

# **Federal Act on Financial Services**

## **(Financial Services Act, FinSA)**

of ...

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*The Federal Assembly of the Swiss Confederation,*

based on Articles 95, 97, 98 and 122 paragraph 1 of the Federal Constitution<sup>1</sup>,  
and having considered the Federal Council Dispatch of .....

*decrees:*

### **Title 1: General Provisions**

#### **Article 1** Purpose and subject matter

<sup>1</sup> 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.

<sup>2</sup> To this end, it establishes the requirements for honesty, diligence and transparency in the provision of financial services, governs the offering of financial instruments and facilitates the assertion of civil-law claims brought by the clients of financial service providers.

#### **Article 2** Scope of application

<sup>1</sup> 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.

<sup>2</sup> This Act does not apply to the Swiss National Bank (SNB) and the Bank for International Settlements (BIS).

#### **Article 3** Definitions

For the purposes of this Act:

- a. *assets* are financial instruments and other financial investments;
- b. *financial instruments* are:

SR .....

<sup>1</sup> SR 101

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 that, on conversion or execution of the rights embedded in them, allow for the acquisition of equity securities, as set forth above, of the same issuer or the same corporate group,
  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<sup>2</sup>,
  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<sup>3</sup>,
  6. redeemable life insurance policies with price-dependent benefits and settlement values as well as capital redemption operations and tontines,
  7. deposits whose redemption value or interest is risk- or price-dependent, excluding those whose interest is linked to an interest rate index,
  8. bonds: units in an overall loan subject to uniform conditions;
- c. *securities* are standardised certificated and uncertificated securities, derivatives and intermediated securities, which are suitable for mass trading;
- d. a *financial service* is 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 assets (portfolio management),
  4. provision of personal recommendations on transactions with financial instruments (investment advice),
  5. granting of loans to finance transactions with financial instruments;
- e. *financial service providers* are any persons who provide financial services on a professional basis in Switzerland or for clients in Switzerland;
- f. *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;
- g. *issuers* are persons who issue or intend to issue securities;
- h. an *offer* is any invitation for the acquisition of a financial instrument that contains sufficient information on the terms of the offer and the financial instrument itself;
- i. a *public offer* is an offer to the public;

<sup>2</sup> SR 951.31

<sup>3</sup> SR 958.1

- j. *producers* are persons who create 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.

#### **Article 4** Client segmentation

<sup>1</sup> 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.

<sup>2</sup> Retail clients are clients who are not professional clients.

<sup>3</sup> Professional clients<sup>4</sup> are:

- a. financial intermediaries as defined in the Banking Act of 8 November 1934<sup>5</sup>, the Financial Institutions Act of ...<sup>6</sup> and the Collective Investment Schemes Act of 23 June 2006<sup>7</sup>;
- b. insurance companies as defined in the Insurance Supervision Act of 17 December 2004<sup>8</sup>;
- c. foreign clients subject to an equivalent form of prudential supervision to the persons listed under a and b above;
- d. central banks;
- e. public entities with professional treasury operations;
- f. occupational pension schemes and other institutions whose purpose is to serve occupational pensions with professional treasury operations;
- g. companies with professional treasury operations.

<sup>4</sup> Institutional clients<sup>9</sup> are professional clients as defined in paragraph 3 letters a to d, as well as national and supranational public entities with professional treasury operations.

<sup>5</sup> The Federal Council may deem other categories of clients to be professional. In doing so, it shall take account in particular of international standards.

<sup>6</sup> Companies of a group that receive a financial service from another company from the same group are not deemed to be clients.

<sup>7</sup> Financial service providers can refrain from client segmentation if they treat all clients as retail clients.

<sup>4</sup> As professional clients are primarily legal entities, they are referred to herein as "it".

<sup>5</sup> SR 952.0

<sup>6</sup> SR ...

<sup>7</sup> SR 951.31

<sup>8</sup> SR 961.01

<sup>9</sup> As institutional clients are primarily legal entities, they are referred to herein as "it".

**Article 5**      Opting out and opting in

<sup>1</sup> High-net-worth retail clients may declare that they wish to be treated as professional clients (opting out). The Federal Council may set certain conditions for the suitability of such persons opting to be treated as professional clients, specifically technical qualifications.

<sup>2</sup> Professional and institutional clients may declare that they wish to be treated as retail clients (opting in).

<sup>3</sup> Institutional clients may declare that they wish to be treated only as professional clients.

<sup>4</sup> Before providing any financial services, financial service providers shall inform their clients, where these are not classified as retail clients, and explain to them the possibility of opting in.

<sup>5</sup> The declarations in paragraphs 1 to 3 must be made in writing or in another form demonstrable via text.

**Title 2: Requirements for the Provision of Financial Services****Chapter 1: Basic Training and Continuing Professional Development****Article 6**      Basic training and continuing professional development duty

<sup>1</sup> 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.

<sup>2</sup> Financial service providers shall define industry-specific minimum standards for basic training and continuing professional development.

<sup>3</sup> The Federal Council shall define the basic training and continuing professional development requirements for client advisers for whom minimum standards do not exist.

**Article 7**      Responsibility of financial service providers

<sup>1</sup> Financial service providers shall ensure that their client advisers have the basic training and continuing professional development necessary for the services to be provided.

<sup>2</sup> They shall ensure that clients can obtain information on the basic training and continuing professional development of their client adviser.

## **Chapter 2: Code of Conduct**

### **Section 1: Principle**

#### **Article 8**

<sup>1</sup> Financial service providers must comply with the supervisory duties set out under this title when providing financial services.

<sup>2</sup> They shall act in the best interests of their clients and with the required level of skill, care and diligence.

<sup>3</sup> The specific provisions of other pieces of legislation are reserved.

### **Section 2: Duty to Provide Information**

#### **Article 9**      Content and form of information

<sup>1</sup> 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 obtaining information on the basic training and continuing professional development of client advisers;
- d. the possibility of initiating mediation proceedings before a recognised ombudsman in accordance with Title 5.

<sup>2</sup> They shall also provide information on:

- a. the financial service offered and the associated risks and costs;
- b. the business affiliations with third parties in connection with the financial service offered;
- c. the financial instruments offered and the associated risks and costs;
- d. the market offer taken into account when selecting the financial instruments;
- e. the form and manner of the custody of the financial instruments and the associated risks and costs.

<sup>3</sup> The information must be comprehensible. It may be given to clients in a standardised form and be sent electronically.

<sup>4</sup> Advertising must be indicated as such.

#### **Article 10**      Timing of information

<sup>1</sup> Financial service providers shall inform their clients before the signing of the contract or provision of the service.

<sup>2</sup> When offering financial instruments for which a key information document is required (Articles 60 to 62), financial service providers shall make this document

available to their retail clients free of charge prior to subscription or conclusion of the contract.

<sup>3</sup> If the value of a financial instrument is calculated based on the development of one or more other financial instruments and if a key information document exists for these instruments, the duty under paragraph 2 applies by analogy for this document.

