
**Federal Act
on Financial Services
(Financial Services Act, FinSA)**

954.1XX

of 15 June 2018

The Federal Assembly of the Swiss Confederation,

based on Articles 95, 97, 98 and 122 paragraph 1 of the Federal Constitution¹, and having considered the Federal Council Dispatch of 4 November 2015²,

decrees:

Title 1 General Provisions

Art. 1 Purpose and subject matter

¹The purpose of this Act is the protection of clients of financial service providers and the creation of uniform conditions for the provision of financial services by financial service providers, thereby contributing to strengthening the reputation and competitiveness of the Swiss financial marketplace.

²To this end, it specifies requirements for the faithful, diligent and transparent provision of financial services and regulates the offering of financial instruments.

Art. 2 Scope of Application

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

- a. financial service providers;
- b. client advisors;
- c. originators and offerors of financial instruments.

¹ SR 101

² BBl 2015 8901

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² This Act does not apply to:

- a. the Swiss National Bank;
- b. the Bank for International Settlements;
- c. occupational benefits schemes and other institutions the purpose of which is the provision of occupational benefits (occupational benefits institutions), as well as employer foundations (employer welfare funds), employers who manage the assets of their occupational benefits schemes, and employer and employee associations that manage the assets of their associations;
- d. insofar as their activity is subject to the Insurance Supervisory Act of 17 December 2004³ (ISA):
 1. insurance companies,
 2. insurance intermediaries,
 3. ombud services;
- e. public insurance institutions in accordance with Article 67 paragraph 1 of the Federal Act of 25 June 1982⁴ on Occupational Old Age, Survivors' and Invalidity Benefits;

Art. 3 Definitions

For the purposes of this Act, the following terms shall have the following meanings:

- a. *Financial instruments*:
 1. equity securities:
 - securities in the form of shares, including securities equivalent to shares that confer participation or voting rights, such as participation certificates or profit-sharing certificates,
 - securities which, upon conversion or exercise of the right guaranteed therein, enable the acquisition of equity securities in accordance with line 1 as soon as they have been registered for conversion,
 2. debt securities: securities that are not equity securities,
 3. units in collective investment schemes in accordance with Articles 7 and 119 of the Collective Investment Schemes Act of 23 June 2006⁵ (CISA),
 4. structured products, namely capital-protected products, capped return products and certificates,
 5. derivatives in accordance with Article 2 letter c of the Financial Market Infrastructure Act of 19 June 2015⁶,
 6. deposits whose redemption value or interest rate is risk or market price dependent,

³ SR 961.01

⁴ SR 831.40

⁵ SR 951.31

⁶ SR 958.1

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except for those whose interest rate is linked to an interest rate index,

7. bonds: shares in a total loan with uniform conditions;
- b. *Securities*: standardised certificated and uncertificated securities, derivatives and intermediated securities, which are suitable for mass trading.
- c. *Financial services*: the following activities performed for clients:
 1. the purchase or sale of financial instruments,
 2. the acceptance and transmission of orders, the subject of which are financial instruments,
 3. the management of financial instruments (asset management),
 4. the provision of personal recommendations relating to transactions with financial instruments (investment advice),
 5. the granting of loans for the execution of transactions with financial instruments;
- d. *Financial service provider*: persons who as a commercial activity provide financial services in Switzerland or for clients in Switzerland, with commercial activity meaning an independent, economic activity aimed at generating income on a permanent basis.
- e. *Client advisors*: natural persons who provide financial services on behalf of a financial service provider or themselves acting as a financial service provider;
- f. *Issuers*: persons who issue or intend to issue securities;
- g. *Offer*: any invitation to purchase a financial instrument that contains sufficient information about the terms of the offer and the financial instrument itself;
- h. *Public offer*: an offer addressed to the public;
- i. *Originator*: persons who create a financial instrument or make changes to an existing financial instrument, including changes to its risk and return profile or to the costs associated with investing in the financial instrument.

Art. 4 Client segmentation

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

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

² Clients who are not professional clients shall be deemed retail clients.

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³ The following shall be deemed professional clients⁷:

- a. financial intermediaries in accordance with the Banking Act of 8 November 1934⁸ (Banking Act), the Financial Institutions Act of 15 June 2018⁹ (FinIA) and the CISA;¹⁰
- b. insurance companies in accordance with the ISA¹¹;
- c. foreign clients subject to prudential supervision in the same manner as the persons and entities under letters a and b;
- d. central banks;
- e. corporations under public law with professional treasury operations;
- f. occupational benefits institutions and institutions the purpose of which is the provision of occupational benefits, each with professional treasury operations;
- g. companies with professional treasury operations;
- h. large companies;
- i. private investment structures with professional treasury operations established for wealthy retail clients.

