

*English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.*

# **Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Ordinance, FinMIO)**

of 25 November 2015 (Status as of 1 October 2021)

---

*The Swiss Federal Council*

based on the Financial Market Infrastructure Act of 19 June 2015<sup>1</sup> (FinMIA),  
*ordains:*

## **Title 1            General Provisions**

### **Art. 1            Subject matter** (Art. 1 and 157 FinMIA)

This Ordinance governs specifically:

- a. the authorisation conditions and duties for financial market infrastructures;
- b. the duties of financial market participants in derivatives trading;
- c. the disclosure of shareholdings;
- d. public takeover offers;
- e. the exceptions that apply with regard to the ban on insider trading and market manipulation.

### **Art. 2            Definitions** (Art. 2 lit. b and c FinMIA)

<sup>1</sup> Securities are deemed to be standardised and suitable for mass trading if they are publicly offered for sale in the same structure and denomination or are placed with more than 20 clients, insofar as they have not been created especially for individual counterparties.<sup>2</sup>

<sup>2</sup> Derivatives are deemed to comprise financial contracts whose price is derived specifically from:

AS 2015 5413

<sup>1</sup> SR 958.1

<sup>2</sup> Amended by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 400).

- a. assets such as shares, bonds, commodities and precious metals;
- b. reference values such as currencies, interest rates and indices.

<sup>3</sup> The following are not deemed to be derivatives:

- a. spot transactions;
- b. derivatives transactions relating to electricity and gas which:
  - 1. are traded on an organised trading facility,
  - 2. must be physically delivered, and
  - 3. cannot be settled in cash at a party's discretion;
- c. derivatives transactions relating to climatic variables, freight rates, inflation rates or other official economic statistics that are settled in cash only in the event of a default or other termination event.

<sup>4</sup> Spot transactions are deemed to be transactions that are settled either immediately or following expiry of the deferred settlement deadline within two business days. Spot transactions are also deemed to be:

- a. transactions that are settled with a longer settlement deadline in accordance with the market norm for the currency pair in question;
- b. purchases or sales of securities, irrespective of their currency, which are paid for by the deadline prescribed by the regulator or by a deadline that is customary in the market;
- c. transactions that are continuously extended without there being a legal obligation or without such an extension between the parties being usual.

### **Art. 3** Significant group companies

(Art. 3 para. 2 FinMIA)

The functions of a group company are significant with respect to the activities which require authorisation if they are necessary for the continuation of important business processes, in particular in the areas of liquidity management, treasury, risk management, master data administration and accounting, personnel, information technology, trading and settlement, and legal and compliance.

**Title 2        Financial Market Infrastructures****Chapter 1    Common Provisions****Section 1****Authorisation Conditions and Duties for all Financial Market Infrastructures****Art. 4            Authorisation application**

(Art. 4 and 5 FinMIA)

<sup>1</sup> The financial market infrastructure shall submit an authorisation application to the Swiss Financial Market Supervisory Authority (FINMA). This shall contain all the information necessary for assessing it, specifically information on:

- a. the business area (Art. 6);
- b. the place of management (Art. 7);
- c. corporate governance (Art. 8);
- d. risk management (Art. 9);
- e. guarantee of irreproachable business conduct (Art. 10);
- f. minimum capital (Art. 13);
- g. capital adequacy and risk diversification (Art. 48, 49, 56, 57 and 69);
- h. the audit firm (Art. 71).

<sup>2</sup> The financial market infrastructure shall attach along with its authorisation application the necessary documentation, namely its articles of association or partnership agreements and regulations.

**Art. 5            Changes in facts**

(Art. 7 FinMIA)

<sup>1</sup> The financial market infrastructure shall notify FINMA in particular of:

- a. any amendments to the articles of association or partnership agreements and regulations;
- b. any material change in the business activity of a subsidiary, branch or representation abroad;
- c. any change in audit firm or in the competent foreign supervisory authority with respect to any subsidiary, branch or representation abroad.

<sup>2</sup> It may only report any changes in its articles of association to the commercial register and put any changes in regulations into effect following FINMA's approval of the changes in question.

**Art. 6 Business area**

(Art. 8 para. 2 FinMIA)

<sup>1</sup> The financial market infrastructure must describe its area of business in factually and geographically precise terms in the articles of association, partnership agreements or regulations.

<sup>2</sup> The business area and its geographical extent must be in harmony with the financial market infrastructure's financial capabilities and administrative organisation.

**Art. 7 Place of management**

(Art. 8 paras. 1 and 2 FinMIA)

<sup>1</sup> The financial market infrastructure must effectively be managed from Switzerland. An exception is made here for general directives and decisions within the context of group supervision if the financial market infrastructure forms part of a financial group that is subject to appropriate consolidated supervision by a foreign financial market supervisory authority.

<sup>2</sup> The persons entrusted with managing the financial market infrastructure must be resident in a place from which they can effectively exercise such management.

**Art. 8 Corporate governance**

(Art. 8 para. 2 FinMIA)

<sup>1</sup> The financial market infrastructure must have an organisational structure and an organisational basis that set out the tasks, responsibilities, powers and accountability of the following bodies:

- a. body for business management;
- b. body for governance, supervision and control;
- c. internal audit function.

<sup>2</sup> The body for governance, supervision and control must comprise at least three members. These may not belong to the bodies described in paragraph 1 letters a and c.

<sup>3</sup> The body for governance, supervision and control shall set out the basic risk management principles and determine the risk tolerance of the financial market infrastructure. This body shall have its work evaluated regularly.

<sup>4</sup> The financial market infrastructure shall define, implement and maintain a compensation policy that promotes sound and effective risk management and does not create incentives to relax risk standards.

<sup>5</sup> It must have mechanisms in place that allow it to establish the needs of participants with regard to the services provided by the financial market infrastructure.

**Art. 9** Risk management

(Art. 8 para. 3 FinMIA)

<sup>1</sup> With regard to risk management, the financial market infrastructure must have a concept for the integrated identification, measurement, management and monitoring of risks, particularly with respect to:

- a. legal risks;
- b. credit and liquidity risks;
- c. market risks;
- d. operational risks;
- e. settlement risks;
- f. reputational risks;
- g. general business risks.

<sup>2</sup> It must have instruments in place and create incentives in order to ensure that participants can continuously manage and limit the risks arising for themselves or for the financial market infrastructure.

<sup>3</sup> Insofar as the financial market infrastructure has indirect participants and these are identifiable, it must also identify, measure, control and monitor the risks posed to the financial market infrastructure by these parties.

<sup>4</sup> The internal documentation of the financial market infrastructure on passing a resolution and the monitoring of transactions associated with the risks should be designed in such a way that allows the audit firm to make a reliable assessment with respect to the business activity.

<sup>5</sup> The financial market infrastructure shall ensure an effective internal control system which, among other things, guarantees compliance with legal and internal company rules and regulations (compliance function).

<sup>6</sup> The internal audit function must submit a report to the body with responsibility for governance, supervision and control or to one of its committees. It must have sufficient resources as well as unrestricted audit rights.

**Art. 10** Guarantee of irreproachable business conduct

(Art. 9 paras. 2 and 3 FinMIA)

<sup>1</sup> The authorisation application for a new financial market infrastructure must contain the following information and documentation in particular on the members of the board and executive management in accordance with Article 9 paragraph 2 FinMIA and on the owners of a qualified participation in accordance with Article 9 paragraph 3 FinMIA:

- a. natural persons:
  1. details on nationality, domicile, qualified participations in other companies and any pending court or administrative proceedings,
  2. a curriculum vitae signed by the relevant person,

3. references,
4. an extract from the register of criminal convictions;
- b. companies:
  1. the articles of association,
  2. an extract from the commercial register or an attestation to this effect,
  3. a description of business activities, the financial situation and, if applicable, the group structure,
  4. details on completed and pending court or administrative proceedings.

<sup>2</sup> Persons holding a qualified participation must make a declaration to FINMA stating whether they hold the participation in question for their own account or on a fiduciary basis for a third party, and whether they have granted options or similar rights with respect to this participation.

<sup>3</sup> The financial market infrastructure must submit to FINMA within 60 days of the end of the financial year a list of all qualified participants in the financial market infrastructure. This list shall contain details on the identity and participation rate of all qualified participants as at the relevant closing date, as well as any changes relative to the prior-year closing date. In addition, the information and documentation set out in paragraph 1 is to be submitted for any qualified participants being reported for the first time.

## **Art. 11 Outsourcing**

(Art. 11 FinMIA)

<sup>1</sup> An outsourcing situation in accordance with Article 11 paragraph 1 FinMIA is deemed to exist if the financial market infrastructure has commissioned a service provider to independently and permanently provide an essential service for the financial market infrastructure in accordance with Article 12.

<sup>2</sup> The following aspects in particular are to be addressed in the agreement with the service provider:

- a. the service to be outsourced and the services of the service provider;
- b. the responsibilities and the reciprocal rights and duties, particularly the financial market infrastructure's rights of inspection, instruction and control;
- c. the security requirements that must be fulfilled by the service provider;
- d. the service provider's adherence to the financial market infrastructure's business confidentiality and, insofar as legally protected data is provided to the service provider, the service provider's adherence to professional confidentiality;
- e. the rights of inspection and access of the internal audit function, the external audit firm, FINMA and – in the case of systemically important financial market infrastructures – the Swiss National Bank (SNB).

<sup>3</sup> The financial market infrastructure must exercise care in the selection, instruction and controlling of the service provider. It shall integrate the outsourced service into

its internal control system and monitor the services rendered by the service provider on an ongoing basis.

<sup>4</sup> Outsourcing to foreign countries requires appropriate technical and organisational measures to ensure the observance of professional confidentiality and data protection in accordance with Swiss law. Contracting parties of a financial market infrastructure whose data is to be sent to a service provider abroad must be informed about this.

<sup>5</sup> The financial market infrastructure, its internal audit function, the external audit firm, FINMA and – in the case of systemically important financial market infrastructures – the SNB must be able to inspect and review the outsourced service.

<sup>6</sup> Paragraphs 1 to 5 do not apply if a central securities depository outsources some of its services or activities to a technical platform that connects securities settlement systems by way of providing a public service. This kind of outsourcing must be governed by means of a dedicated regulatory and operational framework, which requires the approval of FINMA.

## **Art. 12**                      Essential services

(Art. 11 para. 1 FinMIA)

<sup>1</sup> Essential services are deemed to be services that are necessary for the continuation of important business processes, in particular in the areas of liquidity management, treasury, risk management, master data administration and accounting, personnel, information technology, and legal and compliance.

<sup>2</sup> The following services are also deemed to be essential:

- a. in the case of trading venues:
  1. all activities conducted with the aim of ensuring fair, efficient and orderly trading,
  2. the operating of matching and market data distribution systems;
- b. in the case of central counterparties:
  1. contractually entering into securities transactions or other contracts involving financial instruments between two participants or between one participant and another central counterparty,
  2. the establishment of mechanisms relating to the planning for and protection against outages of participants or interoperably associated central counterparties, or relating to the segregation of the positions of indirect participants and clients of participants or to the transfer of positions to other participants;
- c. in the case of central securities depositories:
  1. the operation of a central custodian or securities settlement system,
  2. the initial recording of securities in a securities account,
  3. the reconciliation of holdings;
- d. in the case of trade repositories:
  1. the collection, management and retention of the reported data,

- 2. the publication of reported data,
- 3. the granting of access to reported data;
- e. in the case of payment systems:
  - 1. the acceptance and execution of participants' payment orders,
  - 2. the management of clearing accounts;
- f.<sup>3</sup> in the case of trading facilities for distributed ledger technology securities (DLT trading facilities) that do not provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA:
  - 1. all activities conducted with the aim of ensuring fair, efficient and orderly trading,
  - 2. the operating of matching and market data distribution systems;
- g.<sup>4</sup> in the case of DLT trading facilities that provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA:
  - 1. the services under letter f,
  - 2. the central custody of DLT securities or the clearing and settlement of transactions in DLT securities,
  - 3. the initial recording of DLT securities in a securities account,
  - 4. the reconciliation of holdings.

**Art. 13** Minimum capital  
(Art. 12 FinMIA)

<sup>1</sup> The minimum capital shall amount to:

- a.<sup>5</sup> for trading venues: CHF 1 million;
- b. for central counterparties: CHF 10 million;
- c. for central securities depositories: CHF 5 million;
- d. for trade repositories: CHF 500,000;
- e. for payment systems: CHF 1.5 million;
- f.<sup>6</sup> for DLT trading facilities that do not provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA: CHF 1 million;
- g.<sup>7</sup> for DLT trading facilities that provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA: CHF 5 million.

<sup>3</sup> Inserted by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS **2021** 400).

<sup>4</sup> Inserted by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS **2021** 400).

<sup>5</sup> Amended by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS **2021** 400).

<sup>6</sup> Inserted by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS **2021** 400).

<sup>7</sup> Inserted by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS **2021** 400).



<sup>1bis</sup> For trading venues and DLT trading facilities, where justified, FINMA can stipulate a minimum amount that is up to 50% higher.<sup>8</sup>

<sup>2</sup> In the event of non-cash capital contributions, the value of the assets brought in and the amount of the liabilities shall be reviewed by a licensed audit firm. This also applies when an existing company is transformed into a financial market infrastructure.

#### **Art. 14** Business continuity

(Art. 13 FinMIA)

<sup>1</sup> The strategy detailed in Article 13 paragraph 1 FinMIA must be enshrined in the company organisation and should regulate in particular:

- a. the tasks, responsibilities and powers;
- b. the frequency of the review of the business impact analysis in accordance with paragraph 2;
- c. reporting, communication and training.

<sup>2</sup> The financial market infrastructure shall prepare a business impact analysis which sets out the recovery point objective and the recovery time objective for the business processes that are necessary for operations.

<sup>3</sup> It shall set out the options for the recovery of the business processes that are necessary for operations.

<sup>4</sup> The strategy detailed in Article 13 paragraph 1 FinMIA must be approved by the body responsible for governance, supervision and control.

#### **Art. 15** IT systems

(Art. 14 FinMIA)

<sup>1</sup> The IT systems must be set up in such a way that:

- a. the requirements of information availability, integrity and confidentiality can be appropriately fulfilled with respect to the business activity in question;
- b. reliable access control is possible;
- c. arrangements are in place for identifying security deficiencies and being able to respond to them appropriately.

<sup>2</sup> The financial market infrastructure shall take appropriate measures to ensure that business-relevant data can be recovered in the event of loss.

<sup>8</sup> Inserted by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 400).

**Art. 16** International business

(Art. 17 FinMIA)

<sup>1</sup> The report that a financial market infrastructure must submit to FINMA prior to commencing activity abroad must contain all the necessary information and documentation for evaluating the activity in question, namely:

- a. a business plan that describes in particular the nature of the planned businesses and the organisational structure;
- b. the address of the office abroad;
- c. the names of the members of the board and executive management;
- d. the audit firm;
- e. the supervisory authority in the host country.

<sup>2</sup> The financial market infrastructure must also notify FINMA of:

- a. any discontinuation of business activity abroad;
- b. any material change in the business activity abroad;
- c. any change of audit firm;
- d. any change of supervisory authority in the host country.

**Art. 17** Fair and open access

(Art. 18 FinMIA)

<sup>1</sup> Fair access is deemed not to be guaranteed in particular if excessively high or objectively unjustified requirements are made, or if excessive prices are demanded for use of the services offered. Fee structures should not be conducive to disorderly market conditions.

<sup>2</sup> The financial market infrastructure may make access conditional upon fulfilment of operational, technical, financial and legal requirements.

<sup>3</sup> If it restricts access for reasons of efficiency, FINMA shall consult the Competition Commission as part of its assessment.

**Art. 18** Prevention of conflicts of interest

(Art. 20 FinMIA)

If the disadvantaging of participants through conflicts of interest cannot be excluded with organisational measures, this should be disclosed to participants.

**Art. 19** Publication of essential information

(Art. 21 FinMIA)

The financial market infrastructure shall regularly publish in addition to the information required under Article 21 FinMIA:

- a. the rules and procedures that apply to the operation of the financial market infrastructure, including the rights and duties of the financial market infrastructure and participants;

- b. the fees and prices that apply to the services provided by the financial market infrastructure, including the conditions for the granting of discounts;
- c. the risks for participants associated with the services provided;
- d. the criteria for the suspension and exclusion of a participant;
- e. the rules and procedures that apply in the event of a default or outage of a participant;
- f. the rules and procedures required in order to keep the collateral, receivables and liabilities of participants and indirect participants segregated from one another, and the rules and procedures required for this collateral, receivables and liabilities to be both recorded and transferred;
- g. the aggregated transaction volumes and amounts;
- h. the number, nominal value and currency of issue of the securities held in central custody;
- i. other information in accordance with recognised international standards.

## **Section 2**

### **Special Requirements for Systemically Important Financial Market Infrastructures**

#### **Art. 20** Recovery and resolution plan (Art. 24 FinMIA)

<sup>1</sup> The recovery plan and the resolution plan must take into account the regulations of foreign supervisory authorities and central banks for stabilisation, restructuring and winding-up.

<sup>2</sup> The recovery plan shall in particular describe the measures to be taken and the resources required for their implementation. It must be approved by the body responsible for governance, supervision and control.

<sup>3</sup> The financial market infrastructure shall describe, upon submission of the plan, what measures it is preparing or has already implemented to improve its resolvability both in Switzerland and abroad (Art. 21).

<sup>4</sup> It shall submit to FINMA annually, and by the end of the second quarter of the year, the recovery plan and the information required for the resolution plan. The same documents should also be submitted if changes make a reworking necessary or if FINMA demands such a submission.

<sup>5</sup> FINMA shall grant the financial market infrastructure an appropriate period for the preparatory implementation of the measures envisaged in the resolution plan.

