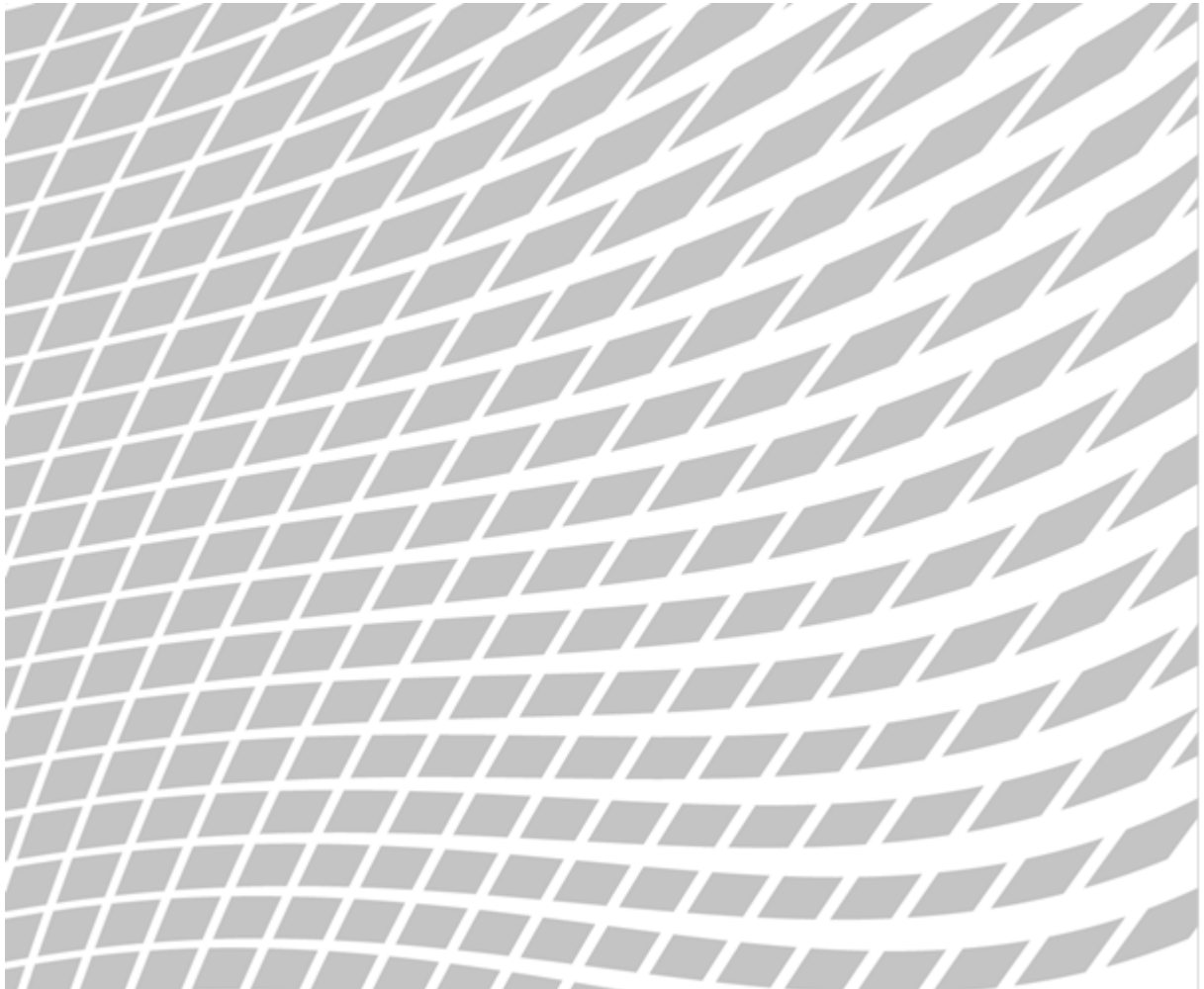


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## FINMA communication policy

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## 1 Introduction

As a supervisory authority, FINMA serves the interests of the Swiss financial centre, investors, creditors and policyholders. Its supervisory activity aims to ensure the smooth functioning of the financial markets and to protect clients as a group. Issuing licences, overseeing the activities of licensed institutions, enforcing supervisory law where necessary and acting as a regulator at a subordinate level are all part of FINMA's remit. To carry out this role, it pursues a risk-based approach that ensures continuity and predictability.

