**Audit points for rules of conduct towards clients for the provision of financial services**

**Overview**

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| --- | --- |
| **Subject** | **Business risks/risk management: risks from indifferent business / rules of conduct towards clients for the provision of financial services**   * **execution only** * **investment advisory** * **portfolio management** * **distribution of collective investment schemes** |
| **Audit depth** | [Audit/critical assessment] |
| **Regulations**  (non-exhaustive list) | * Art. 11 Stock Exchange and Securities Trading Act (SESTA) * Art. 5 para. 3 Federal Act on Collective Investment Schemes Act (CISA) * Art. 24 paras. 1 and 3 CISA * Art. 34a Collective Investment Schemes Ordinance (CISO) * Art. 12 Banking Ordinance (BO) * FINMA Circular 2010/2 Repo/SLB transactions * FINMA Circular 2013/9 Distribution Collective Investment Schemes * Self-regulation recognised as a minimum standard as set out in FINMA Circular 08/10, including: * Portfolio Management Guidelines from Swiss Bankers Association of 6 November 2013 * Guidelines from Swiss Bankers Association on informing investors about structured products of September 2014 * Code of Conduct from Swiss Bankers Association for Securities Dealers / Governing Securities Transactions of 22 October 2008 (“best execution”) * Guidelines from Swiss Bankers Association on the duty to keep documentary records in accordance with Art. 24 para. 3 CISA * SFAMA Guidelines on the Distribution of Collective Investment Schemes of 22 May 2014 in connection with SFAMA Transparency guidelines of 22 May 2014 * SFAMA Code of Conduct of 7 October 2014   *These regulations are to be considered in conjunction with the general legal requirements for adequate organization (“operations”), requirements for proper business conduct and FINMA Circular 2008/24 “Supervision and internal control – banks” (respectively FINMA Circular 2017/'1 "Corporate Governance" since 1st July 2017) .* |
| Suitability | Compliance with conduct rules for individual portfolio management, investment advisory services, execution of transactions and distribution of collective investment schemes. |
| Potential risk sources linked to compliance with conduct rules (suitability risks) | E.g. sales targets, compensations, retrocessions, differences between client risk profile and portfolio risk profile, risk disclosure and documentation, concentration risks, client segmentation, best execution, securities lending and borrowing, distribution of financial instruments, attendance at trainings, suitability systems, product information, client complaints and their management, regulatory changes impacting suitability, etc. |
| **Sign-offs:** | |  |  |  |  | | --- | --- | --- | --- | | **Sign-offs** | **Name** | **Function** | **Date** | | Preparer: | [Name] | [Assistant/Senior/Manager Senior Manager/Partner] | [DD MM YYYY] | | Reviewer: | [Name] | [Senior/Manager Senior Manager/Partner] | [DD MM YYYY] | |

**This is a standard work programme to in principle be applied to the above-mentioned audit fields in the event of interventions in accordance with the audit strategy (margin no. 28 et seqq. FINMA Circular 13/3). The information in the column “Conduct rules for” below indicates whether a particular audit procedure has to be performed for the respective audit field.**

**It is the audit team’s responsibility to adapt the standard work programme to the audited institution’s specific situation (size, business model, organisation, processes, risk exposure, etc.). If the procedures cannot be carried out in full, the underlying rationale must be explained in the working paper.**

**Overall conclusion**

| **Topic** | **Information/description:** |
| --- | --- |
| Overall conclusion | |  |  | | --- | --- | | **Confirmation in audit report:** | **Conclusion:** | | Confirmation that the operational organization related to the management, controlling and reporting of suitability risks in □ individual portfolio management, □ investment advisory services, □ execution of transactions and □ distribution of collective investment schemes was adequate and appropriate.[[1]](#footnote-1) | **Yes** (Audit/critical assessment) / **No** | | Confirmation that the internal processes for compliance with conduct rules for □ individual portfolio management, □ investment advisory services, □ execution of transactions and □ distribution of collective investment schemes were adequate and appropriate, and complied with where the audit depth was “audit”.[[2]](#footnote-2) | **Yes** (Audit/critical assessment) / **No** | | Confirmation of the appropriateness of the measures taken to provide training and further education in □ individual portfolio management, □ investment advisory services, □ executing transactions and □ distribution of collective investment schemes. [[3]](#footnote-3) | **Yes** (Audit/critical assessment) / **No** | |
| Summary of significant findings (See details below.) | [Summary of significant findings] |
| Audit areas, results and work performed by Internal Audit relied on by the audit firm (including audit firm’s own assessment). | [Description] |