<sup>4</sup> When offering financial instruments for which a prospectus is required (Articles 37 to 39), financial service providers shall make this prospectus available to their retail clients free of charge upon request.

<sup>5</sup> If material changes are made to the information set out in Article 9, financial service providers shall inform their clients:

- a. at the time of the next contact if the changes concern the information mentioned in Article 9 paragraph 1;
- b. immediately if they concern the information mentioned in Article 9 paragraph 2.

### **Section 3: Appropriateness and Suitability of Financial Services**

#### **Article 11**      Review duty

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

#### **Article 12**      Assessment of appropriateness

A financial service provider that provides investment advice for individual transactions without taking account of the entire portfolio must enquire about its clients' knowledge and experience and must check whether financial instruments are appropriate for its clients before recommending them.

#### **Article 13**      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 before recommending suitable financial instruments to them within the framework of investment advice or before making corresponding investments within the framework of portfolio management.

#### **Article 14**      Exemption from the duty to assess appropriateness or suitability

<sup>1</sup> Financial service providers whose service consists solely in the execution or transmission of client orders or is provided at the client's request are not obliged to perform an appropriateness or suitability assessment.

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

**Article 15** Assessment of appropriateness and suitability for professional clients

In the absence of indications to the contrary, a financial service provider may assume that professional clients have the required level of knowledge and experience and that they can financially bear the investment risks associated with the financial service.

**Article 16** Non-assessable or lack of appropriateness or suitability

<sup>1</sup> 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.

<sup>2</sup> 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.

**Section 4: Documentation and Rendering of Account****Article 17** Documentation

<sup>1</sup> 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 14 paragraph 2 or the fact that they advised the clients in accordance with Article 16 against provision of the service;
- c. the financial services provided for clients.

<sup>2</sup> When providing portfolio management and investment advice, they shall also document clients' needs and the grounds for each recommendation leading to the acquisition, holding or disposal of a financial instrument.

**Article 18** Rendering of account

<sup>1</sup> Financial service providers shall provide their clients with a copy of the documentation mentioned in Article 17 or shall make it accessible to them in another appropriate manner.

<sup>2</sup> Moreover, 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.

<sup>3</sup> The Federal Council shall govern the timing and minimum content of the information specified in paragraph 2.

## Section 5: Transparency and Care in Client Orders

### Article 19 Handling of client orders

<sup>1</sup> Financial service providers shall uphold the principles of good faith and equal treatment when handling client orders.

<sup>2</sup> The Federal Council shall regulate how the principles under paragraph 1 are to be fulfilled, specifically regarding the procedures and systems for processing client orders.

### Article 20 Best execution of client orders

<sup>1</sup> 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.

<sup>2</sup> 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 28 paragraph 3.

<sup>3</sup> They shall issue internal directives on the execution of client orders.

### Article 21 Use of clients' financial instruments

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> Short selling with the financial instruments of retail clients is not permitted.

## Section 6: Institutional Clients

### Article 22

For transactions involving institutional clients, only the code of conduct set out in Articles 8, 9, 10 paragraphs 1 and 5, Article 18 paragraph 2 and Articles 19 to 21 applies.



## **Chapter 3: Organisation**

### **Section 1: Organisational Measures**

#### **Article 23**      Appropriate organisation

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

#### **Article 24**      Staff

<sup>1</sup> Financial service providers shall ensure that their staff possess the necessary skills, knowledge and experience to perform their work.

<sup>2</sup> Financial service providers not subject to supervision in accordance with Article 3 of the Financial Market Supervision Act of 22 June 2007<sup>10</sup> must also ensure that only persons listed in the register of advisers (Article 31) act as client advisers for them.

#### **Article 25**      Involvement of third parties

<sup>1</sup> Financial service providers may appoint third parties for the provision of financial services.

<sup>2</sup> 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.

#### **Article 26**      Chain of providers

<sup>1</sup> 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 9 to 18.

<sup>2</sup> If the mandated financial service provider has reasonable grounds to suspect that the client information is incorrect or that the duties under Articles 9 to 18 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**

#### **Article 27**      Organisational precautions

<sup>1</sup> 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.

<sup>10</sup> SR 956.1

<sup>2</sup> If disadvantages for clients cannot be excluded, this possibility must be disclosed to them.

<sup>3</sup> The Federal Council shall regulate the details in this respect; in particular, it shall designate forms of conduct that are always inadmissible on account of conflicts of interest.

#### **Article 28** Compensation from third parties

<sup>1</sup> 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; or
- b. pass the compensation on to the clients in full.

<sup>2</sup> 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.

<sup>3</sup> Compensation is defined as payments from third parties flowing to the financial service provider in association with the provision of a financial service, such as brokerage fees, commissions, discounts or other financial benefits.

#### **Article 29** Staff transactions

<sup>1</sup> Financial service providers shall take measures to prevent staff from misusing information made available to them only by virtue of their function for transactions for their own account.

<sup>2</sup> They shall issue an internal directive on the required monitoring measures.

### **Chapter 4: Register of Advisers**

#### **Article 30** Duty to register

Client advisers of Swiss and foreign financial service providers not subject to supervision in accordance with Article 3 of the Financial Market Supervision Act of 22 June 2007<sup>11</sup> may carry out their activity in Switzerland only if they are entered in a register of advisers.

#### **Article 31** Registration conditions

<sup>1</sup> Client advisers are entered in the register of advisers if they prove that they:

- a. have completed the basic training and continuing professional development set out in Article 6 to be entered in the register;

<sup>11</sup> SR 956.1

- b. have taken out professional indemnity insurance or that equivalent collateral exists; and
- c. are themselves affiliated to an ombudsman (Art. 77) in their capacity as a financial service provider or the financial service provider for which they work is affiliated to an ombudsman.

<sup>2</sup> Client advisers will not be entered in the register of advisers if they:

- a. have been convicted of criminal charges in accordance with Articles 92 to 94 of this Act or Articles 86 and 86a of the Insurance Supervision Act of 17 December 2004<sup>12</sup> or of property offences under Articles 137 to 172<sup>ter</sup> of the Swiss Criminal Code<sup>13</sup>; or
- b. have been prohibited from performing the activity to be registered in accordance with Article 33a of the Financial Market Supervision Act of 22 June 2007<sup>14</sup> (FINMASA) or from practising a profession in accordance with Article 33 of the FINMASA.

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

### **Article 32** Contents

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

- a. full name;
- 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 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.

### **Article 33** Registration body

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

<sup>2</sup> FINMA may grant a licence to several registration bodies provided this is objectively justified.

<sup>3</sup> The registration body must be organised such as to guarantee the independent fulfilment of its tasks.

<sup>12</sup> SR 961.01

<sup>13</sup> SR 311.0

<sup>14</sup> SR 956.1

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> If a private body is not available as a registration body, the Federal Council shall designate a body for this task.

### **Article 34** Keeping of the register and notification duty

<sup>1</sup> The registration body shall decide which advisers are registered and deregistered as advisers and shall issue the necessary rulings.

