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Federal Act on Financial Services

(Financial Services Act, FinSA)

of 15 June 2018 (Status as of 1 January 2020)

The Federal Assembly of the Swiss Confederation,

based on Articles 95, 97, 98 and 122 paragraph 1 of the Federal Constitution[1], and having considered the Federal Council Dispatch of 4 November 2015[2],

decrees:

Title 1 General Provisions

Art. 1 Purpose and subject matter

[1] This Act seeks to protect the clients of financial service providers and to establish comparable conditions for the provision of financial services by financial service providers, and thus contributes to enhancing the reputation and competitiveness of Switzerland's financial centre.

[2] To this end, it establishes the requirements for honesty, diligence and transparency in the provision of financial services and governs the offering of financial instruments.

Art. 2 Scope of application

[1] This Act applies to all of the following, irrespective of their legal form:

a. financial service providers;

b. client advisers;

c. producers and providers of financial instruments.

[2] This Act does not apply to:

a. the Swiss National Bank;

b. the Bank for International Settlements;

AS **2019** 4417

1 SR **101**

2 BBl **2015** 8901

c. occupational pension schemes and other institutions whose purpose is to serve occupational pensions (occupational pension schemes), as well as employer-sponsored foundations (employer-sponsored welfare funds); employers who manage the assets of their occupational pension schemes; employer and employee associations which manage the assets of their association schemes;

d. the following, provided their activities are subject to the Insurance Supervision Act of 17 December 2004[3] (ISA):
   1. insurance companies,
   2. insurance intermediaries,
   3. ombudsman's offices;

e. public insurance institutions in accordance with Article 67 paragraph 1 of the Federal Act of 25 June 1982[4] on Occupational Old Age, Survivors' and Invalidity Pension Provision.

Art. 3 Definitions

For the purposes of this Act:

a. *Financial instruments* are:
   1. equity securities:
      – securities in the form of shares including share-like securities allowing for participation or voting rights, such as participation certificates and dividend rights certificates
      – securities which, on conversion or exercise of the rights evidenced by them, enable the acquisition of equity securities, as set forth above, as soon as they have been registered for conversion,
   2. debt instruments: securities not classified as equity securities,
   3. units in collective investment schemes in accordance with Articles 7 and 119 of the Collective Investment Schemes Act of 23 June 2006[5] (CISA),
   4. structured products, i.e. capital-protected products, capped return products and certificates,
   5. derivatives within the meaning of Article 2 letter c of the Financial Market Infrastructure Act of 19 June 2015[6],
   6. deposits whose redemption value or interest is risk- or price-dependent, excluding those whose interest is linked to an interest rate index,
   7. bonds: units in an overall loan subject to uniform conditions;

b. *securities* are standardised certificated and uncertificated securities, derivatives and intermediated securities, which are suitable for mass trading;

3 SR **961.01**
4 SR **831.40**
5 SR **951.31**
6 SR **958.1**

c. *financial services* are any of the following activities carried out for clients:
   1. acquisition or disposal of financial instruments,
   2. receipt and transmission of orders in relation to financial instruments,
   3. administration of financial instruments (portfolio management),
   4. provision of personal recommendations on transactions with financial instruments (investment advice),
   5. granting of loans to finance transactions with financial instruments;

d. *financial service providers* are persons who provide financial services on a commercial basis in Switzerland or for clients in Switzerland, with the criterion of a commercial basis being satisfied if there is an independent economic activity pursued on a permanent, for-profit basis;

e. *client advisers* are natural persons who perform financial services on behalf of a financial service provider or in their own capacity as financial service providers;

f. *issuers* are persons who issue or intend to issue securities;

g. an *offer* is any invitation to acquire a financial instrument that contains sufficient information on the terms of the offer and the financial instrument itself;

h. a *public offer* is an offer to the public;

i. *producers* are persons who produce a financial instrument or modify an existing financial instrument, including its risk and return profile or the costs associated with investing in the financial instrument.

Art. 4 Client segmentation

[1] Financial service providers shall assign the persons for whom they provide financial services to one of the following segments:

a. retail clients;

b. professional clients;

c. institutional clients.

[2] Retail clients are clients who are not professional clients.

[3] Professional clients[7] are:

a. financial intermediaries as defined in the Banking Act of 8 November 1934[8] (BankA), the Financial Institutions Act of 15 June 2018[9] (FinIA) and the CISA[10];

b. insurance companies as defined in the ISA[11];

7 As professional clients are primarily legal entities, they are referred to herein as «it».
8 SR **952.0**
9 SR **954.1**
10 SR **951.31**
11 SR **961.01**

c. foreign clients subject to prudential supervision as the persons listed under a and b above;

d. central banks;

e. public entities with professional treasury operations;

f. occupational pension schemes with professional treasury operations and other occupational pension institutions providing professional treasury operations;

g. companies with professional treasury operations;

h. large companies;

i. private investment structures with professional treasury operations created for high-net-worth retail clients.

[4] Institutional clients[12] are professional clients as defined in paragraph 3 letters a to d as well as national and supranational public entities with professional treasury operations.

[5] A large company is a company which exceeds two of the following parameters:

a. balance sheet total of CHF 20 million;

b. turnover of CHF 40 million;

c. equity of CHF 2 million.

[6] Companies of a group that receive a financial service from another company from the same group are not deemed to be clients.

[7] Financial service providers may refrain from client segmentation if they treat all clients as retail clients.

Art. 5 Opting out and opting in

[1] High-net-worth retail clients and private investment structures created for them may declare that they wish to be treated as professional clients (opting out).

[2] Any person who can credibly declare that they satisfy the criteria under a and b below will be deemed high-net-worth within the meaning of paragraph 1:

a. on the basis of training, education and professional experience or on the basis of comparable experience in the financial sector, they possess the necessary knowledge to understand the risks associated with the investments and have at their disposal assets of at least CHF 500,000; or

b. they have at their disposal assets of at least CHF 2 million.

[3] Professional clients within the meaning of Article 4 paragraph 3 letters f and g may declare that they wish to be treated as institutional clients.