**Work programme for banks – suitability**

| **Conduct rules for** | | | | **No.** | **Topic** | **Procedures for audit depth  “critical assessment”** | **Additional procedures for audit depth “audit”** | **Procedures performed/ findings**  **(including statistics on random sample size and files giving cause for objections from the auditors, and the recommendations they made).** | **WP ref.:** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Individual portfolio management | Investment advisory services | Execution of transactions (execution-only activities) | Distribution of collective investment schemes |
| *Confirmation that the operational organization related to the management, controlling and reporting of suitability risks in* □ *individual portfolio management,* □ *investment advisory services,* □ *execution of transactions and* □ *distribution of collective investment schemes was adequate and appropriate.*  *Bestätigung, dass die Betriebsorganisation zur Bewirtschaftung, Kontrolle und Rapportierung der Suitability-Risiken in den Bereichen* □ *individuelle Vermögensverwaltung,* □ *Anlageberatung,* □ *Transaktionsausführung und* □ *Vertrieb kollektiver Kapitalanlagen angemessen war.*  *Confirmation que l’organisation opérationnelle en matière de gestion, contrôle et reporting des –risques de « suitability », dans les domaines* □ *gestion de fortune individuelle,* □ *conseil en placement,* □ *exécution de transactions et* □ *distribution de placements collectifs était adéquate et appropriée.* | | | | | | | | | |
| **X** | **X** | **X** | **X** |  | **Process for managing  suitability risks in general** | *Assess the adequacy of the methods used to identify, measure, manage and monitor suitability risk, considering the size and relevance of individual portfolio management, investment advisory services, execution of transactions and distribution of collective investment schemes, notably:*  Obtain internal regulations, guidelines, manuals and job descriptions, and assess their adequacy in terms of suitability risk management. |  |  |  |
| **X** | **X** | **X** | **X** | Assess the adequacy of executive management involvement in handling suitability risk by reviewing minutes and relevant reportings (e.g. approval of internal regulations, handling of client complaints). | Inspect a risk-based selection of client complaints or other detected and internally reported suitability risk issues and assess reasonableness of the decisions taken by the competent bodies. |  |  |
| **X** | **X** | **X** | **X** |  | **Internal controls** | *Assess the adequacy of the design of the institution’s internal control system related to suitability of individual portfolio management, investment advisory services, execution of transactions and distribution of collective investment schemes, notably:*  Assess through enquiry and review of relevant documents (policies, internal directives, processes) the adequacy of the design of the internal control system:   * integrated control activities in the suitability work processes and systems (e.g. pre-alerts at point of sale, etc. to ensure preventive pre-trade checks); * processes for compliance with suitability standards incl. internal guidelines * adequate integration of independent risk functions (risk control and/or compliance) in the process of suitability risk monitoring * appropriate monitoring of external asset managers (in particular alertness for churning and investments in products in which the external asset manager is self-interested) | Test key controls on a risk-based basis. |  |  |
|  |  |  | **X** | * appropriate integration of monitoring external distribution points (incl. monitoring requirements for delegation to CISA sub-distributors) in the control regime. |  |  |
| **X** | **X** | **X** | **X** |  | **Reporting** | *Assess through enquiry and review of relevant documents the adequacy of internal reporting and escalation procedures related to suitability risks in general, notably:* |  |  |  |
| **X** | **X** | **X** | **X** | Assess through enquiry and review of relevant documents that suitability compliance is part of the permanent reporting of the compliance function. | Perform procedures on a sample basis to get evidence of non-compliance cases being adequately reported. |  |  |
| **X** | **X** | **X** | **X** | Assess through enquiry and review of relevant documents that suitability risks are part of the permanent reporting of the risk control function. | Inspect a reporting sample to establish whether appropriate information about suitability risks is included. |  |  |
| **X** | **X** | **X** | **X** | Assess through enquiry and review of relevant documents that internal audit adequately addressed suitability issues in its audit plan (risk-oriented). |  |  |  |
| **X** | **X** | **X** | **X** | Assess through enquiry and review of relevant documents the adequacy of the suitability management reporting to the executive management and board of directors. | Verify whether a risk-based selection of reportings cover different suitability issues (potential risk sources in conduct rule compliance), whether they are adequately reflected in the reporting to the executive management and board of directors and whether the governing bodies adhered to their monitoring duties. |  |  |