#### **Art. 21** Measures to improve resolvability (Art. 24 para. 1 FinMIA)

The measures to improve the financial market structure's resolvability can encompass in particular:

- a. structural improvements and unbundling by means of:
  - 1. amendments to the legal structure to create business-aligned legal entities,
  - 2. the creation of legally independent service units,
  - 3. the elimination or minimisation of *de facto* compulsory government support, particularly by creating an independent management structure,
  - 4. the reduction of geographical or balance sheet asymmetries;
- b. financial unbundling to contain risks of contagion by means of:
  - 1. the reduction of capital participations between legal entities at the same level,
  - 2. restrictions on the granting of unsecured loans and guarantees between legal entities at the same level within the financial group,
  - 3. the creation of an incentive structure that gives rise to the highest possible degree of market-consistent intra-group financing;
- c. operational unbundling to safeguard data and ensure continuation of important operational services by means of:
  - 1. ensuring access to and use of data resources, databases and IT resources,
  - 2. the separation or permanent outsourcing of key functions,
  - 3. access to and continued use of systems essential to business operations.

## **Chapter 2    Trading Venues and Organised Trading Facilities**

### **Section 1    Definitions**

#### **Art. 22            Multilateral trading** (Art. 26 and 42 FinMIA)

Trading is deemed to be multilateral if it unites the interests of multiple participants in the acquisition and sale of securities or other financial instruments within the trading facility with a view to concluding a contract.

#### **Art. 23            Non-discretionary rules** (Art. 26 and 42 FinMIA)

Rules are deemed to be non-discretionary if they grant the trading venue or the operator of an organised trading facility no discretion in the amalgamation of offers.

## Section 2      Trading Venues

### Art. 24              Regulatory and supervisory organisation

(Art. 27 FinMIA)

<sup>1</sup> An appropriate regulatory and supervisory organisation shall encompass the following bodies in particular:

- a. a body that fulfils regulatory tasks;
- b.<sup>9</sup> a body that fulfils supervisory tasks;
- c. a body responsible for the admission of securities to trading;
- d. an appeal body.

<sup>2</sup> The body that fulfils the regulatory tasks of the trading venue must be independent of the business management of the trading venue and largely independent of the participants and issuers, both organisationally and with respect to personnel. It must have sufficient organisational, personnel and financial resources.<sup>10</sup>

<sup>2bis</sup> The body that fulfils the supervisory tasks of the trading venue must be independent of the business management of the trading venue and independent of the participants and issuers, both organisationally and with respect to personnel. It must have sufficient organisational, personnel and financial resources.<sup>11</sup>

<sup>3</sup> Both issuers and investors must be appropriately represented in the body responsible for the admission of securities to trading.

<sup>4</sup> The trading venue shall set out in its regulations the tasks and powers of the various bodies, as well as the representation of issuers and investors in the body that is responsible for the admission of securities to trading.

### Art. 25              Approval of regulations

(Art. 27 para. 4 FinMIA)

<sup>1</sup> When approving regulations, FINMA shall review in particular whether these:

- a. ensure transparency and the equal treatment of investors; and
- b. ensure the proper functioning of the securities markets.

<sup>2</sup> FINMA may consult the Competition Commission before making its decision. The latter shall give its opinion on whether the regulations are neutral in terms of competition and are conducive to anti-competitive arrangements or not.

<sup>9</sup> Amended by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 400).

<sup>10</sup> Amended by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 400).

<sup>11</sup> Inserted by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 400).

**Art. 26** Organisation of trading

(Art. 28 FinMIA)

The trading venue shall establish procedures in order that the relevant data on securities transactions can be confirmed on the same day that transactions are executed.

**Art. 27** Pre-trade transparency

(Art. 29 paras. 1 and 3 lit. b FinMIA)

<sup>1</sup> The trading venue shall publish the information communicated via its trading facilities on pre-trade transparency for shares throughout normal trading hours.

<sup>2</sup> For each share, the five best bid and offer prices as well as the volume of orders are to be published.

<sup>3</sup> Paragraphs 1 and 2 also apply for actionable indications of interest.

<sup>4</sup> The trading venue may make provision for exceptions in its regulations for:

- a. reference price systems, as long as the reference prices are widely published and viewed by participants as reliable;
- b. systems that exist only to formalise transactions already negotiated;
- c. orders held in an order management facility of the trading venue pending disclosure;
- d. orders that are large in scale compared with normal market size.

**Art. 28** Post-trade transparency

(Art. 29 paras. 2 and 3 lit. b FinMIA)

<sup>1</sup> The trading venue shall publish the information on post-trade transparency with respect to transactions executed via the trading venue in accordance with its regulations.

<sup>2</sup> Post-trade information with respect to transactions that were carried out on the trading venue outside of normal business hours are to be published by the trading venue prior to the start of trading on the trading day following execution of the transaction in question.

<sup>3</sup> Paragraph 1 also applies to transactions that were conducted outside of the trading venue insofar as they were carried out during the course of the trading day on the most important market for the securities in question or during the normal trading hours of the trading venue. Otherwise, the information is to be published immediately prior to the beginning of the ordinary trading hours of the trading venue, or at the latest prior to the start of the next trading day on the most important market for these securities.

<sup>4</sup> The trading venue may make provision for later publication in its regulations in the case of:

- a. large-volume transactions in accordance with Article 27 paragraph 4 letter d;
- b. transactions:
  1. which are above a size specific to the securities in question,

2. for which a liquidity provider would be exposed to inappropriate risks, and
  3. for which consideration has been given as to whether the contracting parties are retail or wholesale investors;
- c. transactions in securities for which no liquid market exists.

**Art. 29** Exceptions to pre-trade and post-trade transparency

(Art. 29 para. 3 lit. b FinMIA)

<sup>1</sup> Securities transactions are not subject to the provisions on pre-trade and post-trade transparency if they are carried out as part of public tasks and not for investment purposes, namely on the part of:

- a. the Confederation, cantons or communes;
- b. the SNB;
- c. the Bank for International Settlements (BIS);
- d. multilateral development banks in accordance with Article 63 paragraph 2 letter c of the Capital Adequacy Ordinance of 1 June 2012<sup>12</sup> (CAO).

<sup>2</sup> Securities transactions carried out by the following parties may be excluded from the provisions on pre-trade and post-trade transparency as long as the transactions are carried out as part of public tasks and not for investment purposes, and as long as reciprocal rights are granted and an exception does not stand in contradiction to the legislative purpose:

- a. foreign central banks;
- b. the European Central Bank (ECB);
- c. official bodies or state departments that are responsible for or involved in administering the national debt;
- d. the European Financial Stability Facility (EFSF);
- e. the European Stability Mechanism (ESM).

<sup>3</sup> The Federal Department of Finance (FDF) shall publish a list of the bodies covered by paragraph 2.

<sup>4</sup> The trading venue is to be informed in cases where transactions are carried out as part of public tasks and not for investment purposes.

**Art. 30** Guarantee of orderly trading

(Art. 30 FinMIA)

<sup>1</sup> The trading venue shall set transparent rules and procedures for fair, efficient and orderly trading, as well as objective criteria for the effective execution of orders. It must have measures in place to ensure the robust management of technical processes and the operation of its systems.

<sup>2</sup> It must possess effective systems, procedures and arrangements to ensure in particular that its trading facilities:

- a. are robust and equipped with sufficient capacity to deal with peak volumes of orders and announcements;
- b. are in a position to ensure orderly trading under conditions of severe market stress;
- c. are subject to effective emergency measures so that the restoration of business operations can be guaranteed in the event of disruptions to its trading facilities;
- d. reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous;
- e. are in a position to suspend or restrict trading temporarily if there are significant short-term price movements with respect to a security on that market or a related market;
- f. are in a position to cancel, amend or correct any transaction in exceptional cases; and
- g. are regularly reviewed with a view to ensuring that the requirements under letters a to f are met.

<sup>3</sup> It must enter into an agreement, in writing or in another form that that allows for its proof by text, with all participants holding a special function, in particular participants that pursue a market-making strategy in the trading venue. It shall maintain systems and procedures that ensure that these participants comply with the regulations.<sup>13</sup>

<sup>4</sup> It may also prescribe in its regulations that participants must flag up short-selling positions in its trading facility.

**Art. 31**                    Algorithmic trading and high-frequency trading  
(Art. 30 FinMIA)

<sup>1</sup> The trading venue must be able to identify the following:

- a. orders generated by algorithmic trading;
- b. the different algorithms used for the creation of orders;
- c. the participants' dealers who initiated these orders in the trading facility.

<sup>2</sup> It shall require participants that pursue algorithmic trading to flag the orders generated in this manner, record all entered orders, including order cancellations, and in particular to possess effective precautions and risk controls that ensure that their systems:

- a. are robust and equipped with sufficient capacity to deal with peak volumes of orders and announcements;

<sup>13</sup> Amended by Annex 1 No II 14 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).



- b. are subject to appropriate trading thresholds and upper limits;
- c. do not cause or contribute to any disruptions in the trading venue;
- d. are effective for preventing violations of Articles 142 and 143 FinMIA;
- e. are subject to appropriate tests of algorithms and control mechanisms, including precautions to:
  - 1. limit the proportion of unexecuted trading orders relative to the number of transactions that can be entered into the system by a participant,
  - 2. slow down the flow of orders if there is a risk of the capacity of the system being reached, and
  - 3. limit and enforce the minimum tick size that may be executed on the trading venue.

<sup>3</sup> In order to take account of the additional burden on system capacity, the trading venue may make provision for higher fees for:

- a. the placement of orders that are later cancelled;
- b. participants placing a high proportion of cancelled orders;
- c. participants with:
  - 1. an infrastructure intended to minimise delays in order transfer,
  - 2. a system that can decide on order initiation, generation, routing or execution, and
  - 3. a high intraday number of price offers, orders or cancellations.

## **Art. 32**            Supervision of trading

(Art. 31 para. 2 FinMIA)

<sup>1</sup> The trading supervisory body must have appropriate systems and resources to carry out its tasks.

<sup>2</sup> The functioning of the trading supervisory systems must also be guaranteed without restriction even in the event of high data volumes.

<sup>3</sup> The trading supervisory body shall monitor trading in such a way that forms of conduct in accordance with Articles 142 and 143 FinMIA can be identified irrespective of whether they are attributable to manual, automated or algorithmic trading.

## **Art. 33**            Admission of securities by a stock exchange

(Art. 35 FinMIA)

<sup>1</sup> The stock exchange shall guarantee that all securities admitted to trading and all listed securities can be traded in a fair, efficient and orderly manner.

<sup>2</sup> In the case of derivatives, it shall ensure in particular that the way in which derivatives trading is structured facilitates orderly pricing.

<sup>3</sup> The stock exchange shall take the necessary measures to review the securities listed and admitted to trading for their fulfilment of the admission and listing requirements.

**Art. 34** Admission of securities by a multilateral trading facility

(Art. 36 FinMIA)

<sup>1</sup> The multilateral trading facility shall guarantee that all securities admitted to trading can be traded in a fair, efficient and orderly manner.

<sup>2</sup> In the case of derivatives, it shall ensure in particular that the way in which derivatives trading is structured facilitates orderly pricing.

<sup>3</sup> The multilateral trading facility shall take the necessary measures to review the securities admitted to trading for their fulfilment of the admission requirements.

**Art. 35** Appeal body

(Art. 37 paras. 1 to 3 FinMIA)

<sup>1</sup> The appeal body shall be independent in its adjudication and bound only by the law.

<sup>2</sup> The members may not belong to the body responsible for the admission of securities to trading, nor may they be in an employment relationship or any other contractual relationship with the trading venue that could lead to conflicts of interest.

<sup>3</sup> The provisions of the Federal Supreme Court Act of 17 June 2005<sup>14</sup> on recusal apply to the members of the independent appeal body.

<sup>4</sup> The regulations concerning the independent appeal body shall contain guidelines with respect to composition, election, organisation and proceedings before the appeal body.

**Art. 36** Record-keeping duty of participants

(Art. 38 FinMIA)

<sup>1</sup> The participants admitted to a trading venue shall keep a record of all orders they receive and all securities transactions they execute.

<sup>2</sup> The record-keeping duty also applies to orders and transactions in derivatives whose underlying instruments are securities admitted to trading on a trading venue.

<sup>3</sup> The record-keeping duty applies not only to transactions on own account, but also to transactions executed on behalf of a client.

<sup>4</sup> FINMA shall regulate what information is necessary and in what form it must be recorded.

**Art. 37** Reporting duty of participants

(Art. 39 FinMIA)

<sup>1</sup> The participants admitted to a trading venue shall report all transactions they execute involving securities admitted to trading on a trading venue. In particular, the following must be reported:

- a. the name and number of purchased or sold securities;

<sup>14</sup> SR 173.110

- b. the volume, date and time of the transaction;
- c. the price; and
- d. the details necessary to identify the beneficial owner.

<sup>2</sup> The reporting duty also applies to transactions in derivatives whose underlying instruments are securities admitted to trading on a trading venue.

<sup>3</sup> The reporting duty applies not only to transactions on own account, but also to transactions executed on behalf of a client.

<sup>4</sup> The following transactions executed abroad do not have to be reported:

- a. transactions in securities admitted to trading on a trading venue in Switzerland and in derivatives with such securities as their underlying instruments, provided the information in question is regularly communicated to the trading venue on the basis of an agreement in accordance with Article 32 paragraph 3 FinMIA or within the framework of an exchange of information between FINMA and the competent foreign supervisory authority if:
  - 1. they were executed by the branch of a Swiss securities firm<sup>15</sup> or by a foreign admitted participant, and
  - 2. the branch or the foreign participant is authorised to trade by the relevant foreign supervisory authority and is obliged to submit a report in the corresponding state or in its state of domicile;
- b. transactions in foreign securities admitted to trading on a trading venue in Switzerland and in derivatives with such securities as their underlying instruments that are executed on a recognised foreign trading venue.

<sup>5</sup> Third parties may be involved in reporting.

## Section 3 Organised Trading Facilities

### **Art. 38** Authorisation and recognition conditions

(Art. 43 para. 1 FinMIA)

The authorisation and recognition conditions that apply to the operator of an organised trading facility are based on the financial market acts pursuant to Article 1 paragraph 1 of the Financial Market Supervision Act of 22 June 2007<sup>16</sup>.

### **Art. 39** Organisation and prevention of conflicts of interest

(Art. 44 FinMIA)

<sup>1</sup> The operator of an organised trading facility shall issue regulations on the organisation of trading and monitor compliance with the statutory and regulatory provisions, as well as the trading process.

<sup>15</sup> Term in accordance with Annex 1 No II 14 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633). This amendment has been made throughout the text.

<sup>16</sup> SR 956.1

<sup>2</sup> It shall keep a chronological record of all orders and transactions carried out through the organised trading facility.

<sup>3</sup> In the event of agreements being made according to discretionary rules, identical client orders may be matched only if best execution can be guaranteed. Exceptions are permissible only if the clients concerned have expressly waived any claim to best possible execution.

**Art. 40**            Guarantee of orderly trading

(Art. 45 FinMIA)

The operator of an organised trading facility shall set transparent rules and procedures for fair, efficient and orderly trading, as well as objective criteria for the effective execution of orders. It must have measures in place to ensure the robust management of technical processes and the operation of its systems in accordance with Article 30 paragraphs 2 to 4.

**Art. 41**            Algorithmic trading and high-frequency trading

(Art. 45 FinMIA)

In order to prevent disruptions to its trading facility, the operator of an organised trading facility must take effective measures in accordance with Article 31.

**Art. 42**            Pre-trade transparency

(Art. 46 paras. 2 and 3 FinMIA)

<sup>1</sup> In the case of multilateral trading and bilateral trading where a liquid market exists, Articles 27 and 29 apply by analogy.

<sup>2</sup> In the case of bilateral trading where no liquid market exists, price quotes on demand shall suffice.

**Art. 43**            Post-trade transparency for securities

(Art. 46 paras. 1 and 2 FinMIA)

<sup>1</sup> In the case of multilateral trading, Article 28 paragraphs 1 and 4 as well as Article 29 apply by analogy.

<sup>2</sup> In the case of bilateral trading, aggregated publication at the end of the trading day shall suffice.

## **Chapter 3    Central Counterparties**

**Art. 44**            Function

(Art. 48 FinMIA)

The central counterparty shall ensure, in particular, the standardised recording of all details of the transactions cleared by it, the positions of the participants and its reports to trade repositories.

**Art. 45** Organisation, business continuity and IT systems

(Art. 8, 13 and 14 FinMIA)

<sup>1</sup> The central counterparty must appoint a risk committee that includes representatives of the participants, of the indirect participants and members of the body for governance, supervision and control. This committee shall advise the central counterparty on all matters that could have an impact on the risk management of the central counterparty.

<sup>2</sup> The central counterparty shall arrange procedures, capacity planning and sufficient capacity reserves so that, in the event of a disruption, its systems can still process all transactions still open by the close of trading.

**Art. 46** Collateral

(Art. 49 FinMIA)

<sup>1</sup> If predefined thresholds are exceeded, the central counterparty shall call in initial margins and variation margins at least once a day.

<sup>2</sup> It shall avoid concentration risks in the collateral and shall ensure that it can have prompt access to the collateral.

<sup>3</sup> It shall make provision for procedures by means of which it can review the models and parameters on which its risk management is based, and shall conduct these reviews on a regular basis.

<sup>4</sup> If the central counterparty holds its own assets or the collateral and assets of participants with third parties, it shall minimise the associated risks. In particular, it shall hold the collateral and assets with creditworthy financial intermediaries which, insofar as possible, are subject to supervision.

**Art. 47** Exchange-of-value settlement

(Art. 50 FinMIA)

The central counterparty shall enable participants to eliminate their principal risk by ensuring that the settlement of one obligation occurs if and only if the settlement of the other obligation is guaranteed.

