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**Ordinance  
of the Swiss Financial Market Supervisory Authority  
on Financial Market Infrastructures and Market Conduct  
in Securities and Derivatives Trading  
(FINMA Financial Market Infrastructure Ordinance, FinMIO-  
FINMA)**

of 3 December 2015 (Status as of 26 November 2021)

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*The Swiss Financial Market Supervisory Authority (FINMA),*

based on Article 51 paragraph 2 of the Financial Institutions Act of 15 June 2018<sup>1</sup> (FinIA),

Article 74 paragraph 4 of the Financial Institutions Ordinance of 6 November 2019<sup>2</sup> (FinIO),

Articles 39 paragraph 2, 101 paragraphs 1 and 2, 123 paragraphs 1 and 2 and 135 paragraph 4 of the Financial Market Infrastructure Act of 19 June 2015<sup>3</sup> (FinMIA), and Article 36 paragraph 4 of the Financial Market Infrastructure Ordinance of 25 November 2015<sup>4</sup> (FinMIO),<sup>5</sup>

*hereby decrees:*

**Chapter 1 Record-Keeping and Documenting Requirements**

(Art. 74 para. 4 FinIO; Art. 36 para. 4 FinMIO)<sup>6</sup>

**Art. 1**

<sup>1</sup> Securities firms under FinIA and participants<sup>7</sup> admitted to a trading venue record the orders and transactions which must be recorded under Article 74 FinIO and Article 36 FinMIO in a ledger, regardless of whether or not the securities or derivatives are traded on a trading venue. The ledger may also be divided into journals.<sup>8</sup>

AS 2015 5509

<sup>1</sup> SR 954.1

<sup>2</sup> SR 954.11

<sup>3</sup> SR 958.1

<sup>4</sup> SR 958.11

<sup>5</sup> Amended by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

<sup>6</sup> Amended by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

<sup>7</sup> As most *participants* are legal entities, gender-neutral terminology is not used in this text.

<sup>8</sup> Amended by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

- <sup>2</sup> The following shall be recorded in the ledger for all received orders:
- a. the name of the securities and derivatives;
  - b. the time the order was received;
  - c. the name of the person placing the order;
  - d. the name of the transaction and order type;
  - e. the volume of the order.
- <sup>3</sup> The following shall be recorded in the ledger for completed transactions:
- a. the time of execution;
  - b. the volume of the execution;
  - c. the attained or allocated price;
  - d. the place of execution;
  - e. the name of the counterparty;
  - f. the value date.
- <sup>4</sup> The received orders and completed transactions, regardless of whether they are subject to the reporting duty outlined in Chapter 2, shall be recorded in a standardised format, so that the information can be delivered to FINMA promptly and in its entirety on request.

## Chapter 2 Reporting Duty

(Art. 51 FinIA; Art. 39 FinMIA)<sup>9</sup>

### Art. 2<sup>10</sup> Transactions to be reported

Securities firms under FinIA and participants admitted to a trading venue must report all transactions under Article 75 FinIA and Article 37 FinMIO to the addressee under Article 5.

### Art. 3 Contents of the report

- <sup>1</sup> The report shall contain the following details:
- a.<sup>11</sup> the name of the securities firm subject to the reporting duty in accordance with FinIA or the participant admitted to a trading venue;
  - b. the transaction type (buy/sell);
  - c. the exact name of the securities or derivatives in question;

<sup>9</sup> Amended by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

<sup>10</sup> Amended by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

<sup>11</sup> Amended by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

- d. the volume of the transaction as follows: nominal amount for bonds, units or contracts for other securities and derivatives;
- e. the price;
- f. the date and time of execution;
- g. the value date;
- h. whether it is a proprietary or client transaction;
- i. the designation of the counterparty as a stock exchange member, other securities firm<sup>12</sup>, customer; in the case of transmissions of orders: designation of the party to which the order was transmitted;
- j. the name of the trading venue where the security or derivative was traded, or the notification that the transaction was made outside a trading venue;
- k. for client transactions: a standardised reference enabling the identification of the beneficial owner of the transaction (Art. 37 para. 1 let. d FinMIO and Art. 31 para. 1 let. d FinIO).

<sup>2</sup> For client transactions, it shall further contain a standardised reference enabling the identification of the beneficial owner of the transaction (Art. 37 para. 1 let. d FinMIO and Art. 75 para. 1 let. d FinIO).<sup>13</sup>

#### **Art. 4** Reporting deadline

Transactions shall be reported within the deadlines outlined in the regulations of the trading venue to which the report is addressed.

#### **Art. 5** Report addressee

<sup>1</sup> Securities transactions must be reported to the trading venue where the securities are admitted for trading.

<sup>2</sup> If a security is admitted for trading at more than one trading venue in Switzerland licensed by FINMA, the reporting parties may choose at which trading venue to fulfil their reporting obligations.

<sup>3</sup> The derivatives transactions under Article 75 paragraph 2 FinIO and Article 37 paragraph 2 FinMIO must be reported to the trading venue where the underlying is admitted for trading. If the derivative has more than one security as underlyings, the report may be made to the trading venue where one of the underlyings is admitted for trading.<sup>14</sup>

<sup>4</sup> Trading venues shall have a dedicated office (reporting office) in their organisation for receiving and processing reports.

<sup>12</sup> Term in accordance with Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327). This amendment has been made throughout the text.

