Circular 2025/2 Conduct obligations under FinSA/FinSO

Implementation of conduct obligations under FinSA/FinSO
for financial service providers

FINANCIAL SERVICES

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Unofficial translation by Nicole Oberholzer

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Reference:	FINMA Circular 25/2 Financial intermediaries as per AMLA
Issued:	31 October 2024
Entry into force:	1 January 2025
Legal bases:	FINMASA Article 7(1)(b) FinSA Articles 3, 8, 9, 11, 12, 19, 25, 26 FinSO Articles 3, 7, 9, 10, 12, 16-17, 24-28, 29

Addressees

BA			ISA			FinIA					
Banks	Financial groups and congl.	Other intermediaries	Insurance companies	Insurance groups and congl.	Distributors	Asset management companies	Trustees	Managers of coll. Inv. schemes	Fund management companies	Account-holding investment firms	Non-account holding Investment firms
X						X		X	X	X	X

FMIA						CISA						AMLA		OTHERS	
Trading venues	Central Counterparties	Central depositories	Trade repositories	Payment systems	Participants	SICAV	Limited partnerships for CISs	SICAF	Custodian banks	Representatives of foreign CISs	Other intermediaries	SROs	SRO-supervised institutions	Audit firms	Rating Agencies

Table of Content

I. Objective

This circular outlines the requirements for implementing the conduct of business obligations under the Financial Services Act of 15 June 2018 (FinSA; SR 950.1) and the Financial Services Ordinance of 6 November 2019 (FinSO; SR 950.11) with regard to the provision of financial services. Along with the rules of conduct in the strict sense (Articles 7–20 FinSA) these conduct obligations include provisions on the organization of financial service providers (Articles 21–27 FinSA) as well as general terms (Article 3 FinSA) and requirements for client categorization (Articles 4 and 5 FinSA), on which the conduct obligations applicable in individual cases depend. 1

II. Scope of application

The circular is addressed to financial service providers within the meaning of Article 2(1)(a) FinSA ("financial service providers") that are supervised by FINMA or a supervisory organization pursuant to Article 43a of the Financial Market Supervision Act of 22 June 2007 (FINMASA; SR 956.1). 2

III. Definitions

The exception regarding the placement of financial instruments under Article 3(3)(b) FinSO applies to services provided to companies and their shareholders as participants who obtain financing via the capital market. However, any offering of these financial instruments to investors or their sale to customers falls within the scope of the FinSA. 3

IV. Rules of conduct and organization

A. Duties of disclosure

(Articles 8-9 FinSA, Articles 7 and 12 FinSO)

a) Information on the type of financial service

(Articles 8(2)(a) and9 FinSA, Article7(1)(a) and12 FinSO)

Financial service providers must identify and document the type of investment advisory service (transaction-related or portfolio-related) provided to their customers in an appropriate manner (e.g., in a written contract or in another form that allows for proof by means of text, or by means of a documented statement at the time the advice is provided). 4

b) Information about the risks associated with financial instruments

(Article 8(1)(d) FinSA, Article 7(3)(b) FinSO)

As part of the risk disclosure for contracts for difference, the financial services provider must disclose the following information: 5

- about any additional contribution obligations and the potentially unlimited risk of loss; 6

- about leverage, how margining works, counterparty and market risk (including slippage); 7
- quarterly on the percentage of retail customers trading in contracts for difference in the last 12 months who have 8
    - lost money;
    - suffered a total loss of their margins when closing their positions;
    - had to top up a negative balance after closing their positions.

c) Information on the where of financial service associated risks

(Article 8(2)(a) FinSA, Article 7(2) FinSO)

Insofar as risk concentrations in customer portfolios that are atypical for the market cannot be ruled out in asset management and portfolio-related investment advice, the financial services provider must disclose the nature and extent of the concentration risks. Indicators of risk concentrations that are atypical for the market include: 9

- Concentrations of 10% or more in individual securities; 10
- Concentrations of 20% or more with individual issuers; 11

Exceptions are concentrations arising from collective investment schemes that are subject to regulatory risk diversification requirements. 12

B. Adequacy and suitability test

(Articles 11-12 FinSA, Articles 16-17 FinSO)

The financial service providers must ask for all information necessary for the proper performance of the adequacy and suitability tests when creating a risk profile for their customers. 13

Specifically, the financial services provider must inquire about its customer's knowledge and experience with regard to each relevant investment category that is covered by the financial service. When it comes to asset management and portfolio-related investment advice, these inquiries take into account the characteristics of the investment strategy and the types of financial instruments used. The level of detail in the inquiries must be commensurate with the complexity and risk profile of the investments and the investment strategies that may be used in the financial service. 14

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C. Use of customers' financial instruments

Securities Lending

(Article 19 FinSA)

At least the following information must be provided to customers as part of the risk disclosure process and documented: 15

- whether the financial services provider acts as the counterparty (principal) or merely as an agent 16 brokering the transaction with a third party;

- that ownership of the financial instruments is transferred to the counterparty and there is only a claim to replacement of the same type and quantity; 17

- that in the event of the counterparty's bankruptcy or, if applicable, that of a guarantor, there is only a claim to a non-preferential monetary claim of corresponding value (in the case of securities lending with private clients, there is additional cover to the extent of the collateral received); 18

- that the property rights and rights of participation are transferred to the counterparty; 19

- that the risk of a decline in the financial instruments' value remains with the customer; 20

- that the customer may terminate the agreement on the use of financial instruments with immediate effect or, insofar as a fixed term has been expressly agreed in individual cases, that the use only ends upon expiry of the agreement on the use of financial instruments; 21

that the customer can choose to exclude certain financial instruments from securities lending. 22

D. Conflicts of interest

(Article 8(2)(b) and (c) in conjunction with Article 25 FinSA, Articles 9–10 and 24–28 FinSO)

Financial service providers must inform customers whether the market offering taken into account when selecting financial instruments includes only their own financial instruments, their own and third-party financial instruments, or only third-party financial instruments. 23

Where financial service providers inform clients that they consider their own and third-party financial instruments, they must take appropriate measures to avoid any conflicts of interest arising from this, such as a process for selecting financial instruments based on objective criteria customary in the industry. In-house financial instruments cannot be favored by specific incentives in the remuneration of persons involved in these financial services. 24

Customers must be explicitly informed of any unavoidable conflicts of interest arising from the consideration of the financial service provider's own financial instruments. 25

E. Third-party remunerations / retrocessions

Article 26 FinSA / Article 29 FinSO

Information about compensation in standard form contracts must be visibly highlighted and must be physically available to the customer or easily accessible electronically. 26

Where the effective amount of compensation cannot be determined before the financial service is provided or before the contract is concluded, the financial services provider must inform the customer 27

- on the ranges of compensation for the different classes of financial instruments; 28

- and, in the case of asset management and portfolio-related investment advice, additionally on the 29 remuneration ranges based on the portfolio value and the agreed investment strategy.

Upon request, financial service providers must disclose the amounts actually received to their customers free of charge. 30

V. Transitional provisions

For the implementation of margin numbers 8, 9–12 and 24–25, 26, there is a transition period of six months until 30 June 2025. 31

Contacts

Pascal Sprenger
Partner, Financial Services
Tel. +41 58 249 42 23
psprenger@kpmg.com

Matthias Degen
Partner, Financial Services
Tel. +41 58 249 40 36
mdegen@kpmg.com

Thomas Dorst
Partner, Financial Services
Tel. + 41 58 249 54 44
tdorst@kpmg.com

Nicolas Moser
Partner, Financial Services
Tel. +41 58 249 37 87
nmoser@kpmg.com

www.kpmg.ch