

Circular 2008/17

Exchange of information between SROs and FINMA

Exchange of information between SROs and FINMA regarding affiliations, exclusions and withdrawals of membership of financial intermediaries

Reference:	FINMA Circ. 08/17 "Exchange of information between SROs and FINMA"
Date:	20 November 2008
Entry into force:	1 January 2009
Last amendment:	20 October 2010 [Modifications are indicated by an asterisk (*) and listed at the end of the document.]
Concordance:	previously AMLCA Circ. 2006/1 "Exchange of Information" of 10 April 2006
Legal framework:	FINMASA Articles 7 para. 1 let. b, 29 AMLA Articles 2 para. 3, 18 ff., 26, 27 AMLO Article 11
Appendix:	Legal framework

Adressees							
BankA	ISA	FinIA	FMIA	CISA	AMLA	Other	
Banks							
Financial groups and congl.							
Other intermediaries							
Insurers							
Insurance groups and congl.							
Intermediaries							
Portfolio managers							
Trustees							
Managers of collective assets							
Fund management companies							
Investment firms (proprietary trading)							
Investment firms (non propriety trading)							
Trading venues							
Central counterparties							
Central securities depositories							
Trade repositories							
Payment systems							
Participants							
SCA Vs							
Limited partnerships for CISs							
SICAFs							
Custodian banks							
Representatives of foreign CISs							
Other intermediaries							
SRO					X		
SRO-supervised institutions					X		
Audit firms							
Rating agencies							

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I. Introductory remarks

It is the task of FINMA to ensure that all those who operate as professional financial intermediaries in the non-banking sector either join a self-regulatory organisation (SRO) recognised by FINMA in a timely manner or are licenced by it. 1

In order to fulfil this task in an efficient manner, FINMA is also dependent on relevant information on possible illegal financial intermediaries from other authorities, market participants and SROs. SROs frequently have access to information regarding financial intermediaries joining, withdrawing or being expelled that is useful to FINMA for its supervisory tasks. 2

The basic exchange of information between SROs and FINMA is governed by Art. 26 and 27 of the Anti-Money Laundering Act (AMLA; SR 955.0). FINMA is also authorised to request all information and documentation from the SROs to fulfil its tasks (Art. 29 of the Financial Market Supervision Act [FINMASA; SR 956.1]). 3

This Circular is issued pursuant to the aforementioned legal provisions and specifies the exchange of information as required by law and expected by FINMA for the purpose of fulfilling the tasks incumbent upon it, this exchange of information pertaining to 4

- affiliations to an SRO including
 - withdrawal of an application for membership by the applicant,
 - rejection of an application for membership by an SRO,
- expulsion of a member by an SRO and
- withdrawal of a member from an SRO.

SROs must disclose to applicants and withdrawing or expelled members that they are making notification to FINMA of their decision. In addition, SROs are also expected to inform those concerned about the legal framework regarding the duty of objection, Article 11 of the Ordinance of 11 November 2015 on Anti-Money Laundering (AMLO; SR 955.01) and the penalty provisions applicable in the event that a financial intermediary operates without a licence. For a short summary of the framework and a description of FINMA's practice concerning withdrawals and expulsions, please refer to the annex to this Circular. 5

II. Affiliation of financial intermediaries to SROs

SROs are to report all new members in their quarterly reports to FINMA. Ad hoc notification to FINMA of affiliations may be in the interest of financial intermediaries when third parties inquire with FINMA about their regulatory status. 6

In addition to the quarterly reports, SROs are to notify FINMA immediately of financial intermediaries who it definitively knows to be or must assume of violating their obligations pursuant to Art. 11 para. 1 let. b AMLO. When filing a report the SRO is to include all relevant information known to it. 7

III. Withdrawal of an application for membership

SROs are to notify FINMA immediately of any withdrawn applications for membership and include the reasons given by the applicant for withdrawing the application. 8

If an SRO definitively knows or must assume that a financial intermediary, having withdrawn its application for membership, is or has been in violation of Art. 11 para. 1 let. b AMLO, it is to report this to FINMA in the context of reporting as described above, and to include all relevant information known to it. 9

IV. Rejection of an application for membership

If an SRO rejects an application for membership, it is to report this to FINMA immediately upon issuing its first-level ruling and to include the reasons, if any have been given, on which this ruling is based. 10

If an SRO definitively knows or must assume that a financial intermediary whose membership application has been rejected is or has been in violation of Art. 11 para. 1 let. b AMLO, it is to report this to FINMA in the context of reporting as described above, and to include all relevant information known to it. 11