<sup>13</sup> Inserted by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

<sup>14</sup> Amended by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

<sup>5</sup> The reporting office shall issue a set of regulations. It may request adequate compensation for any duties commissioned by FINMA. The rates are submitted to FINMA for approval.

## **Chapter 3 OTC Derivatives Transactions for Clearing**

(Art. 101 FinMIA)

### **Art. 6 Principle**

<sup>1</sup> The derivatives categories to be cleared via a central counterparty are listed in Annex 1.

<sup>2</sup> The decision whether to list derivatives categories in Annex 1 is based on whether:

- a. the contract conditions contain the usual legal documents for the sector with the usual contract specifications listed by counterparties;
- b. the operational processes are subject to automated post-trade processing and there are standardised lifecycle events managed in accordance with a generally agreed schedule;
- c. the margin or financial requirements of the central counterparty are adequately proportionate to the risk being mitigated by the obligatory clearing;
- d. the size and depth of the product's market are stable over the long term;
- e. if a participant in a central counterparty defaults, the market segmentation remains sufficiently high;
- f. the number and value of the previously concluded transactions are sufficiently high;
- g. the information required for the formation of prices is readily available on normal commercial conditions;
- h. there is a heightened systemic risk that counterparties may be unable to meet their payment and delivery obligations to each other if there are strong interdependencies between them.

### **Art. 7 Determination of the OTC derivatives for clearing**

<sup>1</sup> When licensing a Swiss central counterparty or recognising a foreign central counterparty, FINMA determines which of the derivatives cleared by the central counterparty are subject to the clearing obligation. FINMA shall take into consideration the criteria under Article 6 paragraph 2 as well as international standards when determining the clearing obligation.

<sup>2</sup> If the central counterparty clears additional derivatives categories subsequently to obtaining a licence or recognition, it shall inform FINMA thereof.

<sup>3</sup> Upon request it must deliver all information to FINMA necessary to determine the derivatives categories subject to the clearing obligation.

## Chapter 4

### Correspondence and Determination of Deadlines in relation to the Disclosure of Shareholdings and Takeovers

#### Art. 8 Correspondence

(Art. 123 para. 1, 139 para. 5 FinMIA)

<sup>1</sup> Notifications and submissions sent by fax or e-mail pertaining to the disclosure of shareholdings and takeovers are admitted in correspondence outside of administrative proceedings and recognised for the purpose of adhering to deadlines.

<sup>2</sup> As a rule, recommendations by the disclosure offices are served upon the parties, applicants and FINMA by fax or e-mail.

<sup>3</sup> The Ordinance of 18 June 2010<sup>15</sup> on Electronic Communication in Administrative Proceedings applies to electronic submissions in administrative proceedings. Submissions to the Takeover Board may also be made by fax.

#### Art. 9 Determination of deadlines

(Art. 123 para. 1 FinMIA)

<sup>1</sup> Any deadline calculated by trading days starts on the first trading day following the trigger event.

<sup>2</sup> Any deadline calculated by weeks ends in the last week on the same day as the day on which the trigger event took place. If this day is not a trading day, the deadline is on the next trading day.

<sup>3</sup> Any deadline calculated by months ends in the last month on the same date as the date on which the trigger event took place. In the absence of such date, the deadline ends on the last day of the last month; if the day is not a trading day, the deadline ends on the next trading day.

<sup>4</sup> Trading days are days on which the relevant stock exchange in Switzerland is open for trading in accordance with its trading calendar.

## Chapter 5 Disclosure of Shareholdings

### Section 1 Notification Duty

#### Art. 10 Principles

(Art. 120 paras. 1 and 3, 123 para. 1 FinMIA)

<sup>1</sup> The beneficial owners of equity securities under Article 120 paragraph 1 FinMIA are subject to the notification duty. A beneficial owner is the party controlling the voting rights stemming from a shareholding and bearing the associated economic risk.

<sup>2</sup> If the voting rights are not exercised directly or indirectly by the beneficial owner, any person who has full discretionary powers to exercise the voting rights is also

<sup>15</sup> SR 172.021.2

subject to the notification duty in accordance with Article 120 para. 3 FinMIA. If the person who has full discretionary powers to exercise voting rights is directly or indirectly controlled, their notification duty is met where the controlling person reports on a consolidated basis. In such case, the controlling person is considered to be subject to the notification duty.<sup>16</sup>

<sup>3</sup> There is no notification duty, if:

- a. notification of reaching a threshold was provided and that threshold is exceeded, without the subsequent threshold being reached or exceeded;
- b. notification of reaching or exceeding a threshold was provided and that threshold is met again, without having reached or exceeded the subsequent threshold;
- c. a threshold is temporarily reached, exceeded or fallen below during a trading day.

#### **Art. 11** Indirect acquisition and indirect disposal

(Art. 120 para. 5, 123 para. 1 FinMIA)

The following cases in particular qualify as an indirect acquisition or indirect disposal of a shareholding:

- a. the acquisition and disposal via a third party in their own name and on behalf of the beneficial owner;
- b. the acquisition and disposal through directly or indirectly controlled legal entities;
- c. the acquisition and disposal of a shareholding which directly or indirectly transfers control of a legal entity which directly or indirectly holds equity securities.

#### **Art. 12** Acting in concert or as an organised group

(Art. 120 para. 1, 121, 123 para. 1 FinMIA)

<sup>1</sup> Any party who coordinates their conduct regarding the acquisition or disposal of shareholdings or the exercising of voting rights with third parties by contract, other organised arrangement or by law, is acting in concert or as an organised group.