**Art. 48** Capital adequacy

(Art. 51 FinMIA)

<sup>1</sup> The central counterparty must hold total capital in the amount 8.0% (minimum capital requirement) to underpin credit risks, non-counterparty-related risks, market risks and operational risks in accordance with Article 42 CAO<sup>17</sup>. FINMA may demand additional capital in accordance with Article 45 CAO. Titles 1 to 3 CAO apply to the calculation.<sup>18</sup>

<sup>2</sup> The dedicated capital in accordance with Article 53 paragraph 2 letter c FinMIA shall amount to at least 25% of the required capital set out in Title 3 CAO.

<sup>17</sup> SR 952.03

<sup>18</sup> Amended by Attachment No 2 to the O of 11 May 2016, in force since 1 July 2016 (AS 2016 1725).

<sup>3</sup> The central counterparty shall hold further capital in order to cover the costs of a voluntary cessation of business or restructuring. In the case of systemically important central counterparties, this capital must suffice to implement the plan set out in Article 72, but must at least be sufficient to cover ongoing operating expenditure for six months.

<sup>4</sup> In special cases, FINMA can ease the requirements set out in the paragraphs 1 to 3 or impose more rigorous requirements.

<sup>5</sup> The central counterparty must have a plan that sets out how further capital is to be procured if its capital no longer fulfils the requirements set out in paragraphs 1 to 4. The plan must be approved by the body responsible for governance, supervision and control.

<sup>6</sup> If its capital falls short of 110% of the requirements set out in paragraphs 1 to 4, the central counterparty shall immediately inform FINMA and its audit firm, and shall provide FINMA with a plan that sets out how the threshold can once again be adhered to.

**Art. 49** Risk diversification  
(Art. 51 FinMIA)

The central counterparty shall monitor credit risks vis-à-vis an individual counterparty or a group of associated counterparties based on the calculation principles set out in Section 4 of Chapter 1 of Title 4 CAO<sup>19</sup>.

**Art. 50** Liquidity  
(Art. 52 FinMIA)

<sup>1</sup> The following are deemed to constitute liquidity in a currency as set out in Article 52 paragraph 1 FinMIA:

- a. cash balances in this currency with a central bank or a creditworthy financial institution;
- b. cash balances in other currencies that can be converted into this currency in a timely manner through foreign exchange transactions;
- c. contractually committed and approved unsecured lines of credit in this currency with a creditworthy financial institution that can be used without any further credit decision;
- d. collateral in accordance with Article 49 FinMIA and assets that can be converted into cash in this currency in a timely manner through sales;
- e. collateral in accordance with Article 49 FinMIA and assets that can be converted into cash in this currency in a timely manner by means of contractually committed and secured lines of credit or contractually committed repo lines with central banks or creditworthy financial institutions.

<sup>19</sup> SR 952.03

<sup>2</sup> The central counterparty shall regularly review compliance with the requirements set out in Article 52 paragraph 1 FinMIA under various stress scenarios. In doing so, it shall apply collateral discounts (haircuts) to the liquidity that would be appropriate even under extreme but plausible market conditions. It shall diversify its sources of liquidity.

<sup>3</sup> The investment strategy of the central counterparty must be in harmony with its risk management strategy. It must avoid concentration risks.

**Art. 51** Portability  
(Art. 55 FinMIA)

<sup>1</sup> Portability is ensured if:

- a. the transfer is enforceable in the relevant jurisdictions; and
- b. the other participant has an obligation towards the indirect participant to assume the latter's collateral and positions.

<sup>2</sup> If a transfer cannot take place by the deadline set by the central counterparty, the central counterparty may take all precautions in accordance with its regulations to actively manage the risks with respect to the positions in question, including the liquidation of assets and collateral of the participant in default who holds this for the account of an indirect participant or its clients.

## Chapter 4 Central Securities Depositories

**Art. 52** Organisation  
(Art. 8 FinMIA)

<sup>1</sup> The central securities depository shall set up a user committee for every securities settlement system operated by it, on which the issuers and participants in these securities settlement systems are represented.

<sup>2</sup> The user committee shall advise the central securities depository in key matters affecting issuers and participants.

**Art. 53** Principles for the custody, recording and transfer of securities  
(Art. 62 FinMIA)

Central securities depositories that use a common settlement infrastructure shall establish identical times for:

- a. the entry of payment and transfer orders into the system of the common settlement infrastructure;
- b. the irrevocability of payment and transfer orders.

**Art. 54** Collateral  
(Art. 64 FinMIA)

<sup>1</sup> The central securities depository must have sufficient collateral in order to fully cover its current credit exposure.

<sup>2</sup> It shall avoid concentration risks in the collateral and shall ensure that it can have prompt access to the collateral.

<sup>3</sup> It shall make provision for procedures by means of which it can review the models and parameters on which its risk management is based, and shall conduct these reviews on a regular basis.

<sup>4</sup> If it holds its own assets or the collateral and assets of participants with third parties, it shall minimise the associated risks. In particular, it shall hold the collateral and assets with creditworthy financial intermediaries which, insofar as possible, are subject to supervision.

**Art. 55** Exchange-of-value settlement  
(Art. 65 FinMIA)

The central securities depository shall enable participants to eliminate their principal risk by ensuring that the settlement of one obligation occurs if and only if the settlement of the other obligation is guaranteed.

**Art. 56** Capital adequacy  
(Art. 66 FinMIA)

<sup>1</sup> The central securities depository must hold total capital in the amount 8.0% (minimum capital requirement) to underpin credit risks, non-counterparty-related risks, market risks and operational risks in accordance with Article 42 CAO<sup>20</sup>. FINMA may demand additional capital in accordance with Article 45 CAO. Titles 1 to 3 CAO apply to the calculation.<sup>21</sup>

<sup>2</sup> For all other matters, Article 48 paragraphs 3 to 6 apply by analogy.

**Art. 57** Risk diversification  
(Art. 66 FinMIA)

The central securities depository shall monitor credit risks vis-à-vis an individual counterparty or a group of associated counterparties based on the calculation principles set out in Section 4 of Chapter 1 of Title 4 CAO<sup>22</sup>.

<sup>20</sup> SR 952.03

<sup>21</sup> Amended by Attachment No 2 to the Ordinance of 11 May 2016, in force since 1 July 2016 (AS 2016 1725).

<sup>22</sup> SR 952.03



**Art. 58**            Liquidity  
(Art. 67 FinMIA)

<sup>1</sup> The following are deemed to constitute liquidity in a currency as set out in Article 67 paragraph 1 FinMIA:

- a. cash balances in this currency with a central bank or a creditworthy financial institution;
- b. cash balances in other currencies that can be converted into this currency in a timely manner through foreign exchange transactions;
- c. contractually committed and approved unsecured lines of credit in this currency with a creditworthy financial institution that can be used without any further credit decision;
- d. collateral in accordance with Article 64 FinMIA and assets that can be converted into cash in this currency in a timely manner through sales;
- e. collateral in accordance with Article 64 FinMIA and assets that can be converted into cash in this currency in a timely manner by means of contractually committed and secured lines of credit or contractually committed repo lines with central banks or creditworthy financial institutions.

<sup>2</sup> The central securities depository shall regularly review compliance with the requirements set out in Article 67 paragraph 1 FinMIA under various stress scenarios. In doing so, it shall apply collateral discounts (haircuts) to the liquidity that would be appropriate even under extreme but plausible market conditions. It shall diversify its sources of liquidity.

<sup>3</sup> The investment strategy of the central securities depository must be in harmony with its risk management strategy. It must avoid concentration risks.

## **Chapter 4a<sup>23</sup> DLT Trading Facilities**

### **Section 1        Definitions**

**Art. 58a**            Multilateral trading and non-discretionary rules  
(Art. 73a para. 1 FinMIA)

The definitions for multilateral trading and non-discretionary rules under Articles 22 and 23 apply by analogy to DLT trading facilities.

**Art. 58b**            Commercial activity  
(Art. 73a para. 2 FinMIA)

<sup>1</sup> A DLT trading facility is operating commercially if it:

- a. thereby generates gross earnings of more than CHF 50,000 per calendar year;

<sup>23</sup> Inserted by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 400).

- b. per calendar year, has a business relationship with more than 20 participants in accordance with Article 73c paragraph 1 letter e of the FinMIA (private participants) or with at least one participant in accordance with Article 73c paragraph 1 letters a to d of the FinMIA; or
- c. has unlimited power of disposal over third-party DLT securities that exceed CHF 5 million at any given time.

<sup>2</sup> If a threshold under paragraph 1 is exceeded, the DLT trading facility must report this to FINMA within 10 days. It must submit an application for authorisation as provided for in the FinMIA to FINMA within 60 days.

<sup>3</sup> Provided the protective purpose of the FinMIA is not affected, FINMA may prohibit the applicant from exercising the activities reserved to a DLT trading facility until the decision is made on the application for authorisation.

## Section 2 Requirements

### Art. 58c Applicability of certain requirements for trading venues

(Art. 73b FinMIA)

<sup>1</sup> Unless otherwise specified in this Section, Articles 24 to 32 and Article 35 apply by analogy to DLT trading facilities.

<sup>2</sup> Instead of the option under Article 30 paragraph 2 letter f to cancel, amend or correct any transaction in exceptional cases, a DLT trading facility must have a mechanism in place that achieves an economically equivalent effect.

### Art. 58d Record-keeping and reporting duty

(Art. 73c para. 3 FinMIA)

<sup>1</sup> Private participants are exempt from the record-keeping duty under Article 38 of the FinMIA and the reporting duty under Article 39 of the FinMIA.

<sup>2</sup> Articles 36 and 37 of this Ordinance apply by analogy to the other participants.

### Art. 58e Admission and exclusion of participants

(Art. 73c paras. 4 and 5 FinMIA)

<sup>1</sup> The DLT trading facility shall regulate in the regulations in accordance with Article 73c paragraph 5 of the FinMIA whether and which private participants will be admitted.

<sup>2</sup> The granting of non-discriminatory access in accordance with Article 18 of the FinMIA is not binding for private participants.

### Art. 58f Admission of DLT securities and other assets

(Art. 73d FinMIA)

<sup>1</sup> The DLT trading facility shall regulate in the regulations in accordance with Article 73d of the FinMIA which DLT securities and other assets will be admitted to

its services. It may specify the admitted DLT securities and assets individually in the regulations or define them according to their type and function.

<sup>2</sup> If the DLT trading facility admits derivatives designed as DLT securities, only products without fair value or leverage components may be admitted to trading.

<sup>3</sup> DLT securities and other assets which significantly hinder the implementation of the provisions of the Anti-Money Laundering Act of 10 October 1997<sup>24</sup>, or which could adversely affect the stability and integrity of the financial system may not be admitted. FINMA can define these DLT securities and assets in more detail.

<sup>4</sup> The DLT trading facility shall make provision in the regulations for revoking the admission of DLT securities and other assets.

<sup>5</sup> The requirements under Article 34 apply by analogy.

**Art. 58g** Minimum requirements for the admission of DLT securities and regular auditing

(Art. 73d para. 3 FinMIA)

<sup>1</sup> DLT securities may be admitted by the DLT trading facility if the distributed ledger meets at least the requirements under Article 973d paragraph 2 of the CO<sup>25</sup>.

<sup>2</sup> If the distributed ledger is not operated by the relevant DLT trading facility itself, the facility shall audit the ledger before admitting the relevant DLT securities and regularly thereafter, but at least once a year, for compliance with the requirements under paragraph 1.

<sup>3</sup> It shall inform its participants of the audits performed and of the findings.

**Art. 58h** Disclosures on transactions

(Art. 73d FinMIA)

<sup>1</sup> The DLT trading facility shall monitor all transactions conducted on its systems with admitted DLT securities. It shall disclose this data free of charge to all approved DLT trading facilities.

<sup>2</sup> If the DLT securities admitted for trading on the DLT trading facility are based on securities which are also admitted for trading on a Swiss trading venue, the DLT trading facility shall disclose to that trading venue, free of charge, all transactions with these DLT securities.

<sup>3</sup> The trading venues and DLT trading facilities shall use this data exclusively to fulfil their tasks in the area of trade monitoring.

<sup>4</sup> FINMA may regulate the details of these disclosures.

<sup>24</sup> SR 955.0

<sup>25</sup> SR 220

**Art. 58i** Duty of information

(Art. 73e para. 1 FinMIA)

<sup>1</sup> DLT trading facilities with private participants shall provide them with the associated prospectus or key information document for each DLT security admitted to the DLT trading facility.

<sup>2</sup> They shall inform these participants of the following aspects of the distributed ledger for the relevant DLT securities:

- a. its governance; and
- b. its technical risks, specifically the risk of loss.

<sup>3</sup> Moreover, they shall immediately publish information on the transactions in other assets carried out on the DLT trading facility, in particular the price, the volume and the time of the transactions.

**Art. 58j** Other requirements relating to services in the area of central custody, clearing or settlement

(Art. 73e para. 2 FinMIA)

<sup>1</sup> Unless otherwise specified in this Section, the requirements for central securities depositories under Articles 62 to 73 of the FinMIA and 52 to 58 of this Ordinance apply by analogy for DLT trading facilities that provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA.

<sup>2</sup> The segregation in accordance with Article 69 of the FinMIA may take place in the distributed ledger underlying the DLT securities or in the systems of the DLT trading facility.

<sup>3</sup> A DLT trading facility may also enable the settlement of payments in another manner than that provided for in Article 65 paragraph 1 of the FinMIA if it involves a FINMA-supervised institution for the purpose.

<sup>4</sup> For a DLT trading facility, liquidity in a currency in accordance with Article 67 paragraph 1 of the FinMIA also includes cryptobased assets, insofar as the payment obligation is to be fulfilled in the same virtual currency.

<sup>5</sup> In derogation from Article 52, the DLT trading facility does not have to set up a user committee.

**Section 3 Special requirements for small DLT trading facilities****Art. 58k** Small DLT trading facilities

(Art. 73f FinMIA)

<sup>1</sup> A DLT trading facility is deemed to be small if the following thresholds are undercut in relation to DLT securities:

- a. Annual trading volume: CHF 250 million;
- b. Custody volume: CHF 100 million; and

c. Annual settlement volume: CHF 250 million.

<sup>2</sup> If a threshold is reached or exceeded, the DLT trading facility must report this to FINMA within 10 days. It must submit a modified application for authorisation as provided for in the FinMIA to FINMA within 90 days.

<sup>3</sup> The trading facility shall no longer be deemed to be small after 90 days from the time at which a threshold is reached or exceeded. The DLT trading facility may, however, continue to apply the eased requirements for small DLT trading facilities until FINMA makes its decision on the authorisation application.

<sup>4</sup> Where this serves the protective purpose of the FinMIA, FINMA may prohibit the DLT trading facility from admitting further participants until the decision is made on the application for authorisation.

**Art. 58/** Easing of requirements for small DLT trading facilities

(Art. 73/FinMIA)

<sup>1</sup> In derogation from the FinMIA and from this Ordinance, the following eased requirements apply for small DLT trading facilities:

- a. In derogation from Article 8 paragraph 2 second sentence of the FinMIA and Article 8 paragraph 2 second sentence of this Ordinance, it is sufficient if the majority of the members of the bodies responsible for overall management, supervision and control are not members of the body responsible for business management.
- b. If the provision of ancillary services not subject to authorisation or approval by virtue of financial market legislation increases the risks of a DLT trading facility, FINMA may require exclusively organisational measures (Art. 10 para. 3 of the FinMIA). If the DLT trading facility also operates an organised trading facility (Art. 43 of the FinMIA), FINMA may require additional capital and sufficient liquidity.
- c. The business continuity requirements may also be met by having another authorisation holder take over the operation of the DLT trading facility in the event of disruptions (Art. 13 para. 1 of the FinMIA). The strategy and business impact analysis in accordance with Article 14 of this Ordinance may make provision for the operation of the DLT trading facility to be transferred to a third party.
- d. The regulatory tasks delegated to the DLT trading facility may also be carried out by a non-independent body (Art. 27 para. 2 of the FinMIA).
- e. An independent appeal body is not necessary (Art. 37 of the FinMIA).
- f. An internal audit is not necessary (Art. 8 para. 1 lit. c of this Ordinance).

<sup>2</sup> For small DLT trading facilities that provide services in accordance with Article 73a paragraph 1 letter b or c of the FinMIA, the following eased requirements apply in addition, in derogation from the FinMIA:

- a. The capital requirements do not apply (Art. 66 of the FinMIA).
- b. The liquidity requirements do not apply (Art. 67 of the FinMIA).

**Art. 58m** Duty of information for small DLT trading facilities  
(Art. 73f/FinMIA)

Before establishing a business relationship, small DLT trading facilities shall inform their clients, in writing or in another form demonstrable by text, of the specific eased requirements which the small DLT trading facility is applying.

**Art. 58n** Minimum capital for small DLT trading facilities  
(Art. 73f/FinMIA)

For small DLT trading facilities, the minimum capital requirement is:

- a. CHF 500,000 if they do not provide services in accordance with Article 73a paragraph 1 letter b or c;
- b. 5% of the DLT securities in custody, but at least CHF 500,000 if they provide services in accordance with Article 73a paragraph 1 letter b or c.

**Art. 58o** Prohibition on lending  
(Art. 73f/FinMIA)

Small DLT trading facilities may not grant loans.

## Chapter 5 Trade Repositories

**Art. 59** Ancillary services  
(Art. 10 FinMIA)

If the trade repository offers ancillary services, it must provide these in a way that is operationally segregated from its essential services.

**Art. 60** Data retention  
(Art. 75 FinMIA)

<sup>1</sup> The trade repository must do the following with respect to the reported data:

- a. record it immediately and completely;
- b. save it both online and offline;
- c. copy it to an appropriate extent.