⁴ Professional clients in accordance with paragraph 3 letters a-d and national and supranational corporations under public law with professional treasury operations shall be deemed institutional clients¹².

⁵ Large company shall be companies that exceeds two of the following amounts:

- a. balance sheet total of CHF 20 million;
- b. turnover of CHF 40 million;
- c. equity of CHF 2 million.

⁶ Companies of a group for which another company of the same group provides financial services shall not be deemed clients.

⁷ Financial service providers may dispense with client segmentation if they treat all clients as retail clients.

Art. 5 *Opting-out and opting-in*

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

⁷ As professional clients are mainly legal entities, only the male form is used, where applicable, instead of the pair form.

⁸ SR 952.0

⁹ SR ...; BBl 2018 3557

¹⁰ SR 951.31

¹¹ SR 961.01

¹² As institutional clients are mainly legal entities, only the male form is used, where applicable, instead of the pair form.

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² For the purposes of paragraph 1, a wealthy person shall be deemed to be any person who credibly declares that he or she:

- a. as a result of personal education and professional experience or comparable experience in the financial sector, has the knowledge necessary to understand the risks of the investments and has assets of at least CHF 500,000; or
- b. has assets of at least CHF 2 million.

³ Professional clients in accordance with 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 already deemed to be institutional clients under Article 4 paragraph 3 letters a or c in conjunction with Article 4 paragraph 4 may declare that they wish to be treated as institutional clients.

⁵ Professional clients who are not 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 financial services, financial service providers shall inform their clients who are not considered retail clients of the possibility of opting-in.

⁸ The declarations under paragraphs 1-6 must be made in writing or in another form verifiable by text.

Title 2 Requirements for the Provision of Financial Services

Chapter 1 Required Knowledge

Art. 6

Client advisors must have sufficient knowledge of the rules of conduct specified in this Act and the required specialist knowledge required for their activities.

Chapter 2 Rules of Conduct

Section 1 Principle

Art. 7

¹ In providing financial services, financial service providers must comply with the supervisory duties specified in this Title.

² Special legislative regulations remain reserved.

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Section 2 Duty to Inform**Art. 8** Contents and form of information

¹ Financial service providers shall inform their clients about:

- a. the financial service provider's name and address;
- b. the financial service provider's field of activity and supervisory status;
- c. the possibility of initiating mediation proceedings before a recognised ombud service in accordance with Title 5; and
- d. the general risks associated with financial instruments.

² They shall also inform about:

- a. the personally recommended financial service and the associated risks and costs;
- b. the economic ties to third parties existing in connection with the financial service offered;
- c. the market offerings taken into account in the selection of the financial instruments.

³ For the personal recommendation of financial instruments, the financial service providers shall also provide the key information document to the retail client if such a key information document is to be prepared for the recommended financial instrument (Arts. 58 and 59). In the case of a composite financial instrument, a key information document must only be provided for such composite financial instrument.

⁴ No key information document must be provided if the service consists exclusively in the execution or transmission of client orders, unless a key information document already exists for the financial instrument.

⁵ When making a personal recommendation of financial instruments for which a prospectus is to be prepared (Arts. 35-37), the financial service providers shall upon request provide the prospectus to the retail client at no charge.

⁶ Advertising must be labelled as such.

Art. 9 Timing and form of information

¹ Financial service providers shall inform their clients before concluding the contract or providing the service.

² Financial service providers shall provide the key information document to their retail clients at no charge prior to the subscription or the conclusion of the contract. If a consultation takes place among parties that are not present in person, the key information document may be provided after conclusion of the transaction, subject to the client's consent. The financial service providers shall document such consent.

³ The information may be provided to the clients in a standardised form on paper or electronically.

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Section 3 Adequacy and Suitability of Financial Services**Art. 10** Duty to test

Financial service providers who provide investment advice or asset management must conduct an adequacy or suitability test.

Art. 11 Adequacy test

A financial service provider who provides investment advice for individual transactions without taking the entire client portfolio into account must inquire about the knowledge and experience of his or her clients and, before recommending financial instruments, examine whether they are adequate for the client.