| *Confirmation that the internal processes for compliance with conduct rules for □ individual portfolio management, □ investment advisory services, □ execution of transactions and □ distribution of collective investment schemes were adequate and appropriate, and complied with where the audit depth was “audit”.*  *Bestätigung, dass die internen Arbeitsprozesse zur Einhaltung der Verhaltenspflichten gegenüber Kunden bezüglich □ individueller Vermögensverwaltung, □ Anlageberatung, □ Transaktionsausführung und □ Vertrieb kollektiver Kapitalanlagen angemessen waren und im Fall der Prüftiefe „Prüfung“ eingehalten wurden.*  *Confirmation, que les processus internes en matière de respect des devoirs de comportement envers la clientèle relatifs à la* □ *gestion de fortune individuelle,* □ *au conseil en placement,* □ *à l’exécution de transactions et à* □ *la distribution de placements collectifs étaient appropriés et que, en cas d’étendue d’audit « audit », -ont été respectés.* | | | | | | | | | |
| **X** | **X** | **X** |  |  | **Assessment of contractual relationships** | Assess through enquiry and review of relevant documents the appropriateness of processes for verifying the type of contractual client relationships and their revision if client needs have changed with time (e.g. individual portfolio management, portfolio-oriented investment advisory services, selective investment advisory services, pure execution of transactions). |  |  |  |
| **X** | **X** |  |  |  | **Client risk profiles**  Applies to individual portfolio management and investment advisory services[[4]](#footnote-4) | Assess through enquiry and review of relevant documents the appropriateness of processes for preparing and updating client risk profiles and investment strategies. | * Portfolio management/investment advisory services[[5]](#footnote-5): test a risk-based sample if client risk profiles were established for all individual clients and are updated regularly (i.e. new and existing clients). * Portfolio management/investment advisory services[[6]](#footnote-6): Test a risk-based sample for reasonableness of client risk profiles’ structure and plausibility of its content. * Portfolio management: Test a risk-based sample of investment strategies for adherence to client risk profiles. |  |  |
| **X** | **X** |  |  | Assess through enquiry and review of relevant documents appropriateness of processes for defining portfolio risk profiles as well as for product analysis/product classification (new product approval process, product risk rating methodology) and their regular assessment (based on suitable, combining factors such as creditworthiness, value at risk, liquidity, product complexity). | Test a risk based sample for reasonableness of product classification and its regular assessment. |  |  |
| **X** | **X** |  |  | Assess through enquiry and review of relevant documents the appropriateness of processes to determine and regularly monitor conformity between client risk profiles/investment strategies and portfolio risk profile. | Examine for a risk-based sample if discrepancies between client risk profiles, investment strategies and portfolio risk profile exist, the appropriateness of the dedicated reporting and of the measures taken for solving identified discrepancies. |  |  |
| **X** | **X** |  |  |  | **Portfolio diversification** | Assess through enquiry and review of relevant documents the appropriateness of internal policies and procedures for portfolio diversification at client portfolio level and of monitoring (e.g. max. share for each financial instrument, max. share per issuer, max. share per industry, country,  and currency). |  |  |  |
| **X** |  |  |  |  |  | Test a risk-based sample of client portfolios to get evidence for compliance with internal diversification rules. |  |  |
|  | **X** |  |  |  |  | Test a risk-based sample to establish whether portfolio diversification has been considered when rendering advisory services. |  |  |
| **X** | **X** | **X** | **(X)[[7]](#footnote-7)** |  | **Best execution** | Assess through enquiry and review of relevant documents the appropriateness of internal guidelines (documentation), systems and control processes for best execution of client orders. | Obtain relevant documents and inspect a sample of executions of client orders. Get evidence about best execution in terms of place, timing and quantity. |  |  |
| **X** | **X** | **X** |  |  | **Securities lending and borrowing (SLB)** | Assess through enquiry and review of relevant documents the appropriateness of processes and contract templates in terms of compliance with requirements and prohibitions under the SLB. | Inspect the SLB contracts, accounting statements and custody account statements on a sample basis in order to verify compliance with regulation. |  |  |