[4] Swiss and foreign collective investment schemes and their management companies which are not already deemed to be institutional clients within the meaning of Arti-

12 As institutional clients are primarily legal entities, they are referred to as «it».

cle 4 paragraph 3 letter a or c in conjunction with Article 4 paragraph 4 may declare that they wish to be treated as institutional clients.

[5] Professional clients who are not institutional clients within the meaning of Article 4 paragraph 4 may declare that they wish to be treated as retail clients (opting in).

[6] Institutional clients may declare that they wish to be treated only as professional clients.

[7] Before providing any financial services, financial service providers shall inform those of their clients who are not classified as retail clients of the possibility of opting in.

[8] The declarations in paragraphs 1 to 6 must be made in writing or in another form demonstrable via text.

Title 2 Requirements for the Provision of Financial Services

Chapter 1 Required Knowledge

Art. 6

Client advisers must have sufficient knowledge of the code of conduct set out in this Act and the necessary expertise required to perform their activities.

Chapter 2 Code of Conduct

Section 1 Principle

Art. 7

[1] Financial service providers must comply with the supervisory duties set out under this title when providing financial services.

[2] The specific provisions of other pieces of legislation are reserved.

Section 2 Duty to Provide Information

Art. 8 Content and form of information

[1] Financial service providers shall inform their clients of the following:

a. their name and address;

b. their field of activity and supervisory status;

c. the possibility of initiating mediation proceedings before a recognised ombudsman in accordance with Title 5; and

d. the general risks associated with financial instruments.

[2] They shall also provide information on:

a. the financial service personally recommended and the associated risks and costs;

b. the business affiliations with third parties in connection with the financial service offered;

c. the market offer taken into account when selecting the financial instruments.

[3] Where financial instruments are personally recommended, financial service providers shall also make the key information document available to the retail client insofar as such a document must be produced for the financial instrument recommended (Articles 58 and 59). In the case of a compound financial instrument, a key information document shall be made available for said instrument only.

[4] No key information document need be made available if the service is provided exclusively in the execution or transmission of client orders, unless a key information document has already been produced for the financial instrument.

[5] When personally recommending financial instruments for which a prospectus is required (Articles 35 to 37), financial service providers shall make this prospectus available to their retail client free of charge upon request.

[6] Advertising must be indicated as such.

Art. 9 Content and form of information

[1] Financial service providers shall inform their clients before the signing of the contract or provision of the service.

[2] Financial service providers shall make the key information document available free of charge to their retail clients before the signing or conclusion of the contract. Where consultation takes place without the client being physically present, the key information document may be made available after conclusion of the transaction if the client so consents. Financial service providers shall document said consent.

[3] The information may be made available to clients in standardised form on paper or electronically.

Section 3 Appropriateness and Suitability of Financial Services

Art. 10 Duty to review

Financial service providers that provide investment advice or portfolio management services shall perform an appropriateness or suitability review.

Art. 11 Assessment of appropriateness

A financial service provider that provides investment advice for individual transactions without taking account of the entire client portfolio must enquire about its

clients' knowledge and experience and must check whether financial instruments are appropriate for its clients before recommending them.

Art. 12 Assessment of suitability

A financial service provider that provides investment advice taking account of the client portfolio or portfolio management must enquire about its clients' financial situation and investment objectives as well as their knowledge and experience. This knowledge and experience relates to the financial service and not to the individual transactions.

Art. 13 Exemption from the duty to review

[1] Where solely executing or transmitting client orders, financial service providers are not obliged to perform an appropriateness or suitability assessment.

[2] They shall notify the clients before providing the service described in paragraph 1 that an appropriateness or suitability assessment will not be performed.

[3] In the case of professional clients, they may assume that these clients have the required level of knowledge and experience and can financially bear the investment risks associated with the financial service.

Art. 14 Non-assessable or lacking appropriateness or suitability

[1] If the information received by the financial service provider is insufficient for assessing the appropriateness or suitability of a financial instrument, it shall inform the client before providing the service that it cannot perform this assessment.

[2] If the financial service provider is of the opinion that a financial instrument is not appropriate or suitable for its clients, it shall advise them against it before providing it.

[3] A lack of knowledge and experience may be compensated for by providing clients with information.

Section 4 Documentation and Rendering of Account

Art. 15 Documentation

[1] Financial service providers shall document in an appropriate manner:

a. the financial services agreed with clients and the information collected about them;

b. the notification described in Article 13 paragraph 2 or the fact that they advised the clients in accordance with Article 14 against availing of the service;

c. the financial services provided for clients.

[2] When providing investment advice, they shall also document clients' needs and the grounds for each recommendation leading to the acquisition or disposal of a financial instrument.

Art. 16 Rendering of account

[1] If so requested, financial service providers shall provide their clients with a copy of the documentation mentioned in Article 15 or shall make it accessible to them in another appropriate manner.

[2] Moreover, at the clients' request, they shall render account of:

a. the financial services agreed and provided;

b. the composition, valuation and development of the portfolio;

c. the costs associated with the financial services.

[3] The Federal Council shall regulate the minimum content of the information specified in paragraph 2.

Section 5 Transparency and Care in Client Orders

Art. 17 Handling of client orders

[1] Financial service providers shall uphold the principles of good faith and equal treatment when handling client orders.

[2] The Federal Council shall regulate how the principles under paragraph 1 are to be upheld, specifically regarding the procedures and systems for processing client orders.

Art. 18 Best execution of client orders

[1] Financial service providers shall ensure in the execution of their clients' orders that the best possible outcome is achieved in terms of cost, timing and quality.

[2] Regarding cost, they shall consider not only the price of the financial instrument but also the expenses incurred in the execution of the order and the compensation from third parties mentioned in Article 26 paragraph 3.

[3] If they employ staff to execute client orders, financial service providers shall issue internal directives on the execution of client orders which are commensurate with the number of such staff members and the structure of operations.

Art. 19 Use of clients' financial instruments

[1] Financial service providers may borrow financial instruments from clients' portfolios as a counterparty or act as an agent for such transactions only if the clients have given their prior and express consent to these transactions in writing or in another form demonstrable via text in an agreement that is separate from the general terms and conditions.

[2] The clients' consent is valid only if:

a. they have been clearly informed of the risks associated with such transactions;

b. they are entitled to equalisation payments for the proceeds due from the financial instruments borrowed; and

c. they are compensated for the financial instruments borrowed.