<sup>2</sup> It shall record all changes to the reported data, providing information on:

- a. at whose request the change was made;
- b. the reasons for the change;
- c. the time the change was made;
- d. and providing a clear description of the change.

**Art. 61** Publication of data

(Art. 76 FinMIA)

<sup>1</sup> The trade repository shall publish at least weekly the open positions, transaction volumes and values for the following derivative categories:

- a. commodity derivatives;
- b. credit derivatives;
- c. currency derivatives;
- d. equity derivatives;
- e. interest rate derivatives;
- f. other derivatives.

<sup>2</sup> The data must be easily accessible for the public.

<sup>3</sup> It should not be possible to draw conclusions with respect to a contracting party on the basis of the data published.

**Art. 62** Data access for Swiss authorities

(Art. 77 FinMIA)

<sup>1</sup> The trade repository shall grant the following authorities access to the data, whereby paragraph 2 remains reserved:

- a. FINMA: all transaction data;
- b. the SNB: all transaction data;
- c. the Swiss Takeover Board: derivative transaction data with a connection to takeover proceedings;
- d. the Federal Audit Oversight Authority: derivative transaction data that it requires in specific supervisory proceedings involving audit firms;
- e. the Competition Commission: derivative transaction data with a connection to proceedings in the field of competition;
- f. the Electricity Commission: transaction data on derivatives whose underlying instrument relates to electricity.

<sup>2</sup> The trade repository shall reject enquiries concerning transactions and positions of central banks.

**Art. 63** Data access for foreign authorities

(Art. 78 FinMIA)

<sup>1</sup> The trade repository shall grant foreign financial market supervisory authorities access to transaction data solely for the purposes of enforcing financial market law under their responsibility.

<sup>2</sup> The trade repository shall reject enquiries concerning transactions and positions of central banks.

**Art. 64** Procedure

(Art. 77 and 78 FinMIA)

<sup>1</sup> The access of authorities shall be structured in line with the communication protocols, data exchange standards and reference data that are commonplace at the international level.

<sup>2</sup> The authorities must take suitable measures to ensure that only the employees who directly require the data for exercising their activities gain access to the data.

<sup>3</sup> The trade repository shall provide the authorities with a form for their enquiries in which the following information is required:

- a. details of the authority;
- b. reason for the data enquiry and relevance to its mandate;
- c. legal basis for the data enquiry;
- d. a description of the data it is requesting;
- e. an illustration of the measures it has taken to ensure the confidentiality of data received.

<sup>4</sup> From foreign authorities, it shall additionally request confirmation that an agreement is in place between the foreign and Swiss authorities in accordance with Article 78 paragraph 1 FinMIA.

<sup>5</sup> The trade repository shall keep a record of information on data access.

**Art. 65** Data transmission to private individuals

(Art. 79 FinMIA)

<sup>1</sup> The trade repository shall provide private individuals with a form for their enquiries in which the following information is required:

- a. personal details;
- b. reason for the data enquiry;
- c. a description of the data being requested.

<sup>2</sup> It should not be possible to draw conclusions with respect to another contracting party on the basis of the data transferred.

**Chapter 6 Payment Systems****Art. 66** Clearing and settlement principles

(Art. 82 FinMIA)

<sup>1</sup> The payment system shall ensure the proper and lawful clearing and settlement of payment obligations.

<sup>2</sup> It shall specify the time:

- a. after which a payment order is irrevocable and may no longer be changed;



b. when a payment is settled.

<sup>3</sup> Payment systems that use a common settlement infrastructure shall establish identical times for:

a. the entry of payment orders into the system of the common settlement infrastructure;

b. the irrevocability of payment orders.

<sup>4</sup> The payment system shall settle payments in real time if possible, but at the latest at the end of the value day.

**Art. 67** Collateral  
(Art. 82 FinMIA)

<sup>1</sup> The payment system shall use appropriate measures to cover risks arising from the granting of credit.

<sup>2</sup> It shall accept only liquid collateral with low credit and market risks. It shall value the collateral prudently.

<sup>3</sup> It shall avoid concentration risks in the collateral and shall ensure that it can have prompt access to the collateral.

<sup>4</sup> It shall make provision for procedures by means of which it can review the models and parameters on which its risk management is based, and shall conduct these reviews on a regular basis.

<sup>5</sup> If it holds its own assets or the collateral and assets of participants with third parties, it shall minimise the associated risks. In particular, it shall hold the collateral and assets with creditworthy financial intermediaries which, insofar as possible, are subject to supervision.

**Art. 68** Fulfilment of payment obligations  
(Art. 82 FinMIA)

<sup>1</sup> The payment system shall enable the settlement of payments by transferring sight deposits held with a central bank.

<sup>2</sup> If this is impossible or impractical, it shall use a means of payment which carries no or only low credit and liquidity risks. It shall minimise these risks and monitor them on an ongoing basis.

<sup>3</sup> Where exchange-of-value settlement is concerned, the payment system shall enable participants to eliminate their principal risk by ensuring that the settlement of one obligation occurs if and only if the settlement of the other obligation is guaranteed.

**Art. 69** Capital adequacy  
(Art. 82 FinMIA)

In the case of systemically important payment systems, the capital must suffice to implement the plan set out in Article 72, but must at least be sufficient to cover ongoing operating expenditure for six months.

**Art. 70** Liquidity  
(Art. 82 FinMIA)

<sup>1</sup> The payment system must have sufficient liquidity in accordance with Article 58 paragraph 1:

- a. to fulfil its payment obligations in all currencies under extreme but plausible market conditions, even in the event of the default of the participant to which it has its greatest exposure; and
- b. to be able to duly execute its services and activities.

<sup>2</sup> It shall invest its financial resources solely in cash or in liquid financial instruments with a low market and credit risk.

<sup>3</sup> It shall regularly review compliance with the requirements set out in paragraph 1 under various stress scenarios. In doing so, it shall apply collateral discounts (haircuts) to the liquidity that would be appropriate even under extreme but plausible market conditions. It shall diversify its sources of liquidity.

<sup>4</sup> The investment strategy of the payment system must be in harmony with its risk management strategy. It must avoid concentration risks.

## **Chapter 7 Supervision and Oversight**

**Art. 71** Auditing  
(Art. 84 para. 1 FinMIA)

<sup>1</sup> The audit firm of the financial market infrastructure shall review whether the latter fulfils the relevant duties as set forth in legislation, this Ordinance and its own contractual basis.

<sup>2</sup> The audit firm of the trading venue shall coordinate its audit with the latter's trading supervisory body and shall pass on its audit reports to this body.

**Art. 72** Voluntary authorisation return  
(Art. 86 FinMIA)

<sup>1</sup> Systemically important financial market infrastructures shall draw up a plan as to how their systemically important business processes are to be terminated in an orderly way in the event of a voluntary cessation of business. The orderly wind-down plan shall take into account the period of time required for the participants to sign up to an alternative financial market infrastructure. It must be approved by the body responsible for governance, supervision and control.

<sup>2</sup> Paragraph 1 also applies if the cessation of a systemically important business process does not lead to the return of the authorisation.

## **Chapter 8    Insolvency Law Provisions**

### **Art. 73            System protection**

(Art. 89 FinMIA)

<sup>1</sup> The orders of participants include in particular instructions that:

- a. directly affect the settlement of payments or securities transactions; or
- b. serve the purpose of providing the financing or collateral required under the system's rules.

<sup>2</sup> A payment or transfer order may not be revoked either by a participant in the system or by a third party from the time set out in Article 62 paragraph 4 letter a FinMIA and Article 66 paragraph 2 letter a of this Ordinance.

### **Art. 74            Primacy of agreements in the event of insolvency**

(Art. 90 and 91 FinMIA)

<sup>1</sup> The offsetting agreements shall include in particular netting provisions as well as the default agreements contained in bilateral or framework agreements.

<sup>2</sup> The transfer of receivables and liabilities is understood to mean in particular the assignment, cancellation, refunding via agreement and the closure of a position and subsequent reopening of an equivalent position.

<sup>3</sup> In the event of a transfer of a position, any collateral in the form of securities or other assets whose value can be determined objectively are automatically transferred, insofar as they were passed on within the transaction chain, to the taking-over participant.

### **Art. 75            Postponement of the termination of contracts**

(Art. 92 FinMIA)

<sup>1</sup> The following contracts in particular may be postponed:

- a. contracts on the purchase, sale, repurchase and lending of securities and book-entry securities and on trading in options on securities and book-entry securities;
- b. contracts on the purchase and sale with future delivery of commodities and on trading in options on commodities or on commodity deliveries;
- c. contracts on the purchase, sale or transfer of goods, services, rights or interest at a price and future date determined in advance (futures trades/forward trading);
- d. contracts on swap transactions relating to currencies, precious metals, loans and securities, book-entry securities, commodities and their indices.

<sup>2</sup> The financial market infrastructure shall ensure that new agreements or amendments to existing agreements which are subject to foreign law or envisage a foreign jurisdiction are agreed only if the counterparty recognises a postponement of the termination of agreements in accordance with Article 30a BankA.

### **Title 3            Market Conduct**

#### **Chapter 1       Derivatives Trading**

#### **Section 1       General**

#### **Art. 76           Collective investment schemes** (Art. 93 para. 2 lit. e and f FinMIA)

Whether a collective investment scheme counts as a financial counterparty or as a small financial counterparty is determined on the basis of the OTC derivatives transactions carried out for its own account in accordance with Article 99 FinMIA, regardless of whether it can be ascribed legal personality or not.

#### **Art. 77           Companies** (Art. 93 para. 3 FinMIA)

<sup>1</sup> Under the FinMIA, a company is deemed to be any legal entity entered in the commercial register.

<sup>2</sup> Also classified as companies are foreign companies engaged in economic activities that are legal entities according to the law applicable to them, as well as trusts and similar constructs.

#### **Art. 78           Branches** (Art. 93 para. 5 FinMIA)

If FINMA determines that a Swiss branch of a foreign counterparty is subject to regulation that does not correspond to the statutory requirements to a significant extent, it can subject the derivatives transactions carried out by the branch in question to Articles 93 to 117 FinMIA on derivatives trading.

#### **Art. 79           Exceptions for other public sector bodies** (Art. 94 para. 2 FinMIA)

<sup>1</sup> Derivatives with the following counterparties are subject to the reporting duty set out in Article 104 FinMIA, but not to the other derivatives trading duties:

- a. foreign central banks;
- b. the ECB;
- c. the EFSF;
- d. the ESM;

- e. official bodies or state departments that are responsible for or involved in administering the national debt;
- f. financial institutions set up by a central government or by the government of a subordinate regional body in order to grant promotional loans on the state's behalf on a non-competitive, non-profit-oriented basis.

<sup>2</sup> Derivatives transactions with foreign central banks and with the bodies listed under paragraph 1 letter e may be exempted from the reporting duty provided reciprocity is granted.

<sup>3</sup> The FDF shall publish a list of the foreign bodies covered by paragraph 2.

**Art. 80** Excluded derivatives  
(Art. 94 para. 4 FinMIA)

In addition to the derivatives listed under Article 94 paragraph 3 FinMIA, the following derivatives are excluded from Articles 93 to 117 FinMIA concerning derivatives trading:

- a. derivatives issued in the form of a security or uncertificated security;
- b. derivatives accepted in the form of a deposit.

**Art. 81** Fulfilment of duties under foreign law  
(Art. 95 FinMIA)

<sup>1</sup> FINMA shall recognise foreign law as equivalent if the duties that apply for derivatives trading and the provisions on supervision are comparable with the Swiss equivalent in their material impact.

<sup>2</sup> This condition is met with respect to the:

- a. clearing duty under Article 97 FinMIA, if the clearing in question largely reduces the systemic and counterparty risks of standardised OTC derivatives;
- b. reporting duty under Article 104 FinMIA, if the report contains at least the information set out in the Article 105 paragraph 2 FinMIA;
- c. the risk mitigation duty under Articles 107 to 110 FinMIA, if the corresponding measures largely reduce the systemic and counterparty risks of non-standardised OTC derivatives;
- d. the platform trading duty under Article 112 FinMIA, if pre-trade and post-trade transparency in the derivatives market is appropriately improved through the trading of standardised derivatives via trading venues or organised trading facilities.

<sup>3</sup> A Swiss counterparty can fulfil its derivatives trading duties with another Swiss counterparty under foreign supervisory legislation recognised by FINMA if the derivatives transaction in question or a counterparty to this transaction has an objective connection with this legislation. The simply choice of law does not create an objective connection.

**Art. 82** Intra-group flow of information  
(Art. 96 FinMIA)

If the counterparty commissions group companies and branches in Switzerland and abroad with the fulfilment of its duties under Articles 93 to 117 FinMIA, it may exchange all necessary information in this respect with these group companies and branches, including client data, without this requiring the approval of the client in question.

**Art. 83** Declaration concerning a counterparty's characteristics  
(Art. 97 para. 3 FinMIA)

<sup>1</sup> The declaration of a counterparty with respect to its characteristics applies with respect to all the duties set out in this chapter.

<sup>2</sup> Counterparties must inform the counterparties with which it regularly enters into derivatives transactions about any change in its status in a timely manner.

**Art. 84** Currency swaps and currency forward transactions  
(Art. 101 para. 3, 107 para. 2, 113 para. 3 FinMIA)

The currency swaps and currency forward transactions that are exempt from the clearing duty (Art. 97 FinMIA), the risk mitigation duties (Art. 107 to 111 FinMIA) and the platform trading duty (Art. 112 FinMIA) comprise all transactions for the exchange of currencies in which real execution is guaranteed, irrespective of the clearing method.

## **Section 2 Clearing via a Central Counterparty**

**Art. 85** Commencement of duty  
(Art. 97 and 101 para. 2 FinMIA)

The duty to clear derivatives transactions via authorised or recognised central counterparties applies from the point at which FINMA publishes the clearing duty for the derivative category in question:

- a. after the expiry of six months: for derivatives transactions which participants in an authorised or recognised central counterparty conclude anew with one another;
- b. after the expiry of 12 months: for derivatives transactions which:
  1. participants in an authorised or recognised central counterparty conclude anew with other financial counterparties that are not small, or
  2. other financial counterparties that are not small conclude anew with one another;
- c. after the expiry of 18 months: for all other derivatives transactions concluded anew.

**Art. 86** Transactions not covered(Art. 94 para. 4 and 97 para. 2 FinMIA)<sup>26</sup>

<sup>1</sup> Transactions with counterparties that are subject to the clearing duty for the first time in accordance with Article 98 paragraph 2 or Article 99 paragraph 2 FinMIA do not need to be cleared through a central counterparty if they were concluded prior to subjection to the clearing duty.

<sup>2</sup> Derivatives transactions with counterparties which have their registered office or domicile in Switzerland to which the derivatives trading provisions do not apply do not have to be cleared through a central counterparty.

<sup>3</sup> Derivatives transactions in which a covered bond issuer or a legal entity of a cover pool for covered bonds is involved do not have to be cleared via a central counterparty if the following prerequisites are met:

- a. The derivatives transaction serves the sole purpose of hedging interest rate or currency risks arising from the covered bond for the cover pool.
- b. The derivatives transaction is not terminated in the event of restructuring or bankruptcy proceedings brought against the covered bond issuer or the legal entity of the cover pool.
- c. The counterparty of the covered bond issuer or of the legal entity of the cover pool is at least *pari passu* with the covered bond creditors, except in cases where:
  1. the counterparty is the defaulting or affected party; or
  2. the counterparty renounces *pari passu* status.
- d. The other derivatives transactions entered into as part of the netting set are linked to the cover pool.
- e. The cover pool's collateral ratio is at least 102%.<sup>27</sup>

**Art. 87** Derivatives transactions intended to reduce risks

(Art. 98 para. 3 FinMIA)

Derivatives transactions intended to reduce risks are directly associated with the business activity, liquidity management or asset management of the non-financial counterparty if they:

- a. serve to hedge the risks of a change in value of assets or liabilities which the non-financial counterparty or its group can reasonably be considered to hold, in keeping with its business activity;
- b. serve to hedge the risks to the value of assets and liabilities that result from indirect repercussions of fluctuations in interest rates, inflation rates, currency movements or credit risks;

<sup>26</sup> Amended by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

<sup>27</sup> Inserted by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

- c. are recognised as hedging transactions according to an accounting standard that is recognised under Article 1 of the Ordinance of 21 November 2012<sup>28</sup> on Recognised Accounting Standards; or
- d. are concluded as fixed hedging transactions in the context of the management of business risks (portfolio hedging or macro hedging) or are concluded according to the approximation method (proxy hedging) in keeping with recognised international standards.

**Art. 88**                      Thresholds  
(Art. 100 FinMIA)

<sup>1</sup> The following thresholds apply to the average gross positions in outstanding OTC derivatives transactions of non-financial counterparties:

- a. credit derivatives: CHF 1.1 billion;
- b. equity derivatives: CHF 1.1 billion;
- c. interest rate derivatives: CHF 3.3 billion;
- d. currency derivatives: CHF 3.3 billion;
- e. commodity derivatives and other derivatives: CHF 3.3 billion.

<sup>2</sup> Where the average gross position of all outstanding OTC derivatives transactions of financial counterparties are concerned, a threshold of CHF 8 billion applies at financial or insurance group level.

**Art. 89**                      Average gross position  
(Art. 100 FinMIA)

The following rules apply to the calculation of the average gross position of outstanding OTC derivatives transactions:

- a. The latest exchange rates shall be used in the calculation.
- b. Positions from OTC derivatives transactions are factored into the calculation even if they are voluntarily cleared centrally.
- c. Positions of fully-consolidated group companies, including those with their registered office outside Switzerland, shall be factored in irrespective of the registered office of the parent company if these group companies would count as financial or non-financial counterparties in Switzerland.
- d. Adjustments to the nominal amount during the term shall be factored in if these were contractually envisaged at the start of the transaction.
- e. Transactions in the subsequent transaction chain of hedging transactions of a non-financial counterparty likewise count as hedging transactions.
- f. The netting of opposing positions in derivatives is permitted insofar as these positions relate to the same underlying instrument, are denominated in the same currency and have the same maturity date. In such case, the reference

<sup>28</sup> SR 221.432



interest rates for variable-interest positions, the fixed interest rates and the interest-setting reference dates must be identical.

