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Federal Act on Financial Services (Financial Services Act, FIDLEG)

dated 15 June 2018

The Federal Assembly of the Swiss Confederation,

based on Articles 95, 97, 98 and 122 paragraph 1 of the Federal Constitution, and having considered the Federal Council Dispatch of 4 November 2015,

decrees:

Title 1: General Provisions

Art. 1 Purpose and subject matter

¹ This Act seeks to protect the clients of financial service providers and to establish comparable conditions for the provision of financial services by financial service providers and therewith contributes to the strengthening of the reputation of the Swiss financial center.

² To this end, it establishes the requirements for honesty, diligence and transparency in the provision of financial services and governs the offering of financial instruments.

Art. 2 Scope of application

¹ This Act applies to all of the following, irrespective of their legal form:

- a. financial service providers;
- b. client advisers;
- c. producers and issuers of financial instruments.

² This Act does not apply to:

- a. the Swiss National Bank;
- b. the Bank for International Settlement;
- c. occupational pension schemes and other institutions that serve the aim of occupational pensions (occupational pension schemes), as well as paternal foundations (paternal welfare foundations);

- employers who manage the assets of their occupational pension schemes; employees' and employer's associations that manage the assets of their association's institutions;
- d. to the extent their activities are subject to the Insurance Supervision Act of 17 December 2004 (VAG):
1. insurance companies;
 2. insurance brokers;
 3. ombudsmen;
- e. insurance institutions under public law according to Article 67 paragraph 1 of the Swiss Federal Act on Occupational Retirement, Survivors' and Disability Pensions of 25 June 1982.

Art. 3 Definitions

For the purposes of this Act, the following definitions apply:

- a. *financial instruments*:
1. equity securities:
 - securities in the form of shares including share-like securities allowing for participation or voting rights, such as participation certificates and dividend rights certificates
 - securities that, on conversion or execution of the rights embedded in them, allow for acquisition of equity securities, as set forth above,
 2. debt instruments: securities not classified as equity securities,
 3. units in collective investment schemes in accordance with Articles 7 and 119 of the Federal Act of 23 June 2006 on Collective Investment Schemes (CISA),
 4. structured products, in particular capital-protected products, capped return products and certificates,
 5. derivatives within the meaning of Article 2 letter c of the Financial Market Infrastructure Act of 19 June 2015,
 6. deposits whose redemption value or interest is linked to the risk embedded or the interest rate, except those where the interest rate is linked to an interest rate index;
 7. bonds: participation in a total loan with uniform conditions;
- b. *securities*: standardized certificated securities, uncertificated securities, derivatives and intermediated securities suitable for mass trading;
- c. *financial services*: any of the following activities carried out for clients:
1. acquisition or disposal of financial instruments,
 2. reception and transmission of orders in relation to financial instruments,
 3. management of financial instruments (portfolio management),
 4. giving personal recommendations on transactions with financial instruments (investment advice),
 5. granting loans for transactions with financial instruments;
- d. *financial service provider*: any person who provides financial services on a professional basis in Switzerland or for clients in Switzerland, while a professional basis is given in case of an independent economic activity for the purpose of permanent income;

- e. *client advisers*: natural persons who perform financial services on behalf of a financial service provider or in their own capacity as financial service providers;
- f. *issuer*: persons who issues or intends to issue securities;
- g. *offer*: any invitation containing sufficient information on the terms of the offer and the financial instrument itself for the purchase of said financial instrument;
- h. *public offer*: an offer addressed to the public;
- i. *producer*: persons who create a financial instrument or make changes to an existing financial instrument, including changing the risk/return profile or the costs connected with the investment in the financial instrument.

Art. 4 Client segmentation

¹ Financial services providers allocate persons for whom they provide financial services to one of the following segments:

- a. retail clients;
- b. professional clients;
- c. institutional clients.

² Retail clients mean clients who are not professional clients.

³ Professional clients mean:

- a. financial intermediaries as defined in the Banking Act of 8 November 1934 (BankG), the Financial Institutions Act of 15 June 2018 (FINIG) and the CISA;
- b. insurance companies as defined in the VAG;
- c. foreign clients subject prudential supervision as the persons listed under a and b above;
- d. central banks;
- e. public entities with professional treasury operations;
- f. occupational pension schemes and entities which serve the aim of occupational pension schemes with professional treasury operations;
- g. companies with professional treasury operations;
- h. large companies;
- i. investment structures with professional treasury established for high-net-worth retail clients.

⁴ Institutional clients mean professional clients as defined in paragraph 3 letters a–d as well as national and supranational public entities with professional treasury operations.

⁵ Large company means a company which exceeds two of the following measures:

- a. balance sheet total of 20 Million Swiss Francs,
- b. turnover of 40 Million Swiss Francs,
- c. minimum equity of 2 Million Swiss Francs.

⁶ Entities of a group providing financial services to another entity of the same group are not considered as clients.

⁷ Financial service providers may waive the client segmentation if they treat all clients as retail clients.

Art. 5 Opting out and opting in

¹ Wealthy retail clients and private investment structures established for them may declare that they wish to be treated as professional clients (opting out).

² Any person declaring in a credible way that he or she fulfills one of the following conditions may be considered as wealthy in the sense of paragraph 1:

- a. he or she provides over the knowledge necessary to understand the risks of the investments based on the personal education or professional experience or because of a comparable experience in the financial sector, and he or she provides over assets of at least 500 000 Swiss Francs; or
- b. he or she provides over assets of at least 2 Million Swiss Francs.

³ Professional clients according to Article 4 paragraph 3 letters f and g may declare that they wish to be treated as institutional clients.

⁴ Swiss and foreign collective investment schemes and their management companies which are not considered as institutional clients based on Article 4 paragraph 3 letter a or c in connection with Article 4 paragraph 4 may declare that they wish to be treated as institutional clients.

⁵ Professional clients which are no institutional clients within the meaning of Article 4 paragraph 4 may declare that they wish to be treated as retail clients (opting in).

