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# REGULATIONS OF THE SRO POLYREG ACCORDING TO ART. 25 AMLA

## A. Overview and general provisions

### §1 Purpose of the Regulations

[1] According to §22 of the Statutes of the SRO PolyReg these Regulations shall specify the duties of due diligence according to Chapter 2 of the Federal Act on Combating Money Laundering and Terrorist Financing of 10 October 1997 (Anti-Money Laundering Act - AMLA; SR 955.0) and determine how to fulfil them.

[2] These Regulations also determine and specify:

a) the conditions for the affiliation and exclusion of financial intermediaries;

b) the training of the affiliated financial intermediaries;

c) the monitoring procedure;

d) sanctions in case of breaches of duties.

### §2 Scope of application

These Regulations apply for all financial intermediaries who are a member of the SRO PolyReg and for their organs, managing persons and all those employees and auxiliary persons entrusted with functions in the domain of financial intermediary activities.

### §3 Guidelines

[1] Financial intermediaries organise themselves and must take the measures that are required to prevent money laundering and terrorist financing in their field of business.

[2] Financial intermediaries are obliged to fulfil these Regulations, the Statutes and further rules of the SRO PolyReg. In particular, financial intermediaries are obliged to:

a) act in good faith;

b) fulfil the applicable provisions for their business activity, in particular the Anti-Money Laundering Act and the relevant norms of the Swiss Criminal Code (SCC), especially Art. $305^{bis}$, $305^{ter}$, $260^{ter}$ and $260^{quinquies}$ of the Swiss Criminal Code;

c) inform the customers about the legal provisions, in particular of the AMLA and its effect on the business relationship;

d) document all business relationships in accordance with the commercial principles and to preserve these documents in the legally prescribed manner;

e) avoid becoming involved in business of their foreign parent-, sister- or subsidiary company to escape existing rules on combating money-laundering and terrorist financing or audits;

f) record globally, as well as limit and monitor their legal and reputational risks and ensure that their foreign branches or subsidiary companies are compliant with the basic principles of anti-money laundering. They must also take into account the risks of new products, business practices, and technologies and must use a risk-based approach especially in the risk classification of business relationships and sanctions.

## § 4 **Acquisition of membership**

A financial intermediary can apply for membership of the SRO PolyReg if it fulfils the requirements not only of the Statutes, but also the following conditions:

a) it meets the requirements of Art. 14 para. 2 of the AMLA; and

b) Shareholders and shareowners of the financial intermediary, who hold a voting or capital participation of a minimum of one-third, must have a criminal record extract free of any criminal record that might not guarantee the compliance of the financial intermediary.

## § 5 **Membership lists (Art. 26 of the AMLA)**

The SRO PolyReg must inform the Swiss Financial Market Supervisory Authority (FINMA) about their affiliated members, refused affiliation requests, withdrawn and excluded members as well as about the opening and closing of sanction procedures.

## § 6 **Overview of the duties of the financial intermediary**

[1] It is prohibited for the financial intermediary to accept, hold or assist in the investment or transfer of assets which it knows or must assume derive from a crime or an aggravated tax misdemeanour, or stem from criminal organisations, or are intended to finance terrorism. The financial intermediary commits money laundering according to Art. 305$^{bis}$ SCC, if it carries out an act that is aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets which he knows or must assume originate from a felony or aggravated tax misdemeanour.

[2] The financial intermediary must not maintain business relationships with companies or persons whom it knows, or must assume, finance terrorism or support such a criminal organisation in any form.

[3] The financial intermediary is liable to prosecution according to Art. 305$^{ter}$ SCC if, while acting in a professional capacity, it accepts, holds on deposit, or assists in investing or transferring outside assets and fails to ascertain the identity of the beneficial owner of the assets with the care that is required in the circumstances.

[4] The financial intermediary is liable to prosecution according to Art. 260$^{quinquies}$ para. 1 SCC, if it collects or provides funds with a view to financing a violent crime

that is intended to intimidate the public or to coerce a state or international organisation into carrying out or not carrying out an act.

[5] In detail, the affiliated financial intermediaries have the following duties:

a) Identification of the customer and the representative of legal entities according to §§7 et seq.;

b) Establishing the identity of the beneficial owner or the controlling person according to §§18 et seq.;

c) Repetition of the identification or the establishment of the beneficial owner and termination of the business relationship in accordance with §§26 et seq.;

d) Identification of the nature and purpose of the business relationship according to §30;

e) Special clarification according to §§31 et seq.;

f) Duty to keep records according to §§37 et seq.;

g) Organisational measures according to §§40 et seq.;

h) Duty to report according to §§42 et seq.;

i) Freezing of assets and prohibition of information according to §§44 et seq.;

j) Training obligation according to §§60 et seq.

## B. Identification of the customer (Art. 3 of the AMLA)

### § 7 Time of identification

[1] When establishing a business relationship or a spot transaction of considerable financial value with a customer not previously identified, the financial intermediary must verify the identity of the customer on the basis of a document of evidentiary value.

[2] A business relationship is in effect at the time of conclusion of the contract.

[3] In the case of a contract being concluded without the customer being present, the identification, the identity of the beneficial owner and the identification of the nature and purpose of the business relationship shall be promptly made. Until this has occurred, the financial intermediary may not undertake any transactions or related dispositions of assets.

### § 8 Information about the customer

[1] At the establishment of a business relationship or the execution of a spot transaction of considerable financial value according to §14 para. 1 and 2 the financial intermediary must obtain the following information:

a) for natural persons and owners of sole proprietorships: surname, first name, business name (where applicable), date of birth, address and nationality;

b) for legal entities, as well for partnerships and sole proprietorships entered in the commercial register and domiciled in Switzerland: business name and domicile address.

[2] If a customer originates from a country in which dates of birth or residential addresses are not used, these requirements will not apply. Such exceptional cases must be documented in a signed and dated memorandum.

[3] In the case of business relationships with trusts, the trustee shall be identified. Furthermore, the trustee must attest in writing that it is eligible to open the business relationship with the financial intermediary on behalf of the trust.

[4] If a legally eligible third party opens a business relationship in the name of an underage person, the initiating adult shall be identified. If a discerning underage person opens a business relationship on their own, they shall be identified.

### § 9 **Identification of natural persons**

[1] The identification of natural persons occurs by examining a document bearing a photograph, issued by a Swiss or a foreign authority, which is suitable for identification.

[2] If a natural person is not in possession of an identification document within the meaning of these Regulations, their identity may, by way of exception, be established on the basis of a substitute evidential document (e.g. confirmation of residence, acknowledgment of receipt of documents). Any such exceptional situation must be documented in a signed and dated memorandum.

[3] In the case of doubt that the document is authentic or if the photograph is that of the person to be identified, a further evidential document must be obtained.

[4] A sole proprietorship with domicile in Switzerland can also be identified by an extract of the commercial register or an equivalent document (cf. §11 and §12).

[5] When establishing a business relationship with an ordinary partnership, the financial intermediary identifies the customer by identifying all partners or at a minimum, identifying one partner and all persons with signature power on behalf of this business relationship.

### § 10 **Conclusion of a contract by correspondence**

[1] If a business relationship is entered into by correspondence, the customer must identify itself by sending a certified copy of the identification document, as well as the information required for identification in accordance with §8.

[2] The residential address of the customer in a contract by correspondence shall be determined by postal delivery or equivalent, as long as the address does not result from the identification documents.

[3] If the customer's identity is verified online or by way of a video process, or if the declaration regarding the identity of the beneficial owner is submitted electronically, the provisions of the latest version of FINMA Circular 2016/7 must be observed.

### § 11 **Identification of legal entities and companies**

[1] The identity of a legal entity, partnership or sole proprietorship, which is registered in the commercial register and domiciled in Switzerland, may be established on the basis of an extract of the commercial register issued by the registrar.

[2] Provided that all the relevant information is supplied, legal entities or partnerships may be identified on the basis of a printout from a database run by an official authority (e.g. ZEFIX) or from a trustworthy privately managed directory or database (e.g. Teledata, Dun & Bradstreet, Creditreform).

[3] Legal entities not listed in the commercial register (such as associations or foundations) or partnerships with legal capacity must be identified on the basis of their statutes or equivalent documents. For this purpose, equivalent documents shall be understood to mean, apart from §9, the owner's identification documents, the certificate of incorporation, the contract of the formation, an external auditor's certificate, a factory inspectorate permit or a written extract from a trustworthy privately managed directory or database (e.g. Teledata, Dun & Bradstreet, Creditreform).