[3] Short selling with the financial instruments of retail clients is not permitted.

Section 6 Institutional and Professional Clients

Art. 20

[1] The provisions of this chapter do not apply to transactions involving institutional clients.

[2] Professional clients may expressly release financial service providers from applying the code of conduct set out in Articles 8, 9, 15 and 16.

Chapter 3 Organisation

Section 1 Organisational Measures

Art. 21 Appropriate organisation

Financial service providers shall ensure that they fulfil their duties under this Act through internal regulations and an appropriate organisation of operations.

Art. 22 Staff

[1] Financial service providers shall ensure that their staff possess the necessary skills, knowledge and experience to perform their work.

[2] Financial service providers not subject to supervision in accordance with Article 3 of the Financial Market Supervision Act of 22 June 2007[13] (FINMASA) must also ensure that only persons listed in the register of advisers (Article 29) act as client advisers for them.

Art. 23 Involvement of third parties

[1] Financial service providers may appoint third parties for the provision of financial services.

[2] They shall appoint only persons who possess the necessary skills, knowledge and experience for their work and have the required authorisations and register entries for this activity, and shall carefully instruct and supervise the appointed persons.

13 SR **956.1**

Art. 24 Chain of providers

[1] Financial service providers that mandate another financial service provider to provide a financial service for clients remain liable for the completeness and accuracy of the client information and for fulfilling the duties set out in Articles 8 to 16.

[2] If the mandated financial service provider has reasonable grounds to suspect that the client information is incorrect or that the duties under Articles 8 to 16 were not fulfilled by the mandating financial service provider, it shall provide its service only after it has ensured the completeness and accuracy of the information and compliance with the code of conduct.

Section 2 Conflicts of Interest

Art. 25 Organisational precautions

[1] Financial service providers shall take appropriate organisational measures to prevent conflicts of interest that could arise through the provision of financial services or any disadvantages for clients as a result of conflicts of interest.

[2] If disadvantages for clients cannot be excluded, this possibility must be disclosed to them.

[3] The Federal Council shall regulate the details in this respect; in particular, it shall designate forms of conduct that are always impermissible on account of conflicts of interest.

Art. 26 Compensation from third parties

[1] Financial service providers may accept compensation from third parties in association with the provision of financial services only if they:

a. have expressly informed the clients of such compensation in advance and the latter relinquish such compensation; or

b. pass the compensation on to the clients in full.

[2] The information for the clients must contain the type and scope of the compensation and must be given to them before provision of the financial service or conclusion of the contract. If the amount cannot be determined in advance, the financial service provider shall inform its clients of the calculation parameters and the ranges. If so requested, the financial service providers shall disclose the amounts effectively received.

[3] Compensation is defined as payments from third parties accruing to the financial service provider in association with the provision of a financial service, such as brokerage fees, commissions, discounts or other financial benefits.

Art. 27 Staff transactions

[1] Financial service providers shall take measures to prevent staff from misusing for own-account transactions any information made available to them only by virtue of their function.

[2] They shall issue an internal directive on the required monitoring measures.

Chapter 4 Register of Advisers

Art. 28 Duty to register

[1] Client advisers of Swiss financial service providers not subject to supervision in accordance with Article 3 FINMASA[14] as well as client advisers of foreign financial service providers may carry out their activity in Switzerland only if they are entered in a register of advisers.

[2] The Federal Council may exempt prudentially supervised client advisers of foreign financial service providers from the duty to register if the services they provide in Switzerland are exclusively for professional or institutional clients within the meaning of Article 4.

[3] It may make the exception under paragraph 2 dependent on a reciprocal right being granted.

Art. 29 Registration conditions

[1] Client advisers are entered in the register of advisers if they prove that they:

a. satisfy the requirements set out in Article 6;

b. have taken out professional indemnity insurance or that equivalent collateral exists; and

c. are themselves affiliated to an ombudsman's office (Article 74) in their capacity as a financial service provider or the financial service provider for which they work is affiliated to an ombudsman's office.

[2] Client advisers shall not be entered in the register of advisers if they:

a. have been convicted of criminal offences in accordance with Articles 89 to 92 of this Act or Article 86 ISA[15] or of property offences under Articles 137 to 172[ter] of the Swiss Criminal Code[16]; or

b. have been prohibited from performing the registrable activity in accordance with Article 33*a* FINMASA[17] or from practising a profession in accordance with Article 33 FINMASA.

14 SR **956.1**
15 SR **961.01**
16 SR **311.0**
17 SR **956.1**

[3] If client advisers are employed as staff by a financial service provider, the condition set out in paragraph 1 letter b may be fulfilled by the latter.

Art. 30 Contents

The register of advisers shall contain at least the following details on client advisers:

a. surname and forenames;

b. name or company name and address of the financial service provider for which they work;

c. function and position of the client adviser within the organisation;

d. fields of activity;

e. basic training and continuing professional development completed;

f. ombudsman's office to which they themselves in their capacity as financial service providers or the financial service provider for which they work are affiliated;

g. date of the register entry.

Art. 31 Registration body

[1] The registration body shall keep the register of advisers. It requires a licence from the Swiss Financial Market Supervisory Authority (FINMA).

[2] FINMA may grant a licence to two or more registration bodies provided this is objectively justified.

[3] The registration body must be organised so as to guarantee the independent fulfilment of its tasks.

[4] The registration body and the persons responsible for its management must provide the guarantee of irreproachable business conduct. Furthermore, the persons responsible for its management must enjoy a good reputation and have the specialist qualifications required for their function.

[5] If the registration body no longer fulfils the requirements under this Act, FINMA shall order the measures necessary to remedy the deficiencies. If, within a reasonable period, the registration body fails to remedy the deficiencies preventing it from fulfilling its tasks, FINMA shall withdraw its licence to register client advisers.

[6] If a private body is not available as a registration body, the Federal Council shall designate a body for this task.

Art. 32 Keeping of the register and notification duty

[1] The registration body shall decide which advisers are registered and deregistered as advisers and shall issue the necessary rulings.