⁶ Institutional clients may declare that they wish to be treated only as professional clients.

⁷ Before providing any financial services, financial service providers shall inform their clients, where these are not classified as retail clients, and explain to them the possibility of opting in.

⁸ The declarations according to paragraphs 1–6 must be in writing or in another manner verifiable by text.

Title 2: Requirements for the Provision of Financial Services

Chapter 1: Required Knowledge

Art. 6

Client advisers must have sufficient knowledge of the code of conduct set out in this Act and the necessary expertise required to perform their activities.

Chapter 2: Code of Conduct

Section 1: Principle

Art. 7

¹ Financial service providers must comply with the supervisory duties set out under this title in the provision of financial services.

² Provisions in more specific acts remain reserved.

Section 2: Duty of Information

Art. 8 Content and form of information

¹ Financial service providers shall inform their clients of the following:

- a. their name and address;
- b. their field of activity and their supervisory status;
- c. the possibility of bringing mediation proceedings before a recognized ombudsman in accordance with Title 5; and
- d. the general risks connected with financial instruments.

² They additionally inform about:

- a. the personally suggested financial service and the risks and costs connected therewith;
- b. the economics ties with third parties connected with the financial service offered;
- c. the market offerings considered for the choice of financial instruments.

³ In addition to this, in case of a personal recommendation regarding financial instruments to a retail client, the financial services provider shall make available the key information document, if the latter is required for the recommended financial instrument (Articles 58 and 59). In case of a compound financial instrument, the key information document has to be made available for such compound financial instrument only.

⁴ No key information document needs to be made available if the service only consist of the execution or transmission of client orders, unless a key information document is already available.

⁵ When providing personal recommendations on financial instruments for which a prospectus is required (Article 35–37), a prospectus has to be made available by the financial service provider free of charge upon request by the retail client.

⁶ Advertising must be indicated as such.

Art. 9 Timing and form of information

¹ Financial service providers shall inform their clients before the conclusion of the contract or provision of the service.

² Financial service providers shall make the key information document available to their retail clients free of charge prior to subscription or conclusion of the contract. In case of remote advisory, the key information document may be made available after the conclusion of the transaction if the client consents. The financial service provider records such consent.

³ The information may be provided to the client in standardized form on paper or electronically.

Section 3: Suitability and Appropriateness of Financial Services

Art. 10 Duty to assess

Financial service providers that provide investment advice or portfolio management, conduct a suitability or appropriateness assessment.

Art. 11 Assessment of suitability

A financial service provider that provides investment advice for specific transactions without considering the whole portfolio of the client shall enquire about its clients' knowledge and experience and assess the suitability of financial instruments before recommending the latter.

Art. 12 Assessment of appropriateness

A financial service provider that provides investment advice considering the whole portfolio of the client or that provides portfolio management, shall enquire about its clients' financial circumstances and investment objectives as well as the client's knowledge and experience. Such knowledge and experience refers to financial services and not to the specific transactions.

Art. 13 Exemption from the duty

¹ In case of simple execution or transmission of client orders, the financial service provider does not need to conduct a suitability nor an appropriateness assessment.

² They inform clients before performing a service according to paragraph 1 that no suitability or appropriateness assessment will be conducted.

³ For professional clients, they may assume that they provide over the necessary knowledge and experience and that the investment risks associated with the financial service are financially affordable.

Art. 14 Non-assessable or lacking suitability or appropriateness

¹ If the information received by the financial service provider is not sufficient for assessing suitability or appropriateness of a financial instrument, it shall inform the client that it is unable to conduct such assessment.

² If the financial service provider is of the view that a financial instrument is not suitable or appropriate for its clients, it advises against the provision of such service.

³ The lack of knowledge and experience may be compensated by informing the clients.

Section 4: Documentation and Rendering Account

Art. 15 Documentation

¹ Financial service providers shall keep record in appropriate manner of:

- a. the services agreed with the clients and the information collected about them;
- b. the information given to clients in accordance with Article 13 paragraph 2 or the fact that they advised against the provision of the service in accordance with Article 14;
- c. the services provided for the clients.

² When providing investment advice, they shall also document the clients' needs and the grounds for each recommendation leading to the acquisition or disposal of a financial instrument.

Art. 16 Duty to render account

¹ Upon client's request, financial service providers shall give their clients a copy of the documentation mentioned in Article 15 or grant access to such documentation in other appropriate manner.

² They shall further, upon client's request, render account to their clients of:

- a. the financial services agreed and conducted;
- b. the composition, valuation and development of the portfolio;
- c. the costs associated with the financial services.

³ The Federal Council shall govern the minimum content of the information specified under paragraph 2.

Section 5: Transparency and Care in Client Orders

Art. 17 Handling client orders

¹ Financial service providers shall uphold the principles of good faith and of equal treatment when handling client orders.

² The Federal Council shall govern how the principles under paragraph 1 are to be fulfilled, specifically regarding the procedures and systems for processing client orders.

Art. 18 Best execution of client orders

¹ Financial service providers shall ensure in the execution of their clients' orders that the best possible outcome is achieved in terms of cost, timing and quality.

² Regarding cost, they shall consider not only the price of the financial instrument but also the expenses incurred in execution of the order and the remunerations from third parties mentioned in Article 26 paragraph 3.

³ If they employ staff that executes client orders, they shall issue internal directives on the execution of client orders as appropriate for the number of employees and the operational structure.

Art. 19 Use of clients' financial instruments

¹ Financial service providers may borrow financial instruments from clients' portfolios as a counterparty or act as an agent for such transactions only if the clients have given their prior and express consent to these transactions in an agreement that is separate from the general business conditions in writing or in another manner verifiable by text.

² The clients' consent is valid only if they:

- a. have been informed in an understandable manner of the risks associated with such transactions;
- b. are entitled to equalization payments for the proceeds due from the financial instruments borrowed; and
- c. are compensated for the financial instruments borrowed.

³ Uncovered transactions with financial instruments of retail clients are not permitted.