[4] The extract of the commercial register, the external auditor's certificate or the directory or database printout may be no more than twelve months old and must reflect the current situation of the company.

[5] The financial intermediary itself shall obtain the ZEFIX printout or the extract from the directories and databases referred to in para. 2 and attribute the mark 'printed on ...' dated and signed.

[6] The identity of legal entities and partnerships domiciled abroad may be established on the basis of an extract of the commercial register or an equivalent document (e.g. notarised contract of formation, "certificate of incorporation") or on the basis of a written extract from an official or trustworthy privately managed database or directory, provided that this document supplies all the relevant information.

### § 12 **Identification of the representatives of legal entities**

[1] Where the customer is a legal entity, partnership or a sole proprietorship identified by means of an extract of the commercial register and is domiciled in Switzerland, the financial intermediary must acknowledge the provisions regulating the power to bind the legal entity of these persons, who enter into the business relationship on behalf of the legal entity. The identification of these persons needs to be verified.

[2] The provisions regulating the power to bind the legal entity may be confirmed by an extract of the commercial register of the customer, a power of attorney, an excerpt of the minutes or similar documentation with a valid signature in the name of the customer. The authorisation shall be documented. No authentication is needed.

[3] A confirmation of a power of attorney provided orally must be recorded in a memorandum.

### § 13 **Waiver of the identification**

[1] The financial intermediary may dispense with the identification of a legal entity when it is listed on a stock exchange in Switzerland or abroad.

[2] The financial intermediary can also dispense with the identification of public law customers of Switzerland, e.g. states, cantons, communes or further public law corporate bodies, institutions and their legally competent department or units, such as the police, fire brigade, schools, etc.

[3] The reasonable ground for the waiving of the identification must be documented in a dated and signed memorandum.

[4] The financial intermediary can also dispense with the identification for nonreloadable instruments for electronic payment methods, if:

a) the money stored electronically is exclusively used by the customer to pay for goods and services electronically;
b) not more than CHF 250 is available for each data carrier;
c) not more than CHF 1,500 is available per transaction and per customer.

§ 14 **Spot transactions**

[1] Spot transactions, provided that no long-term business relationship is established, mean all cash transactions, in particular money exchange, the sale of traveller's cheques, the cashing of cheques, the cash subscription of bearer bonds (e.g. cash bonds or bonds) and the sale and purchase of precious metals, as well as single transactions for casual customers.

[2] The obligation to identify the customer for spot transactions exists:

a) In the case of money and asset transfers[1] abroad, the instructing party shall be identified in every case.
b) In the case of money and asset transfers to Switzerland from abroad, the payment recipient shall be identified if one or more transactions that appear interlinked exceed the amount of CHF 1,000 (money remitting).
c) When a single transaction involving a virtual currency or several of such transactions, which appear interlinked, reach or exceed the amount of CHF 1,000 and do not constitute money or asset transfers and no long-term business relationship is associated with them.
d) In the case of money exchange transactions, when the denomination of notes or coins in one currency is exchanged, or when coins or notes of one currency are converted to another currency and the value of the entire transaction or a number of apparently linked transactions exceeds CHF 5,000.
e) In all other spot transactions in which a single or several of apparently interlinked transactions reach or exceed the amount of CHF 15,000.

[2bis] If cash payments or other anonymous means of payment are accepted for the sale or purchase of virtual currencies, the financial intermediary must implement technical measures to make sure that the limit pursuant to §14 para. 2 (c) is not exceeded by interlinked transactions within 30 days.

[3] If there are grounds for suspicion of possible money laundering regarding para. 2, the identification must be carried out even if the relevant amounts have not been reached.

[4] The financial intermediary may waive the identification of the customer, provided that it has already conducted transactions for that party within the sense of

[1] A money and asset transfer is defined as the transfer of assets by receiving cash, precious metals, virtual currencies, checks or other methods of payment in Switzerland and payment of an appropriate sum to a third party in cash, precious metals, virtual currencies or cashless transfer, transfer or other use of a payment and settlement system abroad, or in the opposite direction, provided that there is no long-term business relationship associated with these transactions.

para. 1 or 2 and have assured itself that the customer is the very same person as the one who had been initially identified (in the first transaction).

### § 15 **Authentication of documents**

[1] The financial intermediary has the original identification documents or copies thereof, which have been authenticated, presented to them. It shall place the authenticated copies in its files or make a copy of the document presented. It must confirm with signature and date on the photocopy that the document originally inspected was the original or an authenticated copy.

[2] The authentication of the copy of the identification document may be issued by:

a) the financial intermediary itself, when it inspected and copied the original document;

b) by a notary or an attorney-at-law admitted in Switzerland or a public authority which customarily performs such authentication services;

c) a Swiss financial intermediary in accordance with Art. 2 para. 2 or 3 of the AMLA or foreign financial intermediary who carries on an activity in accordance with Art. 2 para. 2 or 3 AMLA, provided that it is subject to equivalent regulation and supervision in relation to combating money laundering.

[3] Obtaining a copy of an identification document from the database of a recognised provider of certification services in accordance with the Federal Act on Electronic Signatures of 18 March 2016 in combination with electronic authentication of the customer in this context also counts as valid confirmation of authenticity. The copy of the identification document must be provided together with a qualified certification issued by the service.

### § 16 **Waiving authentication**

[1] The financial intermediary may dispense with the authentication if it takes other measures enabling the verification of identity and address of the customer. The measures taken must be documented.

[2] When issuing credit and consumer cards by correspondence, it can be dispensed with the need to obtain an authentication of the copy of the identification document, as long as the monthly limit of the card does not exceed CHF 25,000.

### § 17 **Failure of the identification of the customer**

If the customer cannot be identified, the financial intermediary shall refuse the business relationship or terminate it in compliance with Art. 9b AMLA and Art. 12a and 12b of the Ordinance on Combating Money Laundering and Terrorist Financing (AMLO, SR 955.01).

## C. Establishing the beneficial owner (Art. 4 of the AMLA)

### § 18 Beneficial owner

[1] The beneficial owner must be a natural person.

[2] The beneficial owner of an operational legal entity or partnership (controlling person) are those natural persons who ultimately control the entity or partnership directly or indirectly, alone or together with others owning at least 25 percent of all capital or voting power or control them in a different manner. If these persons cannot be identified, the identity of the member of the highest managing body shall be established as the controlling person.

[3] A domiciliary company cannot be a beneficial owner. The beneficial owner of a domiciliary company is defined as the person who based on consultation, managerial authority, organ status, voting or capital participation or for other reasons ultimately has the ability to dispose or to arrange the disposition of the assets of the domiciliary company.

### § 19 Establishing the beneficial owner and the controlling person

[1] The financial intermediary must identify the beneficial owner or the controlling person with the due diligence required in the circumstances. The financial intermediary must obtain a written declaration from the customer regarding the identity of the individual who is the beneficial owner, if:

a) the customer is a natural person and not identical to the beneficial owner or if there is any doubt about the matter;

b) the customer is a domiciliary company;

c) a spot transaction of considerable financial value in accordance with §14 para. 2 lett. c) to e), which equals or exceeds the amount of CHF 15,000, is being conducted;

d) a money or assets transfer according to §14 para. 2 lett. a) is being conducted;

e) the customer is an operational legal entity or partnership and is not listed on stock exchange nor a subsidiary company which is controlled in majority by such a company.

[2] The declaration concerning the beneficial owner (Form A or Form K for controlling person) must contain the following information:

a) in cases of para. 1 lett. a) - d): surname, first name, date of birth, address and nationality of the beneficial owner or owners (Form A);

b) in cases of para. 1 lett. e): the information in accordance with Art. 697l Code of Obligations, such as the first and surname as well as the address of the beneficial owner, in the case of bearer shares, the nationality and date of birth must be included (Form K);

c) if in the case of para. 1 lett. e) it is known that the customer holds the assets on behalf of a third party or there are concrete indications for that, then the beneficial owner of the assets shall be identified according to para. 2 lett. a).

[3] The declaration must be signed by the customer or by one of its authorized signatories. If the financial intermediary or its employees, who request the beneficial owner declaration, act in fiduciary matters for the customer, the declaration may be signed by the beneficial owner itself.