<sup>2</sup> Registered client advisers and the financial service provider for which they work must notify the registration body immediately of all changes in the circumstances underlying their registration.

<sup>3</sup> 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 31 paragraph 2 letter b;
- b. learn of a criminal conviction against them in accordance with Article 31 paragraph 2 letter a.

<sup>4</sup> If the registration body learns that a condition for registration is no longer met, it shall deregister that client adviser.

<sup>5</sup> The contents of the register of advisers shall be public and can be consulted online.

### **Article 35** Fees

<sup>1</sup> The registration body shall charge fees to cover the expenses incurred in its rulings and services.

<sup>2</sup> The Federal Council shall regulate the amount of such fees based on Article 46a of the Government and Administration Organisation Act of 21 March 1997<sup>15</sup>.

### **Article 36** Procedure

The procedure for registration entries is based on the Administrative Procedure Act of 20 December 1968<sup>16</sup>.

<sup>15</sup> SR 172.010

<sup>16</sup> SR 172.021

## **Title 3: Offering of Financial Instruments**

### **Chapter 1: Prospectus for Securities**

#### **Section 1: General**

##### **Article 37** Duty to publish a prospectus

<sup>1</sup> 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 of the Financial Market Infrastructure Act of 19 June 2015<sup>17</sup> must first publish a prospectus.

<sup>2</sup> If the issuer of the securities does not participate in the public offer, it shall not be obliged to cooperate with the preparation of the prospectus.

##### **Article 38** Exemptions by type of offer

<sup>1</sup> A prospectus does not need to be published if the public offer:

- a. is addressed solely at investors classified as professional clients;
- b. is addressed at fewer than 150 investors classified as retail clients;
- 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 100,000 over a 12-month period.

<sup>2</sup> Each public offer for the resale of securities that were previously the subject of an offer in accordance with paragraph 1 shall be regarded as a separate offer.

<sup>3</sup> 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.

<sup>4</sup> A financial service provider does not have to 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.

<sup>5</sup> The Federal Council may adjust the number of investors and the amounts specified under paragraph 1 letters b to e taking account of recognised international standards and legal developments abroad.

##### **Article 39** Exemptions by type of securities

A prospectus does not need to be published if the following types of securities are offered publicly:

<sup>17</sup> SR 958.1

- 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 supplied on the conversion or exchange of financial instruments of the same issuer or corporate group;
- c. equity securities issued or supplied following the execution 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, provided that information exists on the number and type of securities and on the reasons for and details of the offer;
- h. securities 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.

#### **Article 40** Exceptions for admission to trading

A prospectus does not need to 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 10% 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 execution 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.

#### **Article 41** Information beyond the scope of the prospectus duty

In the absence of a duty to publish a prospectus, all investors must be able to take note of the essential information aimed at them within the framework of the offer.

## **Section 2: Requirements**

#### **Article 42** Contents

<sup>1</sup> 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.

<sup>2</sup> The information is to be provided in one of the official languages of the Swiss Confederation or in English.

<sup>3</sup> The prospectus shall also contain a clearly understandable summary of the essential information.

<sup>4</sup> 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 the issue volume shall be filed with and published by the reviewing body.

<sup>5</sup> In the case of offers for which an exception in accordance with Article 53 paragraph 2 is requested, the prospectus has to mention that this has not yet been reviewed.

#### **Article 43** Exceptions

The reviewing body may provide that information does not have to be included in the prospectus if:

- a. disclosure would be seriously detrimental to the issuer and the 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 will have 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.

**Article 44** Inclusion by reference

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

**Article 45** Summary

<sup>1</sup> The summary should facilitate a comparison with similar securities.

<sup>2</sup> The summary must clearly state that:

- a. it should be 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.

**Article 46** Structure

<sup>1</sup> The prospectus may consist of a stand-alone document or several individual documents.

<sup>2</sup> 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.

**Article 47** Base prospectus

<sup>1</sup> For debt instruments issued in an offer programme or issued in a continuous or repeated manner by banks in accordance with the Banking Act of 8 November



1934<sup>18</sup> or securities firms in accordance with the Financial Institutions Act of ...<sup>19</sup>, the prospectus may be drafted in the form of a base prospectus.

<sup>2</sup> 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.

<sup>3</sup> The final terms have to 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 must be published in a definitive version and filed with the reviewing body.

<sup>4</sup> Approval of the final terms is not necessary.

#### **Article 48** 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**

#### **Article 49**

<sup>1</sup> The Federal Council may grant a relaxation of the prospectus and the supplement duties for 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.

<sup>2</sup> It may also grant a relaxation of the requirements particularly for:

- 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.

<sup>18</sup> SR 952.0

<sup>19</sup> SR ...

<sup>3</sup> It shall grant a relaxation of the requirements uniformly and, in particular, with respect to:

- a. the type of securities issued;
- b. the scope of the issue;
- 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**

### **Article 50** Open-ended collective investment schemes

<sup>1</sup> For open-ended collective investment schemes as defined in Title 2 of the Collective Investment Schemes Act of 23 June 2006<sup>20</sup>, the fund management company and the SICAV (Art. 13 para. 2 let. a and b of the CISA) shall produce a prospectus.

<sup>2</sup> 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.

<sup>3</sup> The Federal Council shall decree which information must be set out in the prospectus apart from the fund regulations.

<sup>4</sup> The prospectus and its amendments must be submitted to FINMA without delay.

### **Article 51** Closed-ended collective investment schemes

<sup>1</sup> The limited partnership for collective investment under Article 98 of the Collective Investment Schemes Act of 23 June 2006<sup>21</sup> shall produce a prospectus.

<sup>2</sup> Specifically, this shall contain the information contained in the partnership agreement in accordance with Article 102 paragraph 1 letter h of the Collective Investment Schemes Act.

<sup>3</sup> For the prospectus of an investment company with fixed capital (SICAF) in accordance with Article 110 of the Collective Investment Schemes Act, Article 50 applies by analogy.

### **Article 52** Exemptions

FINMA may exempt collective investment schemes under the Collective Investment Schemes Act of 23 June 2006<sup>22</sup> (CISA) from all or some of the provisions of this chapter provided that they are open only to qualified investors in accordance with

<sup>20</sup> SR 951.31

<sup>21</sup> SR 951.31

<sup>22</sup> SR 951.31

Article 10 paragraph 3<sup>ter</sup> of the CISA and the protective purpose of the law is not thereby affected.

## **Section 5: Review of the Prospectus**

### **Article 53**      Duty

<sup>1</sup> The prospectus must be submitted to the reviewing body prior to publication. The reviewing body shall check that it is complete, coherent and understandable.

<sup>2</sup> The Federal Council may designate securities whose prospectus must be reviewed only after publication if a bank in accordance with the Banking Act of 8 November 1934<sup>23</sup> or a securities firm in accordance with the Financial Institutions Act of ...<sup>24</sup> confirms that the most important information on the issuers and the securities is known at the time of publication.