Section 6: Institutional and Professional Clients

Art. 20

¹ For transactions involving institutional clients, the provisions of this Chapter do not apply.

² Professional clients may exclude applicability of conduct rules according to Articles 8, 9, 15 and 16 by way of an explicit waiver.

Chapter 3: Organization

Section 1: Organizational Measures

Art. 21 Appropriate organization

Financial service providers shall ensure that they fulfil their duties under this Act through internal regulations and an appropriate organization of operations.

Art. 22 Staff

¹ Financial service providers ensure that their staff possess the necessary skills, knowledge and experience to perform their work.

² Financial service providers that are not supervised in accordance with Article 3 of the Financial Market Supervision Act dated 22 June 2007 (FINMAG) shall additionally ensure that only persons listed in the register of client advisers (Article 29) perform an activity as client advisers for them.

Art. 23 Call on the services of third parties

¹ Financial service providers may call on the services of third parties for the provision of financial services.

² They shall appoint only persons who possess the necessary skills, knowledge and experience for their work and have the required authorizations and register entries for this activity, and shall carefully instruct and supervise the appointed persons.

Art. 24 Chain of providers

¹ Financial service providers who mandate another financial service provider to provide a financial service for clients remain liable for the completeness and accuracy of the client information as well as for fulfilling the duties set out in Articles 8–16.

² If the mandated financial service provider has reasonable grounds to suspect that the client information is incorrect or that the duties under Articles 8–16 were not fulfilled by the mandating financial service provider, it shall provide its service only after it has ensured the completeness and accuracy of the information and compliance with the code of conduct.

Section 2: Conflicts of Interest

Art. 25 Organizational precautions

¹ Financial service providers shall take appropriate organizational precautions to prevent conflicts of interest that could arise through the provision of financial services or to exclude any disadvantage to clients as a result of conflicts of interest.

² If a disadvantage to clients cannot be excluded, this must be disclosed to them.

³ The Federal Council shall govern the details in this respect; in particular, it shall designate forms of conduct that are always unlawful due to conflicts of interest.

Art. 26 Benefits from third parties

¹ Financial service providers may accept benefits from third parties in connection with the provision of financial services only if they:

- a. have expressly informed the clients of benefits and the clients waive such benefits in advance;
or
- b. pass on the benefits to the clients in full.

² The information to the client has to disclose type and scope of the benefits and has to take place before provision of the financial service or conclusion of the contract. If the amount cannot be determined in advance, the financial service provider shall inform its clients of the calculation parameters and the ranges. Upon request, the financial service providers shall disclose the amounts actually received.

³ Benefits are defined as payments flowing from a third party to the financial service provider in connection with the provision of a financial service, such as brokerage fees, commissions, premiums, discounts or other financial benefits.

Art. 27 Employee transactions

¹ Financial service providers shall take measures with which it can be prevented that staff use information, over which they provide only because of their function, for improper transactions on their own account.

² They shall specify the necessary monitoring measures in an internal directive.

Chapter 4: Register of Client Advisors

Art. 28 Duty to register

¹ Client advisors of domestic financial service providers which are not supervised according to Article 3 FINMAG, as well as client advisors of foreign financial service providers may carry out their activities only after entry in the register of client advisors.

² The Federal Council may exempt client advisors of foreign financial service providers subject to prudential supervision from the duty to register if they provide their services in Switzerland exclusively to professional or institutional clients in accordance with Article 4.

³ It can make the exemption in paragraph 2 conditional upon granting of reciprocal rights.

Art. 29 Requirements for registration

¹ Client advisors are entered in the register of client advisors if they prove that they:

- a. fulfill the requirements in Article 6;
- b. have taken out professional indemnity insurance or have provided equivalent financial guarantees; and
- c. as financial service provider or the financial service provider they are working for are affiliated to an ombudsman (Article 74).

² Client advisors must not be entered in the register of client advisors if:

- a. they have a criminal conviction for an infringement of Articles 89–92 of this act or of Article 86 VAG or if they have an entry in the criminal records for offences against property under Articles 137–172^{ter} of the Swiss Criminal Code; or
- b. have been prohibited from performing the activity to be entered in the register in accordance with Article 33a FINMAG or from practicing a profession in accordance with Article 33 FINMAG.

³ If client advisors are employed as staff with a financial service provider, the conditions set out in paragraph 1 letter b may be fulfilled by the latter.

Art. 30 Content

The register of client advisors contains at least the following information on the client advisors:

- a. name and first name;

- b. name or company name and address of the financial service provider for which they are working;
- c. function and position of the client adviser within the organization;
- d. the fields of activity;
- e. the conducted education and training;
- f. the ombudsman with which the financial service provider itself or the financial service provider for which they are active is affiliated with;
- g. date of register entry.

Art. 31 Registration body

¹ The registration body shall keep the register of client advisers. It requires authorization from the Swiss Financial Market Supervisory Authority (FINMA).

² FINMA may authorize several registration bodies as long as this is objectively justified.

³ The registration body must be organized so as to guarantee the independent fulfilment of its tasks.

⁴ The registration body and the persons responsible for its management must provide guarantee of fit and proper business conduct. Furthermore, the persons charged with the management must enjoy a good reputation and provide over the specialist qualifications required for their function.

⁵ If the registration body no longer fulfils the requirements under this Act, FINMA shall order the measures necessary to remedy the deficiencies. If, within a reasonable period, the registration body fails to remedy the deficiencies preventing it from fulfilling its tasks, FINMA shall withdraw its authorizations for the registration of client advisers.

⁶ If there is no private entity available as registration body, the Federal Council shall designate a body for this task.

Art. 32 Keeping of the register and reporting duty

¹ The registration body shall decide which client advisers are registered and deregistered as client advisers and it issues the required orders.

² Registered client advisers as well as the financial service provider for whom they work are obliged to notify the registration body of all changes in the circumstances underlying their registration.

³ The responsible supervisory authorities shall notify the registration body if they:

- a. prohibit any registered client advisers from performing an activity or practicing a profession within the meaning of Article 29 paragraph 2 letter b;
- b. learn of a criminal conviction in accordance with Article 29 paragraph 2 letter a against client advisers entered in the register.

