**FINMA Circular 2008/38**  
**Market Code of Conduct**

*Supervisory rules governing market comportment in securities trading*

*Unofficial Translation by SIX Swiss Exchange, July 2010*

Reference: FINMA Circular 08/38 “Market Code of Conduct”  
Adopted: 20 November 2008  
Entry into force: 1 January 2009  
Last amended: 26 November 2008  
Legal foundation: FINMASA Art. 7 para. 1 lit. b  
BankA Art. 3  
SESTA Arts. 1, 6, 10, 11  
CISA Arts. 13, 14

### Addressees

<table>
<thead>
<tr>
<th>BankA</th>
<th>ISA</th>
<th>SESTA</th>
<th>CISA</th>
<th>MLA</th>
<th>Others</th>
<th>MLA</th>
<th>Auditing firms</th>
<th>Rating agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banks</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finance groups and conglomerates</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other intermediaries</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insurers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insurance groups and conglomerates</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Securities exchanges / participants</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Securities dealers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Securities management companies</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Securities dealers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Securities management companies</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SICAVs</td>
<td>Limited partnerships for CISs</td>
<td>Securities dealers</td>
<td>Securities management companies</td>
<td>Securities dealers</td>
<td>Securities dealers</td>
<td>Securities dealers</td>
<td>Securities dealers</td>
<td>Securities dealers</td>
</tr>
<tr>
<td>SICAFs</td>
<td>Custodian banks</td>
<td>Custodian banks</td>
<td>Custodian banks</td>
<td>Custodian banks</td>
<td>Custodian banks</td>
<td>Custodian banks</td>
<td>Custodian banks</td>
<td>Custodian banks</td>
</tr>
<tr>
<td>Asset managers CISs</td>
<td>Limited partnerships for CISs</td>
<td>Limited partnerships for CISs</td>
<td>Limited partnerships for CISs</td>
<td>Limited partnerships for CISs</td>
<td>Limited partnerships for CISs</td>
<td>Limited partnerships for CISs</td>
<td>Limited partnerships for CISs</td>
<td>Limited partnerships for CISs</td>
</tr>
<tr>
<td>Representatives of foreign CISs</td>
<td>SICAVs</td>
<td>SICAVs</td>
<td>SICAVs</td>
<td>SICAVs</td>
<td>SICAVs</td>
<td>SICAVs</td>
<td>SICAVs</td>
<td>SICAVs</td>
</tr>
<tr>
<td>Other intermediaries</td>
<td>Limited partnerships for CISs</td>
<td>Limited partnerships for CISs</td>
<td>Limited partnerships for CISs</td>
<td>Limited partnerships for CISs</td>
<td>Limited partnerships for CISs</td>
<td>Limited partnerships for CISs</td>
<td>Limited partnerships for CISs</td>
<td>Limited partnerships for CISs</td>
</tr>
</tbody>
</table>

X | X | X | X | X | X | X | X | X |
Table of contents

I. Purpose mm. 1-3
II. Scope of validity mm. 4–6
III. Use of confidential price-sensitive information mm. 7–21
IV. Genuine supply and demand conditions mm. 22–35
V. Dissemination of price-sensitive information mm. 36–38
VI. Good faith mm. 39–44
VII. Organizational obligations of securities dealers mm. 45–66
   A. Confidential price-sensitive information mm. 45–47
   B. Information barriers (“Chinese walls”) / isolated confidentiality zones mm. 48–51
   C. Transactions outside of isolated confidentiality zones mm. 52–53
   D. “Watch list” mm. 54
   E. “Restricted list” mm. 55
   F. Monitoring of employee transactions mm. 56
   G. Placement of securities during offerings mm. 57–58
   H. Financial analysts mm. 59–60
   I. Examination of creditworthiness / assignment of ratings mm. 61–62
   J. Recording obligations mm. 63–64
   K. Audit mm. 65
   L. Transitional period mm. 66
I. Purpose

Under its purpose clause (Art. 1 SESTA; SR 954.1), the Stock Exchange Act is intended to ensure the transparency and functional capability of securities markets, as well as the equal treatment of investors. To this end, Art. 6 SESTA calls for the surveillance of market happenings (market supervision) in such a way that exploitation of the knowledge of confidential facts, price manipulations or other violations of law can be detected.

