

Press release

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Embargo:

FINMA opens consultation on circular “Direct transmission”

The Swiss Financial Market Supervisory Authority FINMA is opening the consultation period for the draft circular “Direct transmission”. This new circular assists supervised institutions in autonomously transmitting non-public information to foreign authorities and entities.

In accordance with the Financial Market Supervision Act (Art. 42c FINMASA), from 1 January 2016 institutions supervised by FINMA can transmit non-public information directly to foreign authorities and entities under certain conditions. The planned circular “Direct transmission” sets out the new statutory article in more detail. This will assist supervised institutions to apply the standard in a uniform manner, thus minimising the associated risks. The consultation period for the new circular ends on 1 September 2016.

Autonomous and uniform application of law by supervised institutions

In principle, non-public information may only be transmitted to the competent foreign financial market supervisory authorities and other foreign entities responsible for supervision provided the information to be transmitted is to be used solely for the purpose of implementing financial market law. This information may only be forwarded to other authorities, courts or bodies for this purpose. Furthermore, the authority requesting the information shall be bound by official and professional secrecy provisions. The circular allows supervised institutions to assume that these conditions have in principle been met if FINMA has already provided administrative assistance to the relevant supervisory authority or the courts have already ascertained that administrative assistance can be provided to this authority. However, this only applies if there is no indication that the conditions cannot be met in a particular situation. FINMA will publish a list of these financial market supervisory authorities on its website.

The circular also describes the conditions under which non-public information relating to clients' and supervised institutions' transactions may be transmitted without the authorities or entities receiving the information having to meet the conditions mentioned above regarding confidentiality and speciality (Art. 42c para. 2 FINMASA). In such cases, information can be transmitted to the extent it is mandatory for the execution or approval of transactions.



In addition, the circular lists some examples of situations in which the transmission of information of substantial importance must be reported to FINMA beforehand, as well as situations in which information can be transmitted directly without any prior reporting. The circular also sets out the procedure expected in this regard. The criteria for determining whether the transmission of information is deemed substantial are based on which information is required by FINMA to fulfil its supervisory duties.

Rights of clients and third parties are safeguarded

In general, direct transmission is only permitted if the rights of clients and third parties are safeguarded. These rights arise not only from financial market law, but also from other areas of public and civil law. It is the responsibility of the supervised institutions to safeguard these rights. The circular does not contain any provisions in this regard.

Finally, FINMA may reserve administrative assistance channels for certain transmissions of information or generally for certain supervised institutions, situations or foreign financial supervisory authorities or entities. In such cases, supervised institutions may not transmit any information directly. The foreign supervisory authorities requesting the information must instead submit their queries to FINMA by making a request for assistance.

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