- g. Derivatives not covered by the clearing duty under Article 101 paragraph 3 letter b FinMIA shall not be factored in.

**Art. 90** Cross-border transactions

(Art. 94 para. 2 and 102 FinMIA)

Cross-border transactions do not have to be cleared through a central counterparty if the foreign counterparty:

- a. has its registered office in a country whose legislation is recognised by FINMA as being equivalent; and
- b. the transactions in question are not subject to the clearing duty under the legislation of that country.

**Art. 91** Intra-group transactions

(Art. 103 lit. b FinMIA)

Non-financial counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures if they maintain professional central treasury operations.

### **Section 3 Reporting to a Trade Repository**

**Art. 92** Duty

(Art. 104 FinMIA)

<sup>1</sup> Derivatives transactions with parties that are exempted from the provisions on derivatives trading are to be reported by the counterparty subject to the legislation.

<sup>2</sup> Subject to Article 104 paragraph 4 FinMIA, centrally cleared transactions that are traded via a trading venue or an organised trading facility are to be reported by the counterparty closest to the central counterparty in the transaction chain.

<sup>3</sup> The definition of selling counterparty shall be based on conventional industry and recognised international standards, whereby agreement on another interpretation remains reserved.

<sup>4</sup> A counterparty may submit data to a trade repository in Switzerland or abroad without the approval of, or without informing, its counterparty or an end client, as long as this is done in fulfilment of the duties set out in Title 3 FinMIA, whereby Article 105 paragraph 4 FinMIA remains reserved.

**Art. 93** Content of reports

(Art. 105 para. 2 FinMIA)

Reports are to contain the information set out in Annex 2.

## Section 4 Risk Mitigation

### Art. 94 Duties

(Art. 107 to 111 FinMIA)

<sup>1</sup> The risk mitigation duties apply only to derivatives transactions between companies.

<sup>2</sup> If FINMA determines that a derivatives transaction should no longer be subject to the clearing duty, it shall inform the counterparties promptly in this respect, granting them an appropriate period in which to make the necessary adjustments.

### Art. 95 Confirmation of contractual terms

(Art. 108 lit. a FinMIA)

<sup>1</sup> The contractual terms must be reciprocally confirmed at the latest within two business days of the conclusion of the OTC derivatives transaction in question.

<sup>2</sup> OTC derivatives transactions concluded after 4 p.m. must be confirmed at the latest within three business days of the transaction being concluded.

<sup>3</sup> The deadlines that apply for complex transactions and small counterparties shall be extended by one business day.

<sup>4</sup> The counterparties may agree that an OTC derivatives transaction should also be considered confirmed if one of the counterparties does not raise any objection to a unilateral confirmation.

### Art. 96 Portfolio reconciliation

(Art. 108 lit. b FinMIA)

<sup>1</sup> The details for reconciling the portfolios must be agreed prior to completing an OTC derivatives transaction.

<sup>2</sup> The portfolio reconciliation shall encompass the key terms of the concluded OTC derivatives transactions and their valuation.

<sup>3</sup> It may also be carried out by a third party appointed by one of the counterparties.

<sup>4</sup> It must be carried out:

- a. every business day if there are 500 or more OTC derivatives transactions outstanding between the counterparties;
- b. once a week if there are between 51 and 499 OTC derivatives transactions outstanding between the counterparties at any point during the week;
- c. once a quarter if there are 50 or less OTC derivatives transactions outstanding between the counterparties at any point during the quarter.

<sup>5</sup> Derivatives not covered by the clearing duty under Article 101 paragraph 3 letter b FinMIA are not factored in for purposes of determining outstanding transactions in accordance with paragraph 4.

**Art. 97**            Dispute resolution

(Art. 108 lit. c FinMIA)

<sup>1</sup> The place of jurisdiction and the applicable law for any disputes must be agreed at the latest when an OTC derivatives transaction is concluded.

<sup>2</sup> Procedures are to be set out in the agreement:

- a. for the identification, recording and monitoring of disputes in connection with the recognition or valuation of the transaction and the exchange of collateral between the counterparties; the record of the dispute has to encompass at least how long the dispute has been going on for up to that point, the counterparty and the disputed amount;
- b. for the swift resolution of disputes and for a special process for disputes that cannot be resolved within five business days.

**Art. 98**            Portfolio compression

(Art. 108 lit. d FinMIA)

<sup>1</sup> Portfolio compression need not be undertaken if it would not lead to any meaningful reduction in counterparty risk and the counterparty subject to the obligation documents this at least every six months.

<sup>2</sup> Portfolio compression would not lead to any meaningful reduction in counterparty risk in particular if:

- a. the portfolio contains no or only a few offsettable OTC derivatives transactions;
- b. such activity would jeopardise the effectiveness of internal risk processes and controls.

<sup>3</sup> Portfolio compression also need not be undertaken if the corresponding work and expense would be disproportionate to the anticipated reduction in counterparty risk.

**Art. 99**            Valuation of outstanding transactions

(Art. 109 FinMIA)

<sup>1</sup> Market conditions that do not permit the valuation of OTC derivatives transactions are deemed to hold sway if:

- a. the market in question is inactive; or
- b. the range of plausible fair value estimates is significant and the probabilities of the various estimates cannot be reasonably assessed.

<sup>2</sup> A market for an OTC derivatives transaction is viewed as inactive if:

- a. the quoted prices are not automatically and regularly available; and
- b. the prices available do not represent market transactions that take place regularly and under standard market conditions.

<sup>3</sup> If a valuation is permissible on the basis of model prices, the model must:

- a. take into consideration all factors that the counterparties would take into account when determining a price, including the greatest possible use of market valuation information;
- b. be in line with recognised economic processes for determining the prices of financial instruments;
- c. be calibrated using the prices of observable latest market transactions with the same financial instrument, be reviewed with respect to its validity or be based on available and observable market data;
- d. be monitored and validated independently as part of internal risk management processes;
- e. be properly documented and approved by the management body, the executive management or a risk committee delegated by the latter, and be reviewed at least once a year.

**Art. 100<sup>29</sup>** Duty to exchange collateral

(Art. 110 FinMIA)

<sup>1</sup> If counterparties have to exchange collateral, this shall take the form of:

- a. an initial margin that is suitable for protecting the transaction partners from the potential risk that there could be market price changes during the closing and replacement of the position in the event of default on the part of a counterparty; and
- b. a variation margin that is suitable for protecting the transaction partners from the ongoing risk of market price changes following execution of the transaction.

<sup>2</sup> The duty to supply an initial margin applies only to counterparties whose aggregated month-end average gross position of OTC derivatives not cleared through a central counterparty, including derivatives in accordance with Article 107 paragraph 2 letter b of the FinMIA, is greater than CHF 8 billion at group or financial or insurance group level for the months of March, April and May of the year; in this regard, intra-group transactions are not counted several times from the viewpoint of each group company.

<sup>3</sup> The duty under paragraph 2 always applies for the entirety of the subsequent calendar year.

**Art. 100a<sup>30</sup>** Exceptions to the duty to exchange collateral

(Art. 110 FinMIA)

<sup>1</sup> The exchange of initial margins and variation margins may be waived if:

- a. the collateral to be exchanged would amount to less than CHF 500,000;
- b. small non-financial counterparties are involved in the transaction.

<sup>29</sup> Amended by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS 2017 3715).

<sup>30</sup> Inserted by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS 2017 3715).

<sup>2</sup> The exchange of initial margins may be waived if such margins would have to be provided for the currency components of currency derivatives where the nominal amount and interest in one currency are exchanged against the nominal amount and interest in another currency at a predefined time and according to a predefined method.

<sup>3</sup> If one of the counterparties to a derivatives transaction is a covered bond issuer or a legal entity of a cover pool for covered bonds, that counterparty may, subject to the conditions set out in Article 86 paragraph 3, agree with its counterparty that:

- a. an exchange of initial margins will be dispensed with; or
- b. the covered bond issuer or the legal entity of a cover pool for covered bonds will pay no variation margins, and the counterparty will pay variation margins in cash.

**Art. 100b<sup>31</sup>** Initial margin reduction  
(Art. 110 FinMIA)

<sup>1</sup> The counterparties may reduce initial margins by no more than CHF 50 million.

<sup>2</sup> The amount of the initial margins of a counterparty that belongs to a financial or insurance group or a group is determined taking all of the group companies into account.

<sup>3</sup> In the case of intra-group transactions, the initial margin may be reduced by no more than CHF 10 million.

**Art. 101<sup>32</sup>** Timing of initial margin calculation and payment  
(Art. 110 FinMIA)

<sup>1</sup> The initial margin must be calculated for the first time within one business day of the execution of the derivatives transaction. It must be recalculated regularly, but at least every ten business days.

<sup>2</sup> If both of the counterparties are in the same time zone, the calculation is to be based on the previous day's netting set. If the two counterparties are not in the same time zone, the calculation is to be based on the netting set transactions that were executed on the previous day before 4pm in the earlier of the two time zones.

<sup>3</sup> The initial margin is to be paid on the respective calculation day according to paragraph 1. The customary timeframes apply for settlement.

**Art. 101a<sup>33</sup>** Timing of variation margin calculation and payment  
(Art. 110 FinMIA)

<sup>1</sup> Variation margins are to be recalculated at least every business day.

<sup>31</sup> Inserted by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

<sup>32</sup> Amended by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

<sup>33</sup> Inserted by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

<sup>2</sup> The basis of the calculation is the valuation of the outstanding transaction in accordance with Article 109 of the FinMIA. For all other matters, Article 101 paragraph 2 is applicable by analogy.

<sup>3</sup> Variation margins are to be paid on the respective calculation day according to paragraph 1. The customary timeframes apply for settlement.

<sup>4</sup> Notwithstanding paragraph 3, variation margins may be paid up to two business days after the calculation day if:

- a. A counterparty not obliged to pay an initial margin provided additional collateral before the calculation day and the following conditions are met:
  1. the additional collateral was calculated taking account of a 99% one-tailed confidence interval for the valuation of the OTC derivatives transactions to be secured for the relevant margin period of risk,
  2. the margin period of risk is at least as many days as the number of days between the calculation day and the variation margin payment day, whereby the calculation day and payment day also have to be counted; or
- b. the counterparties paid initial margins taking account of a margin period of risk spanning at least the following periods:
  1. the period from the last variation margin payment day to the possible counterparty default, plus the days from the calculation day to the variation margin payment day, and
  2. the period deemed necessary to replace the OTC derivatives transaction concerned or to hedge the resulting risks.

#### **Art. 102<sup>34</sup>** Treatment of initial margins

(Art. 110 FinMIA)

<sup>1</sup> No reciprocal offsetting may apply to initial margins.

<sup>2</sup> Initial margins paid in cash must be held with a central bank or a Swiss bank independent of the paying counterparty or an independent foreign bank subject to appropriate regulation and supervision.

<sup>3</sup> Initial margins not paid in cash may be held by the receiving counterparty or by a third party mandated by the counterparty. The third party may be the paying counterparty.

<sup>4</sup> The use of initial margins for other purposes is not permissible. This does not apply to the reutilisation of initial margins paid in cash by a custodial third party, provided it is contractually ensured that the reutilisation does not adversely affect the security and its usability.

<sup>5</sup> The receiving counterparty and the custodial third party must keep the non-cash initial margins received separate from their own assets and conclude a segregation agreement. This shall prescribe in particular that:

<sup>34</sup> Amended by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS 2017 3715).

- a. the initial margin payment should be immediately available to the receiving counterparty in the event of bankruptcy or default on the part of the other counterparty; and
- b. the counterparty making the initial margin payment should be sufficiently hedged against the possibility of bankruptcy or default on the part of the receiving party or the custodial third party.

**Art. 103** Calculation of initial margins

(Art. 110 FinMIA)

<sup>1</sup> The initial margin is calculated as a percentage discount on the gross positions of the individual derivatives transactions. Derivatives transactions that form the object of a netting agreement concluded between the counterparties («netting set») may be pooled.

<sup>2</sup> It shall amount to the following for each derivative category:

- a. 1% for interest rate derivatives with a residual term of up to two years;
- b. 2% for credit derivatives with a residual term of up to two years and interest rate derivatives with a residual term of two to five years;
- c. 4% for interest rate derivatives with a residual term of more than five years;
- d. 5% for credit derivatives with a residual term of two to five years;
- e. 6% for foreign currency derivatives;
- f. 10% for credit derivatives with a residual term of more than five years;
- g. 15% for equity, commodity and all other derivatives.

<sup>3</sup> If a transaction can be classified in more than one derivative category in accordance with paragraph 2, it shall be assigned:

- a. to the derivative category with the greatest risk factor insofar as this can be clearly identified in the transaction in question;
- b. to the derivative category with the highest percentage discount if the greatest risk factor cannot be clearly identified in the transaction in question.

<sup>4</sup> The initial margin for a netting set is calculated in accordance with Annex 3.

<sup>5</sup> Financial counterparties that use a market risk model approach approved by FINMA in accordance with Article 88 CAO<sup>35</sup> for calculating positions according to risk weighting, or that use a market model approved by FINMA in accordance with Articles 50a to 50d of the Insurance Oversight Ordinance of 9 November 2005<sup>36</sup> for calculating solvency as part of the Swiss Solvency Test (SST), may calculate the initial margin payment on that basis so long as no internationally harmonised standard model that is recognised throughout the industry has been established. FINMA shall regulate the technical criteria that the model approach or the market model must meet.

<sup>35</sup> SR 952.03

<sup>36</sup> SR 961.011

6 ...<sup>37</sup>

**Art. 104** Admissible collateral for initial and variation margins

(Art. 110 FinMIA)

<sup>1</sup> The following count as admissible collateral:

- a. cash deposits, including medium-term notes or comparable instruments issued by a bank;
- b. high-quality debt securities issued by a central government, a central bank, a public-law entity with the right to levy taxes, the BIS, the International Monetary Fund, the ESM and multilateral development banks;
- c. high-quality debt securities of companies;
- d. high-quality mortgage bonds (*Pfandbriefe*) and other covered debt securities;
- e. shares of a major index in accordance with Article 4 letter b CAO<sup>38</sup>, including convertible bonds;
- f. gold;
- g. money market funds;
- h.<sup>39</sup> Units in securities funds in accordance with Article 53 of the Federal Act of 23 June 2006<sup>40</sup> on Collective Investment Schemes, if:
  - 1. the units are valued daily, and
  - 2. the securities funds invest solely in assets in accordance with letters a to g or in derivatives that hedge such assets.

<sup>2</sup> Collateral is deemed to be high value if it is highly liquid, has a strong track record of preserving its value even in a period of stress and can be monetised within an appropriate period.

<sup>3</sup> Resecuritisation positions are not admissible as collateral.

<sup>4</sup> The collateral must be valued anew each day.

**Art. 105** Discounts on collateral

(Art. 110 FinMIA)

<sup>1</sup> The value of the collateral should be marked down by means of discounts on the market value in accordance with Annex 4.

<sup>2</sup> An additional discount of 8% must be applied in cases where:

- a. the currency of the initial margin paid is different from the currency agreed for the termination payment;

<sup>37</sup> Repealed by No I of the O of 5 July 2017, with effect from 1 Aug. 2017 (AS **2017** 3715).

<sup>38</sup> SR **952.03**

<sup>39</sup> Inserted by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

<sup>40</sup> SR **951.31**



- b. the currency of non-cash variation margins provided is different from the currencies agreed in the derivatives contract, the netting framework agreement or the credit support annex for variation margins.<sup>41</sup>

<sup>3</sup> Counterparties may ascertain the discounts that apply using their own estimates of market price and exchange rate volatility if they meet the qualitative and quantitative minimum standards in accordance with Annex 5.

<sup>4</sup> They shall take measures to:

- a. exclude risk concentrations with respect to certain types of collateral;
- b. rule out the possibility that the collateral accepted was issued by the collateral provider or a company associated with the collateral provider;
- c. avoid key correlation risks with respect to the collateral received.

#### **Art. 106** Cross-border transactions

(Art. 94 para. 2 and 107 FinMIA)

<sup>1</sup> The duty to exchange collateral in the case of cross-border transactions shall also apply, subject to the exemption envisaged in paragraphs 2, 2<sup>bis</sup> and 2<sup>ter</sup>, if the foreign counterparty of the Swiss counterparty which has the duty to exchange collateral would also be subject to this duty if it had its registered office in Switzerland.<sup>42</sup>

<sup>2</sup> No collateral has to be exchanged if the foreign counterparty:

- a. has its registered office in a country whose legislation is recognised by FINMA as being equivalent; and
- b. does not have to exchange collateral under the legislation of that country.

<sup>2bis</sup> The Swiss counterparty may dispense with the payment of initial margins and variation margins to the foreign counterparty if an independent legal review showed that:

- a. the netting or guarantee agreements vis-à-vis the foreign counterparty are not definitely legally enforceable at all times; or
- b. agreements on the separation of collateral are not in line with internationally recognised standards.<sup>43</sup>

<sup>2ter</sup> It can dispense with requiring the foreign counterparty to pay initial margins and variation margins if the conditions under paragraph 2<sup>bis</sup> letter a or b are met and:

- a. an independent legal review showed that the acceptance of initial or variation margin payments from the foreign counterparty in accordance with the provisions of the FinMIA or this Ordinance would not be possible; and
- b. the unsecured transactions concluded and outstanding after the entry into force of the duty to call for the payment of initial margins and variation

<sup>41</sup> Amended by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

<sup>42</sup> Amended by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

<sup>43</sup> Inserted by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

margins account for less than 2.5% of all OTC derivatives transactions, whereby intra-group transactions are not to be included in the calculation.<sup>44</sup>

<sup>3</sup> The other risk mitigation duties that would require the involvement of the counterparty may be fulfilled unilaterally insofar as this corresponds to recognised international standards.