⁴ If the registration body learns that a client adviser does no longer meet a requirement for registration, it shall deregister that client adviser.

⁵ The contents of the register of client advisers are public and are accessible online.

Art. 33 Fees

¹ The registration body shall charge cost-effective fees to cover the expenses incurred in its orders and services.

² The Federal Council shall govern the fees. The regulation is based on Article 46a of the Government and Administration Organization Act of 21 March 1997.

Art. 34 Procedure

The procedure for registration entries is based on the Administrative Procedure Act of 20 December 1968.

Title 3: Offering of Financial Instruments

Chapter 1: Prospectus for Securities

Section 1: General

Art. 35 Duty to publish a prospectus

¹ Any person who makes a public offer for acquisition of securities in Switzerland or any person who seeks the admission for trading of securities on a trading venue in accordance with Article 26 letter a of the Financial Market Infrastructure Act of 19 June 2015 must first publish a prospectus.

² If the issuer is not involved in the public offering, he has no duty to contribute to the drafting of the prospectus.

Art. 36 Exemptions by type of offer

¹ There is no duty to publish a prospectus if the public offering:

- a. is addressed solely at investors classified as professional clients;
- b. is addressed at fewer than 500 investors;
- c. is addressed at investors acquiring securities to the value of at least CHF 100,000;
- d. has a minimum denomination per unit of CHF 100,000;
- e. does not exceed an overall value of CHF 8 million over a 12-month period.

² Each public offering for the resale of securities that were previously subject of an offer mentioned in paragraph 1 shall be regarded as a separate offer.

³ Without indications to the contrary, the offeror may assume that professional and institutional clients did not declare to be treated as retail clients.

⁴ A financial service provider is not obliged to publish a prospectus for securities that are offered at a later stage:

- a. as long as a valid prospectus exists; and

- b. if the issuer or the persons who have assumed responsibility for the prospectus have consented to its use.

⁵ The Federal Council may adjust the number of investors as well as the amounts in paragraph 1 letters b–e under consideration of recognized international standards and foreign regulatory developments.

Art. 37 Exemptions by type of security

¹ There is no duty to publish a prospectus for public offers for the following types of securities:

- a. equity securities issued outside the scope of a capital increase in exchange for previously issued equities of the same class;
- b. equity securities issued or delivered at the conversion or the exchange of financial instruments of the same issuer or the same group of companies;
- c. equity securities issued or delivered as a consequence of the execution of a right connected with a financial instrument of the same issuer or the same group of companies;
- d. securities offered for exchange in connection with a takeover, provided that information exists which is equivalent to a prospectus in terms of its content;
- e. securities offered or allocated in connection with a merger, division, conversion or transfer of assets, provided that information exists which is equivalent to a prospectus in terms of content;
- f. equity securities that are distributed as dividends to holders of equity securities of the same class, provided that information exists on the number and type of equity securities and on the reasons for and details of the offer;
- g. securities that employers or affiliated companies offer to current or former members of the board of directors or management board or their employees;
- h. securities issued or unlimitedly and irrevocably guaranteed for by the federal government or cantons, inter- or supranational public bodies, the Swiss National Bank or foreign central banks;
- i. securities issued by institutions with a charitable purpose to raise funds for noncommercial purposes;
- j. medium-term notes;
- k. securities with a term of less than one year (money market instruments);
- l. derivatives that are not offered in the form of an issue.

² The Federal Council may foresee exemptions from the prospectus requirement for further types of securities which are publicly offered, considering recognized international standards and foreign regulatory developments.

Art. 38 Exemptions for admission to trading

¹ There is no duty to publish a prospectus if the following types of securities are being admitted to trading:

- a. equity securities which, over a period of 12 months, amount to less than 20 percent of the number of equity securities of the same class that are already admitted to trading on the same trading venue;

- b. equity securities issued by way of conversion or exchange of financial instruments or as a consequence of exercising rights connected with financial instruments, as long as such equity securities are of the same class as the equity securities which are already admitted to trading;
- c. securities which are admitted to trading on a foreign trading venue if its regulation, supervision and transparency is recognized as appropriate by the domestic trading venue, or if transparency for investors is ensured by other means;
- d. securities where admission for trading is requested for a trading segment which is available for professional clients trading on own account or on account of professional clients only.

² The exemptions from the duty to publish a prospectus in Articles 36 and 37 apply also with regard to admission for trading by analogy.

Art. 39 Information beyond the scope of the prospectus requirement

If there is no requirement to publish a prospectus, the offerors or issuers treat the investors equally with regard to the provision of relevant information regarding a public offer.

Section 2: Requirements

Art. 40 Contents

¹ The prospectus shall contain the essential information for the investor's decision on:

- a. the issuer and the guarantor and the security provider, specifically:
 - 1. board of directors, management board, auditor and other governing bodies,
 - 2. the most recent semi-annual or annual account or, where these are not available yet, information on assets and liabilities,
 - 3. the business situation,
 - 4. the main prospects, risks and litigations;
- b. the securities to be offered publicly or admitted for trading on a trading venue: specifically the associated rights, obligations and risks for investors;
- c. the offer: specifically the type of placement and the estimated net proceeds of the issuance.

² The information shall be provided in one of the official languages of the Swiss Confederation or in English.

³ The prospectus shall also contain a clearly understandable summary of the essential elements.

⁴ If the final issuance price and the issuance volume cannot be stated in the prospectus, the prospectus must then indicate the maximum issuance price and the criteria and conditions used to determine the issuance volume. The information on the final issuance price and issuance volume shall be deposited with and published by the reviewing body.

⁵ For offers where an exemption according to Article 51 paragraph 2 is invoked, it has to be indicated in the prospectus that the latter has not been reviewed.

