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## **Ordinance on Financial Services (Financial Services Ordinance, FinSO)**

of 6 November 2019 (Status as of 1 January 2022)

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*The Swiss Federal Council,*  
based on the Financial Services Act of 15 June 2018<sup>1</sup> (FinSA),  
*ordains:*

### **Title 1            General Provisions**

#### **Art. 1            Subject matter**

This Ordinance governs the requirements:

- a. for honesty, diligence and transparency in the provision of financial services;
- b. for the offering of securities and other financial instruments.

#### **Art. 2            Territorial scope of application with regard to financial services** (Art. 3 let. c and d FinSA)

<sup>1</sup> This Ordinance applies to persons who provide financial services on a professional basis in Switzerland or for clients in Switzerland.

<sup>2</sup> The following are deemed not to be provided in Switzerland:

- a. financial services provided by foreign financial service providers under a client relationship entered into at the express initiative of a client;
- b. individual financial services requested of a foreign financial service provider at the express initiative of clients.

#### **Art. 3            Definitions** (Art. 3 let. a, b, c, d, g and h and 93 FinSA)

<sup>1</sup> Claims arising from an account or custody agreement for payment or physical delivery of foreign currencies, fixed-term deposits or precious metals are not deemed to be financial instruments within the meaning of Article 3 letter a FinSA.

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<sup>1</sup> SR 950.1

<sup>2</sup> The acquisition or disposal of financial instruments within the meaning of Article 3 letter c item 1 FinSA is deemed to be any activity addressed directly at certain clients that is specifically aimed at the acquisition or disposal of a financial instrument.

<sup>3</sup> The following in particular are not deemed to be a financial service within the meaning of Article 3 letter c FinSA:

- a. consultation on structuring or raising capital as well as on business combinations and the acquisition or disposal of participations and the services associated with such consultation;
- b. the placement of financial instruments with or without a firm commitment as well as the associated services;
- c. financing within the scope of services provided in accordance with letters a and b;
- d. the granting of loans to finance transactions with financial instruments within the meaning of Article 3 letter c item 5 FinSA if the credit-granting financial service provider is not participating in these transactions, unless they are aware that the loan is used solely for financing such transactions.

<sup>4</sup> Companies or units of a group which provide financial services for other companies or units of the same group are not deemed to be financial service providers within the meaning of Article 3 letter d FinSA.

<sup>5</sup> An offer within the meaning of Article 3 letter g FinSA exists if a communication of any kind is made which:

- a. contains sufficient information on the terms of the offer and the financial instrument; and
- b. is customarily intended to draw attention to a certain financial instrument and to sell it.

<sup>6</sup> The following in particular are not deemed to be an offer within the meaning of Article 3 letter g FinSA:

- a. the making available of information at the request or initiative of the client, which information was not preceded by advertising within the meaning of Article 68 FinSA provided by the offerer or an agent of the latter relating to the concrete financial instrument;
- b. the mentioning by name of financial instruments without or in conjunction with factual, general information, such as ISINs, net asset values, prices, risk information, price performance or tax figures;
- c. the mere making available of factual information;
- d. the preparation and making available of legally or contractually required information and documents on financial instruments to existing clients or financial intermediaries, such as corporate action information, invitations to general meetings and the associated requests to issue instructions, as well as the forwarding of such to this group of persons and the publication thereof.

<sup>7</sup> The offer is deemed to be aimed at the public within the meaning of Article 3 letter h FinSA if it is aimed at an unlimited number of persons.

<sup>8</sup> A company, or a private investment structure created for high-net-worth retail clients is deemed to have professional treasury operations if, within or outside the company or the private investment structure, it entrusts, on a permanent basis, the management of its funds to a professionally qualified person with experience in the financial sector.

<sup>9</sup> Paper and any other medium which allows the storage and unaltered forwarding of information are deemed to be a durable data medium within the meaning of this Ordinance.

**Art. 4** Client segmentation  
(Art. 4 FinSA)

<sup>1</sup> Where several clients are entitled to assets, they are to be assigned jointly for these assets to the respective client segment affording the greatest client protection.

<sup>2</sup> Clients acting through an authorised person may agree with the financial service provider in writing or in another form demonstrable via text that they be assigned to a segment in accordance with the knowledge and experience of this person.

