

## Press release

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# FINMA opens consultation on fully revised circular "Market conduct rules"

The Swiss Financial Market Supervisory Authority FINMA can now take action against all persons who use insider information or engage in market manipulation. Following the revision of the Stock Exchange Act and the Stock Exchange Ordinance, FINMA is fully revising Circular 08/38 on 'Market conduct rules'. Together with the section on general market supervision, the full revision also includes the part on specific organisational provisions for FINMA-supervised institutions. The consultation runs until 13 May 2013.

The revision of the Stock Exchange Act and the Stock Exchange Ordinance with respect to market offences and market abuse provides, for the first time at supervisory law level, specific statutory provisions that prohibits all natural persons and legal entities from engaging in insider trading and market manipulation. This means that Switzerland is moving closer to international standards. Prior to this, FINMA and its predecessor, the Swiss Federal Banking Commission (SFBC), could only enforce market conduct rules against supervised market participants. FINMA is implementing these new provisions as part of its full revision of Circular 08/38.

### Clear definition of prohibition standards

The first part (Sections III-V) of the Circular details the general rules on preventing insider information and market manipulation. These rules apply to all natural persons and legal entities active on the financial market. The list provided includes abusive practices such as scalping, spoofing, wash trades, banging the close, etc. and is not conclusive. Moreover, a conceptual change has been made to the Circular: the rules on market conduct have been unbundled from those on the duty of loyalty as prescribed in Article 11 SESTA. The Circular on 'Market conduct rules' will thus focus on market supervision in the traditional sense.

## **Market abuse on the primary market, with foreign securities and in other markets**

In order to assess the proper business conduct of an institution under prudential supervision, the Circular prescribes that not only securities dealing on Swiss stock exchanges is relevant; it now states more precisely what has been in practice for many years, i.e. that securities dealing in the primary market, on a foreign stock exchange and business activities such as the commodities and foreign exchange markets are also of importance when assessing proper business conduct (Section VI).

## **Revised organisational requirements**

Section VII of the Circular that focuses on organisational requirements has also been revised. Here in particular recent experience and, where possible, international standards are taken into consideration; the target group has also been extended. In the revised Circular, organisational requirements are no longer directed exclusively at securities dealers, but also at all institutions under prudential supervision. The requirements specified however, are not the same for every supervised institution: depending on its business activities, size and structure, they are applied on an individual basis. The organisational measures necessary must be defined according to a risk assessment that is conducted regularly.

## **Legislative framework of the Circular**

The revised Stock Exchange Act and Stock Exchange Ordinance are scheduled to come into force on 1 May 2013. The new rules in the Stock Exchange Act provide standards in criminal and supervisory law that capture market abuse on a broader basis and take account of international regulations. In particular, the insider criminal law provision has been newly regulated, the offence for price manipulation defined and universally valid elements for the prudential definition of improper market conduct provided. The Stock Exchange Ordinance sets out behaviour that is allowed in terms of 'safe harbours'.

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