Art. 41 Exemptions

¹ The reviewing body may foresee that elements do not need to be included in the prospectus if:

- a. the publication seriously harmed the issuer and the investors are not misled with regard to facts and circumstances which are relevant for the assessment of the quality of the issuer and the characteristics of the security due to such non-inclusion;
- b. the information in question is of minor importance and not suitable to influence the assessment of the business situation and the relevant perspectives, risks and litigations of the issuer or the guarantor and the security provider; or
- c. elements regarding securities traded on a trading venue are concerned and the periodic reporting of the issuer was in compliance with the relevant provisions on financial reporting for the past three years.

² It can, to a limited extent, foresee further exemptions as long as the interests of investors are safeguarded.

Art. 42 Incorporation by reference

Apart from the summary, the prospectus may contain references to previously or simultaneously published documents.

Art. 43 Summary

¹ The summary shall facilitate a comparison among similar securities.

² The summary must clearly emphasize that:

- a. it should be regarded as an introduction to the prospectus;
- b. the investment decision must be based not on the summary but on the information of the entire prospectus;
- c. liability for the summary is limited to cases when it is misleading, inaccurate or contradicting when read in connection with other parts of the prospectus.

Art. 44 Structure

¹ The prospectus may consist of a stand-alone document or several individual documents.

² If it consists of several individual documents, it may be broken down into:

- a. a registration form with information about the issuer;
- b. a securities description with information on the securities to be offered publicly or admitted for trading on a trading venue;
- c. the summary.

Art. 45 Base prospectus

¹ In particular for debt instruments issued in an offer program or issued constantly or repeatedly by banks according to BankG or securities firms according to FINIG, the prospectus may be drafted in the form of a base prospectus.

² The base prospectus shall contain all the information available at the time of publication on the issuer, guarantor and security provider and on the securities, but not the final terms.

³ At least indicative information on the final terms need to be included in a version at the time of public offering. After expiry of the subscription period, they must be published in a final version and deposited with the reviewing body.

⁴ An authorization of the final terms is not required.

Art. 46 Supplementary provisions

Taking account of the specific characteristics of issuers and securities, the Federal Council shall issue implementing provisions on, among others:

- a. the format of the prospectus and the base prospectus, the summary, the final terms and the supplements;
- b. the content of the summary;
- c. the minimum information to be contained in the prospectus;
- d. the documents to which a reference is allowed.

Section 3: Relief of Requirements

Art. 47

¹ The Federal Council may grant a relief from the prospectus requirements as well as from the duty for supplements by issuers if two of the following volumes in the preceding financial year have not been exceeded:

- a. balance sheet total of CHF 20 million;
- b. turnover of CHF 40 million;
- c. 250 full time jobs on average for the year.

² It may also grant relief from the requirements for, among others:

- a. issuers with low market capitalization on a trading venue;
- b. issues of subscription rights;
- c. issuers who publicly offer securities on a regular basis or whose securities are admitted to trading on a foreign trading venue if its regulation, supervision and transparency is recognized as appropriate by the domestic trading venue.

³ It shall grant relief from requirements uniformly and, in particular, with respect to:

- a. the type of securities issued;

- b. the volume of the issuance;
- c. the market environment;
- d. the investors' specific requirements for transparent information;
- e. the business activities and the size of the issuers.

Section 4: Collective Investment Schemes

Art. 48 Open-ended collective investment schemes

¹ For open-ended collective investment schemes as defined in Title 2 of CISA, the fund management company (Article 32 FINIG) and the investment company with variable capital (SICAV) (Article 13 paragraph 2 letter b CISA) shall produce a prospectus.

² The prospectus shall include the fund regulations in cases where interested persons are not notified as to where such regulations may be obtained prior to an agreement being concluded or prior to subscription.

³ The Federal Council shall determine which information must be set out in the prospectus apart from the fund regulations.

⁴ The prospectus and its amendments must be submitted to FINMA without delay.

Art. 49 Closed-ended collective investment schemes

¹ The limited partnership for collective investment under Article 98 CISA shall produce a prospectus.

² This shall contain in particular the information contained in the partnership agreement in accordance with Article 102 paragraph 1 letter h CISA.

³ For the prospectus of an investment company with fixed capital in accordance with Article 110 CISA, Article 48 applies by analogy.

Art. 50 Exemptions

FINMA may exempt collective investment schemes under CISA from all or some of the provisions of this chapter provided that they are open only to qualified investors in accordance with Article 10 paragraph 3 and 3^{ter} CISA and the protective purpose of the law is not thereby affected.

Section 5: Review of the Prospectus

Art. 51 Duty

¹ The prospectus must be submitted to the reviewing body prior to publication. The latter checks it for completeness, coherence and understandability.

² The Federal Council may designate securities whose prospectus must be reviewed only after publication if a bank in accordance with the BankG or a securities firm in accordance with the FINIG confirms that the main information on the issuers and the securities is available at the time of publication.

³ Prospectuses for collective investment schemes do not have to be reviewed. The approval requirement for the documentation of foreign collective investment schemes under Article 15 paragraph 1 letter e and Article 120 CISA remains reserved.

Art. 52 Reviewing body

¹ The reviewing body requires authorization from FINMA. FINMA may authorize several reviewing bodies as long as this is objectively justified.

² The reviewing body must be organized such as to guarantee the independent fulfilment of its tasks.

³ The reviewing body and the persons charged with its management must provide guarantee of fit and proper business conduct. Furthermore, the persons charged with the management must enjoy a good reputation and provide over the specialist qualifications required for their function.

⁴ If the reviewing body no longer fulfils the requirements under this Act, FINMA shall order the measures necessary to remedy the deficiencies. If, within a reasonable period, the reviewing body fails to remedy the deficiencies preventing it from fulfilling its tasks, FINMA shall withdraw its authorization.

⁵ If there is no private entity available as reviewing body, the Federal Council shall designate a body for this task.

Art. 53 Procedure and deadlines

¹ The procedure followed by the reviewing body is based on the Federal Act on Administrative Procedure of 20 December 1968.

² The reviewing body reviews the prospectuses immediately upon submission.