<sup>3</sup> Prospectuses for collective investment schemes do not have to be reviewed, with the exception of the approval requirement for the documentation of foreign collective investment schemes under Article 15 paragraph 1 letter e and Article 120 of the Collective Investment Schemes Act of 23 June 2006<sup>25</sup>.

### **Article 54**      Reviewing body

<sup>1</sup> The reviewing body requires a licence from FINMA. FINMA may grant a licence to several reviewing bodies provided this is objectively justified.

<sup>2</sup> The reviewing body must be organised such as to guarantee the independent fulfilment of its tasks.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> If a private body is not available as a reviewing body, the Federal Council shall designate a body for this task.

### **Article 55**      Procedure and deadlines

<sup>1</sup> The procedure followed by the reviewing body is based on the Administrative Procedure Act of 20 December 1968<sup>26</sup>.

<sup>23</sup> SR 952.0

<sup>24</sup> SR ...

<sup>25</sup> SR 951.31

<sup>26</sup> SR 172.021

<sup>2</sup> The reviewing body shall check prospectuses as soon as they are received.

<sup>3</sup> If it notices that a prospectus does not meet the statutory requirements, it shall notify the person who submitted the prospectus accordingly within ten calendar days from the time of receipt, stating the reasons and asking the person to make the improvements necessary.

<sup>4</sup> It shall decide on approval within ten calendar days of receiving the possibly rectified prospectus.

<sup>5</sup> This period is 20 calendar days for new issuers.

<sup>6</sup> Should the reviewing body fail to issue its decision within the time frames set out in paragraphs 4 and 5, this shall not constitute approval of the prospectus.

#### **Article 56** Foreign prospectuses

<sup>1</sup> The reviewing body may approve a prospectus produced under foreign legislation if:

- a. it was prepared 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 forth in this Act; audited individual financial statements are not required.

<sup>2</sup> It can provide that prospectuses approved in certain jurisdictions are considered approved in Switzerland too.

<sup>3</sup> It shall publish a list of countries whose prospectus approval is recognised in Switzerland.

#### **Article 57** Validity

<sup>1</sup> 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.

<sup>2</sup> Prospectuses for debt instruments issued by a bank in accordance with the Banking Act of 8 November 1934<sup>27</sup> or a securities firm in accordance with the Financial Institutions Act of ...<sup>28</sup> in an offer programme shall be valid until none of the debt instruments in question is issued in a continuous or repeated manner anymore.

#### **Article 58** Supplements

<sup>1</sup> A supplement to the prospectus must be prepared if any new circumstances occur 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.

<sup>27</sup> SR 952.0

<sup>28</sup> SR ...

<sup>2</sup> The supplement must be reported to the reviewing body immediately upon occurrence or establishment of the new circumstances.

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

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

<sup>5</sup> If a new circumstance in accordance with paragraph 1 occurs during a public offer, the offer period shall end no sooner than two days after publication of the supplement. Investors may withdraw their subscriptions or acquisition pledges up to the end of the subscription or offer period.

#### **Article 59** Fees

<sup>1</sup> The reviewing body shall charge fees to cover the expenses incurred in its rulings and services.

<sup>2</sup> The Federal Council shall regulate the amount of such fees, based on Article 46a of the Government and Administration Organisation Act of 21 March 1997<sup>29</sup>.

## **Chapter 2: Key Information Document for Financial Instruments**

#### **Article 60** Duty

<sup>1</sup> Where a financial instrument is offered to retail clients, the producer must first produce a key information document.

<sup>2</sup> The Federal Council can designate qualified third parties to whom the preparation of the key information document can 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 Articles 60 to 71.

<sup>3</sup> If financial instruments are offered to retail clients on an indicative basis, at least a draft version of the key information document with indicative information must be produced.

#### **Article 61** Exceptions

<sup>1</sup> Persons who offer securities in the form of shares, including share-like securities allowing for participation rights, such as participation certificates and dividend rights certificates, are not obliged to prepare a key information document.

<sup>2</sup> Documents prepared in accordance with foreign legislation that are equivalent to the key information document may be used instead of a key information document.

<sup>29</sup> SR 172.010

**Article 62** Insurance

<sup>1</sup> Where a redeemable life insurance policy in accordance with Article 3 letter b item 6 encompasses another financial instrument, a key information document that covers both the life insurance and the other financial instrument must be prepared.

<sup>2</sup> The insurer's duty to inform under Article 3 paragraph 1 of the Insurance Contracts Act of 2 April 1908<sup>30</sup> shall be deemed fulfilled when the key information document is provided.

**Article 63** Contents

<sup>1</sup> The key information document shall contain the essential information for making a well-founded investment decision and a comparison of different financial instruments by investors.

<sup>2</sup> In particular, the information shall cover:

- 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.

**Article 64** Requirements

<sup>1</sup> The key information document must be easy to understand.

<sup>2</sup> It is a stand-alone document that must be clearly distinguishable from advertising materials.

**Article 65** Changes

<sup>1</sup> The producer shall regularly check the information contained in the key information document and revise it in the event of material changes.

<sup>2</sup> 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 Articles 60 to 71.

**Article 66** Supplementary provisions

<sup>1</sup> The Federal Council shall issue supplementary provisions on the key information document. It shall decree in particular:

<sup>30</sup> SR 221.229.1

- 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 61 paragraph 2.

### **Chapter 3: Publication**

#### **Article 67** Prospectus for securities

<sup>1</sup> 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.

<sup>2</sup> If a class of equity securities of an issuer is 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.

<sup>3</sup> 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 (SOGC);
- b. through free-of-charge distribution in printed form at the issuer's registered office or from the offices involved in the issue;
- c. in electronic form on the website of the issuer, the guarantor and security provider, the trading venue or the offices involved in the issue; or
- d. in electronic form on the website of the reviewing bodies.

<sup>4</sup> If the prospectus is published electronically, a paper version must also be made available free of charge upon request.

<sup>5</sup> The reviewing body shall place the approved prospectuses on a list and make this list available for 12 months.

<sup>6</sup> If the prospectus is prepared in several stand-alone 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 that one, constitute the complete prospectus.

<sup>7</sup> 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.

**Article 68** Prospectus for collective investment schemes

<sup>1</sup> The prospectus for a collective investment scheme must be published no later than the beginning of the public offer.

<sup>2</sup> For publication, Article 67 paragraphs 3, 4 and 6 apply by analogy.

**Article 69** Key information document

<sup>1</sup> 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.

<sup>2</sup> Article 67 paragraphs 3 and 4 apply by analogy.

**Article 70** Changes to the rights associated with securities

<sup>1</sup> The issuer shall announce changes to the rights associated with securities sufficiently early to ensure that investors can exercise their rights.

<sup>2</sup> The content and scope of the publication shall otherwise be based on the issuing conditions. Article 67 paragraphs 3 and 4 apply by analogy.

<sup>3</sup> Special statutory provisions remain reserved.

**Chapter 4: Advertising****Article 71**

<sup>1</sup> Advertising for financial instruments must be clearly indicated as such.