[4] If a customer or beneficial owner comes from a country in which birth data or residential addresses are not used, this information cannot be included. The reasons for these exceptional cases must be documented in a signed and dated memorandum.

[5] No establishment of the identity of the beneficial owner is needed if the disclosure would be contrary to the provisions concerning the professional secrecy of lawyers and notaries in their customary activities according to §47 of these Regulations.

[6] In the case of a non-reloadable data instrument in the field of electronic payment methods the establishment of the identity of the beneficial owner can be waived if:

a) the electronically stored money exclusively enables the customer to pay for services and goods electronically;

b) not more than CHF 250 is made available for each data carrier;

c) not more than CHF 1,500 is available per transaction and customer.

### § 20 **Exemptions from the duty to establish**

[1] No declaration on the beneficial owner must be obtained if the customer:

a) is a Swiss financial intermediary according to Art. 2 para. 2 lett. a or b - c of the AMLA with a residence or domicile in Switzerland;

b) is a financial intermediary with a residence or domicile abroad, which conducts an activity under Art. 2 para. 2 lett. a or b - c of the AMLA provided that it is subject to an equivalent regulation and supervision in combating money laundering;

c) is a securities firm according to Art. 2 para. 2 lett. d of the AMLA with a domicile in Switzerland which manages the accounts on its own according to Art. 44 para. 1 lett. a of the Financial Institutions Act (FinIA, SR 954.1);

d) is a financial intermediary with a domicile abroad, which carries on an activity under Art. 2 para. 2 lett. d of the AMLA, manages the accounts on its own and is subject to comparable supervision and regulations;

e) is a tax-exempt occupational benefits (pension) fund according to Art. 2 para. 4 lett. b of the AMLA.

[2] In the case of suspected misuse or general warnings of the FINMA regarding individual institutions or institutions of a particular country, the customer in accordance with Para. 1 must also provide a declaration of the beneficial owner.

[3] The financial intermediary need not obtain a written declaration on the controlling person, provided that the customers are as follows:

a) companies that are listed on a stock exchange, or a subsidiary mostly controlled by such a company;

b) authorities;

c) financial intermediaries according to Art. 2 para 2 lett. a - $d^{ter}$ of the AMLA and tax-exempt occupational benefits (pension) funds domiciled in Switzerland;

d) banks, securities firms, fund managers, CISA investment companies, managers of collective assets, life insurance companies with a domicile or residence abroad, provided that it is subject to the supervision that is equivalent to the Swiss law;

e) other financial intermediaries with a domicile or residence abroad, if it is subject to adequate prudential regulation and supervision in combating money laundering and terrorist financing;

f) ordinary partnerships.

### § 21 **Collective investment scheme or investment companies**

[1] If the customer is a collective investment scheme or an investment company with 20 or fewer investors, the financial intermediary must obtain a declaration of the beneficial owner.

[2] If the customer is a collective investment scheme or an investment company with more than 20 investors, the financial intermediary need only obtain a declaration of the beneficial owners if the investment scheme or investment company is not subject to adequate supervision and regulations in regard to combating money laundering and terrorist financing.

[3] If the collective investment scheme, investment company or domiciliary company is listed on a stock exchange, no declaration of the beneficial owner is needed.

[4] If a financial intermediary is subject to adequate rules to combat money laundering and terrorist financing and acts as a promoter or sponsor for a collective investment scheme or an investment company as stipulated in §20 para. 1, it is possible to waive the declaration of the beneficial owner.

### § 22 **Doubt as to beneficial ownership**

Doubts regarding the beneficial owner of the customer are possible in the following cases:

a) a power of attorney is granted to a person who is not sufficiently closely related to the customer;

b) the assets contributed by the customer are clearly beyond their financial resources;

c) a business relationship is unusually entered into without any previous personal contact;

d) the contact with the customer reveals further unusual findings.

### § 23 **Domiciliary companies**

[1] Domiciliary companies are defined as legal entities, companies, institutions, foundations, trusts, fiduciary companies and similar entities that do not operate a trading, manufacturing or other commercial business. Specific indications of a domiciliary company are that it:

a) does not maintain its own premises, in particular if the company's address is a c/o address, domiciled in a lawyer's office, a fiduciary company or a bank; or

b) has no employees or the employees' tasks are solely administrative.

[2] Legal entities and companies domiciled in Switzerland are not considered as domiciliary companies when they:

a) protect their members' or beneficiaries' interests by means of common self-help or those that pursue political, religious, scientific, artistic, charitable, sociable or similar aims, provided that these statutory purposes are actually carried out;

b) directly or indirectly hold a majority in one or several operating companies and whose main business is not the asset management of a third party (holding companies).

[3] In a business relationship with an ordinary partnership, which has more than four shareholders, no connection to countries with increased risks and a purpose pursuant to Para. 2 lett. a), no declaration of the beneficial owner is needed unless there is any evidence that the company is acting on the account of others.

### § 24 **Partnerships, trusts and other asset units**

[1] In the case of partnerships, trusts or other asset units which have no beneficial owner, the declaration of the customer must contain the information according to §19 para. 2 lett. a for the following persons:

a) the actual (not fiduciary) founder;

b) the trustees;

c) any curators, protectors or other such persons;

d) the beneficiaries by name;

e) if there are no beneficiaries by name: a class of persons who could be seen as beneficiaries, broken down by category;

f) the persons who can instruct the customer or its organs;

g) for revocable structures, the person entitled to revoke the structure.

[2] Para. 1 also applies to companies with a similar structure as partnerships, trusts or other asset units.

[3] A financial intermediary who enters into a business relationship or carries out a transaction as a trustee shall identify themselves as trustee to the financial intermediary of the customer or the transaction partner.

### § 25 **Failure to establish beneficial ownership**

If doubts remain as to the accuracy of the declaration made by the customer despite further clarifications, the financial intermediary shall refuse to enter into a business relationship or terminate it in compliance with Art. 9b AMLA as well as Art. 12a and 12b AMLO.

## § 25[bis] Special provisions for investment companies

[1] A share relationship is the legal relationship of an investment company according to Art. 2 para. 3 of the Collective Investment Schemes Act (CISA, SR 951.31) to its shareholder or participant, which cannot be terminated by the investment company. Therefore, the following apply:

a) The share relationship begins with the purchase of shares (stocks or participation certificates), and ends with the sale of all shares by an investor.

b) The relationship of the investment company to bondholders is treated as a share relationship, if the acquisition of the bonds is made by the investor and not by subscription to the investment company.

c) The acquisition of derivative instruments on shares of the investment company by an investor establishes a share relationship, if it is under reporting obligation according to Art. 120 para. 1 of the Financial Market Infrastructure Act (FinMIA, SR 958.1).

[2] The share relationship is considered as a business relationship within the meaning of the §§7 et seq. of the Regulations. The implementation of the duties of due diligence of the AMLA regarding share relationships is carried out according to the Regulations with the following specific requirements:

a) The share relationship becomes a business relationship within the meaning of the Regulations when the investment company obtains actionable knowledge on the identity of the shareholder, which makes it possible to contact them.

b) Listed investment companies identify all shareholders who hold three percent or more of the shares. The calculation of the threshold value is performed according to the method of Art. 120 and 121 of the FinMIA.

c) Unlisted investment companies identify all shareholders.

d) If a shareholder has already been identified within the group of companies to which the investment company belongs, this identification document can be used. This use must be documented.

e) It shall be ensured by appropriate organisational measures that regulators and law enforcement authorities have at all times immediate and unrestricted access to this existing identification.

f) For listed investment companies the information to establish the identity of the beneficial owner according to Art. 22 and 23 of the FINMA Financial Market Infrastructure Odinance (FinMIO-FINMA, SR 958.111) is sufficient.

g) The unlisted investment company shall establish the identity of the beneficial owner according to the Regulations and can dispense with the establishing of the identity of the beneficial owner if the shareholder is a prudentially supervised financial intermediary, subject to appropriate supervision authority in combating money laundering and terrorist financing, or if the shareholder is a listed collective investment scheme or an investment company.

[3] If the identification of a shareholder cannot be made within three months due to lack of cooperation or the identity of the beneficial owner cannot be established, the investment company shall immediately consider whether a report according to Art. 9 of the AMLA or Art. 305[ter] of the SCC is required resp. appropriate.

