

FINMA Guidance

03/2020

Exemptions for supervised institutions due to the COVID-19 crisis

7 April 2020

1 Background

The impact of the COVID-19 pandemic on financial markets and the real economy remains significant and is associated with a great deal of uncertainty. In this connection, FINMA refers to the measures taken by the Swiss government and the National Bank as well as FINMA Guidance 2/2020 published on 31 March 2020.

In this guidance FINMA communicates further exemptions for supervised institutions as well as certain clarifications pertaining to the banking sector. The exemptions concern the insurance sector and anti-money laundering regulations.

These selective exemptions are intended to help the supervised institutions overcome the crisis.

2 Smoothing of the yield curves in connection with SST modelling

Since the start of the COVID-19 pandemic, there has been a sharp increase in volatility, particularly for certain yield curves. As the SST is calculated on a specific date, this volatility can result in large fluctuations in the SST. A smoothing of the yield curves over a period of 10 days reduces these fluctuations significantly, without masking important market signals. Upon request, FINMA is therefore willing to accept a 10-day average of the yield curves as the calculation basis for the SST. Such a choice cannot be reversed within a calendar year and must be disclosed accordingly.

3 Annual supervisory duties as of 30 April 2020 for insurance companies

Insurance companies must meet the following supervisory obligations by 30 April 2020:

Regular reporting as defined in Article 25 para. 3 ISA: Insurance companies (primary insurers) as well as insurance groups and conglomerates are obliged to submit their annual report as well as their supervisory report for the previous financial year to FINMA by 30 April at the latest (Art. 25 para. 3 of the Insurance Supervision Act [ISA; SR 961.01], margin no. 41 of FINMA Circular 2016/4 "Insurance groups and conglomerates"). Failure to meet this deadline is normally treated as a criminal offence.

SST reporting: They are also obliged to draw up a report by 30 April each year on the calculation of the target capital and the risk-bearing capital and to submit this to FINMA (SST calculation and SST report, Art. 53 paras. 1 and 2 of the Insurance Supervision Ordinance [ISO; SR 961.011], margin nos. 152 and 153 of FINMA Circular 2017/3 “SST”).

Financial condition report: Insurance companies, insurance groups and conglomerates have to publish a report on their financial condition as part of their supervisory reporting by 30 April at the latest on their website (Art. 111a paras. 1 and 3 as well as 203a ISO).

3.1 Extension of the deadline

If it is not possible for insurance companies, insurance groups and conglomerates to submit and/or publish the mentioned reports on time this year due to the COVID-19 pandemic, this deadline will be extended until 31 May 2020 upon notice being given to FINMA. FINMA must receive the notice in advance, i.e. before 30 April 2020. In such cases, a violation of Article 86 para. 1 let. c ISA on grounds of the late submission of the regular reporting will not be prosecuted.

3.2 Reduced SST report

In relation to the SST report, margin nos. 154 ff. FINMA Circ. 17/3 define the content requirements for the SST report. Due to the COVID-19 pandemic, FINMA is willing to accept an SST report with reduced content this year. The remaining minimum requirements for the SST report will be communicated to the insurance companies in the next few days. This is an option; full SST reporting is still possible.

4 Simplified identification under AMLA

The measures relating to the COVID-19 pandemic are also having an effect on the onboarding of new clients by financial intermediaries. Anti-money laundering regulations provide that new clients must identify themselves by presenting their identity document. Video or online identification is possible, but many financial intermediaries have not made use of this so far and implementation in existing processes is not always possible at short notice.

Pursuant to Article 17 of the Anti-Money Laundering Act (AMLA; SR 955.0) in conjunction with Article 3 para. 2 of the FINMA Anti-Money Laundering Ordinance (AMLO-FINMA; SR 955.033.0) FINMA may grant facilitations to the application of the due diligence requirements. Based on these provisions, FINMA is granting a facilitation for new business relationships

entered into before **1 July 2020**: it is extending the 30-day period set out in Article 45 of the Swiss Banks' Code of Conduct with Regard to the Exercise of Due Diligence (CDB 20) to 90 days in cases where the identification document's authenticity has not been confirmed. This relaxation can be extended or adjusted by FINMA as needed.