**Art. 107**            Intra-group transactions  
(Art. 111 FinMIA)

<sup>1</sup> Insolvency law provisions do not count as legal impediments in the sense of Article 111 letter c FinMIA.

<sup>2</sup> Furthermore, Article 91 applies.

## **Section 5**

### **Trading via Trading Venues and Organised Trading Facilities**

**Art. 108**            Commencement of duty  
(Art. 112 FinMIA)

The duty to trade a derivatives transaction via a trading venue or organised trading facility in accordance with Article 112 FinMIA (platform trading duty) shall apply from the point at which FINMA publishes such a duty for the derivatives transaction in question:

- a. after the expiry of six months: for derivatives transactions which participants in an authorised or recognised central counterparty conclude anew with one another;
- b. after the expiry of nine months: for derivatives transactions:
  1. which participants in an authorised or recognised central counterparty conclude anew with other financial counterparties, or
  2. which other financial counterparties that are not small conclude anew with one another;
- c. after the expiry of 12 months: for all other derivatives transactions concluded anew.

**Art. 109**            Transactions not subject to the trading duty  
(Art. 112 FinMIA)

<sup>1</sup> Counterparties newly subject to the platform trading duty in accordance with Article 98 paragraph 2 or Article 99 paragraph 2 FinMIA do not have to trade transactions they concluded prior to the start of this duty via authorised or recognised trading venues or via operators of an organised trading facility.

<sup>44</sup> Inserted by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS 2017 3715).

<sup>2</sup> Derivatives transactions with counterparties in accordance with Article 94 paragraph 1 FinMIA are not covered by the platform trading duty.

**Art. 110** Trading via foreign organised trading facilities  
(Art. 95 and 112 FinMIA)

The platform trading duty may be fulfilled through trading via a foreign organised trading facility if this facility is subject to foreign regulation that has been recognised by FINMA as being equivalent in analogous application of Article 41 FinMIA.

**Art. 111** Cross-border transactions  
(Art. 94 para. 2 and 114 FinMIA)

Cross-border transactions do not have to be traded through a trading venue or an organised trading facility if the foreign counterparty:

- a. has its registered office in a country whose legislation is recognised by FINMA as being equivalent;
- b. is not subject to the platform trading duty under the legislation of that country.

**Art. 112** Intra-group transactions  
(Art. 94 para. 2 and 115 FinMIA)

For intra-group transactions, Article 91 applies.

## **Section 6 Documentation and Auditing**

**Art. 113** Documentation  
(Art. 116 FinMIA)

<sup>1</sup> Financial and non-financial counterparties shall regulate, in writing or in another form that allows for proof by text, the processes with which they ensure fulfilment of the duties with respect to:<sup>45</sup>

- a. clearing via a central counterparty (Art. 97 FinMIA);
- b. determining thresholds (Art. 100 FinMIA);
- c. reporting to a trade repository (Art. 104 FinMIA);
- d. risk mitigation (Art. 107 FinMIA);
- e. trading via trading venues and organised trading facilities (Art. 112 FinMIA).

<sup>1bis</sup> The transitional period under paragraph 1 is extended until 30 September 2022.<sup>46</sup>

<sup>45</sup> Amended by Annex 1 No II 14 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

<sup>46</sup> Inserted by No I of the O of 25 Aug. 2021, in force since 1 Oct. 2021 (AS **2021** 539).

<sup>2</sup> Non-financial counterparties which do not want to trade in derivatives may set out this resolution in writing or in another form that that allows for proof by text, in which case they are exempt from the duty set out in paragraph 1.<sup>47</sup>

<sup>3</sup> Financial counterparties appointed by other financial or non-financial counterparties to implement their duties shall regulate the corresponding processes in accordance with paragraph 1 by analogy.

#### **Art. 114**      Auditing and notifications

(Art. 116 and 117 FinMIA)

<sup>1</sup> In the case of non-financial counterparties, the auditor shall review whether these counterparties have taken measures, in particular to comply with the derivatives trading duties set out in Article 113 paragraph 1 letters a to e.

<sup>2</sup> When carrying out its audit, it shall take account of the principles of risk-oriented review and materiality.

<sup>3</sup> The auditor in accordance with Article 727 of the Swiss Code of Obligations<sup>48</sup> (CO) shall set out the results of its audit in a comprehensive report for the board of directors in accordance with Article 728b paragraph 1 CO.

<sup>4</sup> The auditor in accordance with Article 727a CO shall inform the responsible body of the audited company of the results of the audit.

<sup>5</sup> If the auditor identifies violations of the provisions on derivatives trading, it shall incorporate these into its report in accordance with paragraphs 3 and 4. It shall set a deadline for rectification of the reported violations.

<sup>6</sup> If the audited company has not executed any derivatives transactions during the audit period and no derivatives transactions are outstanding at the end of this period, the reports required under paragraphs 3 and 4 may be waived.

<sup>7</sup> The auditor shall report the violations to the FDF if the company does not remedy the violations in accordance with paragraph 5 by the deadline set, or if it repeats these violations.

## **Chapter 2      Disclosure of Shareholdings**

#### **Art. 115**

(Art. 120 FinMIA)

<sup>1</sup> The equity securities of a company having its registered office abroad are deemed to be mainly listed in Switzerland if the company has to fulfil at least the same duties for its listing and maintenance of its listing on a stock exchange in Switzerland as companies having their registered office in Switzerland.

<sup>47</sup> Amended by Annex 1 No II 14 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>48</sup> SR 220

<sup>2</sup> The stock exchange shall publish which equity securities of companies having their registered office abroad are mainly listed in Switzerland.

<sup>3</sup> Companies having their registered office abroad whose equity securities are mainly listed in Switzerland must publish the current total number of equity securities issued and the associated voting rights.

### Chapter 3 Public Takeover Offers

**Art. 116** Main listing  
(Art. 125 para. 1 FinMIA)

For public takeover offers, Article 115 regarding main listing applies.

**Art. 117** Fees for the review of a takeover offer  
(Art. 126 para. 5 FinMIA)

<sup>1</sup> The Swiss Takeover Board shall levy a fee for reviewing the takeover offer whenever such an offer is made by any party.

<sup>2</sup> The fee is calculated as a proportion of the value of the transaction:

- a. 0.05% for amounts up to CHF 250 million;
- b. 0.02% for the part between CHF 250 million and CHF 625 million;
- c. 0.01% for the part in excess of CHF 625 million.

<sup>3</sup> The fee shall amount to at least CHF 50,000 and a maximum of CHF 250,000. In special cases, the fee may be reduced or increased by up to 50% depending on the scope and complexity of the transaction in question.

<sup>4</sup> If securities listed on the stock exchange are offered for exchange, the total amount of the offer shall be ascertained on the basis of the volume-weighted average closing price over the last 60 trading days prior to submission of the offer, or prior to the offer being reported to the Swiss Takeover Board. For illiquid or unlisted securities, the fee shall be ascertained on the basis of the auditor's valuation.

<sup>5</sup> In special cases, in particular if the target company or a qualified shareholder causes the Swiss Takeover Board an unusual amount of work, the Swiss Takeover Board may also require the target company or the qualified shareholder to pay a fee. This shall amount to at least CHF 20,000, but no more than the fee payable by the offeror.

**Art. 118** Fees for other decisions  
(Art. 126 para. 5 FinMIA)

<sup>1</sup> The Swiss Takeover Board shall also levy a fee if it has to make a decision in other circumstances relating to takeovers, particularly on whether or not a duty to make an offer exists. It may also levy a fee for reviewing requests for information.

<sup>2</sup> The fee shall amount to up to CHF 50,000 depending on the scope and complexity of the case in question.

<sup>3</sup> If the applicant subsequently submits a takeover offer after a committee has made a decision, the Swiss Takeover Board may subtract this amount from the fee set out in Article 117.

**Art. 119** Advance payment of fees  
(Art. 126 para. 5 FinMIA)

The Swiss Takeover Board may request an advance fee payment amounting to the probable fee from each party.

**Art. 120** Calculation of voting rights in the case of the cancellation of outstanding equity securities  
(Art. 137 para. 1 FinMIA)

In order to determine whether the threshold of 98% in accordance with Article 137 paragraph 1 FinMIA has been exceeded or not, the following shares shall be taken into account in addition to the shares held directly:

- a. those with dormant voting rights;
- b. those held by the offeror indirectly or in concert with third parties at the time of the application for cancellation.

**Art. 121** Proceedings for cancelling outstanding equity securities  
(Art. 137 FinMIA)

<sup>1</sup> If the offeror brings an action against the company in an attempt to have the latter's outstanding equity securities cancelled, the court shall make this known to the public and inform the remaining shareholders that they may participate in the proceedings. In this respect, it shall set a timeframe of at least three months, beginning on the day of the first announcement.

<sup>2</sup> The announcement shall be published three times in the Swiss Official Gazette of Commerce. In special cases, the court may arrange for appropriate publication in another manner.

<sup>3</sup> If shareholders participate in the proceedings, they shall be independent of the defendant company in their litigious acts.

<sup>4</sup> Notice of the cancellation must be published immediately in the Swiss Official Gazette of Commerce, as well as elsewhere at the court's discretion.

## Chapter 4 Exceptions to the Ban on Insider Trading and Market Manipulation

**Art. 122** Subject matter  
(Art. 142 para. 2 and 143 para. 2 FinMIA)

The provisions of this Chapter shall determine the cases in which forms of conduct that fall under Article 142 paragraph 1 and Article 143 paragraph 1 FinMIA are permissible.

**Art. 123** Buyback of own equity securities

(Art. 142 para. 2 and 143 para. 2 FinMIA)

<sup>1</sup> The buyback of own equity securities at market price as part of a public buyback offer (buyback programme) in accordance with Article 142 paragraph 1 letter a and Article 143 paragraph 1 FinMIA is permissible, subject to Article 124, if:

- a. the buyback programme lasts a maximum of three years;
- b. the scope of the buyback programme does not exceed a total of 10% of the capital and voting rights and 20% of the free float of the equity securities;
- c. the scope of the buyback does not exceed 25% of the average daily volume traded on the regular trading line during the 30 days prior to the publication of the buyback programme;
- d. the purchase price is not greater than:
  1. the last independently achieved closing price on the regular trading line, or
  2. the best current independent bid price on the regular trading line, provided this is below the price referred to in item 1;
- e. no prices are provided during breaks in trading and during the opening or closing auction;
- f. sales of own equity securities during the buyback programme are made solely to fulfil employee participation programmes or meet the following conditions:
  1. they are reported to the stock exchange on the trading day following their execution,
  2. they are published by the issuer no later than the fifth trading day after their execution, and
  3. their scope does not exceed 5% of the average daily volume traded on the regular trading line during the 30 days prior to the publication of the buyback programme;
- g. the key content of the buyback programme is published by means of a buyback notice before the start of the buyback programme and remains publicly accessible for the duration of the buyback programme; and
- h. the individual buybacks are reported to the stock exchange as part of the buyback program no later than the fifth trading day following the buyback and are published by the issuer.

<sup>2</sup> The buyback of own equity securities at a fixed price or through the issuance of put options in accordance with Article 142 paragraph 1 letter a and Article 143 paragraph 1 FinMIA is permissible, subject to Article 124, if:

- a. the buyback programme lasts for at least ten trading days;
- b. the scope of the buyback programme does not exceed a total of 10% of the capital and voting rights and 20% of the free float of the equity securities;

- c. the key content of the buyback programme is published by means of a buyback notice before the start of the buyback programme and remains publicly accessible for the duration of the buyback programme; and
- d. the individual buybacks are published by the issuer no later than one stock market day after the end of the buyback programme.

<sup>3</sup> In individual cases, the Swiss Takeover Board may authorise buybacks of a larger scope than those referred to in paragraph 1 letters b and c and paragraph 2 letter b if this is compatible with the interests of investors.

<sup>4</sup> It is assumed that Article 142 paragraph 1 letter a and Article 143 paragraph 1 FinMIA are not violated if the purchase price paid on a separate trading line is a maximum of 2% higher than:

- a. the last closing price achieved on the regular trading line; or
- b. the best current bid price on the regular trading line, provided this is below the price referred to under letter a;

#### **Art. 124**      Blackout periods

(Art. 142 para. 2 and 143 para. 2 FinMIA)

<sup>1</sup> Article 123 paragraphs 1 and 2 shall not apply to the buyback of own equity securities if the buyback programme is announced or the buyback of own equity securities occurs:

- a. while the issuer postpones the announcement of a price-relevant fact in keeping with stock exchange provisions;
- b. during the ten trading days prior to the public announcement of financial results; or
- c. more than nine months after the reference date of the last published consolidated closing accounts.

<sup>2</sup> The buyback at market price remains reserved if this is undertaken by:

- a. a securities firm that was commissioned prior to the start of the buyback programme, and the security firm's decisions are made within the parameters originally prescribed by the issuer without the latter having any further influence;
- b. a trading unit that is segregated with information barriers, insofar the issuer itself is a securities firm.

<sup>3</sup> The parameters under paragraph 2 letter a must have been set prior to publication of the buyback offer and may be adjusted once a month for the duration of the buyback programme. If the parameters are set or adjusted within one of the periods set out in paragraph 1, the buyback may be performed only after a waiting period of 90 days.



**Art. 125** Content of buyback notices

(Art. 142 para. 2 and 143 para. 2 FinMIA)

The buyback notice in accordance with Article 123 paragraph 1 letter g and paragraph 2 letter c must contain at least the following information:

- a. information on the issuer, in particular:
  1. its identity,
  2. the issued capital,
  3. its holding of its own capital,
  4. the shareholder participations in accordance with Article 120 FinMIA;
- b. the nature, purpose and object of the buyback programme;
- c. the schedule.

**Art. 126** Price stabilisation after a public placement of securities

(Art. 142 para. 2 and 143 para. 2 FinMIA)

Securities transactions which are intended to stabilise the price of a security that has been admitted to trading on a trading venue or DLT trading facility in Switzerland and which fall under Article 142 paragraph 1 letter a and Article 143 paragraph 1 of the FinMIA are permissible if:<sup>49</sup>

- a. they are carried out within 30 days of the public placement of the securities to be stabilised;
- b. they are executed at a price that is no higher than the issue price, or, in the case of trading with subscription or conversion rights, at a price that is no higher than the market price;
- c. the maximum period during which the securities transactions can be carried out and the identity of the securities firm responsible for carrying them out are published before the start of trading with the securities to be stabilised;
- d.<sup>50</sup> they are reported to the trading venue or DLT trading facility at the latest on the fifth trading day following their execution and published by the issuer at the latest on the fifth trading day after the expiry of the deadline under letter a; and
- e.<sup>51</sup> the issuer informs the public at the latest on the fifth trading day following the exercising of an overallotment option (greenshoe) about the timing of the exercising, as well as the number and type of the securities concerned.

<sup>49</sup> Amended by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 400).

<sup>50</sup> Amended by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 400).

<sup>51</sup> Amended by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 400).

**Art. 127** Other permissible securities transactions

(Art. 142 para. 2 and 143 para. 2 FinMIA)

<sup>1</sup> The following securities transactions are permissible even if they fall under Article 142 paragraph 1 letter a and Article 143 paragraph 1 FinMIA:

- a. securities transactions to implement an own decision to carry out a securities transaction, in particular the purchase of securities of the target company by the potential offeror with regard to the publication of a public takeover offer, provided the decision was not taken on the basis of insider information;
- b. securities transactions carried out in the course of the fulfilment of public tasks rather than for investment purposes by:
  - 1. the Confederation, cantons or communes,
  - 2. the SNB,
  - 3. the BIS, and
  - 4. multilateral development banks in accordance with Article 63 paragraph 2 letter c CAO<sup>52</sup>.

<sup>2</sup> Paragraph 1 may also be declared applicable to securities transactions carried out by the following parties as long as the transactions are carried out in connection with public tasks and not for investment purposes, and as long as reciprocal rights are granted and an exception does not stand in contradiction to the legislative purpose:

- a. foreign central banks;
- b. the ECB;
- c. official bodies or state departments that are responsible for or involved in administering the national debt;
- d. the EFSF;
- e. the ESM.

<sup>3</sup> The FDF shall publish a list of the bodies covered by paragraph 2.

**Art. 128** Admissible communication of insider information

(Art. 142 para. 2 FinMIA)

The communication of insider information to a person does not fall under Article 142 paragraph 1 letter b FinMIA if:

- a. this person requires the insider information in order to fulfil his or her statutory or contractual obligations; or
- b. the communication is required with regard to the conclusion of a contract and the information holder:
  - 1. makes it clear to the information recipient that the insider information may not be exploited, and
  - 2. documents the disclosure of the insider information and the clarification under item 1 above.

<sup>52</sup> SR 952.03

## Title 4 Transitional and Final Provisions

### Art. 129<sup>53</sup> Financial market infrastructures

<sup>1</sup> The duties set out in Article 27, Article 28 paragraphs 2 to 4, Article 30 paragraphs 2 and 3, Article 31, Article 40 second sentence, and Articles 41 to 43 must be fulfilled no later than 1 January 2018.<sup>54</sup>

<sup>1bis</sup> The record-keeping and disclosure duties set out in Article 36 paragraph 2 and Article 37 paragraph 1 letter d and paragraph 2 must be fulfilled no later than 1 October 2018. Facts occurring between 1 January 2018 and 30 September 2018 that come under these duties are to be recorded and retroactively reported no later than 31 December 2018.<sup>55</sup>

<sup>1ter</sup> Foreign branches of Swiss securities firms and foreign participants on a trading venue must fulfil their duties under Article 36 paragraph 2 and Article 37 paragraph 1 letter d and paragraph 2 no later than 1 January 2019.<sup>56</sup>

<sup>2</sup> The exemption from the reporting duty set out in Article 37 paragraph 4 may be claimed up to 31 December 2017 without an agreement in accordance with Article 32 paragraph 3 FinMIA or an exchange of information between FINMA and the competent foreign supervisory authority.