[4] If an investment company submits a report according to Art. 9 of the AMLA, it shall inform in accordance with Art. 10a para. 2 of the AMLA all the known financial intermediaries that are able to freeze assets in connection with the report.

[5] If the investment company dispenses with a report, the reason needs to be documented.

## D. Repetition of the identification or the establishment of the beneficial owner (Art. 5 of the AMLA) and termination of the business relationship

### § 26 Repetition of the identification or the establishment of the beneficial owner

In the course of the business relationship the identification of the customer or the establishment of the identity of the beneficial owner must be repeated, if doubts arise that:

a) the information on the identity of the customer is accurate;

b) the customer and the beneficial owner are the same person;

c) the declaration of the customer about the beneficial owner is correct.

### § 27 Termination of the business relationship

[1] The financial intermediary can decide to terminate a business relationship, according to Art. 9b para. 1 AMLA and Art. 12b para. 1 AMLO.

[2] The financial intermediary must terminate the business relationship, subject to Art. 9b AMLA and Art. 12a, and Art. 12b AMLO if:

a) doubts persist about the information provided by the customer, even after repeating the identification of the customer or the establishment of the beneficial owner;

b) the customer refuses the repetition of the identification or the establishment of the beneficial owner;

c) the financial intermediary suspects that it was knowingly provided with wrong information about the identity of the customer, the controlling person or the beneficial owner of the assets.

[3] The existing relationship must be terminated as soon as possible without breach of contract. If the financial intermediary is unable to, or due to instructions for correspondence, not permitted to contact the customer, it may defer the termination of the business relationship until the next contact with the customer.

### § 28 Procedure for the withdrawal of assets

If the financial intermediary terminates a business relationship due to the abovementioned reasons, the provisions of Art. 9b para. 2 AMLA and Art. 12b para. 2 AMLO must be observed.

### § 29 **Prohibited termination of the business relationship**

If the conditions for a report according to Art. 9 AMLA are met or the financial intermediary makes use of the right to report pursuant to Art. 305$^{ter}$ Para. 2 SCC, the business relationship can only be terminated in accordance with the provisions of Art. 12a and Art. 12b para. 1 AMLO.

## E. Special duties of due diligence (Art. 6 of the AMLA)

### § 30 **The nature and purpose of the business relationship**

[1] The financial intermediary is required to ascertain the nature and purpose of the business relationship requested by the customer. The finding must be recorded in a memorandum or in the customer profile.

[2] The extent of the gathered information depends on the risk posed by the customer. In a business relationship with higher risk the nature and purpose must be fully documented.

[3] If the nature and purpose of the relationship arises from the circumstances or the contract itself, no further documentation is needed.

### § 31 **Special clarification**

The financial intermediary must clarify the economic background and the purpose of a transaction or of a business relationship if:

a) a business relationship or transaction appears unusual, unless its legality is clear;

b) there are indications that assets are the proceeds of a felony or an aggravated tax misdemeanour (Art. 305$^{bis}$, No. 1$^{bis}$ of the SCC) or are subject to the power of disposal of a criminal organisation (Art. 260$^{ter}$, No. 1 of the SCC) or serve the financing of terrorism (Art. 260$^{quinquies}$ para. 1 of the SCC);

c) the transaction or business relationship carries a higher risk according to §32 or §33.

d) the data of a customer, a beneficial owner or an authorised signatory of a business relationship or a transaction are identical or are very similar to the data that the SRO PolyReg has published on its website pursuant to Art. 22a para. 2 lett. c of the AMLA or has forwarded to the members.

e) a customer, the controlling person, beneficial owner, or representative of which is recorded as a sanctioned party on the list of the State Secretariat for Economic Affairs. Provisions of the Swiss Federal Embargo Act and of the Ordinances issued based on the Embargo Act remain reserved.

§ 32 **Business relationship with higher risk**

[1] The financial intermediary must examine every case or employ a transaction monitoring system, to determine whether a business relationship poses an increased risk. It must take into account the general indicators for money laundering according to the appendix of the FINMA Ordinance on Combating Money Laundering and Terrorist Financing (AMLO-FINMA, SR 955.033.0). Depending on the business activities of the financial intermediary general indications for higher risk are:

a) domicile or address of the customer, the controlling person, or the beneficial owner of assets, especially residence in a country considered as "high risk" or non-cooperative by the FATF, as well as the citizenship of the customer or the beneficial owner of assets;

b) the nature and the location of the business activities of the customer or the beneficial owner of assets, especially in cases of business activities in a country considered as "high risk" or non-cooperative by the FATF;

c) lack of personal contact with the customer and/ or beneficial owner;

d) nature of the requested services or products;

e) amount of the assets deposited;

f) amount of flows of assets;

g) country of origin or destination of frequent payments, especially payments from or to a country considered as "high risk" or non-cooperative by the FATF;

h) complexity of structures, particularly through the use of several domiciliary companies or a domiciliary company with fiduciary shareholders in a non-transparent jurisdiction, without apparent reason, or for the purpose of short-term asset placement;

i) frequent transactions with higher risk.

[2] For the purposes of Para. 1, the financial intermediary may establish its own independent criteria for business relationships with a higher risk within their own area of business and customers. It must submit such criteria to the SRO PolyReg administrative office for their information.

[3] Based on its periodic risk analysis for the criteria according to Paragraph 1, the financial intermediary determines individually if they are relevant for their business. It specifies the relevant criteria in the internal directives and incorporates them for the determination of the business relationships with higher risk. Internal directives must in particular also govern the risk-based updating of the customer file, which requires the customer to be allocated to a risk category.

[4] A business relationship always contains a high risk, if there is:

a) a business relationship with foreign politically exposed persons[2] and their family members or close associates;

b) a business relationship with domestic politically exposed persons or with a person who is close to such a person and at least one risk criterion according to Lett. d) – e) or §32 para. 1 and 2 is added;

c) a business relationship with politically exposed persons in a leading function in an international sport organisation or politically exposed persons in international organisations or with a person who is close to such a person and at least one risk criterion according to Lett. d) – e) or §32 para. 1 and 2 is added;

d) a business relationship with persons who are resident in a country considered to be "high risk" or non-cooperative by the FATF and for which the FATF calls for increased due diligence;

e) the business relationship, the amount of assets or the transaction volume seem unusual in view of the customer profile or the circumstances, unless its legality is clear.

[5] If a person poses a higher risk according to Para. 4 lett. a) – d), it is irrelevant whether it acts as a customer, controlling person, beneficial owner, or a representative.

[6] In its criteria for assessing whether the tax evaded is a possible tax misdemeanour under Art. $305^{bis}$ No. $1^{bis}$ SCC, the financial intermediary may use the maximum tax rate of the tax domicile of its customer and waive the determination of individual tax factors. The financial intermediary takes in consideration for its assessment the taxes according to Federal Act on Direct Federal Tax Law (DBG), Federal Act on the Harmonisation of Direct Taxes of the cantons and communes (StGH) and tax fraud within the meaning of Art. 14 of the Federal Act on Administrative Criminal Law (VStrR).

[7] The establishment of a business relationship with higher risk requires the approval of a line manager, a superior office, or the executive board of the company (§34 para. 4).

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[2] Politically Exposed Persons (PEPs) are: **a)** those who are or have been entrusted with prominent public functions by a foreign country, such as heads of state or of governments, senior politicians at national level, senior government, judicial, military or political party officials at national level, and senior executives of state-owned corporations of national significance **b)** Persons, who are or have been entrusted with prominent public functions at national level in Switzerland in politics, government, the armed forces or the judiciary or who are or have been senior executives of state-owned corporations of national significance. This domestic status as a politically exposed persons expires 18 months after the termination of the public function. **c)** Persons, who are or have been entrusted with a prominent function by an intergovernmental organisation or international sports federations. International sports federations recognized by the International Olympic Committee include nongovernmental organisations that regulate one or more official sports at the global level, and the International Olympic Committee. **d)** Persons who are their family members or close associates.

§ 33 **Transactions with higher risk**

[1] The financial intermediary shall establish criteria for recognition of transactions with higher risk. Depending on the business activities of the financial intermediary, indications for higher risk are:

a) the amount of the assets or the nature and volume of the transactions that appears unusual, considering the customer's profile or the circumstances; especially when there are indications of money laundering within the meaning of the Annex to AMLO-FINMA, without a clear explanation;

b) considerable deviations that are noted from the customary transaction nature, volumes and frequencies, considering the specific business relationship or in comparable business relationships;

c) country of origin or destination of payments, particularly payments from or to a country considered as "high risk" or non-cooperative by the FATF.