<sup>2</sup> Acquisitions and disposals between persons who are acting in concert or as an organised group and have disclosed their total shareholding are exempt from the notification duty.

<sup>3</sup> Changes in the composition of the group and the nature of the arrangement or of the group must be reported.

<sup>16</sup> Amended by No I of the FINMA Ordinance of 26 Jan. 2017, in force since 1 March 2017 (AS 2017 547).

**Art. 13** Triggering of the notification duty  
(Art. 120 paras. 1, 3 and 4, 123 para. 1 FinMIA)

<sup>1</sup> The notification duty under Article 120 paragraph 1 FinMIA is triggered by the emergence of the claim to acquire or dispose of equity securities (binding transaction), irrespective of whether this claim is conditional. The indication of an intended acquisition or disposal does not trigger a notification duty, provided there are no legal obligations associated therewith.

<sup>2</sup> The triggering of the notification duty at the time of the binding transaction under paragraph 1 and an associated disconnection of beneficial owner status and voting entitlement, do not trigger a separate notification duty under Article 120 paragraph 3 FinMIA either for the acquirer or the person disposing of the shareholding.

<sup>3</sup> If a threshold is reached, exceeded or fallen below of as a result of a company with registered office in Switzerland increasing, decreasing or restructuring its share capital, the notification duty is triggered by the correspondent publication in the Swiss Official Gazette of Commerce. In the case of companies with registered office abroad whose equity securities are mainly listed in whole or in part in Switzerland the notification duty is triggered by the publication in accordance with Article 115 paragraph 3 FinMIO.

**Art. 14** Calculation of the positions requiring notification  
(Art. 120 paras. 1 and 3, 123 para. 1 FinMIA)

<sup>1</sup> Any person who reaches, exceeds or falls short of a threshold in one or both of the positions below, must calculate the positions individually and separately and report them simultaneously:

- a. acquisition positions:
  1. shares and equity-related units and voting rights under Article 120 paragraph 3 FinMIA,
  2. conversion and acquisition rights (Art. 15 para. 2 let. a),
  3. granted (written) sales rights (Art. 15 para. 2 let. b),
  4. other equity derivatives (Art. 15 para. 2);
- b. disposal positions:
  1. sales rights (Art. 15 para. 2 let. a),
  2. granted (written) conversion and acquisition rights (Art. 15 para. 2 let. b),
  3. other equity derivatives (Art. 15 para. 2).

<sup>2</sup> The positions requiring notification shall be calculated for companies with registered office in Switzerland based on the total number of voting rights in accordance with the entry in the commercial register. The calculation of the positions requiring notification for companies with registered office abroad shall be based on the publication in accordance with Article 115 paragraph 3 FinMIO.

**Art. 15** Equity derivatives

(Art. 120 paras. 1, 4 and 5, 123 para. 1 FinMIA)

<sup>1</sup> Equity derivatives for the purpose of this Ordinance are instruments whose values are derived, at least partially, from the value or performance of equity securities of companies under Article 120 para. 1 FinMIA.

<sup>2</sup> The following shall be reported:

- a. the acquisition or disposal of convertible and acquisition rights, particularly call options, and of sales rights, particularly put options which are designed for or permit physical settlement;
- b. the granting (writing) of convertible and acquisition rights, particularly call options, and of sales rights, particularly put options which are designed for or permit physical settlement; and
- c. equity derivatives designed for or permitting cash settlement as well as other contracts for difference, including *financial futures*.

<sup>3</sup> The exercise or non-exercise of equity derivatives reported under paragraph 2 must be reported again if it leads to one of the thresholds under Article 120 paragraph 1 FinMIA being reached, exceeded or fallen below.

**Art. 16** Other facts requiring notification

(Art. 120 paras. 1 and 4, 123 para. 1 FinMIA)

<sup>1</sup> A notification duty applies in particular when one of the thresholds under Article 120 paragraph 1 FinMIA is achieved, exceeded or fallen below of:

- a. due to an increase, decrease or restructuring of share capital;
- b. due to the acquisition or disposal of proprietary equity securities by a company;
- c.<sup>17</sup> due to the acquisition and disposal of equity securities for in-house funds in accordance with Article 71 of the Financial Services Act of 15 June 2018<sup>18</sup> (FinSA);
- d. through the proportion of voting rights in the acquisition positions in accordance with Article 14 paragraph 1 letter a 1, alone, whether exercisable or not and regardless of whether the total proportion of voting rights including equity derivatives under Article 15 reaches, exceeds or falls below a threshold;
- e. when transferring equity securities by virtue of the law or following a court or authority ruling.

<sup>2</sup> Changes in information under Article 22 paragraphs 1 letters d and e, 2 letters c, d and f and 3 again trigger a notification duty.

<sup>17</sup> Amended by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

<sup>18</sup> SR 950.1



**Art. 17** Securities lending and similar transactions

(Art. 120 para. 1, 123 para. 1 FinMIA)

<sup>1</sup> Lending transactions and similar transactions, such as repurchase agreements or collateral transactions with transfer of ownership must be reported.

<sup>2</sup> The notification duty is only incumbent on the contracting party acquiring temporary ownership of the securities through such transactions:

- a. for lending transactions: the borrower;
- b. for repurchase agreements: the buyer; and
- c. for collateral transactions: the collateral taker.

<sup>3</sup> On expiry of the transaction, the returning contracting party under paragraph 2 is again subject to a notification duty if a threshold in accordance with Article 120 paragraph 1 FinMIA is reached or fallen below.