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

<sup>3</sup> 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****Article 72**

<sup>1</sup> Where information that is inaccurate, misleading or that in violation of statutory requirements is given or disseminated in prospectuses, key information documents or similar communications, any person involved is liable to the acquirer of a financial instrument for the resultant losses unless they can prove that they were not at fault.

<sup>2</sup> 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.



<sup>3</sup> 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**

### **Article 73**      Structured products

<sup>1</sup> 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 Banking Act of 8 November 1934<sup>31</sup>;
- b. an insurance company as defined in the Insurance Supervision Act of 17 December 2004<sup>32</sup>;
- c. a securities firm in accordance with the Financial Institutions Act of ...<sup>33</sup>;
- d. a foreign institution that is subject to equivalent prudential supervision.

<sup>2</sup> 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 Banking Act of 8 November 1934<sup>34</sup>, the Financial Institutions Act of ...<sup>35</sup> and the Collective Investment Schemes Act of 23 June 2006<sup>36</sup>,
  2. insurance companies as defined in the Insurance Oversight Act of 17 December 2004<sup>37</sup>,
  3. a foreign institution that is subject to equivalent supervision, and
- b. collateral corresponding to the requirements under paragraph 1 are ensured.

<sup>3</sup> The Federal Council shall regulate the requirements for such collateral.

### **Article 74**      In-house funds

<sup>1</sup> 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 Banking Act of 8

31    SR 952.0  
32    SR 961.01  
33    SR ...  
34    SR 952.0  
35    SR ...  
36    SR 951.31  
37    SR 961.01

November 1934<sup>38</sup> and securities firms in accordance with the Financial Institutions Act of ...<sup>39</sup> only if the 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 issue no unit certificates for this;
- c. they do not offer participation to the public and they undertake no advertising for this.

<sup>2</sup> A key information document in accordance with Articles 60 to 66 must be prepared for in-house funds.

<sup>3</sup> The creation and dissolution of in-house funds must be notified to the auditors appointed under the relevant supervisory law.

<sup>4</sup> 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.

## **Title 4: Provision of Documents**

### **Article 75** Entitlement

<sup>1</sup> 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.

<sup>2</sup> With the client's consent, documents may be provided in electronic form.

### **Article 76** Procedure

<sup>1</sup> Any person who wishes to assert a claim must submit a corresponding request in writing or in another form demonstrable via text.

<sup>2</sup> 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.

<sup>3</sup> If it fails to comply with such a request, the client may apply to the court.

<sup>4</sup> 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.

<sup>38</sup> SR 952.0

<sup>39</sup> SR ...

## **Title 5: Ombudsmen**

### **Chapter 1: Mediation**

#### **Article 77** Principle

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

#### **Article 78** Procedure

<sup>1</sup> The proceedings before the ombudsman must be straightforward, fair, quick, impartial and inexpensive or free of charge for the client.

<sup>2</sup> The proceedings are confidential, with the exception of the ombudsman's notification of conclusion of proceedings. 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.

<sup>3</sup> The parties are not entitled to view the ombudsman's correspondence with the other party.

<sup>4</sup> 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 clients credibly prove that they previously informed the financial service provider of their point of view and attempted to reach an agreement;
- c. it is not obviously abusive, 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.

<sup>5</sup> The proceedings are conducted in the official language of the Swiss Confederation chosen by the client. This shall be without prejudice to alternative agreements between the parties, provided that they adhere to the ombudsman's rules of procedure.

<sup>6</sup> The ombudsman shall freely assess the cases submitted to it and shall be subject to no instructions.

<sup>7</sup> The ombudsman shall take the appropriate measures for mediation insofar as they do not appear pointless from the outset.

<sup>8</sup> If an agreement cannot be reached or appears pointless, the ombudsman can give the parties its own factual and legal assessment of the dispute based on the information available to it and include it in the notification of conclusion of proceedings.

**Article 79** Link with conciliation proceedings and other proceedings

<sup>1</sup> Filing a mediation request with an ombudsman does not rule out civil action and does not prevent such from being initiated.

<sup>2</sup> After bringing proceedings before an ombudsman, the plaintiff may unilaterally waive a conciliation procedure under the Civil Procedure Code<sup>40</sup>.

<sup>3</sup> The ombudsman shall terminate the procedure 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****Article 80** Affiliation duty

Financial service providers must affiliate to an ombudsman at the latest on assuming their activity.

**Article 81** Participation duty

<sup>1</sup> Financial service providers that are affected by a mediation request to an ombudsman for dispute resolution must participate in the proceedings.

<sup>2</sup> They must respond promptly to the summonses, requests for comments and any information enquiries from the ombudsmen.

**Article 82** Duty to provide information

<sup>1</sup> Financial service providers shall inform their clients about the possibility of mediation proceedings through an ombudsman:

- a. upon entering into a business relationship in accordance with the duty to provide information under Article 9 paragraph 1 letter d;
- b. in the event of the rejection of a legal claim asserted by a client; and
- c. at any time upon request.

<sup>2</sup> The information shall be given in an appropriate form and contain the name and address of the ombudsman to which the financial service provider is affiliated.

**Article 83** Financial participation

Financial service providers shall make financial contributions to the ombudsman to which they are affiliated. The contributions are based on the ombudsman's schedule of contributions and costs.

<sup>40</sup> SR 272

### **Chapter 3: Admission and Exclusion**

#### **Article 84** Admission

An ombudsman is obliged to admit a financial service provider if it fulfils its admission conditions.

#### **Article 85** Exclusion

Financial service providers that repeatedly fail to comply with the duties in accordance with Articles 81 to 83 shall be excluded by the ombudsman.

#### **Article 86** Duty to inform

The ombudsman 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 the Public Domain**

#### **Article 87** Recognition

<sup>1</sup> Ombudsmen must be recognised by the Federal Department of Finance (FDF).

<sup>2</sup> Organisations meeting the following conditions shall be recognised as ombudsmen:

- a. they and the persons charged by them with mediation perform their task independently in organisational and financial respects, impartially, transparently and efficiently, and do not accept instructions;
- 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 and specify the admission conditions;
- d. they have rules of procedure that flesh out the procedure under Article 78;
- e. they have a schedule of contributions and costs in accordance with Article 83;

<sup>3</sup> The FDF shall publish a list of ombudsmen.

<sup>4</sup> If individual financial service providers have no possibility of being affiliated to an ombudsman, the FDF can oblige an ombudsman to admit these financial service providers. If there is no appropriate ombudsman for several financial service providers, the Federal Council can create such a body.

**Article 88** Review of recognition

<sup>1</sup> Changes which concern the fulfilment of the conditions for recognition laid down in Article 87 must be submitted to the FDF for approval.

<sup>2</sup> If an ombudsman no longer fulfils the conditions for recognition, the FDF shall set an appropriate period for rectification.

<sup>3</sup> If the necessary rectifications are not made within this period, it shall withdraw its recognition.

**Article 89** Reporting

Ombudsmen shall publish an activity report annually.