**Art. 5** Assets eligible for opting out  
(Art. 5 para. 2 FinSA)

<sup>1</sup> Eligible assets within the meaning of Article 5 paragraph 2 FinSA are financial investments held directly or indirectly by the retail client, specifically:

- a. sight or time deposits with banks and securities firms;
- b. certificated and uncertificated securities, including collective investment schemes and structured products;
- c. derivatives;
- d. precious metals;
- e. life insurance policies with a surrender value;
- f. restitution claims from other assets held in trust specified in this paragraph.

<sup>2</sup> Direct investments in real estate and claims from social insurance schemes as well as occupational pension assets do not qualify as financial investments within the meaning of paragraph 1.

<sup>3</sup> Retail clients jointly holding assets which reach the values stipulated in Article 5 paragraph 2 FinSA can only jointly declare their wish to opt out.

<sup>4</sup> The necessary knowledge and experience in accordance with Article 5 paragraph 2 letter a FinSA must be possessed by at least one person with a share in the jointly held assets.

**Title 2            Requirements for the Provision of Financial Services**  
**Chapter 1        Code of Conduct**  
**Section 1        Duty to Provide Information**

**Art. 6**            Information on the financial service provider  
 (Art. 8 para. 1 FinSA)

<sup>1</sup> Financial service providers state the necessary contact details, in particular their address.

<sup>2</sup> Supervised financial service providers shall also state:

- a. the name and address of the authority supervising them;
- b. whether they have authorisation as a bank, portfolio manager, manager of collective assets, fund management company or securities firm.

<sup>3</sup> Portfolio managers shall also state the name and address of the supervisory organisation to which they are subordinated.

<sup>4</sup> Branches and representations of foreign financial service providers in Switzerland shall state their address in Switzerland or provide other necessary contact details.

**Art. 7**            Information on the financial service and the financial instruments  
 (Art. 8 para. 1 and 2 let. a FinSA)

<sup>1</sup> The information on the financial service shall contain details of:

- a. the nature of the financial service, its essential features and functionalities; and
- b. the fundamental rights and obligations which arise from it for the clients.

<sup>2</sup> The information on the risks associated with the financial service shall contain:

- a. in respect of investment advice for individual transactions: details of financial instruments to be acquired or sold;
- b. in respect of portfolio management and investment advice taking account of the client portfolio: a description of the risks arising from the investment strategy for the client assets.

<sup>3</sup> The information on the general risks associated with the financial instrument shall contain details of:

- a. the essential features and functionalities of the financial instruments;
- b. the risks of loss and any obligations arising from the financial instruments for the client.

<sup>4</sup> Where the details specified in paragraphs 1–3 are contained in the key information document or the prospectus, the information may be provided by making the corresponding document available.

**Art. 8** Information on costs

(Art. 8 para. 2 let. a FinSA)

<sup>1</sup> Information on costs shall contain in particular details of the one-time and running costs of the financial service and the costs incurred in connection with the acquisition or disposal of the respective financial instrument.

<sup>2</sup> Where these details are contained in the key information document or the prospectus, reference can be made to the respective document.

<sup>3</sup> Approximate details or bandwidth indications are to be provided of costs which can not be accurately determined in advance or only with a disproportionate amount of effort. If such information can also not be provided or only with a disproportionate amount of effort, this fact must be disclosed and reference made to the risk of additional fees, taxes or other costs.

<sup>4</sup> If several financial service providers are involved in the provision of services, they may agree that one of their number shall provide information on all costs. If no such agreement is made, each financial service provider will provide information on the costs incurred by them individually.

**Art. 9** Information on business affiliations

(Art. 8 para. 2 let. b FinSA)

<sup>1</sup> Financial service providers shall provide information on business associations with third parties insofar as these associations may lead to a conflict of interest in connection with the financial service.

<sup>2</sup> The information shall include details of:

- a. the circumstances giving rise to the conflict of interest;
- b. the risks which the client faces as a result;
- c. the precautions taken by the financial service provider to reduce the risks.

<sup>3</sup> Companies of the group which the financial service provider belongs to are deemed to be third parties for the financial service provider.

**Art. 10** Information on the market offer taken into account

(Art. 8 para. 2 let. c FinSA)

<sup>1</sup> Financial service providers shall inform their client in particular whether the market offer taken into account when selecting the financial instruments comprises only their own or also other financial instruments.

<sup>2</sup> A financial instrument also qualifies as the financial service provider's own if it is issued or offered by companies closely associated with it.

<sup>3</sup> The status of close association is deemed to be met in particular if:

- a. a financial service provider directly or indirectly holds a majority of the shares or voting rights of the offerer or issuer of the financial instrument or otherwise controls the offerer or issuer; or