<sup>4</sup> Lending transactions and repurchase agreements do not need to be reported if they are processed in a standardised manner via trading platforms for liquidity management purposes.

**Art. 18** Collective investment schemes

(Art. 120 para. 1, 121, 123 para. 1 FinMIA)

<sup>1</sup> The notification duties under Article 120 paragraph 1 FinMIA for shareholdings held by approved collective investment schemes under the Collective Investment Schemes Act of 23 June 2006<sup>19</sup> (CISA) must be met by the licence holder<sup>20</sup> (Art. 5 para. 1 in conjunction with Article 2 paragraph 1 letter d FinIA, Article 13 paragraph 2 letters a–d CISA and Article 15 paragraph 1 letter e in conjunction with Article 120 paragraph 1 CISA).<sup>21</sup>

<sup>2</sup> Fulfilling the notification duty involves:

- a. Notification duties for more than one collective investment scheme of the same licence holder shall be fulfilled comprehensively (i.e. including all collective investment schemes) and for each collective investment scheme if they individually reach, exceed or fall below relevant thresholds.
- b. Fund management companies within a group of companies are not required to aggregate their holdings with the holdings of said group of companies.
- c. The notification duty of externally managed investment companies with variable capital (SICAV) is met by the fund management company.
- d. Each sub-fund of an open-ended collective investment scheme with sub-funds qualifies as an individual collective investment scheme under paragraph 1.

<sup>19</sup> SR 951.31

<sup>20</sup> As most *licence holders* are companies, gender-neutral terminology is not used in this text.

<sup>21</sup> Amended by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

<sup>3</sup> For foreign collective investment schemes not approved for offer which do not depend on a group of companies, the notification duties in Article 120 paragraph 1 FinMIA shall be met by the fund management company or the legal entity itself. The requirements of paragraph 2 apply.<sup>22</sup>

<sup>4</sup> For foreign collective investment schemes not approved for offer which depend on a group of companies, the reporting requirements in Article 120 paragraph 1 FinMIA are met by the group.<sup>23</sup>

<sup>5</sup> The independence of the fund management company or the legal entity is contingent on the following:

- a. *personal independence*: Persons controlling the exercise of the voting right for the fund management company or legal entity act independently of the group parent company and those companies under its control;
- b. *organisational independence*: The group ensures through its organisational structures:
  1. that the group parent company and other companies under its control do not influence the fund management company or legal entity in exercising voting rights either through instructions or by any other method, and
  2. that no information is exchanged or disseminated between the fund management company or legal entity and the group parent company or other companies under its control which could influence the exercise of voting rights.

<sup>6</sup> The group of companies must provide the competent disclosure office with the following documents for those cases under paragraph 3:

- a. a list with the names of the fund management companies or legal entities;
- b. a declaration that the independence requirements in paragraphs 3 and 5 are fulfilled and maintained.

<sup>7</sup> The group of companies must provide the competent disclosure office with details of every change to the list under paragraph 6 letter a.

<sup>8</sup> For those cases under paragraph 3, the competent disclosure office may request further documentation supporting compliance with the independence conditions at any time.

<sup>9</sup> Details of the investor's identity are not required.

<sup>22</sup> Amended by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

<sup>23</sup> Amended by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

**Art. 19** Banks and securities firms

(Art. 123 para. 2 FinMIA)

<sup>1</sup> When calculating their acquisition positions (Art. 14 para. 1 let. a) and disposal positions (Art. 14 para. 1 let. b), banks and securities firms under the FinIA may disregard equity securities and equity derivatives which they hold:<sup>24</sup>

- a. in their trading book, provided their share does not reach 5 per cent of voting rights;
- b. as part of securities loans, collateral transactions or repurchase agreements provided their share does not reach 5 per cent of voting rights;
- c. only for up to two trading days and exclusively for clearing and settling purposes.

<sup>2</sup> The calculation under paragraph 1 is only permitted if there is no intention to exercise the voting rights or to intervene in the management of the issuer<sup>25</sup> in any other way, and the voting share does not exceed 10 per cent of the voting rights.

<sup>3</sup> Equity securities for in-house funds under Article 71 FinSA shall be attributed to the bank's or securities firm's proprietary holdings.<sup>26</sup>

**Art. 20** Takeover proceedings

(Art. 123 para. 1 FinMIA)

<sup>1</sup> From the publication of the pre-announcement or of the prospectus (offer prospectus) of the takeover offer until the end of the extension period, the following persons are subject exclusively to the notification duties of the Takeover Board based on Article 134 paragraph 5 FinMIA:

- a. the offeror<sup>27</sup>;
- b. persons acting in concert or as an organised group with the offeror;
- c. persons under Article 134 paragraph 1 FinMIA holding at least 3 per cent of the voting rights directly, indirectly or in concert with third parties, whether exercisable or not, in the target company or, if applicable, in another company whose equity securities are being offered in exchange;
- d. persons designated by the Takeover Board in accordance with Article 134 paragraph 3 FinMIA.

<sup>2</sup> Cases requiring notification which occur during the takeover proceedings must be reported in accordance with the provisions of this Ordinance after expiry of the extension period.

<sup>3</sup> Paragraphs 1 and 2 do not apply to the buy-back of proprietary equity securities.

<sup>24</sup> Amended by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

<sup>25</sup> As most *issuers* are legal entities, gender-neutral terminology is not used in this text.

<sup>26</sup> Amended by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

<sup>27</sup> As most *offerors* are legal entities, gender-neutral terminology is not used in this text.