The Financial Market Supervision Act (FINMASA) sets out the parameters for FINMA communication activities. It requires the supervisory authority to report on its activity and practice at least once a year, limit communication on individual proceedings to exceptional cases, and respect the personal rights of those it supervises. Under the terms of the dispatch on FINMASA, FINMA communication with the public and those subject to its supervision needs to be "restrained, yet constant and credible".

FINMA communication must meet exacting standards and address differing expectations on the part of the public. On the one hand, public interest is shown in information about individual financial market participants, while on the other hand personal rights, as well as legitimate private interest in safeguarding business and professional secrecy, need to be protected.

Although the legislation sets out limits to the information requirements FINMA must respect, it also grants the authority a degree of discretion with regard to its communication. This communication policy explains how FINMA interprets that discretion and establishes a framework for its information strategy. Moreover, this policy sets out the principles of FINMA communication (Section 2) and the options and limits available to it (Section 3).

The communication policy was approved by FINMA's Executive Board on 5 September 2014 and by its Board of Directors on 25 September 2014. In order to maintain its freedom to act and make decisions, FINMA reserves the right to deviate from this policy in exceptional cases, thus exercising the discretion granted to it by law.

## 2 Principles of FINMA communication policy

FINMA communication serves as a tool to enhance its core task of supervising the financial market. In so doing, it pursues the following five goals:

1. FINMA creates legal certainty, while making its own interpretation of the law accessible to all parties concerned simultaneously;
2. FINMA aims to enhance the preventive effect of its supervision;
3. FINMA makes a contribution to the national and international reputation of the financial centre;
4. FINMA explains its regulatory actions, making them transparent for the public;
5. FINMA provides information about unlicensed financial intermediaries.

Through their regular public presence, the Chair of the Board of Directors and the CEO represent FINMA's interests. Queries from individuals, parliamentarians and the media are dealt with by a central internal unit. The most important and comprehensive channel of communication is the FINMA website.

## 3 FINMA communication in practice

In practice, FINMA distinguishes between two forms of communication: for general supervisory matters, for instance, FINMA communicates by providing aggregated and anonymised information, while on the other hand, it provides details on individual companies and persons only when there is sufficient public interest in doing so. The definition of what constitutes public interest is derived from the communication principles set out in Section 2 above and the protective goals of the FINMASA, under which FINMA is charged with safeguarding the interests of creditors, investors and policyholders, and ensuring the smooth functioning of the financial markets. FINMA's ultimate management and staff, as well as those acting on its behalf, are bound by official secrecy.

### 3.1 Communication on general supervisory and regulatory matters

FINMA communication on general supervisory and regulatory matters is detailed and constant. FINMA distinguishes between:

- *public communication*, which gives an account of FINMA's activities and provides up-to-date information to the public;
- *regulatory communication*, which creates transparency in the regulatory process and is described in FINMA's [Guidelines on Financial Market Regulation](#) of 3 July 2013 (in German and French);
- and *supervisory communication*, in which FINMA provides supervised institutions with important information, risk assessments or explanations about supervisory matters.

### 3.1.1 Public communication

FINMA gives an account of its activities by publishing an annual report. It provides ongoing information on current financial market issues and its enforcement activities through a variety of publications (reports, speeches, etc.) and other communication vehicles known as “FINMA information channels” (press releases, media conferences, etc.).

FINMA provides broad and detailed information to the public. Two important publications are its strategic goals and annual reports. Valid for a period of four years, the strategic goals agreed by the Board of Directors set out the medium and long-term focus of the authority’s activity, whereas the annual reports detail FINMA’s principal areas of activity over the previous year and include its financial statements.

Further account of the authority and its work are given in other FINMA publications such as reports, speeches and specialist articles, as well as specific information channels for the media. These may, for example, address current supervisory matters or present FINMA’s analysis of aggregated statistical data. Information about important organisational and key staff changes within FINMA is also released regularly.

#### Vehicles of public communication

Vehicle	Description	Frequency
<b>Strategic goals</b>	Set out the overarching strategic goals for the authority’s development. They are drawn up by the Board of Directors and approved by the Federal Council.	Every four years
<b>Annual report</b>	Provides an account of FINMA’s activities as required by law (Art. 9 para. 1 let. f FINMASA). It is generally published on the day of the annual media conference.	Annually
<b>FINMA publications</b>	FINMA reports: enforcement report, publication of financial reporting by life insurers for the occupational pensions sector, insurance market report, etc.	Annually or as necessary
	Speeches and specialist articles: expository comments by FINMA officials regarding supervisory and financial market issues. They are not legally binding.	Several times a year
	Bulletins: compilation of important FINMA decisions (anonymised), judgments made by the Federal Supreme Court and Federal Administrative Court.	As a rule annually
	Discussion papers: FINMA “green papers” on various financial market topics.	As necessary
	Factsheets: technical issues related to financial market supervision explained concisely and clearly.	Several times a year
<b>FINMA information channels</b>	Press releases, media conferences and other forms of information.	Ongoing

### 3.1.2 Regulatory communication

Before issuing FINMA ordinances and FINMA circulars, the supervisory authority opens a consultation for the parties concerned and provides information on the results.