³ If it notices that a prospectus does not fulfill the statutory requirements, it communicates this including a reasoning within 10 calendar days upon submission to the person who submitted the prospectus and asks the person for rectification.

⁴ It decides within 10 calendar days upon submission of the potentially rectified prospectus upon its approval.

⁵ For new issuers, the deadline is 20 calendar days.

⁶ Should the reviewing body fail to issue its decision within the deadlines set out in paragraphs 4 and 5, this shall not constitute approval of the prospectus.

Art. 54 Foreign prospectuses

¹ The reviewing body may approve a prospectus produced under foreign legislation if:

- a. it was prepared under international standards established by international organizations of securities regulators; and

- b. the duties to inform, including providing financial information, are equivalent to the requirements set forth in this Act, an approved individual financial statement is not required.

² It may foresee that prospectuses approved under specific legal frameworks are deemed as authorized in Switzerland as well.

³ It published a list of countries whose prospectus approval is recognized in Switzerland.

Art. 55 Validity

¹ After approval, prospectuses shall be valid for 12 months for public offers or admission for trading on a trading venue of securities of the same type and by the same issuer.

² Prospectuses for debt securities issued by a bank in accordance with the BankG or a securities firm in accordance with FINIG in an offering program are valid up until none of the debt securities concerned are constantly or repeatedly being issued anymore.

Art. 56 Supplements

¹ A supplement to the prospectus must be prepared if between the time of approval of the prospectus and the final completion of a public offering or opening of trading on a trading venue new facts occur or are established and such facts could significantly affect the valuation of the securities.

² The supplement must be reported to the reviewing body immediately upon occurrence or establishment of the new facts.

³ The reviewing body decides within maximum seven calendar days on the approval of the supplement. Afterwards, the supplement shall be published immediately. Summaries are to be amended based on the information contained in the supplement.

⁴ The reviewing body shall keep a list with facts which by their nature are not subject of approval. Supplements to such facts are to be published at the same time as the reporting to the reviewing body takes place.

⁵ If a new fact in accordance with paragraph 1 occurs during a public offer, the deadline for offers shall end at the earliest two days after publication of the supplement. Investors may withdraw their subscription or acceptance up until the end of the subscription of offering deadline.

Art. 57 Fees

¹ The reviewing body shall charge cost-effective fees to cover the expenses incurred in its orders and services.

² The Federal Council shall regulate the fees. The regulations shall be based on Article 46a of the Federal Act on the Organization of the Government and the Administration of 21 March 1997.

Chapter 2: Key Information Document for Financial Instruments

Art. 58 Duty

¹ Where a financial instrument is offered to retail clients, the producer must first produce a key information document.

² For financial instruments which may be acquired by retail clients only in the realm of a portfolio management mandate, there is no duty to produce a key information document.

³ The Federal Council may designate qualified third parties to which the production of the key information document may be transferred. The producer remains responsible for completeness and accuracy of the information in the key information document as well as for compliance with the duties in accordance with Chapter 2–4 (Articles 58–68).

⁴ If financial instruments are offered to retail clients based on indicative information, at least a provisional version of the key information document with the respective indicative information shall be produced.

Art. 59 Exemptions

¹ There is no duty to prepare a key information document for offers of securities in the form of shares including share-like securities allowing for participation rights, such as participation certificates and dividend rights certificates, as well as debt securities without derivative characteristics.

² Documents under foreign law which are equivalent to the key information document may be used instead of the key information document.

Art. 60 Contents

¹ The key information document shall contain the essential information for making a well-founded investment decision and a comparison of different financial instruments by investors.

² In particular, the information shall cover:

- a. the name of the financial instrument and the identity of the producer;
- b. the type and characteristics of the financial instrument;
- c. the risk/return profile of the financial instrument, including the maximum loss which may occur to the investor on the invested capital;
- d. the costs of the financial instrument;
- e. the minimum holding period and the liquidity profile of the financial instrument;
- f. information on the authorizations and approvals associated with the financial instrument.

Art. 61 Requirements

¹ The key information document must be easy to understand.

² It is a stand-alone document that is clearly distinguishable from advertising materials.

Art. 62 Amendments

¹ The producer shall regularly verify the information contained in the key information document and revise it if significant changes occur.

² The verification and revision of information in the key information document may be delegated to qualified third parties. The producer remains liable for completeness and accuracy of information in the key information document as well as for compliance with the duties in Chapters 2–4 (Articles 58–68).

Art. 63 Supplementary provisions

The Federal Council shall introduce supplementary provisions on the key information document. It shall determine, in particular:

- a. its content;
- b. its scope, language and layout;
- c. details on how it is to be made available;
- d. the equivalence of foreign documents with the key information document in accordance with Article 59 paragraph 2.

Chapter 3: Publication

Art. 64 Prospectus for securities

¹ The offeror of securities or the person requesting admission for trading shall:

- a. file the prospectus with the reviewing body after approval;
- b. publish the prospectus no later than the beginning of the public offer or admission of the security in question for trading.

² In the case of an initial public offer for a class of equity securities to be admitted for trading on a trading venue for the first time, the prospectus must be made available at least six working days before the end of the offer.

³ The prospectus may be published:

- a. in one or more newspapers with a distribution corresponding to the issue or in the Swiss Official Gazette of Commerce;
- b. through free-of-charge distribution in printed form at the issuer's registered office or from the offices involved in the issue;
- c. in electronic form on the website of the issuer, the guarantor or the security provider, the trading venue or the offices involved in the issue; or
- d. in electronic form on the website of the reviewing body.

⁴ If the prospectus is published electronically, upon request a paper version must also be made available free of charge.

⁵ The reviewing body shall place the approved prospectuses on a list and make this list available for 12 months.

⁶ If the prospectus is prepared in several stand-alone documents or if it is incorporated by reference, the documents and information constituting the prospectus may be published separately. The individual documents shall be made available to the investors free of charge. Each individual document must indicate where to obtain the other individual documents that, together with that one, constitute the complete prospectus.