| **X** | **X** | **X** | **X** |  | **Risk disclosure** | Assess through enquiry and review of relevant documents the appropriateness of standardized instruments and processes for providing information on risks to clients, incl. documentation (sales and advisory processes). | Perform procedures on a sample basis to get evidence of correct and complete risk disclosure. |  |  |
|  | **(X)[[8]](#footnote-8)** |  | **X** |  | **Written records** | Assess through review of relevant documents the appropriateness of standardized instruments and processes for establishing written records in accordance with Article 24 para. 3 CISA and Article 34a CISO. | Inspect samples of written records (Article 24 para. 3 CISA, Article 34a CISO). |  |  |
|  | **X** | **X** |  |  | **Simplified prospectuses for own structured products** | Assess through enquiry and review of relevant documents:  Legal conformity in accordance with Article 5 para. 2 CISA and technical regulations on simplified prospectuses of own structured products. Free of charge offering in accordance with Article 5 para. 3 CISA. | Inspect a sample of simplified prospectuses to verify whether they comply with Article 5 para. 2 CISA and technical self-regulation, and verify that they are made available free of charge. |  |  |
|  | **X** |  | **X** |  | **Distribution in line with authorization procedures** | Assess through enquiry and review of relevant documents appropriateness of authorization guidelines for product distribution. Complex financial instruments can only be distributed by suitably qualified employees. | Perform control testing on a risk-based basis to get evidence that complex financial products are distributed by suitably qualified employees. |  |  |
| **X** | **X** |  | **X** |  | **Retrocessions** | Assess through enquiry and review of relevant documents:   * assurance of compliance with relevant provisions set out in the Swissbanking “Portfolio Management Guidelines” on portfolio managers’ reimbursement (retrocessions) * measures taken by the institution to handle retrocession in case of investment advisory and/or execution only services * assurance of a transparent disclosure of retrocessions received as a  distributor. | Inspect on a risk-based basis the documentation used to inform clients on the existence and extent of retrocessions received by the bank (incl. general conditions) and check them for adequacy and correctness. |  |  |
| *Confirmation of the appropriateness of the measures taken to provide training and further education in* □ *individual portfolio management,* □ *investment advisory services,* □ *executing transactions and* □ *distribution of collective investment schemes.*  *Bestätigung, dass die Massnahmen im Bereich der Aus- und Weiterbildung bezüglich* □ *individueller Vermögensverwaltung,* □ *Anlageberatung,* □ *Transaktionsausführung und* □ *Vertrieb kollektiver Kapitalanlagen angemessen waren.*  *Confirmation que les mesures portant sur la formation (initiale et continue) en matière de* □ *gestion de fortune individuelle,* □ *conseil en placement,* □ *exécution de transactions et* □ *distribution de placements collectifs étaient appropriées.* | | | | | | | | | |
| **X** | **X** | **X** | **X** |  | **Training and further  education** | Assess through enquiry and review of relevant documents the appropriateness of the training programme and/or certifications for client advisors and those with client contact, including the transfer of expert knowledge on:   * financial instruments (incl. product complexity, product risks, product specifications) * conduct requirements (application of internal and external regulations), internal standards (e.g. ethical standards, client segmentation) * internal processes and internal systems.   Assess through enquiry and review of relevant documents the appropriateness of the policy to refresh one’s knowledge/further education on a regular basis. |  |  |  |
| **X** | **X** | **X** | **X** | Assess through enquiry and review of relevant documents if employee participation at internal or external courses is documented and monitored. | Perform controls testing on a risk-based basis. |  |  |

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1. Confirmation applies to the audit fields covered effectively. Please check the appropriate box. [↑](#footnote-ref-1)
2. Confirmation applies to the audit fields covered effectively. Please check the appropriate box. [↑](#footnote-ref-2)
3. Confirmation applies to the audit fields covered effectively. Please check the appropriate box. [↑](#footnote-ref-3)
4. Applies to investments advisory services where asset universe includes collective investment schemes. [↑](#footnote-ref-4)
5. Applies to investments advisory services where asset universe includes collective investment schemes. [↑](#footnote-ref-5)
6. Applies to investments advisory services where asset universe includes collective investment schemes. [↑](#footnote-ref-6)
7. Applies to exchange traded funds (ETFs). [↑](#footnote-ref-7)
8. Applicable where there are no written advisory agreements (see FINMA Circular 2013/9 “Distribution of Collective Investment Schemes”). [↑](#footnote-ref-8)