V. Withdrawal of a member from an SRO

SROs are to report all withdrawals of members in their quarterly reports to FINMA. 12

In addition to the quarterly reports, SROs are to notify FINMA immediately of the lapse of membership by virtue of a member's cancellation of membership in the SRO in the event that the SRO definitively knows or must assume the ex-member of operating as a financial intermediary on a professional basis. The SRO is to include the ex-member's notice of cancellation of membership. 13

VI. Expulsion of a member from an SRO

SROs are to notify FINMA immediately after issuing a first-level ruling, provided that the appeal, if any, has been deprived of its suspensive effect, or after the final first-level ruling or arbitration decision in other cases, upon the expulsion ruling including the reasons, if any, on which it is based. 14

Legal framework

I. Legal framework

A. Financial intermediation on a professional basis in the non-banking sector

The Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector (AMLA; SR 955.0) defines the duties of financial intermediaries. In the non-banking sector only financial intermediaries operating on a professional basis are subject to the provisions of the Anti-Money Laundering Act (Art. 2 para. 3 AMLA). The conditions under which financial intermediaries are deemed to be operating on a professional basis are set out in the AMLO. 1

B. Duties to be complied with when changing from a non-professional to a professional financial intermediary activity

Art. 11 AMLO defines the duties with which a natural or legal person must comply who changes from a non-professional to a professional financial intermediary activity and as such falls under the AMLA for the first time: 2*

- The financial intermediary must immediately comply with the duties of due diligence pursuant to chapter 2 of the AMLA (Art. 11 para. 1 let. a AMLO);
- Within two months following a change to another SRO, the financial intermediary must either submit an application for SRO membership or apply for a licence to FINMA to operate on a professional basis (Art. 11 para. 1 let. b AMLO).

In addition, until they have affiliated to an SRO or have been granted a FINMA licence, such financial intermediaries are prohibited from carrying out business activities which essential to maintain the value of the assets (Art. 11 para. 2 AMLO). 3*

C. Supervision by FINMA

Financial intermediaries pursuant to Art. 2 para. 3 AMLA who are not members of an SRO are subject to direct supervision by FINMA. Pursuant to Art. 24 para. 1 FINMASA, FINMA may conduct on-the-spot inspections or instruct an audit firm to carry out such inspections. 4

D. Measures imposed to restore legal compliance

Pursuant to Art. 31 ff. FINMASA and Art. 20 AMLA, in the event of violations of the AMLA and illegal activities in particular, FINMA is empowered to initiate the requisite measures to restore legal compliance including having illegal financial intermediaries liquidated or struck off the Commercial Register. 5

E. Penalty provisions sanctioning financial intermediation without a licence

Anyone who engages in financial intermediation on a professional basis in the non-banking sector pursuant to Art. 2 para. 3 AMLA without being affiliated to an SRO or without being licenced by FINMA as provided for in Art. 14 AMLA is subject to Articles 11 para. 2 and 12 para. 2 AMLO deemed to be operating illegally and is liable to a custodial sentence of up to three years or the 6*

Legal framework

payment of a fine (Art. 44 FINMASA).

F. Withdrawal and expulsion obligations for SRO members

Withdrawal and expulsion obligations for SRO members are defined in Article 12 AMLO. 6.1*

II. Practice of FINMA

Abrogated 7*

Abrogated 8*

Abrogated 9*

Abrogated 10*

The title “Federal Act of 10 October 1997 on Combating Money Laundering and Terrorist Financing in the Financial Sector (AMLA)” (SR 955.0) replaces “Federal Act of 10 October 1997 on Combating Money Laundering in the Financial Sector (AMLA)” (SR 955.0). This amendment was inserted in margin no. 1 of the appendix.

The title “Ordinance of 18 November 2009 on the Professional Practice of Financial Intermediation (VBF)” replaces “Ordinance of the Swiss Financial Market Supervisory Authority of 20 August 2002 on the Professional Practice of Financial Intermediation as defined in the Anti-Money Laundering Act (VBAF-FINMA)” (SR 955.20). This modification is incorporated into this document.

References to the VBF in this circular have been updated with the relevant articles from the revised Anti-Money Laundering Ordinance (AMLO; SR 955.01), which came into force on 1 January 2016.

The appendix to this circular has been modified as follows:

References to the VBF in this circular have been updated with the relevant articles from the revised Anti-Money Laundering Ordinance (AMLO; SR 955.01), which came into force on 1 January 2016. The following margin numbers have therefore been amended:

newly inserted margin no.	6.1
modified margin nos.	2, 3, 6
abrogated margin nos.	7–10
Other changes	margin no. 6.1 (new title); new appendix title