**Art. 21** Preliminary ruling  
(Art. 123 paras. 1 and 3 FinMIA)

<sup>1</sup> Requests for a preliminary ruling regarding the applicability of a notification duty must be submitted to the competent disclosure office in good time prior to the transaction.

<sup>2</sup> The competent disclosure office may exceptionally admit requests for already concluded transactions.

## **Section 2 Notification and Publication**

**Art. 22** Contents of the notification  
(Art. 123 para. 1 FinMIA)

<sup>1</sup> The notification contains the following details:

- a. the proportion of voting rights, type and number of all equity securities or equity derivatives under Article 15 and the associated voting rights held by the persons involved. When falling below the threshold of 3 per cent, the notification to that effect may be given without specifying the actual voting proportion;
- b. the trigger event, such as:
  1. acquisition,
  2. disposal,
  3. transfer of voting rights with full discretionary power (Art. 120 para. 3 FinMIA),
  4. exercising or non-exercising of equity derivatives under Article 15,
  5. securities lending and similar transactions under Article 17,
  6. change in share capital,
  7. court or authority ruling,
  8. acting in concert,
  9. change in the composition of a group, or
  10. change in notified details;
- c. date of the triggering of the notification duty;
- d. transfer date of the equity securities, if different to the triggering date of the notification duty;
- e. last name, first name and place of residence or corporate name and registered office of the acquiring, disposing or associated persons.

<sup>2</sup> In the following instances, the information in paragraph 1 shall be supplemented with:

- a.<sup>28</sup> in the cases outlined in Article 120 paragraph 3 FinMIA:
1. concerning the notification of the person with full discretionary powers over the exercise of the voting rights: the proportion of voting rights covered by the authorisation to exercise,
  2. where the notification is not submitted by the person with full discretionary powers to exercise voting rights, but by the person who directly or indirectly controls the person with full discretionary powers to exercise voting rights (consolidated reporting): a respective reference;
- b. when acting in concert or as an organised group under Article 12: the details in accordance with Article 121 FinMIA and Article 12 paragraph 3 of this Ordinance;
- c. for equity derivatives under Article 15 with an International Securities Identification Number (ISIN): the ISIN;
- d. for equity derivatives under Article 15, without an ISIN: the relevant details, including:
1. the identity of the issuer,
  2. the underlying,
  3. the subscription ratio,
  4. the strike price,
  5. the exercise period,
  6. the exercise type;
- e.<sup>29</sup> for collective investment schemes in accordance with Article 18 paragraph 3: confirmation that the requirements under Article 18 paragraph 5 are met;
- f. for transactions under Article 17:
1. the proportion of voting rights, type and number of transferred equity securities or equity derivatives under Article 15 and the associated voting rights,
  2. the nature of the transaction,
  3. the agreed time of return or, whether the party subject to the notification duty under Article 17 paragraph 2 or the counterparty has discretion as to the time of return.

<sup>3</sup> In the event of an indirect acquisition or indirect disposal (Art. 11), the notification must contain the full details of the person making the direct acquisition or disposal as well as of the beneficial owner.

<sup>28</sup> Amended by No I of the FINMA Ordinance of 26 Jan. 2017, in force since 1 March 2017 (AS 2017 547).

<sup>29</sup> Correction of 26 Nov. 2021 (AS 2021 775).

**Art. 23**      Supplementary details

(Art. 123 para. 1 FinMIA)

Every notification to the disclosure office and company must contain the details of a contact person including their last name, first name, address, telephone number and e-mail address.

**Art. 24**      Notification deadlines

(Art. 123 para. 1 FinMIA)

<sup>1</sup> The notification must be received by the company and competent disclosure office within four trading days following the triggering of the notification duty. The disclosure office shall supply the requisite forms.

<sup>2</sup> In the event of an acquisition through inheritance, the period under paragraph 1 is twenty trading days.

<sup>3</sup> The company must publish the notification within two trading days of receiving it.

<sup>4</sup> For transactions in proprietary securities, the company must provide notification to the competent disclosure office and publish the notification within four trading days following the triggering of the notification duty.

**Art. 25**      Publication

(Art. 123 para. 1, 124 FinMIA)

<sup>1</sup> The company publishes the notification pursuant to Article 22 via the electronic publishing platform of the competent disclosure office. It must also refer to the previous publication relating to the same notifying person.

<sup>2</sup> If a company fails to publish a notification or if it publishes an incomplete or erroneous notification, the disclosure offices may publish the necessary information without delay and invoice the company for the costs incurred through the substitute measure. The disclosure offices may publish the reasons for the substitute measure. The company must be informed in advance.

**Art. 26**      Exemptions and easing provisions

(Art. 123 paras. 1 and 2, 124 FinMIA)

<sup>1</sup> Exemptions or easing provisions to the duty of notification and publication may be granted, provided there is good cause for doing so, and particularly if the transactions:

- a. are of short-term nature;
- b. do not entail any intention to exercise the voting right; or
- c. are subject to conditions.

<sup>2</sup> Requests to this effect must be made to the competent disclosure office prior to the transaction in question.

<sup>3</sup> Requests for completed transactions shall only be admitted by the competent disclosure office as an exception and in extraordinary circumstances.

### Section 3 Monitoring

#### Art. 27 Disclosure office (Art. 123, 124 FinMIA)

<sup>1</sup> Stock exchanges have a dedicated office (disclosure office) for monitoring the duty of notification and publication. The disclosure office also processes requests for a preliminary ruling (Art. 21) and for exceptions and easing provisions (Art. 26).