[2] The following are considered transactions with higher risks in any case:

a) Transactions in which at the beginning of the business relationship assets in value of more than CHF 100,000 are physically paid at once or in a gradual manner;

b) Payments from or to a country considered as "high risk" or non-cooperative by the FATF and for which the FATF calls for increased diligence;

c) In regard to money or asset transfers one or more transactions, which appear interlinked, amount to or exceed a sum of CHF 5,000.

[3] For the purposes of Para. 1, the financial intermediary may establish their own independent criteria for transactions with a higher risk within their own area of business and customers. It must submit such criteria to the SRO PolyReg administrative office for their information.

§ 34 **Monitoring of business relationships and transactions**

[1] The financial intermediary shall take the necessary personnel and organisational measures to ensure effective monitoring of business relationships and transactions.

[2] For the establishment of a long-term business relationship, the financial intermediary must obtain, document, and from time to time, update the information needed for monitoring purposes (customer profile).

[3] In particular, the financial intermediary must, regarding the long-term business relationships, know their customer well enough to be able to judge if a transaction or a business relationship is unusual.

[4] The highest management organ or at least one of its members shall decide about:

a) the establishment of long-term business relationships with politically exposed persons according to §32 para. 4 lett. a) and b) and annually on their continuation;

b) the arrangement of regular checks of all business relationships with higher risk and their monitoring and evaluation.

[5] Financial intermediaries with extensive wealth management and multi-level hierarchical structures can transfer this responsibility to a business unit.

§ 35 **Timing and content of clarifications**

[1] The financial intermediary must start with the clarifications as soon as the conditions for a special duty of clarification are apparent.

[2] Depending on the circumstances, the following points needs to be clarified:

a) the source of the assets deposited;

b) the intended purpose of the assets withdrawn;

c) the backgrounds of the payments received;

d) the origin of the assets of the customer and the beneficial owner;

e) the professional or business activity of the customer and the beneficial owner;

f) the financial situation of the customer and the beneficial owner;

g) for legal entities: who controls them;

h) in case of money and asset transfer: the surname, first name and address of the beneficiary.

§ 36 **Procedure and consequences**

[1] Depending on the circumstances the clarifications can be made as follows:

a) obtain written or verbal details from the customer or the beneficial owner;

b) visit the place of business of the customer or the beneficial owner;

c) consult generally accessible public sources and databases;

d) inquiries with third parties.

[2] The financial intermediary checks the results of the clarification for plausibility and documents them.

[3] According to §27 and §28 and subject to §29 the financial intermediary must terminate the business relationship, when:

a) the doubts about the information of the customer persist also after the duty of the special clarification;

b) there is a strong suspicion that false information has knowingly been given about the identity of the customer or the beneficial owner.

## F. Duty to keep records and involvement of third parties (Art. 7 of the AMLA)

§ 37 **Preparation and organisation of the documents**

[1] The financial intermediary must prepare these documents and receipts of their business relationship with the customer in a manner that third parties, particularly the SRO PolyReg and their audit companies, can verify the compliance with the provisions of these Regulations and the AMLA.

[2] The financial intermediaries must keep an AMLA-register that includes all AMLA-relevant business relationships according to §44 para. 1 of the Statutes and document the identification, establishment and clarifications according to §§7 – 36 and reports according to Art. 9 AMLA. Dossiers that include business relationships with

higher risk or politically exposed persons must be labelled as such. Reports according to Art. 9 AMLA must be kept separately.

[3] The documentation must enable reconstruction of each individual transaction.

[4] Depending on the business, the following pieces of information shall be obtained:

a) In the case of money or asset transfers, the name and address of the financial intermediary has to be documented on the payment receipt.

b) For the execution of payment orders the financial intermediary discloses the name, address, and account number of the customer as well as the name and the account number of the beneficiary. If no account number is available, a transaction-referenced identification number shall be specified. The address of the customer may be replaced with the date and place of birth, their customer number or national ID number. The financial intermediary shall ensure that the information about the customer is correct and complete and that the information about the beneficiary is complete.

[5] The documents and records required by Art. 7 of the AMLA must be retained in a safe location so that the financial intermediary is able to respond within a reasonable time to any requests from the SRO PolyReg, the audit companies designated by the SRO, the FINMA as well as for prosecution authorities.

[6] Electronic dossier management and archiving is permitted. The storage medium or the server must be located in Switzerland. Protection against unauthorised changes, readability at all times and sufficient backup copies must be ensured in accordance with the current state of the art.

### § 38 **Conditions for the involvement of third parties**

[1] In order to identify the customer and the representatives of legal entities, to establish the identity of the beneficial owner, to repeat the identification or the establishment of the identity of the beneficial owner and to implement the special duty of clarification, the financial intermediary may involve an auxiliary person within the meaning of Art. 2 Para. 2 Lett. b AMLO or another financial intermediary, provided that the latter is subject to equivalent supervision and regulation combating money laundering.

[2] Upon written request, the SRO PolyReg may, if there are sufficient grounds, grant a financial intermediary permission to involve a third party, who is not a financial intermediary within the meaning of Para. 1, to carry out duties of due diligence, provided that it concludes a written agreement with the said third party to ensure that they are carefully selected, instructed in their tasks and monitored with regard to the fulfilment of the duty.

### § 39 **Responsibility of the financial intermediary on the involvement of third parties**

[1] In any event, the financial intermediary shall remain responsible for the fulfilment of the delegated tasks.

[2] The financial intermediary shall take appropriate measures (confirmation of the sender, encrypted transmission, etc.) to ensure that the documents maintained in their files correspond to the original documents which have served to fulfil the due diligence.

[3] Any further delegation by the third party is excluded.

### § 39[bis] Waiver and reliefs of the duties of due diligence

[1] Regarding long-term business relationships in the scope of payment methods in the cashless payment system and in the scope of finance leasing the financial intermediary may may dispense with complying with the duties of due diligence in accordance with Art. 11 of the AMLO-FINMA.

[2] The relief pursuant to Art. 12 in conjunction with Art. 78 para. 2 of the AMLO-FINMA may be applied in the case of issuance of payment methods and for the granting of consumer credits.

[3] Upon request, the SRO PolyReg can, in agreement with FINMA, grant further or other reliefs of the requirements to a member. The member must bear the costs of the proceedings.

## G. Organisational measures (Art. 8 of the AMLA)

### § 40 Measures to be taken by the SRO PolyReg

[1] Where necessary or when conditions change, the SRO PolyReg will take supplementary measures to prevent and combat money laundering.

[2] Within the framework of such measures, the SRO PolyReg may issue instructions particularly with regard to:

a) in which cases the Executive Director of the SRO PolyReg must be informed;

b) how the practical fulfilment of the duty to keep records by the financial intermediaries is to be carried out (e.g. by supplying forms etc.).

[3] If deficiencies of lesser significance are detected, the SRO PolyReg may refrain from a sanction procedure and rather issue a written admonition, unless recurring.

[4] The financial intermediaries who work in the field of money and asset transfer keep an up-to-date record of all their auxiliaries and agents of system operators, so that the Executive Director is informed when any changes occur. They themselves and their auxiliaries must comply with the regulations as in Art. 2 para. 2 lett. b of the AMLO.

[5] In regard to the money and asset transfer business an electronic system shall be used to identify and monitor transactions with higher risks if the volume exceeds 500 transactions within the last 12 months. The Executive Director may also direct the use of such a system in other mass businesses.

### § 41 Measures to be taken by the financial intermediary

[1] The financial intermediary must ensure effective monitoring of business relationships and transactions, to be certain that higher risks are identified.

[2] The financial intermediary shall designate those internal persons who are responsible and accountable as contact person (contact person), for the correct keeping of AMLA dossiers (dossier managers), for the internal training (training managers), and

for the decision to file a report (reporting officer and deputy reporting officer). Several of these tasks may be assigned to a single person.

[3] For financial intermediaries that are entered into the commercial register, the contact person for the SRO PolyReg must be entered into the commercial register as an organ with signatory power or an authorized signatory of the financial intermediary. In case of joint signatures, an additional special power of attorney is required for an exclusive power of representation before the SRO. For the other functionaries, a function-adapted special power of attorney may be used. Furthermore, the Chairman may insist on the Swiss residence of the contact person and may request an official confirmation of residence in the case of doubt.