### Art. 130 Reporting to a trade repository

<sup>1</sup> The duty to report to a trade repository under Article 104 FinMIA must be fulfilled at the latest:

- a. within six months of the first authorisation or recognition of the trade repository by FINMA: for derivatives transactions outstanding at this point if the person obliged to report is not a small financial counterparty or a central counterparty;
- b. within nine months of the first authorisation or recognition of the trade repository by FINMA: for derivatives transactions outstanding at this point if the person obliged to report is a small financial counterparty or a non-financial counterparty which is not small;
- c. by 1 January 2024: for derivatives transactions outstanding at this point in all other cases.<sup>57</sup>

<sup>2</sup> The deadlines set out in paragraph 1 shall be extended by six months in each case for the reporting of derivatives transactions that are traded via trading venues or via the operator of an organised trading facility.

<sup>3</sup> In special cases, FINMA may extend the timeframes set out in this Article.

<sup>53</sup> Amended by No I of the O of 29 June 2016, in force since 1 Aug. 2016 (AS **2016** 2703)

<sup>54</sup> Amended by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

<sup>55</sup> Inserted by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

<sup>56</sup> Inserted by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

<sup>57</sup> Amended by No I of the O of 14 Sept. 2018, in force since 1 Jan. 2019 (AS **2018** 3377).

**Art. 131** Risk mitigation duties

<sup>1</sup> The duties that apply with respect to timely confirmation, portfolio reconciliation, dispute resolution and portfolio compression in accordance with Article 108 letters a to d FinMIA shall apply by the following deadlines following the entry into force of this Ordinance:

- a. after 12 months: for derivatives transactions outstanding at this point between counterparties that are not small, and for derivatives transactions outstanding at this point with a small financial counterparty;
- b. after 18 months: for all other derivatives transactions outstanding at this point.

<sup>2</sup> The duty to value outstanding derivatives transactions in accordance with Article 109 FinMIA shall apply to outstanding derivatives transactions 12 months after the entry into force of this Ordinance.

<sup>3</sup> The duty to exchange collateral in accordance with Article 110 of the FinMIA applies only to derivatives transactions concluded after the duties under paragraphs 4 and 5<sup>bis</sup> have entered into force.<sup>58</sup>

<sup>4</sup> The duty to exchange variation margins shall apply:

- a. from 1 September 2016: for counterparties whose aggregated month-end average gross position of non-centrally-cleared OTC derivatives at group or financial or insurance group level for the months of March, April and May 2016 is greater than CHF 3,000 billion;
- b. from 1 September 2017: for all other counterparties.

<sup>5</sup> The duty to exchange initial margins shall apply for counterparties whose aggregated month-end average gross position of non-centrally-cleared OTC derivatives at group or financial or insurance group level:

- a. is greater than CHF 3,000 billion for each of the months of March, April and May 2016: from 1 September 2016;
- b. is greater than CHF 2,250 billion for each of the months of March, April and May 2017: from 1 September 2017;
- c. is greater than CHF 1,500 billion for each of the months of March, April and May 2018: from 1 September 2018;
- d. is greater than CHF 750 billion for each of the months of March, April and May 2019: from 1 September 2019;
- d<sup>bis</sup>.<sup>59</sup> is greater than CHF 50 billion for each of the months of March, April and May 2020: from 1 September 2020;
- e.<sup>60</sup> is greater than CHF 8 billion for each of the months of March, April and May 2020: from 1 September 2021.<sup>61</sup>

<sup>58</sup> Amended by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

<sup>59</sup> Inserted by Annex 1 No II 14 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

<sup>5bis</sup> The duty to exchange collateral applies from 1 January 2024 for non-centrally cleared OTC derivatives transactions that are options on individual equities, index options or similar equity derivatives such as derivatives on baskets of equities.<sup>62</sup>

<sup>6</sup> FINMA may extend the timeframes set out in this Article in order to take account of recognised international standards and foreign legal developments.

#### **Art. 132**      Auditing

The duty to have an audit performed by the auditors in accordance with Article 114 shall apply 12 months following the entry into force of this Ordinance.

#### **Art. 133**<sup>63</sup>      Occupational pension schemes and investment foundations

<sup>1</sup> For occupational pension schemes and investment foundations in accordance with Articles 48 to 60a of the Federal Act of 25 June 1982<sup>64</sup> on Occupational Old Age, Survivors' and Invalidity Pension Provision, the clearing duty set out in Article 97 of the FinMIA shall not apply up to 30 September 2021 for derivatives transactions that these institutions enter into with a view to reducing risk in accordance with Article 87.<sup>65</sup>

<sup>2</sup> The Federal Department of Home Affairs may extend the timeframe set out in this paragraph 1 in order to take account of recognised international standards and foreign legal developments.

#### **Art. 134**      Amendment of other legislative instruments

The amendment of other legislative instruments is set out in Annex 1.

#### **Art. 135**      Commencement

This Ordinance comes into force on 1 January 2016.

<sup>60</sup> Amended by Annex 1 No II 14 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

<sup>61</sup> Amended by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

<sup>62</sup> Inserted by No I of the O of 5 July 2017 (AS **2017** 3715). Amended by No I 10 of the O of 18 June 2021 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS **2021** 400).

<sup>63</sup> Amended by No I of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).

<sup>64</sup> SR **831.40**

<sup>65</sup> Amended by No I of the FDFA O of 4 Sept. 2020, in force since 1 Oct. 2020 (AS **2020** 3801).

*Annex I*  
(Art. 134)

## **Amendment of other legislative instruments**

The legislative instruments below are amended as follows:

...<sup>66</sup>

<sup>66</sup> The amendments may be consulted under AS **2015** 5413.

*Annex 2<sup>67</sup>*  
(Art. 93)

## Data to be reported to trade repositories

*Legend for column «Validation for T / P / V»:*

T: Reporting of an individual transaction<sup>68</sup>

P: Reporting of a position<sup>69</sup>

V: Reporting of a valuation

M: Mandatory

U: Under reservation

O: Optional

N: Not applicable

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
<b>Contracting parties</b>		<b>T</b>	<b>P</b>	<b>V</b>	<b>Contracting parties</b>	
1 ID of reporting counterparty	Code for identifying the reporting counterparty	M	M	M	ID of reporting counterparty	Code for identifying the reporting counterparty

<sup>67</sup> Revised by Annex 1 No II 14 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

<sup>68</sup> Field «level of reporting» exhibits the value T

<sup>69</sup> Field «level of reporting» exhibits the value P

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
2 ID of non-reporting counterparty	Code for identifying non-reporting counterparty	M	M	O	Legal Entity Identifier (LEI) consisting of 20 characters, validity may already have lapsed If LEI is not available: Business Identifier Code (BIC) in accordance with ISO 9362:2014 consisting of 11 characters If neither LEI nor BIC is available: internal code consisting of a maximum of 50 characters	
3 Name of reporting counterparty	Company or name of reporting counterparty	M	M	N	Text consisting of a maximum of 100 characters	
4 Registered office of reporting counterparty	Information on the registered office, consisting of a full address, city and country of the reporting counterparty	M	M	N	Text consisting of a maximum of 500 characters	
5 Corporate sector of reporting counterparty	Type of business activities of reporting counterparty	M	M	N	For financial counterparties: – A = Banks in accordance with Article 1 paragraph 1 of the Banking Act of 8 November 1934 <sup>70</sup> – B = Securities firms in accordance with Article 41 of the Financial Institutions Act of 15 June 2018 <sup>71</sup> (FinIA) – C = Insurance and reinsurance companies in accordance with Article	

<sup>70</sup> SR 952.0

<sup>71</sup> SR 954.1



Field	Data to be reported	Validation for			Permitted values	Additional explanations
		T	P	V	<p>2 paragraph 1 letter a of the Insurance Oversight Act of 17 December 2004<sup>72</sup></p> <ul style="list-style-type: none"> <li>– D = Group parent companies of a financial or insurance group or of a financial or insurance conglomerate</li> <li>– E = Managers of collective assets und fund management companies in accordance with Articles 24 and 32 FinIA</li> <li>– F = Collective investment schemes in accordance with the Collective Investment Schemes Act</li> <li>– G = Occupational pension schemes and investment foundations in accordance with Article 48 et seq. of the Federal Act of 25 June 1982<sup>73</sup> on Occupational Old Age, Survivors' and Invalidity Pension Provision</li> </ul> <p>Non-financial counterparties:</p> <ul style="list-style-type: none"> <li>– H = Oil and natural gas</li> <li>– I = Basic materials (chemicals, raw materials)</li> <li>– J = Industrial companies (construction, electronics, production technology, transportation, etc.)</li> <li>– K = Consumer goods (food, household appliances, etc.)</li> <li>– L = Healthcare</li> <li>– M = Consumer service (travel, media, etc.)</li> </ul>	

<sup>72</sup> SR 961.01

<sup>73</sup> SR 831.10

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
					<ul style="list-style-type: none"> <li>– N = Telecommunications</li> <li>– O = Utilities (electricity, water, etc.)</li> <li>– P = Technology (software and hardware)</li> </ul> For central counterparties: <ul style="list-style-type: none"> <li>– Q = Central counterparty</li> </ul>	
6 Status of reporting counterparty	Indication whether the reporting counterparty is a financial or non-financial counterparty and whether the counterparty is small in accordance with Articles 98 and 99 FinMIA	M	M	N	FP = Financial counterparty which is not considered a small financial counterparty under Article 99 FinMIA FM = Small financial counterparty under Article 99 FinMIA NP = Non-financial counterparty under Article 93 paragraph 3 FinMIA which is not considered a small non-financial counterparty under Article 98 FinMIA NM = Non-financial counterparty under Article 93 paragraph 3 FinMIA Q = Central counterparty	
7 Reporting entity ID	Code for identifying reporting entity	M	M	M	Valid Legal Entity Identifier (LEI) consisting of 20 characters	
8 ID of clearing member of reporting counterparty	Code for identifying the clearing member of the reporting counterparty	U	U	N	Legal Entity Identifier (LEI) consisting of 20 characters, validity may already have lapsed If LEI is not available: Business Identifier Code (BIC) in accordance with ISO 9362:2014 consisting of 11 characters	Must be indicated if the reporting counterparty is not a clearing member and the transaction in question is a centrally cleared transaction

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
9 Clearing threshold	Indication as to whether the reporting counterparty exceeds the clearing threshold at the time of reporting in accordance with Articles 98 or 99 FinMIA	M	M	N	Y = The reporting counterparty has exceeded the threshold in accordance with Article 100 FinMIA at the time of reporting.  N = The reporting counterparty has not exceeded the threshold in accordance with Article 100 FinMIA at the time of reporting.	
<b>Section 2a — Contract type</b>						
10 Product taxonomy	Taxonomy of the product code of the contract	M	M	N	U = Unique Product Identifier (UPI) in accordance with recognised international standards  If UPI is not available: I = International Securities Identification Number (ISIN) in accordance with ISO 6166:2013  If neither UPI nor ISIN is available: A = Alternative Instrument Identifier (AII) in accordance with ESMA guidelines  If neither UPI, ISIN nor AII is available: E = Exchange Product Code (EPC) issued by the relevant trading venue  If none of these codes is available: N = Not available  C = Classification of Financial Instruments (CFI) in accordance with ISO 10962:2015	The order of the permitted values corresponds to the expected value depending on its availability.
11 ID of product	Details of the product code of the contract	M	M	N	Valid code as per taxonomy used	

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
12 Asset category	Indication of type of underlying	M	M	N	CO = Commodity / energy CR = Credit CU = Currency EQ = Equity security IR = Interest rate OT = Other derivative	
13 Type of contract	Details of type of contract	M	M	N	CD = Contract for difference (CFD) FR = Forward rate agreement FU = Future FW = Forward OP = Option SW = Swap SB = Spreadbet EX = Exotic product	

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
14 Underlying taxonomy	Taxonomy of the underlying instrument of the contract	M	M	N	<p>ISIN in accordance with ISO 6166:2013</p> <p>If ISIN is not available: Country code in accordance with ISO 3166:2013 if the issuer of the underlying is a state; in all other cases:</p> <p>If neither ISIN nor country code is available: UPI in accordance with recognised international standards</p> <p>If neither ISIN, country code nor UPI is available: ID of the basket of underlyings or if this is not available the value «NA»; or in the case of indices for which no ISIN is available: full name of index</p> <p>In all other cases: the value «NA»</p>	The order of the permitted values corresponds to the expected value depending on its availability.
15 ID of underlying	Details of the underlying code of the contract	M	M	N	Valid code as per taxonomy used	
<b>Section 2b — Transaction details</b>						
16 Trade ID	A unique trade ID provided by the reporting counterparty at the request of the other counterparty	M	M	M	Text with a maximum of 52 characters	
17 Side of reporting counterparty	Indication whether the reporting counterparty is acting as buyer or seller	M	M	N	<p>B = Buyer</p> <p>S = Seller</p>	To be determined in accordance with recognised international standards

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
18 Compression (numerical reduction of outstanding contracts)	Indication whether the contract results from such a compression exercise	M	O	N	Y = The amount reported is the remaining transaction or position amount following compression. N = The reported transaction or position does not result from compression.	In the case of positions that remain as a result of netting transactions, this field remains empty.
19 Price/rate	Price per derivative excluding, where applicable, commission and accrued interest	M	O	N	Decimal value	
20 Price quotation	The manner in which the price is expressed	M	O	N	U = The price is expressed as an absolute value. P = The price is expressed as a percentage value.	
21 Currency of price	The currency in which the price is expressed, if applicable	U	O	N	In the cases of prices given as absolute values, the currency of the price in accordance with ISO 4217:2008, or other recognised international standards, should be indicated	
22 Nominal value 1	Current reference value of the contract	M	U	N	Decimal value	Must be indicated if the field «amount» exhibits the value 1
23 Nominal value 2	In the case of swap transactions and currency forward transactions, the current second reference value of the contract	O	O	N	Decimal value	

Field	Data to be reported	Validation for			Permitted values	Additional explanations
		T	P	V		
24 Currency of denomination 1	Currency of nominal value	M	M	N	Currency in accordance with ISO 4217:2008 or other recognised international standard	The currency in this field corresponds to the currency of «Nominal value 1». In the case of interest rate derivative contracts, this is the nominal currency of Leg 1.
25 Currency of denomination 2	Currency of nominal value. In the case of interest rate derivative contracts, this is the nominal currency of Leg 2.	U	U	N	Currency in accordance with ISO 4217:2008 or other recognised international standard	Must be indicated if «Nominal value 2» was reported In the case of interest rate derivatives, this is the nominal currency of Leg 2. In the case of foreign currency contracts, this is the second currency.
26 Currency to be delivered	Currency to be delivered, if applicable	U	U	N	Currency in accordance with ISO 4217:2008 or other recognised international standard	Must be indicated if the contract is settled in cash
27 Price multiplier	The number of units of the financial instrument which are contained in a trading lot, e.g. the number of derivatives represented by one exchange-traded contract	M	M	N	Decimal value	
28 Amount	Number of reported contracts	M	M	N	Decimal value	The value «0» is permissible only if the field «Type of report» exhibits the value «C».
29 Type of delivery	Indication whether the contract is settled in physical form or in cash	M	M	N	C = Cash settlement P = Physical settlement O = Optional for the counterparty	

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
30 Conclusion date	Date on which the contract was concluded	M	M	N	Date and time format in accordance with ISO 8601:2004	May be provided in either Coordinated Universal Time (UTC) or local Swiss time  If the information is not expressed in UTC, this should be indicated to the trade repository
31 Effective date	Date when obligations under the contract come into effect	M	O	N	Data format in accordance with ISO 8601:2004	
32 Maturity date	Original date of expiry of the reported contract. An early termination is not reported in this field	M	M	N	Data format in accordance with ISO 8601:2004	
33 Termination date	Date on which the reported contract terminates	U	U	N	Data format in accordance with ISO 8601:2004	This field should be used in the event of early expiry (report via «Type of report» = C) or in the event of compression (report via «Type of report» = M). In all other cases it should be left empty.
34 Date of settlement	Last date for settlement of underlyings	O	O	N	Data format in accordance with ISO 8601:2004	
35 Market value of contract	Valuation of contract at mark to market or mark to model prices	O	O	M	Decimal value	Must be provided in the case of a valuation report
36 Currency in which the current mark to market value of the contract is expressed	Currency in which the mark to market or mark to model price valuation was effected	O	O	M	Currency in accordance with ISO 4217:2008 or other recognised international standard	Must be provided in the case of a valuation report



Field	Data to be reported	Validation for			Permitted values	Additional explanations
		T	P	V		
37 Date of valuation	Date of last valuation at mark to market or mark to model prices	O	O	M	Data format in accordance with ISO 8601:2004	Must be provided in the case of a valuation report
38 Time of valuation	Time of last valuation at mark to market or mark to model prices	O	O	M	Time format in accordance with ISO 8601:2004	Must be provided in the case of a valuation report May be provided in either Coordinated Universal Time (UTC) or local Swiss time If the information is not expressed in UTC, this should be indicated to the trade repository
39 Type of valuation	Indication as to whether the valuation was effected at mark to market or mark to model prices	O	O	M	M = Mark to market price O = Mark to model price	Must be provided in the case of a valuation report