<sup>2</sup> If the establishment of such an office proves excessive, this role may be transferred to another stock exchange; the regulations governing the cooperation must be submitted to FINMA for approval.

<sup>3</sup> The disclosure offices keep the public informed of their activities. They may issue communications and regulations and publish information required to fulfil the purpose of the law in an appropriate format. As a rule, recommendations are published in anonymous form.

<sup>4</sup> The disclosure offices may request adequate compensation for any duties commissioned by FINMA and for processing requests. The rates must be submitted to FINMA for approval.

#### Art. 28 Procedure (Art. 123, 124 FinMIA)

<sup>1</sup> Requests for a preliminary ruling (Art. 21) and for exemptions or easing provisions (Art. 26) must contain the relevant facts, motion and statement of reasons. The facts must be documented appropriately and have to include all the details outlined in Article 22.

<sup>2</sup> The disclosure office issues recommendations to the applicants; these must be substantiated and submitted to FINMA.

<sup>3</sup> The disclosure office may address its recommendations to the company. Fundamental interests of the applicant, such as business secrets, remain reserved.

<sup>4</sup> FINMA issues a decision, if:

- a. it wishes to rule on the matter itself;
- b. the applicant rejects or fails to observe the recommendation; or
- c. the disclosure office approaches it for a decision.

<sup>5</sup> If FINMA wishes to decide on the matter itself, it shall make its intentions known within five trading days.

<sup>6</sup> A rejected recommendation must be substantiated by the applicant in a submission to FINMA within five trading days. FINMA may extend this deadline on request.

<sup>7</sup> In cases under paragraph 4, FINMA shall immediately initiate proceedings and inform the disclosure office and parties to that effect. It shall also instruct the disclosure office to submit its files.

**Art. 29**            Investigations  
(Art. 8, 31, 123 para. 1 FinMIA)

FINMA may instruct the disclosure offices to conduct investigations.

**Chapter 6**    **Duty to make an Offer**  
**Section 1**    **Duty to make an Offer**

**Art. 30**            Applicable provisions  
(Art. 135 para. 4 FinMIA)

In addition to Art. 135 FinMIA and the following provisions, Articles 125–134, 136–141, 152 and 163 FinMIA and the implementing provisions of the Federal Council and Takeover Board pertaining to public takeover offers apply to the duty to make an offer.

**Art. 31**            Principle  
(Art. 135 paras. 1 and 4 FinMIA)

The duty to make an offer is incumbent on any person who acquires equity securities directly or indirectly and, by doing so, exceeds the legal or statutory threshold under Article 135 paragraph 1 FinMIA (threshold).

**Art. 32**            Indirect acquisition  
(Art. 135 paras. 1 and 4 FinMIA)

Article 120 paragraph 5 FinMIA and Article 11 of this Ordinance apply by analogy to those holdings of the target company requiring an offer when making an indirect acquisition.

**Art. 33**            Acting in concert or as an organised group  
(Art. 135 paras. 1 and 4, 136 para. 2 FinMIA)

Article 12 paragraph 1 applies to persons acting in concert or as an organised group to acquire holdings requiring an offer with respect to the target company with the aim of controlling the target company.

**Art. 34**            Calculation of the threshold  
(Art. 135 paras. 1 and 4 FinMIA)

<sup>1</sup> The threshold is calculated based on the total number of voting rights in accordance with the entry in the commercial register.

<sup>2</sup> When determining whether the threshold has been exceeded, all equity securities are taken into account which are owned by the acquiring person or whose voting rights have been transferred to the acquiring person in another way, regardless of whether the voting rights may be exercised.

<sup>3</sup> Voting rights restricted to a power of attorney granted solely for the purposes of representation at one general meeting are excluded from the calculation.



**Art. 35** Definition of the duty to make an offer

(Art. 135 paras. 1 and 4 FinMIA)

<sup>1</sup> The duty to make an offer must be extended to all types of listed equity securities of the target company.

<sup>2</sup> It must also include new equity securities created through equity derivatives, if the associated rights are exercised prior to expiry of the extension under Article 130 paragraph 2 FinMIA.

**Art. 36** Transfer of the duty to make an offer to the acquiring person

(Art. 135 para. 4, 136 para. 2, 163 FinMIA)

If the person previously entitled to the equity securities was subject to the duty to make an offer for all equity securities on exceeding the threshold of 50 per cent of voting rights pursuant to the transitional regulation of Article 163 FinMIA, this duty passes over to the person acquiring a holding between 33⅓ and 50 per cent of the voting rights, if that person is exempted from the duty to make an offer under Article 136 paragraph 2 FinMIA.

**Art. 37** Resurgence of the duty to make an offer

(Art. 135 para. 4 FinMIA)

A person who reduces a holding of 50 per cent or more of the voting rights in a company acquired prior to 1 January 1998 to under 50 per cent must make an offer under Article 135 FinMIA, if the said person's holding subsequently exceeds the threshold of 50 per cent.

**Art. 38** Duty to make an offer and conditions

(Art. 135 paras. 1 and 4, 136 para. 2 FinMIA)

<sup>1</sup> The duty to make an offer may not be made subject to conditions unless there is good cause for doing so.

<sup>2</sup> Good cause is particularly present if:

- a. an official authorisation is required for the acquisition;
- b. the equity securities to be acquired do not procure voting rights; or
- c. the offeror wants the specifically mentioned economic substance of the target company to remain unchanged.