Art. 12 Suitability test

A financial service provider who provides investment advice taking into account the client's portfolio or asset management must inquire about the financial circumstances and investment objectives as well as the knowledge and experience of the client. This knowledge and experience relates to the financial service and not to the individual transactions.

Art. 13 Exception from the duty to test

¹ If the financial service providers are merely executing or transmitting client orders, they shall not be required to conduct an adequacy or a suitability test.

² They shall inform the clients prior to providing the services under paragraph 1 that no adequacy or suitability test will be conducted.

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

Art. 14 Adequacy or suitability not assessable or lacking

¹ If the information received by the financial service provider is not sufficient to assess the appropriateness or suitability of a financial instrument, the financial service provider shall, before providing the service, inform the client that he or she cannot make that assessment.

² If the financial service provider is of the opinion that a financial instrument is not adequate or suitable for his or her clients, then he or she shall advise them against doing so before providing the service.

³ A lack of knowledge and experience can be compensated by informing the clients.

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Section 4 Documentation and Accountability**Art. 15** Documentation

¹ Financial service providers shall document in an appropriate manner:

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

² When providing investment advice, they shall also document the requirements of the clients and the reasons for each recommendation leading to the purchase or sale of a financial instrument.

Art. 16 Accountability

¹ Financial service providers shall provide their clients upon request with a copy of the documentation in accordance with Article 15 or make it available to them in another appropriate manner.

² In addition, they shall account for the following upon the client's request:

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

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

Section 5 Transparency and Diligence in Client Orders**Art. 17** Processing of client orders

¹ When processing client orders, financial service providers shall observe the principles of good faith and equal treatment.

² The Federal Council shall regulate how the principles under paragraph 1 are to be complied with, in particular with regard to the procedures and systems for processing client orders.

Art. 18 Best possible execution of client orders

¹ Financial service providers shall ensure that in executing their clients' orders the best possible result is achieved in financial and qualitative terms and in terms of time.

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² In financial terms, in addition to the price of the financial instrument, they shall take into account the costs associated with the execution of the order as well as the compensation from third parties in accordance with Article 26 paragraph 3.

³ If they have employees who execute the client orders, they shall issue instructions on the execution of client orders that are appropriate to the number of such employees and the business operations.

Art. 19 Use of financial instruments of clients

¹ Financial service providers may only borrow financial instruments from client portfolios as counterparties or broker such transactions as agents if the clients have expressly consented to such transactions in advance in an agreement that is separate from the general terms and conditions, which agreement must be in writing or in another form verifiable by text.

² The clients' consent is only valid if they:

- a. have been informed in an understandable manner about the risks associated with such transactions;
- b. are entitled to compensation for the income coming due on the borrowed financial instruments; and
- c. are compensated for the borrowed financial instruments.

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

Section 6 Institutional and Professional Clients

Art. 20

¹ The provisions of this Chapter do not apply to transactions for institutional clients.

² Professional clients may expressly waive the requirement that financial service providers apply the rules of conduct under Articles 8, 9, 15 und 16.

Chapter 3 Organisation
Section 1 Organisational Measures

Art. 21 Appropriate organisation

Financial service providers shall ensure compliance with the obligations under this Act through internal regulations and an appropriate business organisation.

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Art. 22 Employees

¹ Financial service providers shall ensure that their employees have the skills, knowledge and experience necessary for their work.

² Financial service providers that are not supervised in accordance with Article 3 of the Financial Market Supervision Act of 22 June 2007¹³ (FINMASA) shall also ensure that only persons registered in the advisor register (Art. 29) act as client advisors for them.

Art. 23 Involvement of third parties

¹ Financial service providers may involve third parties in the provision of financial services.

² They shall only involve persons who possess the skills, knowledge and experience necessary for their activity and who have the authorisations and register entries required for such activity, and they shall carefully instruct and monitor the persons so involved.

Art. 24 Service provider chain

¹ Financial service providers who appoint another financial service provider to provide a financial service to clients shall remain responsible for the completeness and accuracy of the client information as well as for compliance with the obligations specified in Articles 8-16.

² If the appointed financial service provider has reasonable grounds to suspect that the client information is inaccurate or that the obligations under Articles 8-16 are not being complied with by the appointing financial service provider, he or she shall not provide his or her service until he or she has ensured the completeness and accuracy of the information as well as compliance with the rules of conduct.