[2] Registered client advisers and the financial service provider for which they work must notify the registration body of all changes in the facts underlying their registration.

[3] The competent supervisory authorities shall notify the registration body if they:

a. prohibit any registered client advisers from performing an activity or practising a profession as defined in Article 29 paragraph 2 letter b;

b. learn of a criminal conviction against registered client advisers in accordance with Article 29 paragraph 2 letter a.

[4] If the registration body learns that a client adviser no longer meets a condition for registration, it shall deregister that client adviser.

[5] The contents of the register of advisers shall be public and may be consulted online.

Art. 33 Fees

[1] The registration body shall charge fees to cover the expenses incurred in its rulings and services.

[2] The Federal Council shall regulate the details. This regulation is based on Article 46*a* of the Government and Administration Organisation Act of 21 March 1997[18].

Art. 34 Procedure

The procedure for registration entries is based on the Administrative Procedure Act of 20 December 1968[19].

Title 3 Offering of Financial Instruments

Chapter 1 Prospectus for Securities

Section 1 General

Art. 35 Duty to publish a prospectus

[1] Any person in Switzerland who makes a public offer for the acquisition of securities or any person who seeks the admission of securities to trading on a trading venue in accordance with Article 26 letter a of the Financial Market Infrastructure Act of 19 June 2015[20] must first publish a prospectus.

[2] If the issuer of the securities does not participate in the public offer, it is not obliged to cooperate with the preparation of the prospectus.

Art. 36 Exemptions by type of offer

[1] A prospectus does not need to be published if the public offer:

a. is addressed solely at investors classified as professional clients;

18 SR **172.010**
19 SR **172.021**
20 SR **958.1**

b. is addressed at fewer than 500 investors;

c. is addressed at investors acquiring securities to the value of at least CHF 100,000;

d. has a minimum denomination per unit of CHF 100,000;

e. does not exceed a total value of CHF 8 million over a 12-month period.

[2] Each public offer for the resale of securities that were previously the subject of an offer in accordance with paragraph 1 is regarded as a separate offer.

[3] In the absence of indications to the contrary, the offerer may, for the purposes of this provision, assume that professional and institutional clients have not declared that they wish to be treated as retail clients.

[4] A financial service provider need not publish a prospectus for securities offered publicly at a later stage:

a. as long as a valid prospectus exists; and

b. if the issuer or the persons who have assumed responsibility for the prospectus have consented to its use.

[5] Taking account of recognised international standards and legal developments abroad, the Federal Council may adjust the number of investors and the amounts specified under paragraph 1 letters b to e.

Art. 37 Exemptions by type of securities

[1] A prospectus need not be published if the following types of securities are offered publicly:

a. equity securities issued outside the scope of a capital increase in exchange for previously issued equity securities of the same class;

b. equity securities issued or delivered on the conversion or exchange of financial instruments of the same issuer or corporate group;

c. equity securities issued or delivered following the exercise of a right linked to financial instruments of the same issuer or corporate group;

d. securities offered for exchange in connection with a takeover, provided that information exists that is equivalent in terms of content to a prospectus;

e. securities offered or allocated in connection with a merger, division, conversion or transfer of assets, provided that information that is equivalent in terms of content to a prospectus exists;

f. equity securities that are distributed as dividends to holders of equity securities of the same class, provided that information exists on the number and type of equity securities and on the reasons for and details of the offer;

g. securities that employers or affiliated companies offer or allocate to current or former members of the board of directors or management board or their employees;

h. securities issued by or with an unlimited and irrevocable guarantee from the Confederation or cantons, from an international or supranational public entity, from the Swiss National Bank or from foreign central banks;

i. securities issued by non-profit institutions for raising funds for non-commercial purposes;

j. medium-term notes;

k. securities with a term of less than one year (money market instruments);

l. derivatives that are not offered in the form of an issue.

[2] Taking account of recognised international standards and legal developments abroad, the Federal Council may provide for exemptions from the duty to publish a prospectus for further types of publicly issued securities.

Art. 38 Exemptions for admission to trading

[1] A prospectus need not be published if the following types of securities are admitted to trading:

a. equity securities that over a period of 12 months account for less than 20% of the number of equity securities of the same category already admitted to trading on the same trading venue;

b. equity securities issued upon the conversion or exchange of financial instruments or following the exercise of rights linked to financial instruments, provided they are equity securities of the same category as those already admitted to trading;

c. securities admitted to trading on a foreign trading venue whose regulation, supervision and transparency are acknowledged as being appropriate by the domestic trading venue or whose transparency for investors is ensured in another manner;

d. securities for which admission is sought for a trading segment open exclusively to professional clients trading for their own account or for the account solely of professional clients.

[2] Exemptions from the duty to publish a prospectus in accordance with Articles 36 and 37 also apply by analogy to admission to trading.

Art. 39 Information beyond the scope of the duty to publish a prospectus

In the absence of a duty to publish a prospectus, offerers or issuers shall treat investors alike when sending them essential information on a public offer.

Section 2 Requirements

Art. 40 Contents

[1] The prospectus shall contain the essential information for the investor's decision on:

a. the issuer and the guarantor and security provider, specifically:
   1. the board of directors, management board, auditors and other governing bodies,
   2. the most recent semi-annual or annual accounts or, where these are not yet available, information on assets and liabilities,
   3. the business situation,
   4. the main prospects, risks and litigation;
b. the securities to be offered publicly or admitted to trading on a trading venue, specifically the associated rights, obligations and risks for investors;
c. the offer, specifically the type of placement and the estimated net proceeds of the issue.

[2] The information shall be provided in one of the official languages of the Swiss Confederation or in English.

[3] The prospectus shall also contain a clearly understandable summary of the essential information.

[4] If the final issue price and the issue volume cannot be stated in the prospectus, it must then indicate the maximum issue price and the criteria and conditions used to determine the issue volume. The information on the final issue price and on the issue volume shall be filed with and published by the reviewing body.

[5] In the case of offers for which an exception in accordance with Article 51 paragraph 2 is requested, the prospectus shall mention that this has not yet been reviewed.