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
40 Collateralisation	Indication as to whether collateralisation has taken place	M	M	O	UN = Uncollateralised PC = Partially collateralised PL = One-way collateralised FC = Fully collateralised	<p>The value «UN» should be used if no Credit Support Agreement (CSA) or pledge agreement was used or if the contract of the counterparties envisages neither the provision of an initial margin nor the provision of variation margins.</p> <p>The value «PC» should be used if it is contractually prescribed that both counterparties must regularly provide variation margins.</p> <p>The value «PL» should be used if only one of the counterparties is contractually obliged to an initial margin and/or variation margin.</p> <p>The value «FC» should be used if it is contractually prescribed that both counterparties must provide an initial margin and regular variation margins.</p> <p>For centrally cleared derivatives, the value «PL» should be used.</p>
41 Types of collateralisation	If collateralisation was effected, it must be indicated whether this took place on the basis of a collateralisation annex to a framework agreement or pledge agreement	U	U	O	CSA = Collateralisation annex to a framework agreement («Credit Support Annex») Pledge = Pledge agreement	<p>The value «CSA» corresponds to an irregular right of lien under Swiss law.</p> <p>The value «Pledge» corresponds to a regular right of lien under Swiss law.</p>

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
42 Type of framework agreement	Reference to the framework agreement if used for the reported contract	O	O	N	Text with a maximum of 50 characters	Sample values «ISDA Master Agreement», «Master Power Purchase and Sale Agreement», «International ForEx Master Agreement», «European Master Agreement» or any local or internal framework agreements
43 Version of framework agreement	Year of the framework agreement version used for the reported trade, if applicable	O	O	N	Text with a maximum of 20 characters	Sample values: «1992», «2002»
<b>Section 2c — Clearing</b>						
44 Clearing duty	Indication as to whether the reported contract and both counterparties are subject to a clearing duty under Article 97 et seq. FinMIA	M	N	N	Y = The reported contract and both counterparties are subject to a Swiss clearing duty N = The value «Y» is not applicable	
45 Date of clearing	Date of clearing if the contract was settled via a central counterparty	U	O	N	Data format in accordance with ISO 8601:2004	Must be provided in the case of a centrally cleared transaction
46 ID of central counterparty	Indication of the standard code of the central counterparty which cleared the contract	U	O	N	Valid LEI consisting of 20 characters If LEI is not available: BIC in accordance with ISO 9362:2014 consisting of 11 characters	Must be provided in the case of a centrally cleared transaction
47 Intra-group transactions	Indication as to whether the contract was entered into as an intra-group transaction in accordance with Article 103 FinMIA	M	M	N	Y = The transaction is an intra-group transaction in accordance with Article 103 FinMIA N = The value «Y» is not applicable	

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
Section 2d — Interest rates						
48 Interest type leg 1	Indication of the type of interest rate of leg 1	U	U	N	F = Fixed interest rate L = Variable interest rate	
49 Interest type leg 2	Indication of the type of interest rate of leg 2	U	U	N	F = Fixed interest rate L = Variable interest rate	Must be provided for interest rate swaps
50 Interest rate leg 1	Details of the fixed interest rate that applies to leg 1 or details of the regular fixing of the reference interest rate used to determine the variable interest rate, if applicable	U	U	N	Decimal value in the case of fixed interest rates Text in the case of variable interest rates	In the case of variable interest rates, the name of the reference interest rate and the reference period is to be indicated in the format «reference period/reference interest rate» (e.g. «3M/Euribor»)
51 Interest rate leg 2	Details of the fixed interest rate that applies to leg 2 or details of the regular fixing of the reference interest rate used to determine the variable interest rate, if applicable	U	U	N	Decimal value in the case of fixed interest rates Text in the case of variable interest rates	Must be provided for interest rate swaps In the case of variable interest rates, the name of the reference interest rate and the reference period is to be indicated in the format «reference period/reference interest rate» (e.g. «3M/Euribor»)
52 Interest practice leg 1	Interest payment practice in the calculation period in question, if applicable	U	U	N	Market-standard indication of interest practice	Must be provided for interest rate derivatives Format: «days per month/days per year» (e.g. «Actual/365», «30/360», «Actual/Actual», etc.)
53 Interest practice leg 2	Interest payment practice in the calculation period in question, if applicable	U	U	N	Market-standard indication of interest practice	Must be provided for interest rate swaps Format: «days per month/days per year» (e.g. «Actual/365», «30/360», «Actual/Actual», etc.)

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
54 Payment frequency leg 1	Payment frequency of leg 1, if applicable	U	U	N	Integer value plus: – Y = Year – M = Month – W = Week – D = Day	Must be provided for interest rate derivatives Sample values «5Y», «3M» or «10D» The smallest possible integer value should always be given (e.g. «1M» and not «30D»)
55 Payment frequency leg 2	Payment frequency of the variable leg, if applicable	U	U	N	Integer value plus: – Y = Year – M = Month – W = Week – D = Day	Must be provided for interest rate swaps Sample values «5Y», «3M» or «10D» The smallest possible integer value should always be given (e.g. «1M» and not «30D»)
56 Interest rate redefinition frequency for leg 1	Frequency of the redefinition of the variable interest rate of leg 1, if applicable	U	U	N	Integer value plus: – Y = Year – M = Month – W = Week – D = Day	Must be provided for interest rate derivatives Sample values «5Y», «3M» or «10D» The smallest possible integer value should always be given (e.g. «1M» and not «30D»)
57 Variable interest rate redefinition frequency for leg 2	Frequency of the redefinition of the variable interest rate of leg 2, if applicable	U	U	N	Integer value plus: – Y = Year – M = Month – W = Week – D = Day	Must be provided for interest rate swaps Sample values «5Y», «3M» or «10D» The smallest possible integer value should always be given (e.g. «1M» and not «30D»)
<b>Section 2e — Foreign exchange</b>						
58 Forward exchange rate	Forward exchange rate on value date	U	U	N	Decimal value	Must be provided for forward exchange transactions

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
59 Exchange rate basis	Currency pair for exchange rate	U	U	N	Currency pair with currencies in accordance with ISO 4217:2008 or other recognised international standard, separated by a forward slash	Must be provided for all currency derivatives, e.g. «USD/CHF», «CHF/EUR»
<b>Section 2f— Commodities</b>						
<b>General</b>						<b>Mandatory general information for all commodity derivatives</b>
60 Commodity underlying	Type of commodities underlying the contract	U	U	N	AG = Agricultural EN = Energy FR = Freight ME = Metal IN = Index EV = Environmental EX = Exotic or not otherwise applicable	
61 Commodity details	Details of the particular commodity beyond the data provided in field 60	U	U	N	GO = Grains / oilseeds DA = Dairy products LI = Livestock FO = Forestry SO = Softs DR = Dry freight WT = Wet freight OI = Oil NG = Natural gas	

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
					CO = Coal EL = Electricity IE = Inter-energy PR = Precious metal NP = Non-precious metal WE = Weather EM = Emissions OT = Other	
<b>Energy</b>						<b>Must be provided if the field «Delivery point or zone» is to be completed</b>
62 Delivery point or zone	Delivery point(s) of market area(s)	U	U	N	Energy Identification Code (EIC) consisting of 16 characters	Must be provided if the delivery point or zone is in Europe and the «Commodity details» line exhibits the value «NG» or «EL»
63 Interconnection point	Indication of the border(s) or border crossing(s) of a transport contract	U	U	N	Text with a maximum of 50 characters	
64 Load type	Identification of last delivery profile according to the delivery periods per day	U	U	N	BL = Base load PL = Peak load OP = Off-peak BH = Hour/block hours SH = Shaped GD = Gas day OT = Other	

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
65 Delivery start date and time	Delivery start date and time	U	U	N	Date and time format in accordance with ISO 8601:2004	May be provided in either Coordinated Universal Time (UTC) or local Swiss time If the information is not expressed in UTC, this should be indicated to the trade repository
66 Delivery end date and time	Delivery end date and time	U	U	N	Date and time format in accordance with ISO 8601:2004	May be provided in either Coordinated Universal Time (UTC) or local Swiss time If the information is not expressed in UTC, this should be indicated to the trade repository
67 Contracted capacity	Quantity per delivery interval	U	U	N	Text with a maximum of 50 characters	
68 Quantity unit	Daily or hourly quantity delivered in MWh or kWh/d depending on the underlying	U	U	N	KW KWh/h KWh/d MW MWh/h MWh/d GW GWh/h GWh/d Therm/d KTherm/d MTherm/d	



Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
					cm/d mcm/d	
69 Price per time interval quantities	If applicable, price per time interval quantities	U	U	N	Decimal value	
<b>Section 2g — Options</b>						<b>Mandatory information for all non-exotic options</b>
70 Option type	Indication of option type	U	U	N	P = Put C = Call O = Other	
71 Exercise type	Indication of type of exercise for the option in question	U	U	N	A = American B = Bermudan E = European S = Asian O = Other	
72 Strike price (cap/floor rate)	Strike price of the option expressed in the corresponding reference currency or reference amount	U	U	N	Decimal value	
<b>Section 2h — Credit derivatives</b>						
73 Seniority	Order of underlying claims in the schedule of claims	U	U	N	SR = Senior/not subordinate SB = Subordinate OT = Other	Mandatory information for credit derivatives

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
74 Premium / coupon	The annual premium / annual coupon of the contract as a percentage of the nominal value	U	U	N	Decimal value	Mandatory information for credit derivatives
75 Date of last credit event	Date of last credit event of the underlying claims	U	U	N	Data format in accordance with ISO 8601:2004	Mandatory information for credit derivatives
76 ID of index	Serial number of reference index, if applicable	U	U	N	Text with a maximum of 10 characters	Mandatory information for credit derivatives that refer to an index as the underlying
77 Index factor	Adjustment factor of the reference index with respect to past credit events	U	U	N	Integer with a maximum of 3 characters	Mandatory information for credit derivatives that refer to an index as the underlying
<b>Section 2i — Report modifications</b>						
78 Report type	Indication of report type	M	M	M	N = Transaction is being reported for the first time	To be used for the first-time reporting of a transaction or position insofar as the report type «X» does not apply. An OTC derivatives transaction that is cleared centrally on the same day it is concluded is at least to be reported as a centrally cleared transaction. The reporting of transactions taking place before clearing on the same day is permitted but is not mandatory. An OTC derivatives transaction that is not cleared centrally on the same day or not cleared centrally at all is at least to be reported on the basis of its status at the end of the trading day. The reporting of

Field	Data to be reported	Validation for T P V			Permitted values	Additional explanations
						<p>transactions taking place beforehand on the same day is permitted but is not mandatory.</p> <p>Block trades (in which a large pooled position is received and then individually assigned) which are not assigned on the same day are to be reported. If the assignment does take place on the same day, there is no need to report the block trade. In both cases, the assigned transactions are to be reported.</p>
	Indication as to whether the report refers to an individual transaction or a position				X = Transaction is being reported for the first time and the transfer of the transaction to a position is envisaged on the same day.	<p>The resulting sum of transactions is to be reported at the end of the day as a position via the field «Level» = «P». A renewed reporting of individual transactions as compressed is therefore inapplicable.</p> <p>This report type is primarily envisaged for exchange-traded derivatives (ETDs) and contracts for difference (CFDs).</p> <p>In the case of exchange-traded derivatives involving clearing through a central counterparty, the reporting duty exists only at central clearing level («cleared allocation»). The steps prior to central clearing do not yet need to be reported.</p>
					M = Modification of erroneous data, supplementation of missing data or updating of positions	

Field	Data to be reported	Validation for			Permitted values	Additional explanations
		T	P	V		
					E = Report was made erroneously and should be deleted	E.g. the double reporting of the same transactions with a different «trade ID»
					C = Premature termination/cancellation of a contract	Predefined termination does not need to be reported. For modification reports, «Report type» = «M» should be used.
					Z = Compression of an OTC derivatives transaction	Intended for compressions in accordance with Article 108 letter d FinMIA. The transaction is thereby closed.
					V = Reporting of a valuation	Ongoing report of valuations in accordance with Article 109 FinMIA. The first valuation report can be entered either as «Report type» = «N» or in a subsequent report as «Report type» = «V». In the case of centrally cleared transactions, the valuation of the central counterparty is to be used. No valuation is to be reported for transactions that do not have to be valued by law.
					D = Modification of the «Trade ID», provided this had not yet been determined at the time of reporting.	

Field	Data to be reported	Validation for			Permitted values	Additional explanations
		T	P	V		
					L = Modifications that arise as a result of certain events during the term of the contract and for which no other value applies (lifecycle events)	All events during the term of exchange-traded derivatives must always be reported at position level. An example of this kind of event is the partial exercise of an option which reduces the overall position of this option.
79 Report level		M	M	N	T = Transaction P = Position	A renewed report has to be submitted for a position only if it has changed. It is permissible to report derivatives transactions only at transaction level.

*Annex 3*  
(Art. 103 para. 4)

### **Calculation of the initial margin for a netting set**

- 1 The initial margin for a netting set is calculated using the formula:  
$$\text{Net initial margin} = 0.4 * \text{gross initial margin} + 0.6 * \text{NGR} * \text{gross initial margin}$$
- 2 The following apply in this respect:
  - 2.1 The net initial margin is deemed to be the reduced amount of the initial margin requirements for all derivatives contracts with a counterparty included in a netting set;
  - 2.2 The NGR is the net gross ratio, calculated as the ratio between the net replacement value of a netting set with a counterparty (numerator of ratio) and the gross replacement value of this netting set (denominator of ratio);
  - 2.3 The net replacement value of a netting set is the sum of the market values of all transactions, whereby no negative values are permitted;
  - 2.4 The gross replacement value of a netting set is the sum of the market values of all transactions in accordance with Article 109 FinMIA and Article 99 FinMIO with positive values in the netting set.

*Annex 4<sup>74</sup>*  
(Art. 105 para. 1)

### Discounts (haircuts) on collateral

Rating class as per Annexes 2 to 4 CA <sup>75</sup> O	Term to maturity	Haircut on collateral in cash deposits in %	Haircuts on collateral as per Art. 104 para. 1 lit. b in %	Haircuts on collateral as per Art. 104 para. 1 lit. c and d in %	Haircuts on collateral as per Art. 104 para. 1 lit. e and f in %	Haircuts for securities funds
n.a.	n.a.	0	n.a.	n.a.	15	Haircut applicable to invested assets (weighted average)
1 or 2, or 1 for short-dated debt securities	≤ 1 year	n.a.	0.5	1	n.a.	
	> 1 year and ≤ 5 years		2	4		
	> 5 years		4	8		
3 or 4, or 2 or 3 for short-dated debt securities	≤ 1 Jahr		1	2		
	> 1 year and ≤ 5 years		3	6		
	> 5 year		6	12		
5	all		15	Not recognised		

Securities that would be classified in rating classes 6 or 7 in accordance with Annex 2 CAO are generally not recognised as collateral.

<sup>74</sup> Amended by No II of the O of 5 July 2017, in force since 1 Aug. 2017 (AS **2017** 3715).  
<sup>75</sup> SR **952.03**

*Annex 5*  
(Art. 105 para. 3)

## Quantitative and qualitative minimum standards for collateral

### 1 Quantitative minimum standards

- 1.1 If debt securities have a credit rating from an approved rating agency, volatility estimates for each category of securities may be provided.
- 1.2 When delimiting securities categories, the type of issuer, its rating, the residual term and the modified duration must be taken into account. Volatility estimates must be representative of the securities actually contained in this category.
- 1.3 For the other debt securities or shares recognised as collateral, the haircuts must be individually calculated for each security.
- 1.4 The volatilities of the collateral and the currency mismatch must be individually estimated. The estimated volatilities may not take into account the correlations between claims without collateral, collateral and exchange rates.
- 1.5 If the haircuts are determined using own estimates, the following quantitative requirements must be met:
  - 1.5.1 When determining the haircut, a one-sided 99% confidence interval is to be used.
  - 1.5.2 The minimum holding period is ten business days.
  - 1.5.3 If the frequency of the revaluation amounts to more than one day, the minimum haircut is to be scaled according to the number of business days between the revaluation, with the help of the following formula:

$$H = HM \sqrt{[(NR + (TM - 1)) / TM]}$$

The following abbreviations apply here:

H = The haircut to be applied

HM = The haircut with daily revaluation

NR = The actual number of business days between the revaluations

TM = The minimum holding period for the transaction in question.

- 1.5.4 Account must be taken of the illiquidity of assets of lower quality. In cases where a predefined holding period is too short in view of the liquidity of the collateral, the holding period must be increased. Banks must recognise if historical data underestimates the potential volatility, e.g. in the case of pegged exchange rates. In such cases, the data is to be subjected to a stress test.
- 1.5.5 The survey period for determining the haircut must amount to at least one year. Where individual daily observations with different weightings are taken into account, the weighted average observation period must be at least a year (i.e. the weighted average time lag for the individual figures may not be less than a year).



- 1.5.6 The data must be updated at least once every three months. If market conditions require it, it must be updated immediately.

## **2 Qualitative requirements**

- 2.1 The estimated volatilities and holding periods must be used in the bank's daily risk management process.
- 2.2 The banks must ensure that the requirements of this Annex are accurately reflected in the internal guidelines, controls and procedures with respect to the risk measurement system.
- 2.3 The risk measurement system must be used in connection with internal credit limits.
- 2.4 An independent review of the risk management system must be regularly carried out as part of the internal audit process. This must encompass at least the following points:
- 2.4.1 the embedding of risk measurement in daily risk management;
  - 2.4.2 the validation of any material change in risk measurement procedures;
  - 2.4.3 the accuracy and completeness of position data;
  - 2.4.4 the review of the consistency, promptness and reliability of the data sources used for the internal models, including the independence of such data sources; and
  - 2.4.5 the accuracy and appropriateness of the volatility assumptions.