FINMA's main function is to act as a supervisory authority, implementing and ensuring compliance with regulations. It regulates only when it is necessary to meet its supervisory goals. FINMA issues its own ordinances, where this is explicitly prescribed in the legislation. It can also issue circulars to consolidate its supervisory practice or if on the part of supervised institutions, there is need for its codification.

When issuing or amending its own ordinances or circulars, FINMA communicates in detail, involving the parties concerned. The details of this process are set out in the [Guidelines on Financial Market Regulation](#). FINMA publishes a frequently updated regulatory pending project list detailing the current status of major financial market regulatory projects in Switzerland. During consultations, FINMA sets out and publishes on its website its own position on regulatory projects at the level of laws and Federal Council ordinances.

#### Vehicles of regulatory communication

Vehicle	Description	Frequency
<b>FINMA ordinances</b>	FINMA issues its own ordinances where financial market legislation empowers it to do so. The parties concerned are provided with an explanatory report and have the opportunity to submit their responses. The results are published in a consultation report.	As necessary
<b>FINMA circulars</b>	FINMA codifies and standardises its supervisory practice in circulars. These do not have the force of law and are not legally binding. The parties concerned are provided with an explanatory report and their responses are published in consultation reports.	As necessary
<b>Regulatory pending project list</b>	List of regulatory projects within financial market law at the level of Parliament, the Federal Council and FINMA, indicating the status of the regulatory project.	Semi-annually

### 3.1.3 Supervisory communication

FINMA guidance is a supervisory instrument directed at a specific group of licensed institutions in each case. It includes important or urgent information, explanations of issues relevant to the supervised institutions, and/or FINMA risk assessments.

Public communication with supervised institutions takes the form of FINMA guidance. The authority provides them with relevant information on ongoing developments or draws their attention to risks, based on its own observations and experience. The aim is to raise awareness among supervised institutions proactively, thereby supporting them in their efforts to comply with financial market legislation.

Although used at irregular intervals, FINMA guidance is a flexible, rapid, transparent and, where necessary, ad hoc means of providing guidance to supervised institutions. Unlike FINMA ordinances and FINMA circulars, FINMA guidance is designed to prompt action rather than exert a legal effect.

#### Vehicles of supervisory communication

Vehicle	Description	Frequency
<b>FINMA guidance</b>	Guidance sent to specific groups of supervised institutions setting out FINMA's interpretation of financial market law or pointing out potential risks.	As necessary
<b>FAQs on supervisory matters</b>	Responses to frequently asked questions on supervisory matters aimed at providing guidance to supervised institutions.	At irregular intervals
<b>Guidelines</b>	Guidance for supervised institutions on licensing and reporting matters.	At irregular intervals

## 3.2 Communication on individual companies and persons

A distinction is made between communication on general supervisory matters and communication on individual cases. The legislature requires FINMA to exercise restraint in its communication on individual supervisory actions and proceedings. Supervised institutions, their internal auditors and audit firms, as well as individuals and companies holding qualified or significant participations, are required to provide FINMA with all the information and documentation it needs to carry out its duties. For its part, FINMA is bound by official secrecy, especially where protection of the business and professional secrecy of supervised institutions and the personal rights of the individuals involved is concerned.

FINMA is not permitted to report publicly on individual proceedings unless, from a supervisory viewpoint, there is a particular need to do so (Article 22 FINMASA). The law stipulates three reasons for communication of this kind: first, the protection of market participants or supervised institutions; second, correcting false or misleading information; and third, safeguarding the reputation of Switzerland's financial centre. In the sections below, FINMA sets out its interpretation of those legal provisions.

### 3.2.1 Communication on licensing and supervision

#### a) Licensing

FINMA publishes the names and licensing status of all supervised institutions on its website. FINMA does not provide information about licensing processes currently in progress.

FINMA publishes a negative list of companies that may be engaging in business activities without holding the requisite licence.

As regards licensing, FINMA oversees the entry and exit of participants in licensed financial markets. The focus is on publishing and continually updating the list of all licensed companies. In most cases, the supervised institutions provide notification of supervision by FINMA. FINMA communicates actively when it is necessary to warn or protect creditors, investors or policyholders.