⁷ The text and format of the prospectus and supplements that have been published or made available to the public must at all times be identical to the version deposited with the reviewing body.

Art. 65 Prospectus for collective investment schemes

¹ The prospectus for a collective investment scheme must be published no later than at the commencement of the public offering.

² For publication, Article 64 paragraphs 3, 4 and 6 apply by analogy.

Art. 66 Key information document

¹ If a financial instrument for which a key information document is required is being publicly offered, the key information document shall be published no later than at the commencement of the public offer.

² Article 64 paragraphs 3 and 4 apply by analogy.

Art. 67 Changes to the rights associated with securities

¹ The issuer shall announce changes to the rights associated with securities sufficiently early to guarantee that investors can exercise their rights.

² Apart from that, content and scope of the publication conform to the issuance requirements. Article 64 paragraphs 3 and 4 apply by analogy.

³ Special legal provisions remain reserved.

Chapter 4: Advertising

Art. 68

¹ Advertising for financial instruments must be clearly indicated as such.

² In the advertisement, reference shall be made to the prospectus and the key information document of the respective financial instrument as well as to the place where they can be obtained.

³ Advertisements and other information on financial instruments made towards investors must correspond to the information given in the prospectus and the key information document.

Chapter 5: Liability

Art. 69

¹ Any person who provides information that is inaccurate, misleading or in violation of statutory requirements in a key information document or similar communications, without applying the required diligence, shall be liable to the acquirer of a financial instrument for the resultant loss.

² Liability for information in the summary applies only if it occurs that such information is misleading, inaccurate or contradiction if read in connection with other parts of the prospectus.

³ Liability for inaccurate or misleading information on relevant prospects applies only if such information has been provided or disseminated against better knowledge or without reference to the insecurity of future developments.

Chapter 6: Offering of Structured Products and Creation of In-house Funds

Art. 70 Structured products

¹ Structured products may be offered in or from Switzerland to retail clients without long-term portfolio management or investment advisory relationship only if these are issued, guaranteed or secured in an equivalent manner by:

- a. a bank in accordance with the BankG;
- b. an insurance company in accordance with VAG;
- c. a securities firm in accordance with the FINIG;
- d. a foreign institution that is subject to equivalent prudential supervision.

² The issuance of structured products to retail clients by special purpose entities is permitted if:

- a. such products are offered by:
 1. a financial intermediary in accordance with the BankG, FINIG or CISA,
 2. an insurance company in accordance with VAG,
 3. a foreign institution that is subject to equivalent prudential supervision; and
- b. guarantees are ensured corresponding to the requirements under paragraph 1.

³ The Federal Council shall regulate the requirements of such guarantees.

Art. 71 In-house funds

¹ In-house funds of a contractual nature for the purpose of collectively managing assets of existing clients may be created by banks according to the BankG and securities firms according to the FINIG only if the following requirements are met:

- a. Clients participate in such in-house funds exclusively on the basis of a long-term portfolio management or investment advisory agreement.
- b. No unit certificates are issued.

c. Participation is not offered to the public and no advertising is undertaken.

² A key information document in accordance with Articles 58–63 must be prepared for in-house funds.

³ The creation and dissolution of in-house funds must be notified to the auditors appointed under the relevant supervisory law.

⁴ In the event of bankruptcy of the bank or securities firm, assets and rights that form part of in-house funds shall be segregated in favor of the investors.

Title 4: Provision of Documents

Art. 72 Claim

¹ The client is entitled at all times to receive a copy of their client file and all other client-related documents that the financial service provider has produced within the context of their business relationship.

² With the client's consent, the financial service provider may provide the copy in electronic form.

Art. 73 Procedure

¹ Any person who wishes to assert a claim must submit a corresponding request in writing or in another manner verifiable by text.

² The financial service provider shall provide the client with a copy of the documents in question within 30 days after receipt of such request.

³ If it fails to comply with such a request, the client may apply to the court.

⁴ In any subsequent legal dispute, a potential refusal by the financial service provider to issue the requested documents may be taken into account by the competent court in the decision on procedural costs.

Title 5: Ombudsmen

Chapter 1: Mediation

Art. 74 Principle

Disputes regarding the client's claims against a financial service provider should be settled, if possible, by an ombudsman in mediation proceedings.

Art. 75 Proceedings

¹ The proceedings before the ombudsman must be straightforward, fair, quick, impartial and inexpensive or free of charge to the client.

² The proceedings are confidential. The parties' statements in the mediation proceedings as well as the correspondence between a party and the ombudsman may not be used in other proceedings.

³ The parties are not entitled to view the ombudsman's correspondence with the other party.

⁴ A request for mediation is permissible at any time if:

- a. it has been submitted in accordance with the ombudsman's rules of procedure or using the form provided by the ombudsman;
- b. the client provides in a credible way that he or she has previously informed the financial service provider of their point of view and attempted to reach an agreement;
- c. it is not obviously an abuse of the procedure, or mediation proceedings have not already been conducted in the same matter; and
- d. the case is or has not being dealt with by a court, court of arbitration or an administrative authority.

⁵ The proceedings may be conducted in the client's choice of an official language of the Swiss Confederation. Alternative agreements between the parties remain reserved, provided that they adhere to the ombudsman's rules of procedure.

⁶ The ombudsman shall freely assess the cases submitted and is not bound by any instructions.

⁷ The ombudsman shall take the necessary measures to mediate, as long as it does not seem to be unpromising from the beginning.

⁸ If no agreement can be reached or if the situation seems unpromising, the ombudsman may provide its own factual and legal assessment of the dispute based on the information available to it and add to the final communication on the procedure.

Art. 76 Relationship to conciliation proceedings and other proceedings

¹ Filing a request for mediation to an ombudsman does not rule out civil action and does not prevent such from being initiated.

² After bringing proceedings before an ombudsman, the plaintiff may unilaterally waive a conciliation procedure under the Civil Procedure Code.

³ The ombudsman shall terminate the procedure once a conciliation authority, a court, a court of arbitration or an administrative authority assumes the case.

