

# Guidelines on Financial Market Regulation

5 December 2019

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FINMA publishes these guidelines in order to meet its statutory obligation to specify in detail the regulatory principles set out in Art. 7 of the Financial Market Supervision Act (FINMASA) and the Ordinance on the Financial Market Supervision Act.

## Regulatory principles

1. As defined in its statutory mandate, FINMA is an independent supervisory authority. Pursuant to Art. 4 FINMASA, FINMA's objective is to ensure the proper functioning of the financial markets and to protect creditors and customers. It is therefore committed to the competitiveness and sustainability of the financial centre.<sup>1</sup>
2. FINMA regulates only when this is necessary to meet its supervisory goals. FINMA issues technical implementing provisions in its own ordinances where the legislature allows it to do so. In circulars, FINMA sets out its own supervisory practice and describes how it interprets the applicable laws and ordinances with a view to creating legal certainty and ensuring efficient application of the law. Wherever possible, it leaves room for case-specific solutions. FINMA may also recognise self-regulation as a minimum standard.
3. The guiding principles for FINMA regulation are defined through laws and ordinances enacted by the Federal Assembly and the Federal Council. In the financial market sector, responsibility for regulatory projects at the level of laws and Federal Council ordinances rests with the Federal Department of Finance (FDF) and the State Secretariat for International Financial Matters (SIF).
4. As set out in Art. 7 FINMASA, FINMA exercises its regulatory powers only to the extent required by its supervisory objectives and, whenever possible, with a principle-based approach. This principle-based approach delivers solutions which provide scope for future developments; its implementation relies on the individual responsibility of those involved. Differentiated regulation and application of the principle of proportionality are prerequisites for FINMA's risk-based approach to supervision.
5. FINMA regulations are intended to be as neutral as possible in terms of competition and technology and avoid unwanted consequences.
6. FINMA stands for a transparent, predictable and credible regulatory process which involves stakeholders at an early stage. Stakeholders include in particular the providers of financial services and products, the clients of such providers, other market participants, potential

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<sup>1</sup> In accordance with Art. 4 of the Financial Market Supervision Act (FINMASA), financial market supervision has the objectives of "[...] protecting creditors, investors, and insured persons as well as ensuring the proper functioning of the financial market. It thus contributes to sustaining the reputation, competitiveness and sustainability of Switzerland's financial centre."

competitors, and interested parties such as public authorities and academics.

## Regulatory process

7. **Monitoring** – In coordination with the FDF and the Swiss National Bank (SNB), FINMA monitors the macroeconomic environment, the situation on the financial markets, challenges and risks for the Swiss financial centre, national initiatives and international standard-setting work on financial market regulation.<sup>2</sup>
8. **Triggering** – FINMA regulations are generally triggered by amendments to overarching legislation which must then be cascaded down a lower level. Moreover, the legislature may require overarching legislation to be specified in detail in the form of FINMA ordinances. Alternatively, for reasons of transparency and legal certainty, there may be a requirement on the part of FINMA or the parties affected to have the interpretation of financial market law set out in circulars.
9. **Options for action** – FINMA examines the various options for achieving the regulatory objective and the urgency of the matter in question. It looks at the existing scope for action in the overarching legislation as well as alternative measures such as case-by-case decisions and recognised self-regulation. When drafting regulations, consideration is given not only to the supervisory objectives but also to any impact on the costs of those affected and on competition, innovative capacity, the international competitiveness and sustainability of the Swiss financial centre, the varying sizes, complexities, structures, business activities and risks of the supervised entities and the international minimum standards.<sup>3</sup>
10. **Impact analysis** – At an early stage and where practicable, FINMA usually assesses the cost implications of the various regulatory options and weighs them up against the expected benefits. In doing so, it considers the assessment of the consequences of regulations at the level of law or Federal Council ordinance and the practical experience and assessments of those affected. It specifies the impact analysis, if necessary during the regulatory process. The assessment includes qualitative and, where possible, quantitative information. The more important a regulatory project is for the economy and for society at large and the more uncertain its impact, the likelier it is that comprehensive data collection from supervised institutions will be appropriate. This should always be done appropriately and with a sense of proportion.

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<sup>2</sup> See Memorandum of Understanding on financial stability and information-sharing in relation to financial market regulation between the Federal Department of Finance (FDF), the Swiss Financial Market Supervisory Authority FINMA and the Swiss National Bank (SNB) dated December 2019.

<sup>3</sup> See Art. 7 para. 2 FINMASA.

11. **Cooperation with the FDF and the SNB** – FINMA involves the FDF and, where there are common areas of interest, the SNB in its regulatory considerations and work. If FINMA concludes that regulation at Federal level or through a Federal Council ordinance would be necessary for it to fulfil its statutory mandate, it informs the FDF accordingly. FINMA supports the FDF in its regulatory work.
12. **Preliminary consultation** – FINMA consults with stakeholders and interested parties in advance. It investigates the facts, collects the required information, explains the main thrust of the regulation and receives feedback. The exchange with affected parties may also include the need for action and the potential options. Preliminary consultations may take place between those affected, interested parties and FINMA at expert and top level, including regulatory discussions by FINMA's Board of Directors.
13. **Interdepartmental consultation** – FINMA consults the administrative bodies concerned before issuing an ordinance or circular and before recognising self-regulation as a minimum standard pursuant to Article 7 para. 3 FINMASA.
14. **Public consultation** – As a matter of principle, FINMA conducts public consultations on draft regulations, giving those affected and interested parties in particular an opportunity to state their views. The process defined in the Consultation Procedure Act is followed whenever a regulation is put out to consultation. Consultations are conducted in accordance with the provisions of the Ordinance on the Financial Market Supervision Act. In addition to the regulatory texts, FINMA publishes an explanatory report in which it also presents the results of its impact analysis. FINMA publishes the comments received and addresses them in a results report. In exceptional cases, hearings may be waived if no new findings are expected, especially if the overarching legislation leaves no room for manoeuvre.
15. **Coordination of content and timing** – FINMA seeks to achieve consistency in terms of content and timing with existing and other planned regulations, including self-regulation.
16. **Adoption** – Before a regulation is adopted, FINMA weighs up the arguments advanced during consultation, transitional issues and whether pilot projects, test runs, time limits or similar approaches would be appropriate. It publishes adopted regulations on its website in a timely manner.
17. **Transparency regarding scheduling and implementation** – FINMA's website provides information about planned and pending regulatory projects and their status. FINMA plans the implementation of regulations in a timely manner and defines appropriate transitional periods where necessary.
18. **Ex-post evaluation** – FINMA evaluates whether implemented regulations are having the desired impact and whether they need to be

updated or repealed because, for instance, the market failure in question no longer exists or because the overarching regulatory principles have changed. To this end, it also consults interested parties. In the case of documents with a strong technical bias, FINMA specifically analyses the actual impact of practical implementation after a predetermined period of time and, in doing so, takes account of the experience of those affected. Where necessary, FINMA adapts or repeals existing regulations. The results of ex-post evaluations are published.

## Self-regulation

19. **Support** – Self-regulation (in other words, the regulation of financial markets by their participants or by private associations) is supported by FINMA in line with the statutory requirements.
20. **Recognition as a minimum standard** – FINMA's Board of Directors can recognise and enforce self-regulation as a minimum standard. FINMA calls on the self-regulatory associations to adhere to FINMA's fundamental requirements of regulation as well..
21. **Public consultation** – If the content of a self-regulation is of major material significance, FINMA may also provide for public consultation.