities as their underlyings, provided that the conditions specified in Article 37 para. 4 let. a FMIO or Article 31 para. 4 let. a SESTO are met. 26

VII. Information on the beneficial owner

For the purposes of the duty to report, establishing the identity of the beneficial owner is carried out in accordance with the Anti-Money Laundering provisions. By way of exception to this principle, however, operating legal entities, foundations and collective investment schemes are also to be reported as beneficial owners. In the case of trusts, the trustee must be reported. 27

Natural persons are reported using their nationality and date of birth together with an internal identification number created by the participant in the following order: 28

¹ The list of recognised foreign trading venues under Article 37 para. 4 let. b FMIO and Article 31 para. 4 let. b SESTO can be found on the FINMA website: www.finma.ch > Authorisation > Financial market infrastructures and foreign market participants.

1. Nationality format: two-letter country code according to ISO 3166-1 alpha-2;
2. Date of birth format: YYYYMMDD;
3. Participant's internal identification number. This can be the master number assigned to the business relationship, even if the participant has several business relationships with the same natural person and has assigned a different master number to each one.

If the participant has recorded more than one nationality for a particular person, it uses the country code that comes first in the alphabetical list according to ISO 3166-1 alpha-2. 29

If the beneficial owner is an operating legal entity, foundation or collective investment scheme, it is normally reported using the standardised international identification system for financial market participants, the Legal Entity Identifier (LEI). Where no LEI is available, the Business Identifier Code (BIC) according to ISO 9362:2014 or the Commercial Register number preceded by the country code (see Margin no. 28) may be reported. 30

Alternatively, a disclosure office may accept a full report in the European Union format as specified in the regulatory and technical implementing standards (RTS 22) for Article 26 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (MiFIR). Natural persons are identified in such reports either as set out in Margin no. 28 above or by means of CONCAT in accordance with Article 6 para. 4 RTS 22. The disclosure office may only allow such alternative reports under MiFIR if it is able to assess these equally for the purpose of supervising trading under Article 31 para. 1 FMIA. 31

VIII. Disclosure office

The Swiss trading venues operate a disclosure office that acts as the point of contact for submitting reports. 32

Foreign participants must report transactions executed outside the trading venue either to the trading venue's disclosure office or to a foreign disclosure office recognised by the trading venue. The trading venue requires the foreign disclosure office to provide it with the reported information for the purpose of supervising trading, i.e. information reported to a foreign disclosure office recognised by the trading venue must be forwarded to the Swiss disclosure office, or the Swiss disclosure office must be given access to such information. 33

IX. Transitional provision

The entry into force of this circular renders FINMA Circular 2008/11 "Duty to report securities transactions" null and void. 34

X. Summary of key information

| Information | Duty to report | Comments |
|-------------|----------------|----------|
|-------------|----------------|----------|

A. Equities

| | | | |
|---|-----|--|----|
| Buyback of own shares | Yes | Transactions resulting from buybacks of own shares are reportable. | 35 |
| Assignment of own (group) shares to staff | No | The internal transfer (assignment) of own (group) shares to staff is not reportable. | 36 |
| Exercise of convertible preferred shares | No | The exercise of preferred shareholders' right to convert their preferred shares into ordinary shares is not a fundamental element of securities trading and thus not reportable. | 37 |
| Issue of free shares (including stock dividends) | No | The issue of free shares takes place on the primary market and is not reportable. | 38 |

B. Bonds

| | | | |
|--|-----|--|----|
| Redemption of bonds at or prior to maturity | No | Bond redemptions are not securities transactions under the Financial Market Infrastructure Act. | 39 |
| Buyback of bonds | Yes | Buybacks of bonds admitted to trading on a trading venue in Switzerland are securities transactions under the Financial Market Infrastructure Act. | 40 |

| Information | Duty to report | Comments | |
|---|----------------|--|----|
| Distressed bonds | Yes | Even when the issuer fails to make interest payments, bonds still qualify as being admitted to trading and are subject to the duty to report. | 41 |
| Trading in delisted bonds | Yes | As long as they can continue to be traded on a Swiss trading venue, delisted bonds still qualify as being admitted to trading and are subject to the duty to report. | 42 |
| Separation of warrant bonds into warrant and “ex option” bond components | No | The act of separation itself, which comprises booking out the warrant bond and booking in the warrant and the “ex option” bond, is not reportable. | 43 |
| Exercise of conversion rights and warrants | No | The exercise of conversion rights (in relation to convertible bonds) and warrants (in relation to warrant bonds) is not a fundamental element of securities trading and thus not reportable. | 44 |