**Art. 39** Time period

(Art. 135 paras. 1 and 4 FinMIA)

<sup>1</sup> The mandatory offer must be made within two months of exceeding the threshold.

<sup>2</sup> The Takeover Board may grant an extension if there is good cause for doing so.

## Section 2 Exceptions to the Duty to make an Offer

### Art. 40 General exceptions

(Art. 135 para. 4, 136 FinMIA)

<sup>1</sup> The duty to make an offer lapses, if:

- a. the threshold is exceeded during a restructuring resulting from a capital reduction immediately followed by a capital increase for the purpose of offsetting a loss;
- b.<sup>30</sup> banks or securities firms under FinIA acting independently or as a syndicate acquire equity securities as part of an issue and undertake to sell the number of equity securities exceeding the threshold within three months after exceeding the threshold and the sale actually takes place within this period.

<sup>2</sup> The claim to an exception under paragraph 1 or Article 136 paragraph 2 FinMIA has to be notified to the Takeover Board. The Takeover Board shall initiate an administrative procedure within five trading days if it has reason to suspect that the conditions in paragraph 1 are not met.

<sup>3</sup> The Takeover Board may extend the period under paragraph 1 letter b upon application if there is adequate justification for doing so.

### Art. 41 Particular exceptions

(Art. 135, 136 para. 1 FinMIA)

<sup>1</sup> In the cases outlined under Article 136 paragraph 1 FinMIA and in other justified cases, a person obliged to make an offer may be exempted from the duty to make an offer if there is good cause for doing so.

<sup>2</sup> Further justified cases under Article 136 paragraph 1 FinMIA are particularly those cases where:

- a. the acquiring person cannot control the target company because another person or group has a higher voting share;
- b. a member of an organised group in accordance with Article 136 paragraph 1 letter a FinMIA exceeds the threshold individually; or
- c. the previous acquisition was made indirectly (Art. 32), provided this acquisition is not one of the main purposes of the transaction and the interests of the target company's shareholders remain preserved.

<sup>3</sup> When granting exceptions conditions may be attached; in particular the acquiring person may be made subject to certain obligations.

<sup>4</sup> The conditions under paragraph 3 transfer to a legal successor who acquires a shareholding exceeding 33⅓ per cent even if the legal successor is exempt from the duty to make an offer under Article 136 paragraph 2 FinMIA.

<sup>30</sup> Amended by Annex No 5 of the FINMA O of 4 Nov. 2020 on Financial Institutions, in force since 1 Jan. 2021 (AS 2020 5327).

### Section 3 Determining the Offer Price

#### Art. 42 Stock exchange price

(Art. 135 paras. 2–4 FinMIA)

<sup>1</sup> The offer price must be at least equal to the stock exchange price for every type of equity security in the target company.

<sup>2</sup> The stock exchange price in accordance with Article 135 paragraph 2 letter a FinMIA corresponds to the volume-weighted average price of the on-order-book trades of the last 60 trading days prior to the publication of the offer or to the pre-announcement.

<sup>3</sup> It must be adjusted to negate the effects of significant price influences triggered by special events, such as a dividend distribution or capital transactions, to which it is subject during this period. An audit firm in accordance with Article 128 paragraph 1 FinMIA must confirm the adequacy of the adjustment and show the calculation basis in its report.

<sup>4</sup> If the listed equity securities are not liquid prior to the publication of the offer or the pre-announcement, the audit firm has to carry out a valuation of the company. The report shall outline the valuation methods and the basis for the valuation as well as provide an explanation of whether and, if so, to what extent, the setting of the minimum price is to deviate from the stock exchange price or company value.

#### Art. 43 Price of the previous acquisition

(Art. 135 paras. 2–4 FinMIA)

<sup>1</sup> The price of the previous acquisition under Article 135 paragraph 2 letter b FinMIA corresponds to the highest price paid by the buyer for equity securities in the target company over the past 12 months prior to the publication of the offer or to the pre-announcement.

<sup>2</sup> It must be defined separately for each type of equity security. The price of the most expensive equity security relative to the nominal value shall form the basis for setting the appropriate ratio between the prices of different types of equity securities under Article 135 paragraph 3 FinMIA.

<sup>3</sup> The equity securities in the target company acquired through the exchange of securities as part of the previous acquisition shall be calculated at their value at the time of the exchange.

<sup>4</sup> If the person buying or selling has added other benefits in addition to the main payment for the previous acquisition, and in particular if the person has provided guarantees or benefits in kind, the price for the previous purchase shall be reduced or increased correspondingly.

<sup>5</sup> An audit firm (Art. 128 FinMIA) must review the valuation of the equity securities under paragraph 3 and the adequacy of the increase or decrease under paragraph 4 and present its calculation details in its report.

**Art. 44** Indirect prior acquisition

(Art. 135 paras. 2–4 FinMIA)

<sup>1</sup> If the prior acquisition was indirect within the meaning of Article 32 in conjunction with Article 11 letter c, the offeror must disclose in the offer prospectus the share of the total price paid attributable to the target company's equity securities.

<sup>2</sup> The valuation of this share must be audited by an audit firm.

**Art. 45** Payment of the offer price

(Art. 135 paras. 2–4 FinMIA)

<sup>1</sup> The offer price may be paid in cash or exchanged against securities.

<sup>2</sup> Payment against exchange of securities is permitted provided full payment in cash is offered as an alternative.

