

Insurance - Switzerland

FINMA circular on market conduct rules extended to apply to insurers

Contributed by **BADERTSCHER Rechtsanwälte AG**

November 19 2013

Introduction
Insurance industry
Organisational requirements
FINMA
Comment

Introduction

Following the entry into force of the new Swiss rules on insider dealing and manipulation in the revised Stock Exchange Act and the implementation of the Stock Exchange Ordinance on May 1 2013, (1) the Financial Market Supervisory Authority (FINMA) conducted a consultation process for an amended circular. The revised circular (2013/8) – which entered into force on October 1 2013 – contains rules on market conduct. Unlike in the European Union, which has two distinct directives (2009/138/EC for corporate governance and good conduct and 2003/6/EC on insider dealing and market manipulation), the Swiss market conduct rules for securities trading now also apply to insurance companies.

Insurance industry

In its position paper filed during the consultation process, the Swiss Insurance Association raised concerns about the extension of the rules of conduct valid for securities brokers and other financial intermediaries to the insurance industry. The association argued that FINMA could not rely on a valid statutory basis for such extension. In particular, the Insurance Supervisory Act does not empower FINMA to extend the rules contained in other financial market laws or circulars to the insurance sector. Likewise, the (revised) Stock Exchange Act does not justify any extension of its provisions to the insurance industry. The Swiss Insurance Association further argued that no foreign laws exist which declare the observance of rules of securities and stock exchange supervision to be part of governance in terms of insurance supervision.

Organisational requirements

Since insurers now fall under the scope of the new provisions on insider information and market manipulation, their organisational requirements are affected. However, the rules stipulated by the circular are clearly aimed at the regulation of securities dealers; a one-size-fits-all regulation was not intended. The requirements depend on the size and structure of the company concerned.(2) Insurers must therefore take all organisational measures necessary to fulfil the duties laid down by the new provisions of the Stock Exchange Act and the circular. The necessary measures to be determined by a risk assessment are as follows:

- Insider information must be handled in a structured manner, so that any unlawful conduct can be avoided or detected;
- Employees and other relevant persons must be supervised and monitored during personal transactions;
- Information barriers (Chinese walls) must be introduced where appropriate;
- Watch lists and restricted lists which clarify secret information and who possesses it must be introduced; and
- Transactions which do not appear to be in line with the rules of the circular must be documented.

In addition, all telephone calls of all employees working in securities trading must be recorded and appropriate review and notification duties must be installed.

FINMA

FINMA has the right to:

- demand information;

Authors

Markus Dörig



Alexandra Bösch



- issue and publish declaratory decisions;
- name and shame (ie, publish a declaratory decision); and
- seize profits.

For supervised institutions, FINMA may even impose an occupational ban, in a worst-case scenario, .

Comment

While the insurance industry is sceptical, it remains to be seen what the practical impact on insurers newly submitted to the revised circular will be. Nevertheless, insurers are advised to assess their risk and determine the organisational requirements arising from the circular. The organisational measures must be implemented by January 1 2015 and a first assessment conducted by April 1 2014. Since this assessment may overlap with existing duties – such as the notification duty for the Swiss solvency test (see Circular 2008/44) – insurers and insurance groups or conglomerates might choose to file only one report covering all relevant aspects.

For further information on this topic please contact [Markus Dörig](#) or [Alexandra Bösch](#) at BADERTSCHER Rechtsanwälte AG by telephone (+41 44 266 20 66), fax (+41 1 266 20 70) or email (doerig@b-legal.ch and boesch@b-legal.ch). The BADERTSCHER Rechtsanwälte AG website can be accessed at www.b-legal.ch.

Endnotes

- (1) Articles 33e and 33f of the Stock Exchange Ordinance and Articles 54 and the following of the Stock Exchange Act.
- (2) See Page 27 of the report on the consultation process, August 29 2013.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Online Media Partners



© Copyright 1997-2014
Globe Business Publishing Ltd