**Title 6: Supervision and Exchange of Information****Article 90** Supervision

<sup>1</sup> The competent supervisory authority shall monitor that the financial service providers under its supervision comply with the requirements for the provision of financial services and the offering of financial instruments.

<sup>2</sup> It may issue orders to prevent or remedy violations within the scope of the supervisory instruments available to it.

<sup>3</sup> 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.

**Article 91** Exchange of information

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

**Title 7: Criminal Provisions****Article 92** 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 9;
- b. seriously violates the duties to assess appropriateness and suitability under Articles 11 to 16;
- c. violates the provisions on the disclosure of compensation paid by third parties under Article 28.

**Article 93** Violation of the regulations on prospectuses and key information documents

<sup>1</sup> 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.

<sup>2</sup> 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.

**Article 94** 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 73;
- b. creates an in-house fund without complying with the conditions set out in Article 74.

**Title 8: Final Provisions****Article 95** Implementing provisions

The Federal Council shall issue the implementing provisions.

**Article 96** Amendment of other legislation

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

**Article 97** Transitional provisions

<sup>1</sup> The Federal Council can make provision for a transitional period for the acquisition of the basic training and continuing professional development set out in Article 6.

<sup>2</sup> The client advisers in accordance with Article 30 must report to the registration body for entry in the register within six months of this Act coming into force.

<sup>3</sup> Financial service providers must be affiliated to an ombudsman in accordance with Article 77 within six months of this Act coming into force.

<sup>4</sup> The provisions of Title 3 of this Act will apply two years after entry 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.

<sup>5</sup> 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.

**Article 98**      Referendum and entry into force

<sup>1</sup> This Act is subject to an optional referendum.

<sup>2</sup> The Federal Council will determine the commencement date.



## **Amendment of other legislative instruments**

The legislative instruments below are amended as follows:

### **1. Swiss Code of Obligations<sup>41</sup>**

*Article 652a*

*Repealed*

*Article 752*

*Repealed*

*Article 1156*

*Repealed*

### **2. Civil Procedure Code<sup>42</sup>**

*Article 114a*    Litigation proceedings for disputes regarding financial market services

<sup>1</sup> In litigation proceedings for disputes involving financial services or claims from the deposit, loan or insurance business, applicant retail clients in accordance with Article 4 paragraph 2 of the Financial Services Act of ...<sup>43</sup> do not have to make an advance payment of costs (Art. 98) or provide security for the party costs (Art. 99).

<sup>2</sup> A successful service provider will be awarded party costs payable by a retail client if:

- a. the applicant retail client did not submit a request for mediation in the same matter to the recognised ombudsman to which the service provider is affiliated, or did not participate in the proceedings, provided the defendant is affiliated to a recognised ombudsman;
- b. the applicant retail client is in an extraordinarily sound financial situation;
- c. the amount at issue exceeds CHF 250,000 without counting any counterclaims; or
- d. the retail client acted in bad faith or wilfully.

<sup>41</sup> SR 220

<sup>42</sup> SR 272

<sup>43</sup> SR ...

<sup>3</sup> If the retail client is unsuccessful, the court can deviate from the principles of allocation (Art. 106) and allocate the court costs at its discretion if:

- a. the private client was prompted to bring proceedings in good faith following mediation proceedings before a recognised ombudsman;
- b. the conduct of the service provider gave the retail client good reason to bring an action;
- c. although the retail client has the necessary funds, he or she is not in an extraordinarily sound financial situation; or
- d. the awarding of costs against the retail client appears inconsistent with the protection of clients.

<sup>4</sup> Articles 108, 109 and 116, and the provisions on legal aid are reserved.

*Article 199 paragraph 2 letter d*

<sup>2</sup> The plaintiff may unilaterally waive conciliation:

- d. if proceedings are brought before a recognised ombudsman in disputes between a client and a financial service provider.

*Article 251a* Financial Services Act and Insurance Oversight Act

Summary proceedings may be brought in particular for entitlement to the delivery of a copy of the client file and other documents (Art. 75 of the Financial Services Act of ...<sup>44</sup> and Art. 80 of the Insurance Oversight Act of 17 December 2004<sup>45</sup>).

*Heading preceding Article 407c*

**Chapter 4: Transitional provision to the amendment of ...**

*Article 407c*

For proceedings in financial market disputes that are pending at the time of the amendment of ... coming into force, the new special cost settlement rule shall apply for all decisions on costs taken after entry into force.

**3. Federal Act of 22 March 1974<sup>46</sup> on Administrative Criminal Law**

*Article 31a*

IV. Form and service of communications

<sup>1</sup> Communications shall be in writing unless otherwise stipulated in this Act.

<sup>44</sup> SR ...

<sup>45</sup> SR 961.01

<sup>46</sup> SR 313.0

<sup>2</sup> Service shall be by registered mail or in any other way with acknowledgement of receipt.

<sup>3</sup> It shall be deemed effected once the delivery is received by the addressee or by an employee thereof or a person living in the same household who is at least 16 years old, unless it is stipulated that delivery must be made to the addressee in person.

<sup>4</sup> It shall also be deemed to be effected:

- a. in the case of delivery by registered mail that was not collected: on the seventh day following the unsuccessful delivery attempt, provided the addressee should have been expecting to be served;
- b. in the case of personal service if the addressee refuses to accept service and this is recorded by the messenger: on the day of refusal.

### *Article 34*

#### B. Service / I. Address for service

<sup>1</sup> Addressees must be served communications at their domicile, their habitual place of residence or their registered office.

<sup>2</sup> Accused persons whose domicile, habitual place of residence or registered office is abroad must designate an address for service in Switzerland. The provisions of international agreements under which communications may be served directly are reserved.

<sup>3</sup> Communications for parties who have appointed a legal adviser will be delivered to their legal adviser.

<sup>4</sup> These provisions apply by analogy to those affected by confiscation.

### *Article 34a*

#### II. Service by means of publication

<sup>1</sup> Service shall be effected by publication in the Federal Gazette if:

- a. the whereabouts of the recipient are unknown and cannot be ascertained despite making reasonable enquiries;
- b. service is impossible or would lead to exceptional inconvenience;
- c. a party or his or her legal adviser whose domicile, habitual place of residence or registered office is abroad has failed to designate an address for service in Switzerland.

<sup>2</sup> Service shall be deemed to be effected on the day of publication.

<sup>3</sup> In the case of final judgments, only the conclusions of the judgment shall be published.

<sup>4</sup> Final protocols shall be deemed to be served even without publication.

*Article 61 paragraph 5 and Article 64 paragraph 3*

*Repealed*

#### **4. Collective Investment Schemes Act of 23 June 2006<sup>47</sup>**

*Article 2 paragraph 3 introductory sentence and letter a*

<sup>3</sup> Investment companies in the form of a Swiss company limited by shares are not governed by this Act, provided they are listed on a Swiss exchange, or provided that:

- a. only shareholders as defined in Article 10 paragraphs 3 and 3<sup>ter</sup> are entitled to participate in them; and

*Articles 3 to 6*

*Repealed*

*Article 7 paragraphs 3 and 5*

<sup>3</sup> The Federal Council may stipulate a minimum number of investors in accordance with the legal status and target group. It may authorise collective investment schemes for a single qualified investor (single investor fund) in accordance with Article 10 paragraph 3 in conjunction with Article 4 paragraph 3 letters b, e and f of the Financial Services Act of ...<sup>48</sup>.