[4] The financial intermediary shall appoint one or more qualified persons to act as an anti-money laundering department within the company. The designated SRO contact person and the company training officer should carry out these duties, unless other persons are designated to perform this function.

[5] The anti-money laundering department shall prepare internal directives on combating money laundering and terrorist financing (including the risk categorization in terms of §32 para. 3), as well as plan and administer internal training. It supports and advises line managers and senior management in the implementation of these regulations, without taking the responsibility away from them.

[6] For larger companies, with more than twenty people with AMLA-related duties, a clear separation between monitoring body and the business personnel must be ensured. The anti-money laundering department has the following additional tasks:

a) it monitors the enforcement of internal directives to combating money laundering and terrorism financing in consultation with the internal auditor, the audit company and line management;

b) it sets parameters for the transaction monitoring system as per §40 para. 5;

c) it initiates the evaluation of reports generated by the transaction monitoring system;

d) it orders additional clarifications as per §35 or performs these itself;

e) it provides the responsible management with the appropriate information to determine whether to accept or continue a business relationship according to §34 para. 4;

f) depending on the business field, it shall prepare a risk analysis for combating money laundering and terrorism financing, specifically taking into consideration the customer's domicile or residence, the customer segment as well as the products and services offered. The risk analysis shall be approved by the Board of Directors or the Executive Management and updated periodically.

[7] Financial intermediaries with more than eight employees engaged in AMLA activity shall prepare in writing a concept for the control of internal operations, which must include the following instructions and information:

a) in which cases the SRO PolyReg must be informed;

b) the procedure for establishing new business relationships;

c) who will decide on admission and continuation of business relationships with higher risk;

d) the content and the management of AMLA dossiers;

e) the archiving and storage of documents;

f) assignment of tasks and responsibilities within the financial intermediary.

### § 41[bis] Global monitoring of legal and reputational risks

[1] A financial intermediary that has branches abroad or leads a financial group with foreign companies must comprehensively (on a global level) record, mitigate and monitor the legal and reputational risks associated with money laundering and financing of terrorism. In particular, it shall ensure that:

a) the anti-money laundering department or another independent body of the financial intermediary prepares periodically a risk analysis on a consolidated basis;

b) based on sufficient information, both quantitative and qualitative, the financial intermediary arranges at least yearly reporting from the branches and group companies, in order to reliably estimate their legal and reputational risks on a consolidated basis;

c) branches and group companies voluntary and promptly inform the financial intermediary about the establishment and continuation of the business relationships and transactions that are overall the most important ones from the risk perspective, as well as about other significant changes in the legal and reputational risks, especially when these involve significant assets or politically exposed persons;

d) the group's compliance office regularly conducts risk-based internal audits, including spot checks of individual business relationships on site at the branches and group companies.

[2] It must ensure that:

a) the internal supervisory functions, namely the compliance office and the internal auditor, and the group's audit company have, when required, access to information about individual business relationships in all branches and group companies; neither a central database of the customers and beneficial owners at the group level, nor the central access of the internal supervisory functions to the local databases is necessary;

b) the branches and group companies provide the competent bodies of the group with the information essential for the global monitoring of legal and reputational risks within a short period of time upon request.

[3] If a financial intermediary notices that access to the information about the customers, the controlling persons, or the beneficial owners of assets in specific countries is impossible or seriously obstructed for legal or practical reasons, it shall inform the administrative office of SRO PolyReg.

[4] When required, the financial intermediary that is a part of a domestic or foreign financial group shall grant the internal supervisory functions and the group's audit company access to the information about certain business relationships, insofar as this is necessary for the monitoring of legal and reputational risks on the global level and is permitted under the Swiss law.

[5] When a financial intermediary domiciled in Switzerland or its employee domiciled or resident abroad conduct activities outside Switzerland, without having a local

branch, parent, or subsidiary company, the financial intermediary must, in addition to complying with Swiss legislation, ensure that foreign regulations on combating money laundering and terrorist financing are not violated.

## H. Duty to report and the right to report

### § 42 **Cause for report**

[1] The duty to report and the right to report are governed by the legal provisions (Art. 9 AMLA and Art. 305$^{ter}$ para. 2 SCC).

[2] If the financial intermediary does not submit a report because he was able to dispel the suspicion on the basis of additional clarifications pursuant to §31 of the regulations, he shall document the underlying reasons.

### § 43 **Form of report**

[1] All communication with the Money Laundering Reporting Office is governed by the provisions of Art. 3a of the Ordinance on the Money Laundering Reporting Office RS 955.23) and Art. 9 para. 1$^{ter}$ AMLA.

[2] The SRO PolyReg must be informed without delay about the report made and the Money Laundering Reporting Office's notifications resulting from such a report, by providing a copy of the report and notifications. This also applies to reports pursuant to Art. 305$^{ter}$ Para. 2 SCC.

## I. Freezing of assets and prohibition of information

### § 44 **Freezing of assets**

Assets are to be frozen in accordance with the provisions of Art. 10 AMLA.

### § 45 **Prohibition of information**

[1] The prohibition of information must be observed in accordance with the provisions of Art. 10a AMLA with regard to the duty to report pursuant to Art. 9 AMLA and the right to report in accordance with Art. 305$^{ter}$ Para. 2 SCC.

[2] If a financial intermediary informs another financial intermediary that it has submitted a report in accordance with Art. 9 AMLA or Art. 305$^{ter}$ Para. 2 SCC, the provisions of Art. 12c AMLO must be observed.

### § 46 **Exclusion of criminal and civil liability**

An exclusion of criminal and civil liability applies under Art. 11 AMLA to the duty to report pursuant to Art. 9 AMLA and the right to report pursuant to Art. 305$^{ter}$ Para. 2 SCC.

## K. Special provisions for persons subject to professional secrecy

### § 47 Lawyers and notaries

Lawyers and notaries are released from the provisions concerning the duties of due diligences and the duty to report, if they accept assets from third parties to which they themselves hold no beneficial title and administer such assets in accounts / safe custody deposits with regard to which they are subject to the legal obligation of professional secrecy under Art. 321 of the SCC.

### § 48 Accounts subject to professional secrecy

[1] Accounts/safe custody deposits used and identified as being exclusively for the following purposes are subject to professional secrecy under Art. 321 of the SCC:

a) the settlement and, where advisable, the related short-term investment of advances for court costs, deposits, public law charges, etc. as well as payments to or from parties, third parties or authorities (designation for example as "Customer funds settlement account/Safe custody deposit");

b) the deposit and, where advisable, the related investment of assets from a pending inheritance or execution of an estate (designation for example as "Inheritance" or "Legacy");

c) the deposit, and, where advisable, the related investment of assets from a pending division of property in a divorce or separation (designation for example as "Division of property divorce");

d) the deposit of securities and, where advisable, the related investment of assets in civil or public law actions (designation for example as "Escrow account/ safe custody deposit", "Blocked share purchase deposit", "Deposit of securities contractor's bond", "Deposit of securities real estate capital gains tax", etc.);

e) the deposit, and, where advisable, the related investment of assets in civil or public law actions before ordinary courts or arbitration tribunals and in enforcement proceedings (designation for example as "Advance payments", "Security for court costs", "Bankruptcy assets", "Arbitration proceedings", etc.).

[2] While upholding professional secrecy, the Board of the SRO PolyReg is responsible for questions regarding the delineation between activity as a financial intermediary and forensic work as a lawyer or notary.

## L. Monitoring

### § 49 Audit companies

[1] By accepting the Statutes, the members authorise the Board of the SRO PolyReg to appoint permanent independent audit companies to conduct the periodic ordinary auditing of members. Audit companies in accordance with §33 and §34 of the Statutes must be approved by the SRO PolyReg, according to Art. 24a AMLA.

[2] The audit companies act on behalf of the SRO PolyReg, but on account of the member under review. They submit a written report on the completed audit to the Managing Director for the attention of the Executive Board of the SRO PolyReg.

[3] In the case of review of persons subject to professional secrecy, the audit companies are subject to the special conditions of professional secrecy of the member. If the report includes information relevant to secrecy, the audit companies will report directly to the Board Delegation.