**Art. 46** Valuation of securities

(Art. 135 paras. 2–4 FinMIA)

Article 42 paragraphs 2–4 apply to determining the value of the securities offered in exchange.

**Art. 47** Exceptions

(Art. 135 paras. 2–4 FinMIA)

The Takeover Board may grant exemptions from the regulations of this section (Art. 40–44) to the offeror in individual cases if there is good cause for doing so.

## **Chapter 7 Cooperation between FINMA, the Takeover Board and Stock Exchanges**

**Art. 48**

(Arts. 122, 123 para. 1 FinMIA; Art. 39 para. 1 FINMASA)

<sup>1</sup> FINMA, the Takeover Board, the stock exchange's registration and disclosure offices and trading supervisory bodies shall provide each other, either proactively or on request, with all information and relevant documentation required by these authorities and offices or bodies for performing their respective duties. In particular, they shall inform each other if they have grounds for suspecting a violation of the law requiring investigation by the relevant authority, office or bodies.

<sup>2</sup> In doing so, the authorities, offices and bodies involved shall observe official, professional and business secrecy and only use the information and relevant documentation received for the performance of their legal duties.

## Chapter 8 Final Provisions

### Art. 49 Repeal and amendment of other legislation

The repeal and amendment of other legislative instruments are regulated in Annex 2.

### Art. 50 Transitional provision on the disclosure of shareholdings

<sup>1</sup> Disclosure notifications made under existing law retain their validity. Cases which arose prior to the FinMIA coming into force and which need to be disclosed due to that Act and this Ordinance must be reported by 31 March 2016.

<sup>2</sup> Cases requiring notification which arise after this Ordinance comes into force may initially be reported and published under the current law, including a notice to that effect, up to 31 March 2016. The notification under the new legal regime must be submitted to the competent disclosure office and the company by 31 March 2016.

<sup>3</sup> A disclosure office that does not have an electronic publishing platform when this Ordinance comes into force must have such a platform available and fully operational by 1 January 2017.

<sup>4</sup> Until an electronic publishing platform becomes operational in accordance with paragraph 3, the company publishes its disclosure notifications in the Swiss Official Gazette of Commerce and in at least one of the prominent electronic media used for disseminating stock exchange information. The relevant point in time in determining compliance with the deadline under Article 24 paragraph 2 is the communication of the disclosure notification to the electronic media. Such disclosure notification must be sent to the disclosure office at the same time.

### Art. 50a<sup>31</sup> Transitional Provision to the Amendment of 26 January 2017

The duty to report under Article 10 para. 2 FinMIO-FINMA in its version amended on 26 January 2017 must be met by 31 August 2017.

### Art. 51 Commencement

This Ordinance comes into force on 1 January 2016.

<sup>31</sup> Inserted by No I of the FINMA Ordinance of 26 Jan. 2017, in force since 1 March 2017 (AS 2017 547).

*Annex I*<sup>32</sup>  
(Art. 6 para. 1)

## Clearing of Derivatives Categories via a Central Counterparty

### I. OTC interest rate derivatives

Type	Reference inter-est rate	Settlement cur-rency	Term	Type of settle-ment currency	Option	Type of nominal value
1. Basis-Swap	EURIBOR	EUR	28D–50Y	same currency	no	constant or variable
2. Basis-Swap	LIBOR	GBP	28D–50Y	same currency	no	constant or variable
3. Basis-Swap	LIBOR	JPY	28D–30Y	same currency	no	constant or variable
4. Basis-Swap	LIBOR	USD	28D–50Y	same currency	no	constant or variable
5. Fixed-to-Float	EURIBOR	EUR	28D–50Y	same currency	no	constant or variable
6. Fixed-to-Float	LIBOR	GBP	28D–50Y	same currency	no	constant or variable
7. Fixed-to-Float	LIBOR	JPY	28D–30Y	same currency	no	constant or variable
8. Fixed-to-Float	LIBOR	USD	28D–50Y	same currency	no	constant or variable
9. Forward Rate Agreement	EURIBOR	EUR	3D–3Y	same currency	no	constant or variable
10. Forward Rate Agreement	LIBOR	GBP	3D–3Y	same currency	no	constant or variable
11. Forward Rate Agreement	LIBOR	USD	3D–3Y	same currency	no	constant or variable
12. Overnight Index Swap	EONIA	EUR	7D–3Y	same currency	no	constant or variable
13. Overnight Index Swap	FedFunds	USD	7D–3Y	same currency	no	constant or variable
14. Overnight Index Swap	SONIA	GBP	7D–3Y	same currency	no	constant or variable

<sup>32</sup> Amended by No 1 of the FINMA Ordinance of 3 May 2018, in force since 1 Sept. 2018 (AS 2018 2387).

**II. OTC credit derivatives**

Type	Subtype	Region	Reference index	Settlement cur- rency	Series	Term
1. Index CDS	Index, not tranchéd	Europe	iTraxx Europe Main	EUR	From 17	5Y
2. Index CDS	Index, not tranchéd	Europe	iTraxx Europe Cross- over	EUR	From 17	5Y

*Annex 2*  
(Art. 49)

## **Repeal and Amendment of other Legislation**

### **I**

The FINMA Stock Exchange Ordinance of 25 October 2008<sup>33</sup> is repealed.

### **II**

The following legislative instruments are amended as follows:

...<sup>34</sup>

<sup>33</sup> [AS 2008 6521, 2011 6285, 2013 1117]

<sup>34</sup> The amendments may be consulted under AS 2015 5509.