Art. 41 Exemptions

[1] The reviewing body may provide that information need not be included in the prospectus if:

a. disclosure would be seriously detrimental to the issuer and omission would not mislead investors with regard to facts and circumstances that are essential to an informed assessment of the quality of the issuer and the characteristics of the securities;
b. the information in question is only of minor importance and has no bearing on the assessment of the business situation and the main prospects, risks and litigation of the issuer or of the guarantor and security provider; or
c. the information concerns securities traded on a trading venue, and the issuer's periodic reporting over the preceding three years complied with the applicable financial reporting requirements.

[2] The reviewing body may to a limited degree provide for further exemptions insofar as the interests of investors remain protected.

Art. 42 Inclusion by reference

The prospectus may contain references to previously or simultaneously published documents in all sections apart from the summary.

Art. 43 Summary

[1] The summary should facilitate a comparison with similar securities.

[2] The summary must clearly state that:

a. it is regarded as an introduction to the prospectus;

b. the investment decision must be based not on the summary but on the information contained in the entire prospectus;

c. liability for the summary is limited to cases where the information contained therein is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

Art. 44 Structure

[1] The prospectus may consist of a stand-alone document or several individual documents.

[2] If it consists of two or more individual documents, it may be broken down into:

a. a registration document with information about the issuer;

b. a securities note with information on the securities to be offered publicly or admitted to trading on a trading venue;

c. the summary.

Art. 45 Base prospectus

[1] For debt instruments issued in an offer programme or issued in a continuous or repeated manner by banks in accordance with the BankA[21] or securities firms in accordance with the FinIA[22], the prospectus may be drafted in the form of a base prospectus.

[2] The base prospectus shall contain all the information available at the time of publication on the issuer, the guarantor and security provider and the securities, but not the final terms.

21 SR **952.0**
22 SR **954.1**

[3] The final terms shall be included at least in a version with indicative information at the time of the public offer. At the end of the subscription period, they shall be published in a definitive version and filed with the reviewing body.

[4] Approval of the final terms is not necessary.

Art. 46 Supplementary provisions

Taking account of the specific characteristics of the issuers and securities, the Federal Council shall issue supplementary provisions on:

a. the format of the prospectus and the base prospectus, the summary, the final terms and the supplements;

b. the content of the summary;

c. the minimum information to be contained in the prospectus;

d. the documents to which reference may be made.

Section 3 Relaxation of Requirements

Art. 47

[1] The Federal Council may grant a relaxation of the duty to publish a prospectus and supplements to issuers that have not exceeded two of the following volumes in the preceding financial year:

a. balance sheet total of CHF 20 million;

b. turnover of CHF 40 million;

c. 250 FTEs on average for the year.

[2] It may also grant a relaxation of the requirements particularly to:

a. issuers with low market capitalisation on a trading venue;

b. issues of subscription rights;

c. issuers that regularly offer securities publicly or whose securities are admitted to trading on a foreign trading venue whose regulation, supervision and transparency are acknowledged as being appropriate by a domestic trading venue.

[3] It shall grant a relaxation of the requirements uniformly and, in particular, with respect to:

a. the type of securities issued;

b. the issue volume;

c. the market environment;

d. the investors' specific requirements for transparent information;

e. the business activities and the size of the issuers.

Section 4 Collective Investment Schemes

Art. 48 Open-ended collective investment schemes

[1] For open-ended collective investment schemes as defined in Title 2 of the CISA[23], the fund management company (Article 32 FinIA[24]) and the investment company with variable capital (SICAV) (Article 13 paragraph 2 letter b CISA) shall produce a prospectus.

[2] The prospectus shall include the fund regulations in cases where interested persons are not notified as to where such regulations may be separately obtained prior to an agreement being concluded or prior to subscription.

[3] The Federal Council shall determine which information must be set out in the prospectus apart from the fund regulations.

[4] The prospectus and its amendments shall be submitted to FINMA without delay.

Art. 49 Closed-ended collective investment schemes

[1] A limited partnership for collective investment under Article 98 CISA[25] shall produce a prospectus.

[2] Specifically, this shall contain the information contained in the partnership agreement in accordance with Article 102 paragraph 1 letter h CISA.

[3] For the prospectus of an investment company with fixed capital (SICAF) in accordance with Article 110 CISA, Article 48 applies by analogy.

Art. 50 Exemptions

FINMA may exempt collective investment schemes under the CISA[26] from all or some of the provisions of this chapter provided that they are open only to qualified investors in accordance with Article 10 paragraphs 3 and 3[ter] CISA and the protective purpose of the law is not thereby affected.

Section 5 Review of the Prospectus

Art. 51 Duty

[1] The prospectus must be submitted to the reviewing body prior to publication. The reviewing body shall check that it is complete, coherent and understandable.

[2] The Federal Council may designate securities whose prospectus must be reviewed only after publication if a bank in accordance with the BankA[27] or a securities firm

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in accordance with the FinIA[28] confirms that the most important information on the issuers and the securities is known at the time of publication.

[3] Prospectuses for collective investment schemes do not have to be reviewed; the foregoing does not apply to the approval requirement for the documentation of foreign collective investment schemes under Article 15 paragraph 1 letter e and Article 120 CISA[29].

Art. 52 Reviewing body

[1] The reviewing body requires a licence from FINMA. FINMA may grant a licence to two or more reviewing bodies provided this is objectively justified.

[2] The reviewing body must be organised so as to guarantee the independent fulfilment of its tasks.

[3] The reviewing body and the persons responsible for its management must provide the guarantee of irreproachable business conduct. Furthermore, the persons responsible for its management must enjoy a good reputation and have the specialist qualifications required for their function.

[4] If the reviewing body no longer fulfils the requirements under this Act, FINMA shall order the measures necessary to remedy the deficiencies. If, within a reasonable period, the reviewing body fails to remedy the deficiencies preventing it from fulfilling its tasks, FINMA shall withdraw its licence.

[5] If a private body is not available as a reviewing body, the Federal Council shall designate a body for this task.

Art. 53 Procedure and deadlines

[1] The procedure followed by the reviewing body is based on the Administrative Procedure Act of 20 December 1968[30].

[2] The reviewing body shall check prospectuses as soon as they are received.

