Eidgenössische Finanzmarktaufsicht FINMA
Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
Swiss Financial Market Supervisory Authority FINMA

Circular 2010/2
Repo/SLB transactions

Repurchase & reverse repurchase transactions and securities lending & borrowing transactions (Repo/SLB transactions)

Reference:	FINMA Circular 10/2 „Repo/SLB transactions"
Date:	17 December 2009
Entry into force:	30 June 2010
Last amendment:	3 July 2014 [Modifications are indicated by an asterisk (*) and are listed at the end of the document.]
Legal framework:	FINMASA art. 7 sect. 1 lett. b BA art. 3 SESTA art. 10, 11

Addressees																																
BankA			ISA			SESTA	FMIA						CISA										AMLA			Other							
Banks	Financial groups and congl.	Other intermediaries	Insurers	Insurance groups and congl.	Intermediaries	Securities dealers	Trading venue	Central counterparties	Central securities depositories	Trade repositories	Payment systems	Participants	Fund management companies	SICAVs	Limited partnerships for CISs	SICAFs	Custodian banks	Asset manager CISs	Distributors	Representatives of foreign CISs	Other intermediaries	SROs	DSFIs	SRO-supervised institutions	Audit firms	Rating agencies							
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Index

I. Subject and scope of application

In this Circular the Swiss Financial Market Supervisory Authority (FINMA) establishes the rules applicable to securities lending and borrowing transactions with clients (margin no. 4-20) and risk management (margin no. 44). Securities lending and borrowing transactions are referred to below as “SLB transactions”. 1*

The following are not considered clients: banks, securities dealers, fund management companies and insurance companies. 2

This Circular is addressed to banks and securities dealers. 3*

II. Rules pertaining to SLB transactions with clients

A. General declaration and disclosure requirements

Banks and securities dealers that engage in securities borrowing transactions in the capacity of a counterparty or that broker such transactions in the capacity of agents must make advance disclosures to the clients (lenders) about the risks associated with individual transactions in an easy-to-understand manner. Cognisance thereof is to be documented separately or in the SLB contract (margin no. 12). 4

Clients are to be informed of the following in particular: 5

- The client is to be informed as to whether the bank or securities dealer is acting as the borrower and thus as the counterparty (principal) or whether they are acting solely in the capacity of an agent in brokering the transaction with a third party. In the case of brokered unsecured SLB transactions the client is to also be informed whether the bank or the securities dealer is guaranteeing the return of the securities. 6

- The client loses his title to the lent securities. The client only has the right against the borrower of recovery of the same type and quantity of securities; in the event of insolvency or bankruptcy on the part of the latter the client loses his entitlement to the surrender of the securities lent by him (no right of segregation of assets or preferential treatment as a creditor). 7

- In the event of insolvency or bankruptcy on the part of the borrower and any guarantor, the client only has a monetary claim against same in the same value, said claim not being privileged or secured under the depositor protection scheme (art. 37h BA). Only secured SLB transactions benefit from additional backing in the amount of the collateral received. 8

- The proprietary and participation rights and, in particular, the voting rights associated with the individual securities are transferred to the borrower for the duration of the loan (unless agreed otherwise in an individual case). However, the risk associated with any depreciation in value of the securities remains with the client. 9

B. Unsecured SLB transactions

Unsecured SLB transactions with individual investor clients are prohibited. Qualified investors pursuant to art. 10 sect. 3, 3bis and 3ter CISA are not considered individual investor clients. 10

C. The SLB contract and its content

In going about complying with their risk management obligations, banks and securities dealers must ensure that their SLB contracts are designed so that they are effective and legally enforceable. 11

The client must expressly consent in advance to participation in an SLB transaction by way of a contract that is separate of the bank's or securities dealer's general business terms and conditions. Combining this contract with other contracts is permissible. 12

The client is to be afforded the option of excluding specific securities from an SLB transaction. 13

The client's entitlement to compensation payments in lieu of the revenue payable on the lent securities is to be covered by the contractual provisions. 14

Clients are to be remunerated for the securities lent by them (lending fee). The criteria for the calculation of this lending fee are to be established in the contract in a general manner. 15

The client may terminate the SLB contract and individual lending transactions at any time with immediate effect. This shall not apply to cases in which a fixed term is expressly established, with the lending transaction not terminating until the lapse thereof. The timeframes and conditions of the recovery of the same type and quantity of securities are to be established. 16

D. Accounting statements

The bank or securities dealer must provide an accounting to the client covering compensation payments (margin no. 14) and remuneration (margin no. 15) on a periodical basis. 17

The accounting statement is to detail what securities item has been lent for what period of time and what rights the client has to remuneration and compensation payments. The client may demand additional information for calculating his entitlements in a specific case. 18

E. Custody account statements

Lent securities are to be indicated as such in custody account statements. In addition, the client is to be reminded of his ongoing participation in an SLB transaction. 19

F. Register listing

After every SLB transaction involving equity securities, the bank or securities dealer must have a listing or delisting immediately entered in the respective register unless an individual client expressly waives his right to have this done (shares for which no application for registration has been made).[1] 20

[1] This is subject to adaptation as appropriate as the result of the "nominee model" provided for in the context of corporate law reform.

III. Treatment of repo and SLB transactions under liquidity regulations (art. 12 et seq. LO)

Abrogated	21*
Abrogated	22*
Abrogated	23*
Abrogated	24*
Abrogated	25*
Abrogated	26*
Abrogated	27*
Abrogated	28*
Abrogated	29*
Abrogated	30*
Abrogated	31*
Abrogated	32*
Abrogated	33*
Abrogated	34*
Abrogated	35*
Abrogated	36*
Abrogated	37*
Abrogated	38*
Abrogated	39*
Abrogated	40*
Abrogated	41*
Abrogated	42*
Abrogated	43*

IV. Risk management

Banks and securities dealers that engage in unsecured securities borrowing transactions involving client portfolios in the capacity of a counterparty or that broker such transactions in the capacity of agents must have a concept in place with defined standard processes that take account of any conflicts of interest in times of tight liquidity. 44

V. Audit

Audit firms are to review compliance with this Circular pursuant to the requirements of FINMA Circ. 13/3 “Auditing” and record the findings of their audit activities in the audit report submitted by them. 45*

VI. Transition period

A transition period until 31 December 2010 applies to the implementation of margin no. 4-16 with regard to existing SLB transactions with clients. 46

List of modifications

This Circular has been modified as follows:

This modification was adopted on 6 December 2012 and will enter into force on 1 January 2013.

Modified margin no. 45

This modification entered into force on 1 January 2013.

References to art. 16 et seq. BO have been adapted in accordance with the Liquidity Ordinance (LO; SR 952.06) which entered into force on 1 January 2013.

This modification entered into force on 1 June 2013.

References to art. 10 CISA have been adapted in accordance with the modifications which entered into force on 1 June 2013.

This modification was adopted on 3 July 2014 and will enter into force on 1 January 2015.

Modified margin no. 1, 3

Abrogated margin no. 21-43

Details on handling repo and SLB transactions under the liquidity requirements are set out in FINMA Circular 2015/2 "Liquidity risks – banks" as of 1 January 2015.