<sup>5</sup> Collective investment schemes must have their registered office and head office in Switzerland.

*Article 10 paragraph 3, 3<sup>bis</sup>, 3<sup>ter</sup>, 4 and 5 letter b*

<sup>3</sup> Qualified investors within the meaning of this Act are professional clients as defined in Article 4 paragraphs 3 to 5 or Article 5 paragraph 1 of the Financial Services Act of ...<sup>49</sup>.

<sup>3bis</sup> *Repealed*

<sup>3ter</sup> Qualified investors also include retail clients for whom a financial intermediary in accordance with Article 4 paragraph 3 letter a of the Financial Services Act of ...<sup>50</sup> or a foreign financial intermediary that is subject to equivalent prudential supervision provides portfolio management or investment advice in accordance with Article 3 letter d items 3 and 4 of the Financial Services Act within the scope of a permanent portfolio management or investment advice relationship, provided they have not declared that they do not wish to be treated as such. Such declaration must be made in writing or in another form demonstrable via text.

<sup>47</sup> SR 951.31

<sup>48</sup> SR ...

<sup>49</sup> SR ...

<sup>50</sup> SR ...

<sup>4</sup> *Repealed*

<sup>5</sup> FINMA may fully or partially exempt collective investment schemes from certain provisions of this Act, provided that they are exclusively open towards qualified investors and that the protective purpose of this Act is not impaired, specifically from the provisions concerning:

b. *Repealed*

*Heading preceding Article 20*

## **Chapter 4: Protection of investors' interests**

*Article 20 paragraphs 1 letter c, 2 and 3*

<sup>1</sup> Persons who manage or represent collective investment schemes or hold the assets of these schemes in safekeeping, as well as their agents must fulfil the following duties in particular:

c. **Duty to provide information:** They shall render account of the collective investment schemes which they manage and represent and the assets of these schemes which they hold in safekeeping, and provide information on all of the fees and costs incurred directly or indirectly by investors as well as compensation from third parties, particularly commissions, discounts or other financial benefits.

<sup>2</sup> *Repealed*

<sup>3</sup> Persons who manage or represent collective investment schemes or hold their assets in safekeeping, as well as their agents shall take all measures necessary for the fulfilment of these duties in their entire business activity.

*Article 21 paragraph 2 second sentence*

<sup>2</sup> ... Compensation in accordance with Article 28 of the Financial Services Act of ...<sup>51</sup> must be credited to the collective investment scheme.

*Article 22*

*Repealed*

*Article 24*

*Repealed*

*Article 51 paragraph 4*

<sup>4</sup> The board of directors fulfils the duties associated with the offering of financial instruments under Title 3 of the Financial Services Act of ...<sup>52</sup>.

<sup>51</sup> SR ...

*Article 71 paragraphs 3 and 4*

<sup>3</sup> Reference must be made in the fund name and in the prospectus and key information document in accordance with Title 3 of the Financial Services Act of ...<sup>53</sup> as well as in advertising material, to the special risks associated with alternative investments.

<sup>4</sup> *Repealed*

*Article 73 paragraph 2*

<sup>2</sup> It may transfer responsibility for the custody of the investment fund's assets to third-party custodians and central securities depositories in Switzerland or abroad, provided this is in the interest of efficient custody. Investors must be informed in the prospectus and key information document in accordance with Title 3 of the Financial Services Act of ...<sup>54</sup> about the risks associated with such transfers.

*Heading preceding Article 75 and Articles 75 to 77*

*Repealed*

*Article 102 paragraph 3*

*Repealed*

*Article 116*

*Repealed*

*Article 148 paragraph 1 letters d, f and g*

<sup>1</sup> Any person who wilfully does any of the following is liable to a custodial sentence not exceeding three years or to a monetary penalty:

- d. offers domestic and foreign collective investment schemes that have not been approved to non-qualified investors;
- f. in the annual report or semi-annual report:
  - 1. provides false information or withholds material facts,
  - 2. does not provide all the mandatory information;
- g. with respect to the annual report or semi-annual report:
  - 1. fails to produce it or fails to produce it in an orderly manner,
  - 2. fails to publish it or fails to publish it by the specified deadline,
  - 3. fails to submit it to FINMA or fails to submit it to FINMA by the specified time.

<sup>52</sup> SR ...

<sup>53</sup> SR ...

<sup>54</sup> SR ...

*Article 149 paragraph 1 letters c and e, paragraph 2*

*Repealed*

## **5. Financial Market Supervision Act of 22 June 2007<sup>55</sup>**

*Article 1 paragraph 1 letter i*

<sup>1</sup> The Confederation shall create an authority for the supervision of the financial markets in accordance with the following acts (financial market acts):

- i. Financial Services Act of ...<sup>56</sup>

*Article 15 paragraph 2 letter c*

<sup>2</sup> The supervision charge is assessed according to the following criteria:

- c. for insurance institutions under the Insurance Supervision Act of 17 December 2004<sup>57</sup>, on the basis of their share of the total premium income for all insurance institutions.

## **6. Insurance Supervision Act of 17 December 2004<sup>58</sup>**

*Article 1 paragraph 1*

<sup>1</sup> This Act governs the requirements for acting as an insurance company and as an insurance intermediary.

*Article 2 paragraph 1 introductory sentence, paragraph 2 introductory sentence, paragraph 3*

<sup>1</sup> The provisions of this Act apply to:

<sup>2</sup> The provisions of this Act do not apply to:

<sup>3</sup> The Swiss Financial Market Supervisory Authority (FINMA) may exempt insurance companies whose insurance activity is of minor economic importance or which have only a small number of insured persons from being subject to this law if such exemption is justified by special circumstances.

*Article 3 paragraph 1*

<sup>1</sup> Every insurance company in accordance with Article 2 paragraph 1 letters a and b that is subject to this Act (insurance company) is subject to FINMA supervision and requires authorisation from FINMA in order to commence its insurance activity.

<sup>55</sup> SR 956.1

<sup>56</sup> SR ...

<sup>57</sup> SR 961.01

<sup>58</sup> SR 961.01

*Article 40*      Definition

<sup>1</sup> Irrespective of their designation, insurance intermediaries are persons offering or entering into insurance policies.

<sup>2</sup> Non-tied insurance intermediaries have a relationship of trust with the insured persons and act in their interest.

<sup>3</sup> All other insurance intermediaries are deemed to be tied insurance intermediaries.

*Article 42*      Duty to register

<sup>1</sup> Non-tied insurance intermediaries may carry out their activity only if they are entered in a register of advisers in accordance with Articles 30 to 36 of the Financial Services Act of ...<sup>59</sup> (FinSA).