[3] If it ascertains that a prospectus does not meet the statutory requirements, within ten calendar days from the time of receipt it shall notify the submitter of the prospectus accordingly, with reasons, and ask the latter to make the improvements necessary.

[4] Within ten calendar days of receiving the rectified prospectus the reviewing body shall decide on whether to approve it.

[5] This period is 20 calendar days for new issuers.

[6] If the reviewing body fails to issue its decision within the time frames set out in paragraphs 4 and 5, this shall not constitute approval of the prospectus.

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30 SR **172.021**

Art. 54 Foreign prospectuses

[1] The reviewing body may approve a prospectus produced under foreign legislation if:

a. it was produced in accordance with international standards established by international organisations of securities regulators; and

b. the duty to inform, including with regard to providing financial information, is equivalent to the requirements set out in this Act; audited individual financial statements are not required.

[2] It may provide that prospectuses approved in certain jurisdictions are considered approved in Switzerland too.

[3] It shall publish a list of countries whose prospectus approval is recognised in Switzerland.

Art. 55 Validity

[1] Prospectuses shall be valid for 12 months after approval for public offers or admission to trading on a trading venue of securities of the same category and the same issuer.

[2] Prospectuses for debt instruments issued by a bank in accordance with the BankA[31] or a securities firm in accordance with the FinIA[32] in an offer programme shall be valid until none of the debt instruments in question is issued in a continuous or repeated manner any more.

Art. 56 Supplements

[1] A supplement to the prospectus must be produced if any new facts arise or are established between the time of approval of the prospectus and final completion of a public offer or opening of trading on a trading venue which could have a significant influence on the assessment of securities.

[2] The supplement must be reported to the reviewing body immediately upon occurrence or establishment of the new fact.

[3] The reviewing body shall decide whether to approve the supplement within a maximum of seven calendar days. Thereafter, the supplement shall be published immediately. The information contained in the supplement must be added to the summaries.

[4] The reviewing body shall maintain a list of facts which by their nature are not subject to approval. Supplements on such facts have to be published at the same time as they are reported to the reviewing body.

[5] If a new fact in accordance with paragraph 1 arises during a public offer, the offer period shall end no sooner than two days after publication of the supplement. Inves-

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tors may withdraw their subscriptions or acquisition pledges up to the end of the subscription or offer period.

Art. 57 Fees

[1] The reviewing body shall charge fees to cover the expenses incurred in its rulings and services.

[2] The Federal Council shall regulate the fees. This regulation is based on Article 46a of the Government and Administration Organisation Act of 21 March 1997[33].

Chapter 2 Key Information Document for Financial Instruments

Art. 58 Duty

[1] Where a financial instrument is offered to retail clients, the producer must first produce a key information document.

[2] It is not required to prepare a key information document for financial instruments which may be acquired for retail clients solely within the scope of a portfolio management agreement.

[3] The Federal Council may designate qualified third parties to whom the preparation of the key information document may be assigned. The producer shall remain liable for the completeness and accuracy of the details in the key information document, as well as for compliance with the duties set out in Chapters 2 to 4 (Articles 58 to 68).

[4] If financial instruments are offered to retail clients on the basis of indicative details, at least a draft version of the key information document with the relevant indicative information is to be prepared.

Art. 59 Exemptions

[1] Persons who offer securities in the form of shares, including share-like securities allowing for participation rights, such as participation certificates, dividend rights certificates and non-derivative debt instruments, are not obliged to prepare a key information document.

[2] Documents prepared in accordance with foreign legislation that are equivalent to the key information document may be used instead of a key information document.

Art. 60 Contents

[1] The key information document shall contain the information essential for investors to make a well-founded investment decision and a comparison of different financial instruments.

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[2] In particular, the information shall include:

a. the name of the financial instrument and the identity of the producer;

b. the type and characteristics of the financial instrument;

c. the risk/return profile of the financial instrument, specifying the maximum loss the investor could incur on the invested capital;

d. the costs of the financial instrument;

e. the minimum holding period and the tradability of the financial instrument;

f. information on the authorisations and approvals associated with the financial instrument.

Art. 61 Requirements

[1] The key information document must be easy to understand.

[2] It is a stand-alone document that must be clearly distinguishable from advertising materials.

Art. 62 Changes

[1] The producer shall regularly check the information contained in the key information document and revise it in the event of material changes.

[2] The checking and revision of the information contained in the key information document may be assigned to qualified third parties. The producer shall remain liable for the completeness and accuracy of the details in the key information document, as well as for compliance with the duties set out in Chapters 2 to 4 (Articles 58 to 68).

Art. 63 Supplementary provisions

The Federal Council shall issue supplementary provisions on the key information document. It shall regulate in particular:

a. its content;

b. its scope, language and layout;

c. details on how it is to be made available;

d. the equivalence of foreign documents with the key information document in accordance with Article 59 paragraph 2.

Chapter 3 Publication

Art. 64 Prospectus for securities

[1] The offerer of securities or the person requesting their admission to trading must:

a. file the prospectus with the reviewing body after it has been approved;

b. publish the prospectus no later than the beginning of the public offer or admission of the securities in question to trading.

[2] If a class of equity securities of an issuer is being admitted to trading on a trading venue for the first time, the prospectus must be made available at least six working days before the end of the offer.

[3] The prospectus may be published:

a. in one or more newspapers with a distribution corresponding to the issue or in the Swiss Official Gazette of Commerce;

b. through free-of-charge distribution in printed form at the issuer's registered office or from the office involved in the issue;

c. in electronic form on the website of the issuer, the guarantor and security provider, the trading venue or the office involved in the issue; or

d. in electronic form on the website of the reviewing body.

[4] If the prospectus is published electronically, a paper version must also be made available free of charge upon request.

[5] The reviewing body shall place the approved prospectuses on a list and make this list available for 12 months.

[6] If the prospectus is prepared in two or more individual documents or if it is incorporated by reference, the information and documents constituting the prospectus may be published separately. The individual documents shall be made available to the investors free of charge. Each individual document must indicate where to obtain the other individual documents that, together with said document, constitute the complete prospectus.

[7] The text and format of the prospectus and supplements that are published or made available to the public must at all times correspond to the version filed with the reviewing body.