### § 50 **Independent investigators**

Special audits to clarify any irregularities or violations identified shall, unless conducted by the Executive Director himself or unless they are subject in a sanction procedure, be conducted by an independent investigator, who acts on behalf of the Board and reports their findings in writing to the Board. The member shall bear the costs of the special audit by the independent investigator.

### § 51 **Ordinary periodic audit**

[1] The SRO PolyReg ensures that every member is inspected on average once every twelve months by an audit company regarding compliance with the association, due diligence and reporting obligation on site at their business.

[2] The Executive Director of the SRO PolyReg mandates the audit company to verify compliance of the member on or by a specific date. Extensions may be granted for good reason.

[3] The Executive Director may, ex officio or at written request of a member, defer the ordinary audit once or twice by a year if:

a) the last audit was carried out by an SRO PolyReg audit company and was not a first audit, and;

b) the last two, most recent audits did not reveal any material shortcomings, and

c) the member and its activity are subject to little risk of money-laundering, as per the risk-based assessment of the proportions (transaction volume, assets under management, number of customers, etc.), the origin of the customers, the field of activity, and the stability of the business relationships. In any case, money and assets transfer is considered as a business with higher risk.

The reasons for the acceptance or rejection of a deferral request must be documented.

[4] The request for the initial postponement of the audit must be sent to the SRO PolyReg within six months after the last ordinary audit; the request for a second postponement of the audit shall be made no earlier than 12 and no later than 18 months after the last ordinary audit. The SRO PolyReg reserves the right to arrange an audit at any time without stating a reason.

[5] The audit will be scheduled or – if the purpose of the audit dictates it – unscheduled. The time period inspected shall be at least up to the last audit.

[6] The member audited must present the audit company with documents and records evidencing compliance with their duties. The audit company may have access to

the member's bookkeeping and the vouchers for the accounts of their firm or their customers. The audit company must be provided with all relevant information.

[7] The examiners shall identify themselves to the member by means of an audit mandate issued by the SRO PolyReg. The audit company and the SRO PolyReg shall protect the business or professional secrecy of the members.

### § 52 **Content of the audit**

[1] The audit company shall verify compliance with the provisions of the AMLA, the Statutes and these Regulations and report to the SRO PolyReg using the forms provided.

[2] The audit shall proceed in accordance with the terms of the concept of control and shall, in particular, cover:

a) whether the documents required to carry out the duties of due diligence and to keep records have been properly drawn up and maintained in a file;

b) if the filed documents prove that the duties of identification and clarification have been complied with;

c) if the duty to report has been fulfilled;

d) if the training obligation has been complied with and the employees have adequate knowledge, and where appropriate, an in-house training plan has been fully implemented.

[3] The audit shall also cover whether the conditions for a membership of the SRO PolyReg are satisfied and that all changes have been notified immediately in accordance with §8 of the Statutes.

[4] The audit company shall forward a copy of its report to the Executive Director of the SRO PolyReg no later than 14 days since the conclusion of its audit. In addition, it shall give the Executive Director immediate verbal notice of any serious violations or reasonable suspicion thereof. The audit company will assess the risk posed by the activities of the inspected financial intermediary and may apply for additional measures. The Board will decide on the further course of action at the request of the Executive Director (appointment of an independent investigator, sanctions, report to FINMA).

### § 53 **Extraordinary audit**

[1] An independent investigator can be appointed to clarify suspicious facts or irregularities as well as in the case of detected violations. The independent investigator will report to the Executive Committee or Board Delegation of the SRO PolyReg. It will conduct a detailed examination of any suspicious or non-transparent processes.

[2] The independent investigator takes evidence on file and draws up a written report of its findings. He may combine his report with a request for sanctions.

[3] The member concerned must assist the independent investigator and provide it with all necessary access.

[4] The cost of the extraordinary audit shall be determined by the Board, and as a rule, borne by the member. The Executive Director of the SRO PolyReg will make the necessary arrangements in this regard.

## M. System of sanctions

### § 54 **Sanctions**

[1] The grounds for sanctions, the type of sanctions, and the range of fines are based on §45 Para. 1 to 4 of the Statutes.

[2] Where necessary and feasible, the sanction shall be combined with a demand to restore the proper legal situation within a maximum period of three months. The demand may incorporate instructions and conditions for the internal organisation of the member.

[3] The clerical and court fee for the sanction ruling generally ranges between CHF 200 and CHF 3,000 and is to be specified within this fee band, depending on the complexity and importance of the procedure. In especially cumbersome cases, the upper limit may be increased by no more than the half.

### § 55 **Financial penalty**

[1] Any financial penalty applied must be in proportion to the seriousness of the breach, the degree of culpability and the economic capacity of the member. The fact that the state applies measures and/or penalties at the same time shall not prevent the SRO PolyReg from imposing its own sanctions. However, a penalty should be moderated if the combination of penalties would be unreasonably harsh.

[2] In the case of breaches arising out of negligence, a warning may be given instead of a financial penalty or the sanction may be waived. If a sanction is waived, the issuing of an admonition pursuant to §40 shall be checked.

### § 56 **Exclusion**

[1] An exclusion may be ordered in case of breaches of the regulations as set out in §54 para. 1, if the responsible member does not restore the legal, regulatory, or statutory situation within the set deadline, or in case of a repeated violations.

[2] A member will be excluded if it no longer satisfies the membership requirements, particularly if it does not provide assurance of proper business operations in terms of personnel or organisation and fails to restore the proper situation within a fixed deadline of up to three months.

[3] A prior warning or setting a deadline can be waived if it appears to have no effect.

[4] A member must be excluded if it either intentionally or by gross negligence breaches important provisions of the AMLA, namely the duty to report and in cases of §8 para. 4 and §10 para. 4 of the Statutes.

[5] In any case of exclusion or threat of exclusion, additional financial penalties may be imposed.

### § 57 **Enforcement of exclusion**

[1] If a member appeals against its exclusion, the suspension effect can be withdrawn, if the member ceases to fulfil the requirements for membership, if a member no longer can be monitored properly, if the fulfilment of membership obligations in

the future appears doubtful, if the exclusion was based on compelling reasons (§56 para. 4) or if through its continued activity, third parties' interests appear to be at risk.

[2] Members who cannot be reached at their last address, have lost the legal capacity or declare bankruptcy may be excluded directly.

[3] If a member has several accountable organs and employees and the grounds for exclusion apply only to one of them, without the responsibility or negligence on the part of the others, then the exclusion may be overturned and a fine imposed instead. The member must prove that all fallible organs and employees are completely excluded, and no longer exercise voting or equity participation of a third or more, alone or in concert with any third parties.

[4] In such a case as described in Para. 3, the Board can, upon request, reconsider a pending exclusion decision until the legal force, if a security is given for the proposed financial penalty and the projected costs of a pending arbitration proceeding. The Executive Board determines the amount of the security deposit. If the exclusion is overturned, the Board can impose a new financial penalty.

### § 58 **Report to the FINMA**

[1] If a sanction proceeding, which may result in an exclusion from the SRO PolyReg, is instituted against an affiliated member, the decisions concerning the opening and conclusion of the proceedings shall be disclosed to the FINMA.

[2] If the proceeding is instituted against a person subject to professional secrecy, the Board Delegation must take the necessary steps to ensure that professional secrecy is maintained (for example by anonymising documents).

### § 59 **Internal appellate remedies**

In accordance with §37 of the Statutes, all sanction decisions may be appealed to the Arbitration Court.

## N. Training

### § 60 **Training obligation, implementation and dispensation**

[1] The training consists of an initial training and an annual recurrent training.

[2] The member's operationally active bodies and all employees entrusted with duties pertinent to AMLA are obliged to complete the initial training provided by the SRO PolyReg. Additionally, employees are to be internally educated about the measures and instructions adopted by the member to prevent money-laundering and terrorist financing.

[3] The recurrent training obligation is met when all when all persons entrusted with AMLA-functions pursuant to §41 para. 2 of the Regulations attend the annual further training session. It must also be ensured internally that the information relevant for the member´s field of activity is passed on to the employees through internal education.

§ 61 **Implementation of training**

[1] The administrative office organises the initial and recurrent training sessions. The Executive Director may, upon prior request, recognise that the training requirements are satisfied through attendance at another equivalent training course.

[2] The member's operationally active bodies and the employees entrusted with duties pertinent to AMLA shall be trained through the initial training within a reasonable period of time, but no later than six months after joining the member's company.