C. Derivatives

| | | | |
|--|----|--|----|
| Assignment of (OTC) options to staff | No | The internal transfer (assignment) of options to staff is not reportable. However, subsequent sales of OTC options by staff may be reportable. | 45 |
| Exercise and assignment of standardised derivatives | No | The exercise and assignment of derivatives contracts admitted to trading on a trading venue in Switzerland are not fundamental elements of securities trading and thus not reportable. | 46 |
| Exercise of warrants and structured products | No | The exercise of warrants and structured products admitted to trading on a trading venue in Switzerland, obligations arising from their exercise and redemption or delivery on their expiry are not fundamental elements of securities trading and thus not reportable. | 47 |

| Information | Duty to report | Comments | |
|--------------------------------|----------------|---|----|
| Exercise of OTC options | No | The exercise of OTC options on securities admitted to trading on a trading venue in Switzerland and obligations arising from their exercise are not fundamental elements of securities trading and thus not reportable. | 48 |
| Issue of free options | No | The issue of free options (including shareholder options) takes place on the primary market and is not reportable. | 49 |

D. Pre-emptive rights

| | | | |
|---------------------------------------|-----|--|----|
| Trading in pre-emptive rights | Yes | Pre-emptive rights are securities under Article 2 let. b FMIA and are subject to the duty to report. Internal offsetting of purchases and sales must be reported on a collective basis. Participants of a trading venue fulfil the duty to report by using the trading system. Other Swiss securities dealers are also required to report. | 50 |
| Exercise of pre-emptive rights | No | The exercise of pre-emptive rights admitted to trading on a trading venue in Switzerland is not a fundamental element of securities trading and thus not reportable. | 51 |

E. Collective investment schemes

| | | | |
|---|----|--|----|
| Issue and redemption of fund units | No | The issue and redemption of fund units take place via the custodian bank on the primary market and are not fundamental elements of securities trading and thus not reportable. | 52 |
|---|----|--|----|

| Information | Duty to report | Comments | |
|--|----------------|---|----|
| Creation and redemption of exchange-traded funds (ETFs) from the issuer's point of view: a) issue and redemption of ETF units b) receipt and return of the basket of shares | No | The creation/issue of ETF units by the ETF issuer is a primary market transaction and is not reportable. The redemption of ETF units by the ETF issuer also qualifies as a primary market transaction and does not give rise to a duty to report. | 53 |
| | Yes | The receipt and return of the basket of shares, meanwhile, do give rise to a duty to report for the ETF issuer on creation and redemption. These are securities transactions (transfers of ownership), not exchanges. | |
| Creation and redemption of ETFs from the market maker's point of view: a) issue and redemption of ETF units b) receipt and return of the basket of shares | No | The receipt and redemption of ETFs through the creation and redemption processes do not give rise to a duty to report for the market maker. | 54 |
| | Yes | The transfer and return of the basket of shares, meanwhile, do give rise to a duty to report for the market maker on creation and redemption. These are securities transactions (transfers of ownership), not exchanges. | |

F. Transactions outside Switzerland

| | | | |
|--|-----|--|----|
| Transactions in American Depositary Receipts (ADRs) where the underlying share has its primary listing in Switzerland | Yes | ADRs are securities (share certificates denominated in USD, mostly in small denominations) that are not formally identical to the corresponding Swiss securities. They are subject to the duty to report if the underlying share is a Swiss security that has its primary listing on a trading venue in Switzerland. | 55 |
| Transactions in ADRs where the underlying share does not have its primary listing in Switzerland | No | There is no duty to report if the underlying share does not have its primary listing on a trading venue in Switzerland. | 56 |

| Information | Duty to report | Comments |
|-------------|----------------|----------|
|-------------|----------------|----------|

G. Other reportable information

| | | | |
|---|-----|--|----|
| Securities lending and borrowing | No | Securities lending is not a fundamental element of securities trading. | 57 |
| Repurchase agreements | No | Repurchase agreements (repos) are not reportable. | 58 |
| Transfer as collateral | No | The transfer of securities and derivatives as collateral is not reportable. | 59 |
| Combination of spot and futures transactions concerning securities | Yes | These are two separate transactions and must be reported as such. The futures transaction must also be reported on the trade date (time of entering into the obligation). | 60 |
| Volume-weighted average price (VWAP) orders | Yes | Under Article 3 FMIO-FINMA, hedging transactions for the purpose of fulfilling VWAP orders must be reported as client transactions (with the participant as agent). A VWAP order is a client order with a price guaranteed by the securities dealer. | 61 |
| Discretionary orders | Yes | Under Article 3 FMIO-FINMA, discretionary orders must be executed and reported as client transactions (with the participant as agent). They must be executed separately from nostro trading. | 62 |