Art. 65 Prospectus for collective investment schemes

[1] The prospectus for a collective investment scheme must be published no later than the beginning of the public offer.

[2] For publication, Article 64 paragraphs 3, 4 and 6 apply by analogy.

Art. 66 Key information document

[1] If a financial instrument for which a key information document has to be prepared is offered publicly, the key information document must be published no later than the beginning of the public offer.

[2] Article 64 paragraphs 3 and 4 apply by analogy.

Art. 67 Changes to the rights associated with securities

[1] The issuer shall announce changes to the rights associated with securities sufficiently early to ensure that investors can exercise their rights.

[2] The content and scope of the publication shall otherwise be based on the issuing conditions. Article 64 paragraphs 3 and 4 apply by analogy.

[3] Special statutory provisions remain reserved.

Chapter 4 Advertising

Art. 68

[1] Advertising for financial instruments must be clearly indicated as such.

[2] Advertising must mention the prospectus and the key information document for the financial instrument in question, as well as where these can be obtained.

[3] Advertising and other information on financial instruments intended for investors must correspond to the details given in the prospectus and the key information document.

Chapter 5 Liability

Art. 69

[1] Any person who fails to exercise due care and thereby furnishes information that is inaccurate, misleading or in violation of statutory requirements in prospectuses, key information documents or similar communications is liable to the acquirer of a financial instrument for the resultant losses.

[2] With regard to information in summaries, liability is limited to cases where such information is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

[3] With regard to false or misleading information on main prospects, liability is limited to cases where such information was provided or distributed against better knowledge or without reference to the uncertainty regarding future developments.

Chapter 6 Offering of Structured Products and Creation of In-House Funds

Art. 70 Structured products

[1] Structured products may be offered in or from Switzerland to retail clients with whom there is no permanent portfolio management or investment advice relationship only if these are issued, guaranteed or secured in an equivalent manner by:

a. a bank as defined in the BankA[34];

b. an insurance company as defined in the ISA[35];

c. a securities firm as defined in the FinIA[36];

d. a foreign institution that is subject to equivalent prudential supervision.

[2] The issuing of structured products to retail clients by special purpose entities is permitted if:

a. these products are offered by:

1. financial intermediaries as defined in the BankA, the FinIA and the CISA[37],

2. insurance companies as defined in the ISA,

3. a foreign institution that is subject to equivalent supervision, and

b. collateral corresponding to the requirements under paragraph 1 is guaranteed.

[3] The Federal Council shall regulate the requirements for such collateral.

Art. 71 In-house funds

[1] In-house funds of a contractual nature for the purpose of collectively managing the assets of existing clients may be created by banks as defined in the BankA[38] and securities firms in accordance with the FinIA[39] only if said banks and securities firms meet the following conditions:

a. they manage clients' participation in the in-house funds exclusively on the basis of a permanent portfolio management or investment advice relationship;

b. they do not issue any unit certificates for this;

c. they do not offer participation to the public and they undertake no advertising for this.

[2] A key information document in accordance with Articles 58 to 63 must be prepared for in-house funds.

[3] The creation and dissolution of in-house funds must be notified to the auditors appointed under the relevant supervisory law.

[4] In the event of bankruptcy of the bank or securities firm, assets and rights that form part of in-house funds shall be segregated in favour of the investors.

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35 SR **961.01**
36 SR **954.1**
37 SR **951.31**
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Title 4 Provision of Documents

Art. 72 Entitlement

[1] Clients are entitled at all times to receive a copy of their file and all other documents concerning them that the financial service provider has prepared within the context of their business relationship.

[2] With the client's consent, documents may be provided in electronic form.

Art. 73 Procedure

[1] Any person who wishes to assert their right must submit a corresponding request in writing or in another form demonstrable via text.

[2] The financial service provider shall provide the client with a copy of the documents in question free of charge within 30 days after receipt of such request.

[3] If it fails to comply with such a request, the client may apply to the court.

[4] A refusal by the financial service provider to supply the requested documents may be taken into account by the competent court in any subsequent legal dispute when deciding on procedural costs.

Title 5 Ombudsman's Offices

Chapter 1 Mediation

Art. 74 Principle

Disputes regarding legal claims between the client and the financial service provider should be settled by an ombudsman in mediation proceedings if possible.

Art. 75 Procedure

[1] The proceedings before the ombudsman must be straightforward, fair, quick, impartial and inexpensive or free of charge for the client.

[2] The proceedings are confidential. The statements made by the parties within the framework of mediation proceedings and the correspondence between a party and the ombudsman may not be used in other proceedings.

[3] The parties are not entitled to view the ombudsman's correspondence with the other party.

[4] A mediation request is permissible at any time if:

a. it was submitted in accordance with the ombudsman's rules of procedure or using the form provided by the ombudsman;

b. the client credibly proves that they previously informed the financial service provider of their point of view and attempted to reach an agreement;

c. it is not obviously vexatious, and mediation proceedings have not already been conducted in the same matter; and

d. the case is not being or has not been dealt with by a conciliation authority or by a court, court of arbitration or administrative authority.

[5] The proceedings are conducted in the official language of the Swiss Confederation chosen by the client unless the parties make alternative arrangements that comply with the ombudsman's rules of procedure.

[6] The ombudsman shall freely assess the cases submitted to him and is not subject to any directives.

[7] The ombudsman shall take the appropriate measures for mediation unless there appears to be no prospect of success from the outset.

[8] If an agreement is not reached or there appears to be no prospect of such, the ombudsman may give the parties his own factual and legal assessment of the dispute based on the information available and include it in the notification of conclusion of proceedings.

Art. 76 Interdependence with conciliation proceedings and other proceedings

[1] Filing a mediation request with an ombudsman does not rule out civil action and does not prevent such from being initiated.

[2] After bringing proceedings before an ombudsman, the plaintiff may unilaterally waive conciliation proceedings under the Civil Procedure Code[40].

[3] The ombudsman shall terminate proceedings once a conciliation authority, a court, a court of arbitration or an administrative authority begins dealing with the case.

Chapter 2 Duties of Financial Service Providers

Art. 77 Duty to affiliate

Financial service providers must affiliate to an ombudsman's office at the latest on commencing activity.