[3] With the authorization of the Executive Director, the member can conduct their own initial training, if it has a qualified training officer with profound knowledge at their disposal. In that case, the member must draw up a detailed training programme to be presented to the Executive Director for approval. The SRO PolyReg shall supervise the implementation of the training programme. The audit company shall check and document compliance on the occasion of the audit of the member.

§ 62 **Dispensation**

[1] If recently joined employees entrusted with duties pertinent to AMLA have already received training concerning the duties and implementation of the AMLA or demonstrate long-standing work experience in the domain of activities pertinent to AMLA, the member may apply in writing to the SRO PolyReg for a dispensation. The request must be made within three months, stating the reasons. Employees exempt from the initial training must be given further training by the member concerning the SRO PolyReg requirements as well as its internal measures and directives to prevent money laundering.

[2] The employees entrusted with duties pertinent to AMLA working for nonprofessional members shall be excused from the obligation of the initial training and annual recurrent training, as long as no professional activity is exercised by the member. The prerequisite is the timely declaration of inactivity for the following year.As soon as the thresholds of professional activity have been reached, the training and further education obligation pursuant to §60 of the Regulations is reactivated.

§ 63 **Training goal**

[1] In order to ensure a reliable implementation of the AMLA, the persons entrusted with duties pertinent to AMLA, must, according to their function, understand the legal provisions, the indications of money-laundering and terrorism financing, the regulation of the SRO PolyReg as well as their internal measures taken to prevent money laundering.

[2] The training program shall cover the regulations aimed at combating money laundering and financing of terrorism, particularly the duties of due diligence (Art. 3 to 8 of the AMLA), the duty to report (Art. 9 of the AMLA), the freezing of assets (Art. 10 of the AMLA) and the prohibition on informing affected parties or third parties that a report has been sent (Art. 10a of the AMLA) and the regulations for the implementation of the AMLA, the relevant provisions of the penal code (Art.

260$^{ter}$, 260$^{quinquies}$, Art. 305$^{bis}$ and Art. 305$^{ter}$ of the SCC), the regulations issued by the SRO PolyReg and the measures taken internally to prevent money laundering.

[3] The SRO PolyReg shall inform its members in writing of the trainings offered by the Association.

## O. Final Provisions

### § 64 Transitional provisions

[1] Aggravated tax misdemeanours under Art. 305$^{bis}$ para. 1$^{bis}$ SCC that were committed before the amendment of the 12 December 2014 came into force, are not considered predicate offences within the meaning of Art. 305$^{bis}$ para. 1 SCC.

[2] The provisions on the establishment of the identity of the controlling person of operative legal entities have no retrospective effect on existing business, with reservation to §26.

[3] §4 para., 1 Lett. d) has no retrospective application.

[4] The financial intermediary must implement the technical measures pursuant to §14 para. 2$^{bis}$ within six months from the entry into force of these Regulations.

### § 65 Entry into force

These Regulations have been approved by the Swiss Financial Market Supervisory Authority FINMA in its decision of 21 February 2023. They enter into force on 1 March 2023.

PolyReg: Zurich, February 2023

**Content**

**Indications of money laundering (Annex of AMLO-FINMA)**

1 **Intent of indications**

1.1 Financial intermediary shall abide by the following indications that provide insights into business relationships or transactions with higher risk. Generally, individual indications do not always constitute on its own a sufficing suspicion for the existence of a punishable money-laundering transaction, however, a conjunction of several of these elements may indicate money laundering.

1.2 Declarations of customers about the background of such transactions must be assessed in terms of their plausibility. The essential point here is that not all declarations of customers should be accepted without reservations.

2 **General indications**

2.1 Particular risks in regard to money laundering exist in transactions:

2.1.1 whose construction points to an illegal purpose, whose economic purpose is not evident, or that even seem economically illogical;

2.1.2 in which assets are withdrawn shortly upon their receipt by the financial intermediary (transitory accounts), unless a plausible cause for such an instantaneous outflow arises from the customer's business activity;

2.1.3 in which it is incomprehensible why the customer has even selected this particular financial intermediary or branch for its business;

2.1.4 which cause that a formerly inactive account becomes very active, without that a plausible reason for it is apparent;

2.1.5 which are irreconcilable with the knowledge and expertise of the financial intermediary about the customer and the purpose of business relationship.

2.2 Then, fundamentally each customer, who gives false or misleading information to the financial intermediary or who refuses without a logical reason [to provide] to the financial intermediary information and documents necessary for the business relationship and customary for the activity in question, is suspicious.

2.3 A reason for suspicion may arise when a customer regularly receives transfers originating from a bank domiciled in a country that is considered a "high risk" or non-cooperative by the FATF, or when a customer makes frequent transfers to such a country.

2.4 A reason for suspicion may arise if a customer makes frequent transfers to regions that are in geographical proximity to the areas of operation of terrorist organizations.

3 **Single indications**

3.1 **Spot transactions**

3.1.1 Converting a large amount of (foreign or domestic) notes of a small denomination into larger ones.

3.1.2 Money exchange, to a great extent without booking onto the customer account;

3.1.3 Cashing large amounts with checks, including traveller's checks;

3.1.4 Purchase or sale of large quantities of precious metals by "casual"/ "walk-in" customers;

3.1.5 Purchase of bank checks of a substantial amount by "casual"/ "walk-in" customers;

3.1.6 Transfer orders to abroad by "casual"/ "walk-in" customers, without that a legitimate reason is apparent;

3.1.7 Repeated conclusion of spot transactions that are tightly below the identification threshold;

3.1.8 Buying bearer bonds with a physical delivery.

3.2 **Bank accounts and depository accounts**

3.2.1 Frequent withdrawals of large amounts of cash, without that a reason for them is found in the [nature of] business activity of the customer;

3.2.2 Recourse to means of financing that are indeed common in international trade, however, whose use is in contradiction to known activities of the customer;

3.2.3 Accounts with large movements, although, normally, these accounts are not used or are used only infrequently;

3.2.4 Economically illogical structure of the customer's business relationship with a bank (large number of accounts with the same institution, frequent shifting among different accounts, excessive liquidity, etc.)

3.2.5 Placement of collateral (securities, guarantees) by third parties that are unknown to the bank and that do not stand in a visibly close relationship with customer and for whose placement there is no apparent, plausible reason;

3.2.6 Transfers to another bank without specification of the recipient;

3.2.7 Acceptance of transfers from other banks without specification of the name or the account number of the beneficiary or of the mandating party;

3.2.8 Repeated transfers of a substantial amount to abroad, with the instruction to pay out the amount in cash (to the recipient);

3.2.9 Large and frequent transfers from and to drug-producing countries;

3.2.10 Placement of collateral or bank guarantees to cover loans not aligned with the market for third parties;

3.2.11 Cash deposits made to a single account by a large number of different persons;

3.2.12 Unexpected repayment of a nonperforming loan, without a credible explanation;

3.2.13 Use of pseudo accounts or numbered accounts in execution of commercial transactions in trading, business operations, or industrial undertakings;

3.2.14 Withdrawal of the assets, shortly after they were credited to the account (transitory accounts).

3.3 **Fiduciary transactions**

3.3.1 Fiduciary loans (back-to-back loans) without an apparent, legally allowed purpose;

3.3.2 Holding in fiduciary capacity the equity interest in the companies that are not listed on the stock exchange, in whose activities the financial intermediary has no insight.

3.4 **Other indications**

3.4.1 The customer's attempt to avoid personal contact sought by the financial intermediary.

3.4.2 A request by the Money Laundering Reporting Office to disclose information pursuant to Art. 11a Para. 2 of the AMLA.

4 **Particularly suspicious indications**

4.1 The customer's request, without any documentary trace (paper trail), to close accounts and open new accounts in its own name or in the name of its family members.

4.2 The customer's request regarding receipts for cash withdrawals or the delivery of securities that in fact did not take place or when the assets were immediately deposited again with the same institution.

4.3 The customer's request to execute payment orders with specification of an inaccurate mandating party;

4.4 The customer's request to make certain payments not through its accounts, but through nostro accounts of the financial intermediary, or more specifically through omnibus accounts;

4.5 The customer's request to accept or to show credit collaterals, which do not correspond to the economic reality, or to guarantee fiduciary loans with fictitious coverage;

4.6 Criminal proceedings for crime, corruption, misuse of public funds, or qualified tax offence against the customer of the financial intermediary.