<sup>2</sup> The registration conditions under Article 31 of the FinSA apply by analogy.

<sup>3</sup> The Federal Council may provide for exemptions from the duty to register.

*Article 43*      Basic training and continuing professional development duty

<sup>1</sup> Insurance intermediaries must have sufficient knowledge of the code of conduct set out in this Act and the necessary expertise required to perform their activities.

<sup>2</sup> Insurance companies and insurance intermediaries shall define industry-specific minimum standards for basic training and continuing professional development.

<sup>3</sup> The Federal Council shall define the basic training and continuing professional development requirements for insurance intermediaries for which no appropriate minimum standards exist.

*Article 44*      Responsibility of insurance companies

<sup>1</sup> Insurance companies shall ensure that their insurance intermediaries have the basic training and continuing professional development necessary for the service to be provided.

<sup>2</sup> They shall ensure that insured persons can obtain information on the basic training and continuing professional development of their insurance intermediary.

*Article 45*      *Duty to provide information*

<sup>1</sup> Insurance intermediaries shall inform their insured persons of the following:

- a. their name and address;
- b. their field of activity and whether the intermediation is tied or non-tied;
- c. the possibility of obtaining information on the basic training and continuing professional development of the insurance intermediary;

<sup>59</sup> SR ...



- d. the possibility of initiating mediation proceedings before an ombudsman in accordance with Title 5 of the Financial Services Act of ...<sup>60</sup>;
  - e. the person with liability for negligence, errors or incorrect information relating to their activities as intermediaries;
  - f. the processing of personal data, in particular the purpose, scope and recipients of this data and its retention.
- <sup>2</sup> They shall also provide information on:
- a. the service offered and the associated costs;
  - b. their business affiliations with third parties in connection with the service offered;
  - c. the insurance products offered and the associated costs;
  - d. the market offer taken into account when selecting the insurance products.
- <sup>3</sup> The information must be comprehensible. It may be given to insured persons in a standardised form and be made available electronically.
- <sup>4</sup> Advertising must be indicated as such.

#### *Article 45a* Timing of information

- <sup>1</sup> Insurance intermediaries shall inform their insured persons before the signing of the contract or provision of the service.
- <sup>2</sup> If material changes are made to the information, insurance intermediaries shall inform the insured persons:
- a. at the time of the next contact with the insured persons if the changes concern the information mentioned in Article 45 paragraph 1;
  - b. immediately if they concern the information mentioned in Article 45 paragraph 2.

#### *Article 45b* Duties of loyalty and diligence

- <sup>1</sup> Insurance intermediaries shall act in the interests of their insured persons and with the required level of skill, care and diligence.
- <sup>2</sup> They shall ensure that they fulfil their duties under this Act.

#### *Article 45c* Code of conduct

- <sup>1</sup> Before concluding an insurance contract, insurance intermediaries shall determine the objectives and needs of the insured persons and check whether insurance products are appropriate for them before recommending them.
- <sup>2</sup> If an insurance contract is concluded at the insured person's request or if the information received is insufficient to assess the appropriateness of an insurance product,

<sup>60</sup> SR ...

the insurance intermediary shall inform the insured person that no assessment of appropriateness will be performed.

<sup>3</sup> If insurance intermediaries are of the opinion that insurance products are not appropriate for the insured persons, they shall advise them against these products before concluding any such insurance contracts.

*Article 45d Compensation from third parties*

<sup>1</sup> Non-tied insurance intermediaries may accept compensation from third parties in association with the provision of their service only if they:

- a. have expressly informed the insured persons of such compensation in advance; or
- b. pass the compensation on to the insured persons in full.

<sup>2</sup> The information for the insured persons must contain the type and scope of the compensation and must be given to them before provision of the service or conclusion of the contract. If the amount cannot be determined in advance, non-tied insurance intermediaries shall inform their insured persons of the calculation parameters and the ranges.

<sup>3</sup> Compensation is defined as payments from third parties flowing to non-tied insurance intermediaries in association with their provision of a service, such as brokerage fees, commissions, discounts or other financial benefits.

*Article 46 paragraph 1 letter f*

<sup>1</sup> The tasks of FINMA are as follows:

- f. to protect the insured persons from any abuse by insurance companies.

*Article 51 paragraph 1 and paragraph 2 letter g*

<sup>1</sup> If an insurance company, a significant group or a conglomerate does not comply with the provisions of this Act, an ordinance or FINMA orders or if the interests of the insured persons appear jeopardised in any other way, FINMA shall take the protective measures that seem necessary to ensure that the interests of the insured persons are safeguarded.

<sup>2</sup> In particular, it may:

- g. *Repealed*

*Article 53 paragraph 4 new*

<sup>4</sup> FINMA may also order protective measures in accordance with Article 51.

*Article 55 paragraph 3*

<sup>3</sup> During deferment of premium payment, insurance contracts may be terminated or converted into a premium-free policy only at the policy holder's request, which must be submitted in writing or in another form demonstrable via text.

**Chapter 7: Provision of Documents***Article 80* Entitlement

<sup>1</sup> Insured persons are entitled at all times to receive a copy of their file and all other documents concerning them that the insurance company or insurance intermediary has prepared within the context of their business relationship.

<sup>2</sup> With the insured persons' consent, documents may be provided in electronic form.

*Article 81* Procedure

<sup>1</sup> Any person who wishes to assert a claim must submit a corresponding request in writing or in another form demonstrable via text.

<sup>2</sup> The insurance company or insurance intermediary shall provide the insured person with a copy of the documents in question free of charge within 30 days after receipt of such request.

<sup>3</sup> If it fails to comply with such a request, the insured person may apply to the court.

<sup>4</sup> A refusal to supply the requested documents may be taken into account by the competent court in any subsequent legal dispute when deciding on procedural costs.

*Heading preceding Article 82***Chapter 7a: Procedure***Article 82* Ombudsman

<sup>1</sup> Insurance companies and non-tied insurance intermediaries must affiliate to an ombudsman at the latest on assuming their activity.

<sup>2</sup> The provisions of Title 5 of the Financial Services Act of ...<sup>61</sup> on ombudsmen apply by analogy.

*Article 84 heading*

## Rate decisions

<sup>61</sup> SR ...

*Article 86 paragraph 1 letter e**Repealed**Article 86a* 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 45;
- b. seriously violates the code of conduct under Article 45c;
- c. violates the duties under Article 45d.

*Article 90* Transitional provision to the amendment of ...

<sup>1</sup> The Federal Council can make provision for a transitional period for the acquisition of the basic training and continuing professional development set out in Article 43.

<sup>2</sup> Non-tied insurance intermediaries in accordance with Article 40 paragraph 2 must report to the registration body for entry in the register of advisers in accordance with Article 30 et seq. of the Financial Services Act of ...<sup>62</sup> within six months of the new provisions coming into force.

<sup>3</sup> Insurance companies and non-tied insurance intermediaries must be affiliated to an ombudsman within six months of Article 82 coming into force.

<sup>62</sup> SR ...