Art. 78 Duty to participate

[1] Financial service providers that are affected by a mediation request to an ombudsman for dispute resolution must participate in the proceedings.

[2] They must respond promptly to summonses, requests for comments, and any enquiries from ombudsman's offices.

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Art. 79 Duty to provide information

[1] Financial service providers shall inform their clients about the possibility of mediation proceedings through an ombudsman:

a. on entering into a business relationship in accordance with the duty to provide information under Article 8 paragraph 1 letter c;

b. in the event of the rejection of a legal claim asserted by a client; and

c. at any time upon request.

[2] The information shall be given in an appropriate form and contain the name and address of the ombudsman's office to which the financial service provider is affiliated.

Art. 80 Financial participation

Financial service providers shall make financial contributions to the ombudsman's office to which they are affiliated. Based on the volume of work caused, the contributions are in accordance with the ombudsman office's schedule of contributions and costs.

Chapter 3 Admission and Exclusion

Art. 81 Admission

An ombudsman's office is obliged to admit a financial service provider if it fulfils the admission conditions.

Art. 82 Exclusion

Financial service providers that repeatedly fail to comply with the duties in accordance with Articles 78 to 80 shall be excluded by the ombudsman's office.

Art. 83 Duty to inform

The ombudsman's office shall inform the supervisory authorities as well as the registration body about the financial service providers it has admitted, those refused admission and those excluded.

Chapter 4 Recognition and Publication

Art. 84 Recognition

[1] Ombudsman's offices must be recognised by the Federal Department of Finance (FDF).

[2] Organisations meeting the following conditions shall be recognised as ombudsman's offices:

a. they and the persons charged by them with mediation are organisationally and financially independent, perform their task impartially, transparently and efficiently, and do not accept directives;

b. they ensure that the persons charged by them with mediation have the necessary specialist skills;

c. they have organisational regulations that ensure the proper functioning of the ombudsman's office and specify the admission conditions;

d. they have procedural rules governing the procedure under Article 75;

e. they have a schedule of contributions and costs in accordance with Article 80.

[3] The FDF shall publish a list of ombudsman's offices.

[4] If individual financial service providers have no possibility of being affiliated to an ombudsman's office, the FDF may require an ombudsman's office to admit these financial service providers. Where two or more financial service providers have no appropriate ombudsman's office available to them, the Federal Council may create such an office.

Art. 85 Review of recognition

[1] Changes which concern the fulfilment of the conditions for recognition laid down in Article 84 must be submitted to the FDF for approval.

[2] If an ombudsman's office no longer fulfils the conditions for recognition, the FDF shall set an appropriate period for rectification.

[3] If the necessary rectifications are not made within this period, the FDF shall withdraw its recognition.

Art. 86 Reporting

Ombudsman's offices shall publish an activity report annually.

Title 6 Supervision and Exchange of Information

Art. 87 Supervision

[1] The competent supervisory authority shall monitor the compliance of financial service providers under its supervision with the requirements for the provision of financial services and the offering of financial instruments.

[2] Within the scope of the supervisory instruments available to it, it may issue orders to prevent or remedy breaches of the requirements.

[3] Contentious civil matters between different financial service providers or between financial service providers and clients are settled by the competent court or court of arbitration.

Art. 88 Exchange of information

FINMA, the supervisory organisation, the registration body, the reviewing body, the ombudsman's office and the FDF may exchange information not in the public domain which they require to fulfil their tasks.

Title 7 Criminal Provisions

Art. 89 Violation of the code of conduct

A fine not exceeding CHF 100,000 shall be imposed on any person who wilfully:

a. provides false information or withholds material facts when complying with the duties to provide information under Article 8;

b. seriously violates the duties to assess appropriateness and suitability under Articles 10 to 14;

c. violates the provisions on the disclosure of compensation paid by third parties under Article 26.

Art. 90 Violation of the regulations on prospectuses and key information documents

[1] A fine not exceeding CHF 500,000 shall be imposed on any person who wilfully:

a. provides false information or withholds material facts in the prospectus or key information document in accordance with Title 3;

b. fails to publish the prospectus or the key information document under Title 3 by the beginning of the public offer at the latest.

[2] A fine not exceeding CHF 100,000 shall be imposed on any person who wilfully fails to make the key information document available prior to subscription or conclusion of the contract.

Art. 91 Unauthorised offering of financial instruments

A fine not exceeding CHF 500,000 shall be imposed on any person who wilfully:

a. offers retail clients structured products without complying with the conditions set out in Article 70;

b. creates an in-house fund without complying with the conditions set out in Article 71.

Art. 92 Exemptions

Articles 89 to 91 do not apply to persons and entities subject to supervision in accordance with Article 3 FINMASA[41] and to persons working for them.

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Title 8 Final Provisions

Art. 93 Implementing provisions

The Federal Council shall issue the implementing provisions.

Art. 94 Amendment of other legislation

The amendment of other legislative instruments is set out in the Annex.

Art. 95 Transitional provisions

[1] The Federal Council may make provision for a transitional period for fulfilment of the requirements set out in Article 6.

[2] The client advisers in accordance with Article 28 must report to the registration body for entry in the register within six months of this Act coming into force.

[3] Financial service providers must be affiliated to an ombudsman's office in accordance with Article 74 within six months of this Act coming into force.

[4] The provisions of Title 3 of this Act will come into force two years after this Act comes into force:

a. in the case of securities for which a public offer was made or a request was made for admission to trading on a trading venue before entry into force;

b. in the case of financial instruments that were offered to retail clients before entry into force.

[5] The Federal Council may extend the time frame under paragraph 4 for securities if this is warranted by a delay in the reviewing body commencing operations.

Art. 96 Referendum and commencement

[1] This Act is subject to an optional referendum.

[2] The Federal Council shall determine the commencement date.

[3] This Act shall only come into force with the FinIA[42].

Commencement date: 1 January 2020[43]

42 SR **954.1**
43 O of 6 Nov. 2019 on the Final Commencement of the Financial Institutions Act (AS **2019** 4631).

Annex
(Art. 94)

Amendment of other legislative instruments

The legislative instruments below are amended as follows:

…[44]

44 The amendments may be consulted under AS **2019** 4417.