4.1 Financial intermediaries to whom the CDB applies

Article 45 CBD 20 already provides that in exceptional cases, if this is necessary so as not to interrupt the ordinary course of business, an account may already be used if only particular information and / or documents are not available or particular documents have not been provided in the appropriate form and, on the basis of a risk-based assessment, the application of this exemption is deemed appropriate. In such cases, it should be ensured that sufficient information regarding the identity of the contracting partner and the beneficial owner or controlling person is available.

This provision can be applied to new business relationships for the time being, such that they can be entered into with a simple copy of the identification document. Regarding the lack of confirmation of authenticity (not regarding any other missing documents or information, which must be considered on a case-by-case basis), the COVID-19 pandemic is generally recognised as a situation within the meaning of Article 45 of CDB 20 that requires by way of exception that a business relationship already be utilised, so as not to interrupt the ordinary course of business. For business relationships with increased risks (unlike those without increased risks), however, it must continue to be assessed and documented on a case-by-case basis whether this application of the exception is acceptable in view of the associated money laundering risks. The confirmation of authenticity must, regardless of the risk category of the relationship, be presented within 90 days (instead of 30 days in accordance with Art. 45 of CDB 20).

4.2 Supervised SROs

A self-regulatory organisation can also grant a facilitation as described in this guidance. This need not be approved in advance, provided that it does not go further than FINMA's rules in any way.

5 Further information for banks

5.1 Reduction of the relief in the leverage ratio calculation in the event of dividend distributions

Institutions whose capital relief is to be reduced as a result of dividend distributions as stated in Guidance 02/2020 are requested to proceed as follows. The calculation basis for the leverage ratio is to be reduced by the amount of the dividend payment in CHF divided by:

- 3% in the case of non-systemically important banks;
- 8% in the case of non-systemically important banks that apply the small banks regime in accordance with Articles 47a-47e of the Capital Adequacy Ordinance (CAO; SR 952.03);
- the bank-specific Tier 1 leverage ratio requirement between 4.5% and 5% in the case of systemically important banks.

The maximum reduction is the amount of the relief as a result of central bank deposits being excluded.

In disclosure table LR1, the value is to be determined in row 7 "Other adjustments" taking into account the reduction of the relief and a corresponding comment on the reduction is to be included. In the LERA form of the capital statement, the entries in rows 1.7 and 2.1.1 are to be adjusted according to the reduction.

Companies that are part of a FINMA-supervised financial group or Swiss sub-financial group of a foreign financial group are exempt from reducing the relief in the leverage ratio calculation in the event of a dividend distribution if

- either the dividend distribution is to a supervised Swiss parent company, or
- the dividend distribution is to an (unsupervised) Swiss parent company within the supervised group or sub-group, and no distribution from the group or sub-group to a third party takes place.

5.2 Treatment of COVID-19 credits for financial accounting purposes

Credits that are granted under the COVID-19 ordinance on joint and several guarantees published on 25 March 2020 (COVID-19 credits) are to be disclosed in the position "Amounts due from customers" (Annex 1 let. A Banking Ordinance; SR 952.02).

The division according to type of collateral required in the appendix “Presentation of collateral for loans / receivables and off-balance-sheet transactions, as well as impaired loans / receivables” in accordance with margin no. 27 ff. Appendix 4 to FINMA Circular 2020/1 “Accounting – banks” is to be carried out as follows:

- Credits of up to CHF 500,000 which are fully guaranteed are to be disclosed under “other collateral”.
- Credits in excess of CHF 500,000 with 85% guarantee are to be disclosed as follows:
 - 85% as “other collateral”.
 - The remaining 15% is to be disclosed in one of the following categories, depending on the type of collateral: “secured by mortgage”, “other collateral” and “unsecured”.

The assessment of what counts as “collateral” for the purposes of FINMA Circ. 20/1 is based on margin no. 34 Appendix 4 FINMA Circular 20/1.

5.3 Treatment of COVID-19 credits in the interest risk report

COVID-19 credits have a certain repricing maturity, as does any SNB COVID-19 refinancing facility claimed. These must therefore be reported in the interest risk report using form ZIR1_CHF under Category I positions in rows 28–30 (or 28–31). Due to the low interest rate (with little present value effect), which can be adjusted by the FDF annually, the remaining period can be used for the repricing maturity. The refinancing facility is to be reported in rows 59–61 (or 59–62). The relevant maturity band is 1–3 months.