Chapter 2: Duties of Financial Service Providers

Art. 77 Affiliation duty

Financial service providers must affiliate to an ombudsman at the latest on assuming their activity.

Art. 78 Participation duty

¹ Financial service providers that are affected by a conciliation request to an ombudsman must participate in the proceedings.

² They must respond promptly to the summonses, requests for comments and any information enquiries from the ombudsmen.

Art. 79 Duty to provide information

¹ Financial service providers shall inform their clients about the possibility of mediation proceedings through an ombudsman:

- a. before entering into a business relationship in the realm of the information duties in accordance with Article 8 paragraph 1 letter c;
- b. when rejecting a legal claim made by the client; and
- c. anytime upon request.

² The information shall be given in an appropriate form and contain the name and address of the ombudsman with which the financial service provider is affiliated.

Art. 80 Financial participation

Financial service providers shall make financial contributions to the ombudsman with which they are affiliated. The contributions are determined according to the ombudsman's schedule of contributions and costs, taking into account the costs caused by them.

Chapter 3: Acceptance and Exclusion

Art. 81 Acceptance

An ombudsman is obliged to accept a financial service provider if it fulfills the ombudsman's acceptance criteria.

Art. 82 Exclusion

Financial service providers which do not fulfill their obligations in accordance with Articles 78–80 repeatedly shall be excluded by the ombudsman.

Art. 83 Information duty

The ombudsman shall inform the responsible supervisory authorities as well as the registration body about the affiliated financial service providers and about those whose affiliation has been rejected or which have been excluded.

Chapter 4: Recognition and Publication

Art. 84 Recognition

¹ Ombudsmen require recognition by the Federal Department of Finance (FDF).

² Organizations meeting the following criteria shall be recognized as ombudsmen:

- a. They and all persons entrusted by them with mediation fulfil their task impartially, transparently, efficiently and independently in organizational and financial respects and do not take any instructions.
- b. They ensure that the persons entrusted by them with mediation have the necessary specialist skills.
- c. They have organizational regulations which ensure the functionality of the ombudsman and which regulates the affiliation criteria.
- d. They have a procedural directive which specifies the procedure in accordance with Article 75.
- e. They have a schedule of contributions and costs in accordance with Article 80.

³ The FDF shall publish a list of ombudsmen.

⁴ If certain financial service providers have no possibility to affiliate with an ombudsman, the FDF may oblige a body to have such financial services providers affiliated. If there is no suitable ombudsman available for several financial service providers, the Federal Council may establish such a body.

Art. 85 Review of recognition

¹ Amendments which concern compliance with the recognition requirements in accordance with Article 84 shall be submitted to the FDF for approval.

² If an ombudsman no longer fulfils the recognition requirements, the FDF shall set an appropriate period for rectification.

³ If the rectifications are not made within this period, it shall withdraw the recognition.

Art. 86 Reporting

The ombudsman annually publishes an activity report.

Title 6: Supervision and Exchange of Information

Art. 87 Supervision

¹ The responsible supervisory authority shall control that the financial service providers it supervises fulfill the requirements regarding the provision of financial services and the offering of financial instruments.

² It may make orders within the realm of the supervisory instruments it may use to prevent or remove violations against such requirements.

³ The responsible court or arbitration court shall decide upon private law litigations between financial service providers or between financial service providers and clients.

Art. 88 Exchange of information

The FINMA, the supervisory organizations, the registration body, the reviewing body, the ombudsman and the FFD may transmit amongst each other non-public information which they require to fulfill their tasks.

Title 7: Criminal Provisions

Art. 89 Violation of the code of conduct

Any person who willfully does the following shall be liable to a fine not exceeding CHF 100,000:

- a. gives false information or omits important facts with regard to the duty of information under Article 8;
- b. violates the duty to assess suitability and appropriateness under Articles 10–14 in a serious way;
- c. violates the duties regarding passing on of remunerations from third parties in accordance with Article 26.

Art. 90 Violation of the regulations on prospectus and key information documents

¹ Any person who willfully does the following shall be liable to a fine not exceeding CHF 500,000:

- a. gives false information or omits important facts in the prospectus or the key information document under Title 3;
- b. does not publish the prospectus or the key information document under Title 3 at the latest at the time of public offering.

² Any person who willfully does not provide the key information document before subscription or before conclusion of the contract shall be liable to a fine not exceeding CHF 100,000.

Art. 91 Unauthorized offering of financial instruments

Any person who willfully does the following shall be liable to a fine not exceeding CHF 500,000:

- a. offers structured products to retail clients without fulfilling the requirements in accordance with Article 70;
- b. establishes in-house funds without fulfilling the requirements in accordance with Article 71.

Art. 92 Exemptions

Articles 89–91 are not applicable to supervised entities in accordance with Article 3 FINMAG or to persons working for them.

Title 8: Final Provisions

Art. 93 Implementing regulations

The Federal Council shall issue the implementing regulations.

Art. 95 Transitional provisions

¹ The Federal Council may introduce a transitional period for compliance with the requirements in Article 6.

² Advisers in accordance with Article 28 shall sign up for registration with the registration body within six months after entry into force of this Act.

³ Financial services providers shall be affiliated with an ombudsman in accordance with Article 74 within six months after entry into force of this Act.

⁴ The provisions of Title 3 of this Act shall be applicable two years after entry into force:

- a. for securities for which before entry into force a public offer was made or admission to trading on a trading venue was requested;
- b. for financial instruments which were offered to retail clients before entry into force.

⁵ The Federal Council may postpone the deadline in accordance with paragraph 4 for securities if this should be appropriate due to a delay in putting into operation of the reviewing body.

Art. 96 Referendum and entry into force

¹ This Act is subject to an optional referendum.

² The date of entry into force shall be determined by the Federal Council.

³ This Act shall enter into force together with FINIG.

Council of States, 15 June 2018

The president: Karin Keller-Sutter
The secretary: Martina Buol

National Council, 15 June 2018

The president: Dominique de Buman
The secretary: Pierre-Hervé Freléchoz