This Circular lays down the supervisory rules governing the comportment of regulated market participants in the conduct of securities transactions. It contains instructions for the avoidance of market abuse, as well as examples of permissible securities transactions (“accepted market practices”).

The requirements herein are based on the call for proper business conduct as per Art. 10 para. 2 lit. d SESTA and Art. 11 SESTA. They constitute the substance of supervisory law, have a distinct context and extend namely beyond the content of Arts. 161 and 161bis SPC (Federal Supreme Court decision of 2.2.2000; see SFBC Bulletin 40/2000, 37 et seq.). The organizational obligations under Point VII, below, are based on Art. 10 para. 2 lit. a SESTA.

II. Scope of validity

This Circular applies to all securities dealers regulated under the Stock Exchange Act.

If there are apparent signs that securities transactions on behalf of customers are not consistent with the requirements laid down in Points III through V herein, securities dealers must clarify the underlying circumstances and, if necessary, recuse themselves from participation in the customer’s securities transaction; systematic surveillance and clarification is not required in this regard.

Banks without securities dealer status, as well as authorized parties according to Art. 13 para. 2 lit. a, b, c, d and f as well as Art. 13 para. 4 CISA, must also observe the rules laid down in Points III through V herein when conducting securities transactions for their own or any third-party account. These requirements are based on the call for proper business conduct as per Art. 3 para. 2 lit. c BankA and Art. 14 para. 1 lit. a CISA.

III. Use of confidential price-sensitive information

Securities trading must be conducted on the basis of generally accessible or published information on securities and their issuers or information derived therefrom.

Information on securities and issuers is deemed to be generally accessible if is published and disseminated in the media or via the customary information channels within the financial industry, or if it derived therefrom.

All other information on securities and issuers is to be viewed as confidential.

Exploitation of the knowledge of confidential price-sensitive facts for securities transactions is not permissible (misuse of information).

1 Änderung vom 26. November 2008
Information is deemed to be price sensitive if it is capable of substantially influencing the market price or valuation of the relevant securities. Such information pertains namely to facts that have a material impact on the organizational structure, executive and operative management, course of business, assets or profitability of a company and hence is likely to cause a significant change in market price. Under circumstances, it constitutes grounds for public disclosure of the facts or, as it were, the substance of legal or regulatory obligations to provide information (disclosure obligations as per Art. 20 SESTA or ad hoc publicity according to stock exchange regulations).

Also deemed to be misuse of information is the unjustified dissemination of confidential price-sensitive information, or of tips or recommendations to conduct securities transactions based thereon.

Rumors or vague suggestions do not constitute confidential information. However, the deliberate spreading of rumors or vague suggestions in order to cite them as substantiation is impermissible.

Also impermissible is any exploitation of the anticipated reaction of market participants and securities prices through one’s prior knowledge of the impending announcement of an investment recommendation (2scalping*).

Specifically permissible securities transactions and conduct:

- Securities transactions outside of isolated confidentiality zones: organizational measures are to be taken to ensure that no confidential price-sensitive information is used for the purpose of securities transactions (for details, see Point VII below).
- Securities transactions that, despite knowledge of confidential price-sensitive information, were demonstrably not conducted on the basis of that information and would have been conducted even without it.
- Purchases of securities of a takeover candidate by the potential acquirer itself or by an authorized third party on behalf of the former for the purpose of staging the takeover.
- The passing of confidential price-sensitive information to authorized third parties (e.g. involvement of advisors in preparations for a merger).
- Continuation of a pre-existing investment strategy that has been established without any consideration of confidential price-sensitive information.
- Hedging transactions, proprietary trading or market making based on information available to the securities dealer owing to its positions or the order book of the securities exchange(s).
- The repurchase of an issuer’s own securities in order to prepare for, or within the framework of, a repurchase program as per Circular No. 1 of the Swiss Takeover Board: Buyback programs.
IV. Genuine supply and demand conditions

Securities transactions must have an economic rationale and reflect genuine supply and demand conditions.

Securities transactions or the mere entry of orders for the purpose of creating the impression of market activity or distorting the liquidity, market price or valuation of securities, as well as fictitious trades and orders, are not permissible (market manipulation).

