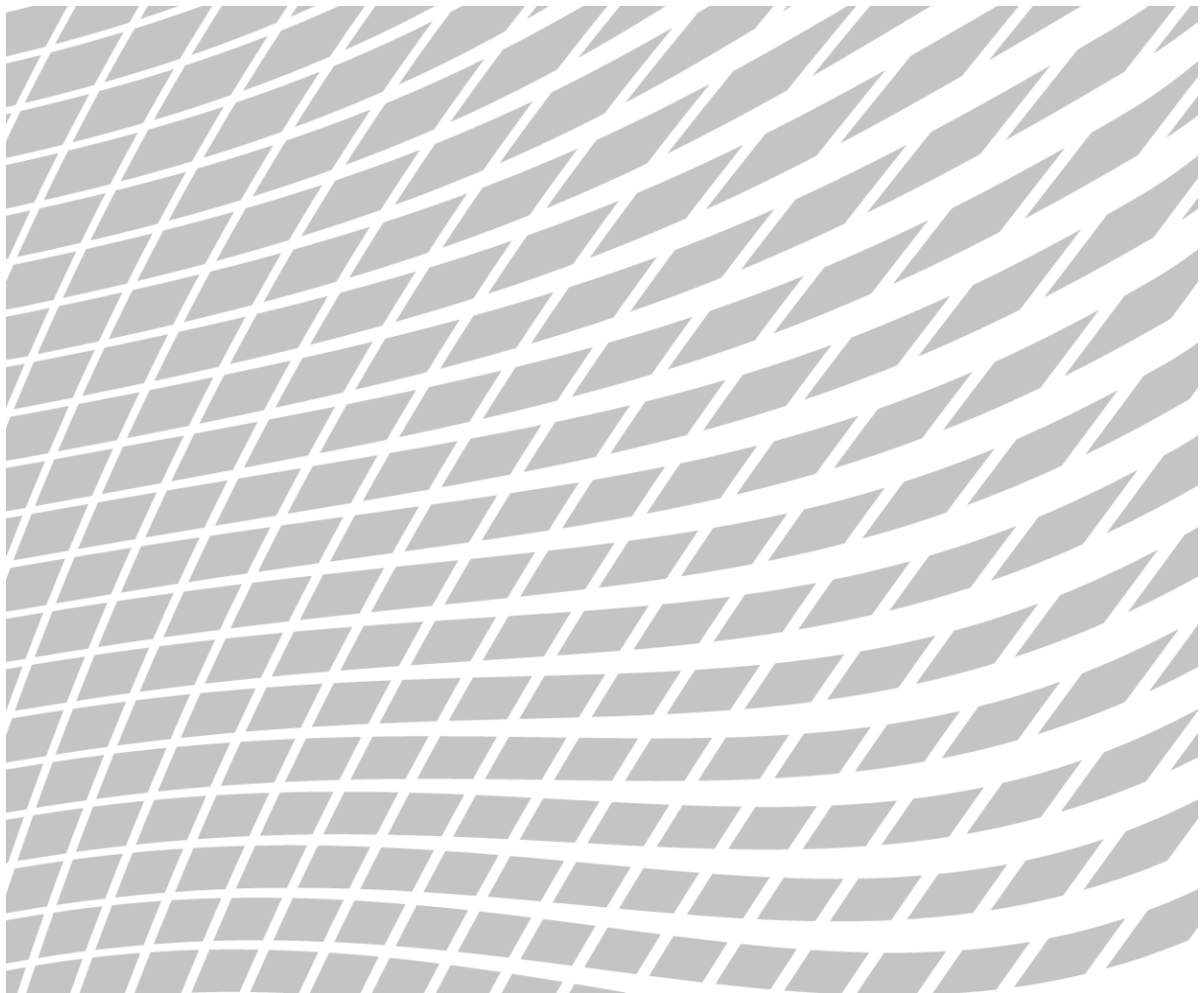


August 2009

International administrative assistance in stock exchange matters



Key points

This FINMA report was largely drafted by its legal predecessor the SFBC. To align the text with the current legal situation, FINMA has adapted it in accordance with the changes to the Banking Act and the Stock Exchange Act, which entered into force at the start of 2009 with the Financial Market Supervision Act.

International administrative assistance in securities matters is an important bridge between the increasingly global activities of financial market players and market supervision, which is still carried out on a national basis. FINMA has always clearly stated that it is willing to work together with foreign financial market supervisory authorities to help them apply their national supervisory legislation. It expects the same assistance from these supervisory bodies when it requests information itself, what it regularly does.

The global and cross-border business model of many banks and securities traders and their need to invest their assets under management in large foreign capital markets lead to numerous transactions by these players in foreign markets, either on their own account or (more important) on the account of their clients. Such transactions may be subject to monitoring by foreign financial market supervisory authorities. FINMA is therefore an important partner for these authorities. Article 38 of the Stock Exchange Act permits effective administrative assistance in stock exchange matters, taking into account the interests of both the foreign financial supervisory authorities and the clients affected by the administrative assistance.

Article 38 of the Stock Exchange Act requires a legal examination before client information can be transferred to foreign authorities. This automatically involves the relevant procedural rights. These proceedings use a considerable amount of FINMA's resources. Not all clients, but certainly a large proportion of them, wish a procedural protection even if the courts have approved administrative assistance in similar cases.

This necessarily delays the exchange of information. Nonetheless, the administrative assistance provided by FINMA is not any slower overall than that of other countries' supervisory authorities.

FINMA's willingness to cooperate with foreign supervisory authorities is internationally recognised. However, some features of the Swiss system that are an essential part of the client procedure, such as informing clients about information requests and the resulting risk of collusion in specific cases, have come in for criticism. FINMA is therefore making an active effort to find solutions in compliance with current procedural law.