| Information | Duty to report | Comments | |
|--|----------------|--|----|
| Grey market transactions (e.g. in equities, warrants and bonds) | No | In principle, transactions prior to the first day of trading, i.e. before the official admission to trading (known as grey market transactions) are treated as secondary market transactions (see FINMA Circular 08/4 “Securities journals”, Margin no. 22) and are reportable under Article 39 para. 1 FMIA or Article 15 para. 2 SESTA from the first day of trading (see Margin no. 12). There is no duty to report between the date of public announcement/launch and the first day of trading (the grey market period). Transactions executed during this period do not have to be reported after the fact on the first day of trading. | 63 |
| Secondary offering | Yes | Where securities are placed directly with clients without the use of a nostro account, each client transaction must be reported separately. If the securities are first booked to the securities dealer’s nostro account and only placed with clients in a second step, two reports are required: one for the booking to the nostro account, another for the placement with the client or third party. | 64 |
| Transactions outside a trading venue during interruptions to trading | Yes | Transactions executed outside a trading venue are reportable, regardless of any interruption to trading. | 65 |
| Transactions outside a trading venue while trading is suspended | Yes | Transactions executed outside a trading venue in securities that are suspended from trading are reportable for the duration of the suspension. | 66 |
| Exchange of American Depositary Receipts (ADRs) for Swiss securities | No | Exchanging ADRs for Swiss securities does not entail a change in beneficial owner. | 67 |
| Transactions in securities provisionally admitted to trading | Yes | Securities that are provisionally admitted to trading are treated as having been admitted to trading (see Margin no. 8). | 68 |
| Transactions initiated by representative offices of foreign securities dealers in Switzerland | Yes | Either the representative office or the foreign securities dealer itself must fulfil the duty to report. | 69 |

| Information | Duty to report | Comments | |
|---|----------------|--|----|
| Transactions between natural persons and/or legal entities without securities dealer status | No | | 70 |
| Transactions between natural persons and/or legal entities without securities dealer status in which a participant or securities dealer acts purely as an intermediary | Yes | Transactions between two unregulated parties that involve a participant or securities dealer acting neither as buyer nor as seller must be reported once by the participant or securities dealer. | 71 |
| Intermediation of transactions in securities and derivatives with securities as their underlyings between clients where the intermediating participant or securities dealer buys the position from one client and sells it to another client | Yes | In this case, the participant or securities dealer executes two transactions (purchase and sale) and must therefore submit two reports. | 72 |
| Transactions executed by independent asset managers with securities dealer status | Yes | A licensed securities dealer operating as an independent asset manager is subject to the duty to report. | 73 |
| Direct orders from clients of a third-party bank to participants of a trading venue | Yes | Depending on the type of transaction concerned, the trading venue participant reports either automatically using the trading venue's systems or via appropriate third-party systems. The participant or securities dealer that maintains the account or custody account is also required to report (see Margin nos. 12-14 and 80). | 74 |
| Orders from group companies | Yes | Transactions due to orders received from other group companies (e.g. a parent company or subsidiary) must be identified as client transactions with the participant or securities dealer as agent. | 75 |

| Information | Duty to report | Comments | |
|---|----------------|--|----|
| Merger of participants or securities dealers (share exchange, cash payment of fractions) | No | When participants or securities dealers merge with each other, there is no duty to report in respect of the shares exchanged. The remaining fractions from the share exchange, which are paid out in cash, are also not covered by the duty to report. | 76 |

H. Miscellaneous

| | | | |
|--|--|--|----|
| Duty to report/record-keeping duties | | Participants and securities dealers must fulfil the record-keeping duties under Article 38 FMIA in conjunction with Article 36 FMIO and Article 15 para. 1 SESTA in conjunction with Article 30 SESTO irrespective of the duty to report. These are more stringent in that securities that are not admitted to trading on a trading venue in Switzerland must also be recorded in the journal (see FINMA Circular 08/4 “Securities journals”). | 77 |
| Verifying reported transactions | | Responsibility for fulfilling the duty to report in terms of content, deadlines and compliance with the legal requirements always lies with the participant or securities dealer. Audit firms verify compliance with the duty to report in accordance with FINMA Circular 13/3 “Auditing”. | 78 |
| Delegation or outsourcing of the duty to report | | A participant or securities dealer may delegate or outsource its duty to report to a third party. If this third party is also a participant or securities dealer and is simultaneously tasked by the delegating or outsourcing participant or securities dealer with forwarding transactions in securities or in derivatives with securities as their underlyings, it must submit two reports for each transaction: one for itself and one for the delegating or outsourcing participant or securities dealer. | 79 |

| Information | Duty to report | Comments |
|------------------|----------------|---|
| Reportable price | | <p>In principle, the price actually achieved on the market must be quoted in order to fulfil the duty to report.</p> <p>Net transactions: A net transaction is one where the price charged to the client includes all fees and commissions. For net transactions, the amount after deduction of all fees and commissions must be reported as the price. Where a participant or securities dealer acts as an intermediary in a transaction between two clients on a commission basis, the mid price may be charged and reported, provided that the same fees and commissions are charged to both clients. In all other cases, the reportable price is calculated by deducting the client-specific fees and commissions from each of the two net prices.</p> |

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