Indications of market manipulation can be inferred from the following behavioral patterns (where necessary, the securities exchanges regulate the details in this regard):

- The concurrent purchase and sale of the same securities for the account of the same beneficial owner ("wash trades").
- Equal but opposite purchases and sales of the same securities for the proprietary trading account of a securities dealer ("nostro-nostro in-house crosses").
- The entry of equal but opposite buy and sell orders in the same security upon prearrangement with the intention to distort liquidity or prices ("improper matched orders", "daisy chains" in collaboration with several parties).
- Liquidity and price distortions through the intentional generation of an overhang of buy or sell order ("ramping", "capping", "pegging").
- The establishment of large positions with the intention to constrict the market ("squeeze" or "corner").

Specifically permissible securities transactions and conduct:

- Securities transactions for the purpose of price stabilization or price nursing (temporarily evening out price gyrations) during a predetermined yet extendable time frame; the time frame and stabilization efforts are to be reported to the exchange in accordance with its rules (publication is not required).
- Price stabilization measures following the allotment of a public offering of securities for a limited time span ("syndicate bid"). The parameters of such measures (i.e. the fact that stabilization is taking place, the related price spread, duration of the activity) are to be publicly disclosed prior to the commencement of trading.
- Securities transactions associated with the posting of quotes on the bid and ask sides of the market ("market making").
- An issuer’s acquisition of its own shares within the framework of a repurchase program as per Circular No. 1 of the Swiss Takeover Board: Buyback programs.
- Nostro-nostro in-house crosses, provided the offsetting transactions are executed in the exchange system independently of each other and without prior arrangement.
V. Dissemination of price-sensitive information

Price-sensitive information may only be disseminated and published if it can be assumed in good faith that the information corresponds to the facts.

Deemed to constitute dissemination and publication are, namely, announcements made via financial and securities exchange information channels, the media in general and the Internet, as well as communiqués issued by the research and analysis departments of securities dealers.

The dissemination of false, incomplete or misleading price-sensitive information on securities or issuers with the intention to deceive other market participants is not permissible (market deception).

VI. Good faith

In the carrying out of securities transactions, the doctrine of good faith is to be observed.

The obligations pertaining to comportment vis-à-vis customers as per Art. 11 SESTA (duty to provide information, duty of care, duty of loyalty) are specified concretely in the Swiss Bankers Association Code of Conduct for Securities Dealers. The doctrine of good faith, however, also calls for irreproachable comportment vis-à-vis the market as a whole.

The following behavioral patterns are not compatible with the doctrine of good faith:

- The invoicing of a price that is at variance with the execution price actually obtained ("price fraud"). No price fraud is present if, in connection with the underlying order, the securities dealer has borne a price risk or reached agreements with the customer that justify an invoiced price that is at variance with the execution price actually obtained (see Swiss Bankers Association Code of Conduct for Securities Dealers).

- Exploiting knowledge of impending customer orders by executing same-side proprietary transactions before, in parallel with or immediately after the customer transactions ("front-/parallel-/after-running"; see Swiss Bankers Association Code of Conduct for Securities Dealers).

- Exploiting the use of market orders in securities for which no bid or ask prices exist.

Specifically permissible securities transactions and conduct:

- The in-house execution of securities trades against proprietary positions or versus customer orders (internalization) is permissible, provided the "best execution" principle is upheld.
VII. Organizational obligations of securities dealers

A. Confidential price-sensitive information

The manner in which confidential price-sensitive information is handled must be organized and monitored such that abusive market comportment can be identified and customer disadvantages avoided. The securities dealer must behave in a way that preserves customers’ trust in the securities dealer itself and the Swiss financial center as a whole.

If, in certain instances, abuses or disadvantages are foreseeable, or if the isolation of information in specific confidentiality zones is not possible, the existing conflicts of interest must be disclosed or any transactions in the relevant securities forgone until the confidential price-sensitive information is made public.

To this end, the securities dealer must have, commensurate to its business activities, size and structure, a reasonable and appropriate organization, level of training and controls in place.

B. Information barriers (“Chinese walls”) / isolated confidentiality zones

Information barriers (“Chinese walls”) represent a combination of measures aimed at controlling the flow of information and hence avoiding conflicts of interest or the misuse of information.

Through spatial, personnel, functional, organizational and information technology measures, confidentiality zones are created in which information can be isolated and controlled. The degree of organization depends on the business activities, size and structure of the securities dealer. If necessary, ad hoc confidentiality zones are to be created and confidential price-sensitive information isolated within the objectively necessary circle of confidants.

