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Federal Act on Financial Services (Financial Services Act, FinSA)

of 15 June 2018 (Status as of 1 August 2021)

*The Federal Assembly of the Swiss Confederation,
based on Articles 95, 97, 98 and 122 paragraph 1 of the Federal Constitution¹,
and having considered the Federal Council Dispatch of 4 November 2015²,
decrees:*

Title 1 General Provisions

Art. 1 Purpose and subject matter

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

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

Art. 2 Scope of application

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

- a. financial service providers;
- b. client advisers;
- c. producers and providers of financial instruments.

² This Act does not apply to:

- a. the Swiss National Bank;
- b. the Bank for International Settlements;

AS 2019 4417

¹ SR 101

² BBl 2015 8901

- c. occupational pension schemes and other institutions whose purpose is to serve occupational pensions (occupational pension schemes), as well as employer-sponsored foundations (employer-sponsored welfare funds); employers who manage the assets of their occupational pension schemes; employer and employee associations which manage the assets of their association schemes;
- d. the following, provided their activities are subject to the Insurance Supervision Act of 17 December 2004³ (ISA):
 - 1. insurance companies,
 - 2. insurance intermediaries,
 - 3. ombudsman's offices;
- e. public insurance institutions in accordance with Article 67 paragraph 1 of the Federal Act of 25 June 1982⁴ on Occupational Old Age, Survivors' and Invalidity Pension Provision.

Art. 3 Definitions

For the purposes of this Act:

- a. *Financial instruments* are:
 - 1. equity securities:
 - securities in the form of shares including share-like securities allowing for participation or voting rights, such as participation certificates and dividend rights certificates
 - securities which, on conversion or exercise of the rights evidenced by them, enable the acquisition of equity securities, as set forth above, as soon as they have been registered for conversion,
 - 2. debt instruments: securities not classified as equity securities,
 - 3. units in collective investment schemes in accordance with Articles 7 and 119 of the Collective Investment Schemes Act of 23 June 2006⁵ (CISA),
 - 4. structured products, i.e. capital-protected products, capped return products and certificates,
 - 5. derivatives in accordance with Article 2 letter c of the Financial Market Infrastructure Act of 19 June 2015⁷ (FinMIA),
 - 6. deposits whose redemption value or interest is risk- or price-dependent, excluding those whose interest is linked to an interest rate index,
 - 7. bonds: units in an overall loan subject to uniform conditions;

³ SR 961.01

⁴ SR 831.40

⁵ SR 951.31

⁶ Amended by No 14 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 33, 399; BBl 2020 233).

⁷ SR 958.1

- b.⁸ *securities* are standardised certificated and uncertificated securities, in particular uncertificated securities in accordance with Article 973c of the Code of Obligations (CO)⁹ and ledger-based securities in accordance with Article 973d of the CO, as well as derivatives and intermediated securities, which are suitable for mass trading;
- c. *financial services* are any of the following activities carried out for clients:
 - 1. acquisition or disposal of financial instruments,
 - 2. receipt and transmission of orders in relation to financial instruments,
 - 3. administration of financial instruments (portfolio management),
 - 4. provision of personal recommendations on transactions with financial instruments (investment advice),
 - 5. granting of loans to finance transactions with financial instruments;
- d. *financial service providers* are persons who provide financial services on a commercial basis in Switzerland or for clients in Switzerland, with the criterion of a commercial basis being satisfied if there is an independent economic activity pursued on a permanent, for-profit basis;
- e. *client advisers* are natural persons who perform financial services on behalf of a financial service provider or in their own capacity as financial service providers;
- f. *issuers* are persons who issue or intend to issue securities;
- g. an *offer* is any invitation to acquire a financial instrument that contains sufficient information on the terms of the offer and the financial instrument itself;
- h. a *public offer* is an offer to the public;
- i. *producers* are persons who produce a financial instrument or modify an existing financial instrument, including its risk and return profile or the costs associated with investing in the financial instrument.

Art. 4 Client segmentation

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

- a. retail clients;
- b. professional clients;
- c. institutional clients.

² Retail clients are clients who are not professional clients.

⁸ Amended by No I 4 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 33, 399; BBl 2020 233).

⁹ SR 220

³ Professional clients¹⁰ are:

- a. financial intermediaries as defined in the Banking Act of 8 November 1934¹¹ (BankA), the Financial Institutions Act of 15 June 2018¹² (FinIA) and the CISA¹³;
- b. insurance companies as defined in the ISA¹⁴;
- c. foreign clients subject to prudential supervision as the persons listed under a and b above;
- d. central banks;
- e. public entities with professional treasury operations;
- f. occupational pension schemes with professional treasury operations and other occupational pension institutions providing professional treasury operations;
- g. companies with professional treasury operations;
- h. large companies;
- i. private investment structures with professional treasury operations created for high-net-worth retail clients.

⁴ Institutional clients¹⁵ are professional clients as defined in paragraph 3 letters a to d as well as national and supranational public entities with professional treasury operations.

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

- a. balance sheet total of CHF 20 million;
- b. turnover of CHF 40 million;
- c. equity of CHF 2 million.

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

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

Art. 5 Opting out and opting in

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

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

¹⁰ As professional clients are primarily legal entities, they are referred to herein as «it».

¹¹ SR **952.0**

¹² SR **954.1**

¹³ SR **951.31**

¹⁴ SR **961.01**

¹⁵ As institutional clients are primarily legal entities, they are referred to as «it».

- a. on the basis of training, education and professional experience or on the basis of comparable experience in the financial sector, they possess the necessary knowledge to understand the risks associated with the investments and have at their disposal assets of at least CHF 500,000; or
- b. they have at their disposal assets of at least CHF 2 million.

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

⁴ Swiss and foreign collective investment schemes and their management companies which are not already deemed to be institutional clients within the meaning of Article 4 paragraph 3 letter a or c in conjunction with Article 4 paragraph 4 may declare that they wish to be treated as institutional clients.

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

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

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

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

Title 2 Requirements for the Provision of Financial Services

Chapter 1 Required Knowledge

Art. 6

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

Chapter 2 Code of Conduct

Section 1 Principle

Art. 7

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

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