#### b) Ongoing supervision

As a rule, FINMA does not provide information on ongoing supervisory activities. Only in exceptional cases where there is a particular public interest is information provided.

Supervision of licensed institutions (such as banks, insurance companies, fund management companies, asset managers, etc.) mostly takes the form of direct dialogue between FINMA and those companies. This supervisory dialogue includes a large amount of confidential and market-relevant information that is not normally intended for publication.



### **3.2.2 Communication on enforcement proceedings**

Where enforcement proceedings are conducted against individual companies or persons, the scope of FINMA communication has been narrowly circumscribed by the legislature. Article 22 para. 2 FINMASA requires restraint in order to protect the business and professional secrecy of supervised institutions, as well as the personal rights of individuals. This automatically precludes continuous and systematic communication on all FINMA enforcement proceedings.

#### **c) Principle**

As a rule, FINMA does not communicate on individual enforcement proceedings. Exceptions to this principle are made in cases where there is a particular supervisory interest in doing so.

In selected cases, FINMA may publish information on individual enforcement proceedings. FINMA always provides information when investors, creditors or other market participants require swift protection, or when misleading information that could damage investors or supervised institutions needs to be corrected. FINMA reserves the right to communicate on enforcement proceedings when there is a particular need to do so from a supervisory viewpoint.

#### **d) Breaches of market conduct rules**

FINMA provides information when it declares in a decision that a market participant has committed a serious breach of market conduct rules (disclosure obligations, insider trading, etc.).

FINMA is responsible for ensuring that all companies listed on an exchange in Switzerland comply with the market conduct rules. Its responsibility thus extends beyond the financial market. If FINMA declares in a decision that a market participant has engaged in misconduct, it communicates without delay in order to create transparency for the market as a whole and to prevent or swiftly correct market distortions. This measure should also exert a preventive effect.

#### **e) Insolvency measures and liquidations**

FINMA always provides information when it orders resolution proceedings or (bankruptcy) liquidation to be carried out.

If a supervised company is experiencing financial difficulties, FINMA orders protective measures, providing information if this is deemed necessary to enforce those measures, or to protect third parties.

If a supervised company finds itself in financial difficulties, FINMA is responsible for taking the necessary insolvency measures. Depending on the situation, FINMA can initiate and carry out resolution and bankruptcy proceedings or other protective insolvency measures tailored to the specific situation. In the event of serious breaches of supervisory law, FINMA can order the dissolution of the company and hence its compulsory liquidation.

In all such cases, FINMA's core task is to protect the creditors of the companies concerned. FINMA provides information immediately after the necessary measures have been ordered, provided this is in the interest of the creditors. Such an interest is generally deemed to apply when resolution proceedings are opened, or liquidations or bankruptcies are ordered.

#### **f) Form of communication**

As a rule, FINMA provides information about enforcement proceedings in the form of a press release or FINMA report.

FINMA does not casually provide information about ongoing or concluded enforcement proceedings. It normally does so only where there is a particular public interest, for example the protection of investors, creditors or policyholders against loss or damage. In such cases, prompt public communication is indispensable, and the best way of achieving this is through a press release.

In the event of a serious breach of supervisory law, FINMA publishes its final decision, including the names of persons or companies where necessary, if this has been stipulated in the decision.

Article 34 FINMASA allows FINMA to publish the names of the companies or persons involved in serious breaches of supervisory law. FINMA makes use of this option primarily in relation to individuals conducting unlicensed activities in the financial market, in order to achieve an admonitory or deterrent effect, or to warn potential clients and investors. Cases of this type may only be publicised once the underlying decision has legal force and it stipulates their publication.

## Vehicles for communication on companies and individuals

Vehicle	Description	Frequency
<b>List of supervised institutions</b>	FINMA publishes details of all licensed institutions and registrations. These are continually updated to reflect any changes.	Ongoing
<b>Negative list</b>	FINMA publishes the names of companies that may be engaging in unlicensed activities.	Ongoing
<b>Publications under Article 34 FINMASA</b>	FINMA publishes the names of persons and companies against which it has issued a legally binding decision owing to serious breaches of supervisory law, where the decision allows for publication.	Ongoing
<b>Liquidations and bankruptcies</b>	FINMA publishes the names of companies against which it has opened liquidation or bankruptcy proceedings.	Ongoing
<b>List of companies with FINMA investigating agents</b>	FINMA publishes the names of companies at which it has appointed a FINMA investigating agent with a management function (e.g. Art. 36 FINMASA).	Ongoing