Organizational units are to be segregated vertically as stand-alone confidentiality zones by means of information barriers. Through the establishment of a horizontal information barrier, it must be ensured that no confidential price-sensitive information flows from the executive level and central controlling units into other business areas. These information barriers are to be anchored in internal regulations or, as needed, established on an ad hoc basis.

Adherence is to be monitored by a specially designated office (e.g. the Compliance function). The latter also bears responsibility for steering the flow of information both horizontally and vertically. For important reasons, information barriers may be breached. Such exceptions are to be documented promptly. Ultimate responsibility for the handling of confidential price-sensitive information and any conflicts of interest lies with senior management. Senior management and the board of directors may opt to disregard information barriers.

C. Transactions outside of isolated confidentiality zones

If confidential price-sensitive information remains isolated within confidentiality zones, it is permissible to conduct securities transactions in other organizational units, namely for the purpose of market making, hedging the relevant securities (underlying instruments and derivatives) in the proprietary trading account, as well as executing the usual nostro and customer transactions (see also mm. 15).

If however there are interdivisional conflicts of interest that affect the securities dealer as a whole, transactions in the relevant securities are, under circumstances, to be forgone for a specified period of time at the instruction of senior management or the board of directors.
D. “Watch list“

The “watch list” contains details about the confidential price-sensitive information on the issuer that is available to the securities dealer, as well as about the confidants and time frame in which confidentiality must be maintained. The list is to be administered by an office designated as responsible for that task (e.g. the Compliance function).

E. “Restricted list“

Prohibitions or restrictions on specific trading activities, such as the forbiddance of trading in certain securities, bans on transactions or restrictions on the publication of financial analyses, are communicated by means of the “restricted list”. The office responsible for the “watch list” also bears responsibility for the “restricted list”.

F. Monitoring of employee transactions

The measures for monitoring employee transactions are to be established in internal directives. These measures must be suitable for the prevention or, as it were, detection of employees’ misuse of confidential price-sensitive information for their own transactions. As a part of this, the banking relationships that employees of the securities dealer have with third-party institutions, as well as any conflicts of interest they may have vis-à-vis their employer, must be taken into account in an appropriate manner.

G. Placement of securities during offerings

Collaborating in preparations for a public offering of securities can involve the awareness of confidential price-sensitive information. The requirements as per Point III, above, apply in this regard. Furthermore, it must be ensured that the allotment of securities is accomplished fairly and transparently in keeping with objective criteria, and that it is verifiable and comprehensible. Details in this regard are regulated in the Swiss Bankers Association’s Allocation Directives for the New Issues Market.

H. Financial analysts

The analysis or research departments are to be organized independently and segregated as confidentiality zones. The Swiss Bankers Association’s Directives on the Independence of Financial Research are applicable in this regard. In addition, internal directives governing the personal transactions of those employed in analysis or research are to be enacted.

I. Examination of creditworthiness / assignment of ratings

Departments involved in the examination of creditworthiness or the assignment of ratings are also to be organized independently and segregated as confidentiality zones. So that a holistic view of credit clients can be achieved within the scope of a creditworthiness examination, the credit department may utilize information from other divisions. The personal transactions of individuals employed in these areas are to be regulated in internal directives.
J. Recording obligations

Under Art. 15 para. 1 SESTA and Art. 1 SESTO-FINMA as well as FINMA Circular 08/4 “Securities Journal”, all securities transactions are to be recorded. In addition, all facts of supervisory relevance as per this Circular are to be documented.

For the purpose of market supervision, the external and internal telephone conversations of employees involved in securities trading are also to be recorded. These recordings, as well as the electronic correspondence (e-mails) of said employees, are to be retained for a minimum of six months and if necessary made accessible to FINMA in an unchanged form for investigative purposes.

K. Audit

The organizational obligations of regulated securities dealers can be the object of a risk-oriented audit performed by the auditing firms appointed in accordance with the supervisory laws. If, within the framework of the audit, violations of the Market Code of Conduct are discovered, they must be reported to FINMA in keeping with the requirements of Art. 27 FINMASA and also mentioned in the audit report.

L. Transitional period

The organizational obligations set forth herein are to be implemented by 30 April 2009. If, due to its business activities, size or structure, a securities dealer forgoes the implementation of individual organizational requirements, the auditing firm must state its position on the matter in its audit report.