Section 2 Conflicts of Interest**Art. 25** Organisational precautions

¹ Financial service providers shall take appropriate organisational precautions to avoid conflicts of interest that may arise in the provision of financial services and to preclude conflicts of interest from disadvantaging clients.

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

³ The Federal Council shall regulate the details; in particular, it shall specify conduct which due to conflicts of interest is inadmissible in any case.

¹³ SR 956.1

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Art. 26 Compensation from third parties

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

- a. have expressly informed the clients of the compensation in advance and the clients have waived their rights to it; or
- b. pass the compensation on to the clients in full.

² The information to the clients must include the nature and amount of the compensation and must be provided prior to the provision of the financial service or the conclusion of the contract. If the amount cannot be determined in advance, the financial service provider shall inform his or her clients about the calculation parameters and the bandwidths. Upon request, the financial service providers shall disclose the amounts actually received.

³ Compensation shall be deemed to be any benefits received by the financial service provider from third parties in connection with the provision of a financial service, in particular brokerage fees, commissions, discounts or other financial benefits.

Art. 27 Employee transactions

¹ Financial service providers shall institute measures to prevent employees from misusing for their own account information of which they become aware solely based on their function.

² They shall issue an internal directive on the necessary monitoring measures.

Chapter 4 Advisor Register**Art. 28** Duty to register

¹ Client advisors of domestic financial service providers who are not supervised in accordance with Article 3 FINMASA¹⁴ and client advisors of foreign financial service providers may only carry out their activities in Switzerland after they have been entered in an advisor register.

² The Federal Council may exempt client advisors of foreign financial service providers that are subject to prudential supervision if they provide services in Switzerland exclusively to professional and institutional clients in accordance with Article 4.

³ It may make the exemption under paragraph 2 contingent on reciprocal rights being granted.

¹⁴ SR 956.1

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Art. 29 Registration conditions

¹ Client advisors are entered in the advisor register if they provide verification that they:

- a. meet the requirements of Article 6;
- b. have concluded a professional liability insurance or have equivalent financial collateral; and
- c. are themselves affiliated to or the financial service provider for whom they work is affiliated to an ombud service (Art. 74).

² Client advisors are not entered in the advisor register if:

- a. they have been criminally convicted under Articles 89-92 of this Act or under Article 86 ISA¹⁵ or who are entered in the register of criminal convictions for offences against property under 137-172^{ter} of the Criminal Code¹⁶; or
- b. for the activity to be registered there is a prohibition on performing certain activities under Article 33a FINMASA¹⁷ or a prohibition from practising a profession under Article 33 FINMASA.

³ If the client advisors work as employees of a financial service provider, the condition under paragraph 1 letter b may be met by the financial service provider.

Art. 30 Contents

The advisor register shall contain at least the following information about the client advisors:

- a. surname and first name;
- b. name or company name and address of the financial service provider for whom they work;
- c. function and position of the client advisor within the organisation;
- d. the fields of activity;
- e. the completed training and further education;
- f. the ombud service to which they themselves are affiliated to as a financial service provider or to which the financial service provider for whom they work is affiliated to;
- g. date of the register entry.

¹⁵ SR 961.01

¹⁶ SR 311.0

¹⁷ SR 956.1

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Art. 31 Registration entity

¹ The registration entity shall keep the advisor register. It must be authorised by the Swiss Financial Market Supervisory Authority (FINMA).

² FINMA may approve several registration entities if objectively justified.

³ The registration entity shall be organised in such a way as to ensure the independent performance of its tasks.

⁴ The registration entity and the persons responsible for its management must guarantee irreproachable business conduct. The persons responsible for its management must also enjoy a good reputation and have the specialist qualifications required for their function.

⁵ If the registration entity no longer meets the requirements specified in this Act, FINMA shall take the necessary measures to remedy the deficiencies. If the registration entity fails to remedy the deficiencies that jeopardise the performance of its tasks within a reasonable period of time, FINMA shall withdraw its authorisation to register client advisors.

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

Art. 32 Register management and duty to notify

¹ The registration entity shall decide on the entries and deletions in the advisor register and shall issue the necessary decisions.

² Registered client advisors and the financial service provider for whom they work must notify the registration entity of any changes to the facts underlying the registration.

³ The competent supervisory authorities shall notify the registration entity if they:

- a. have issued a prohibition on performing certain activities or a prohibition from practising a profession within the meaning of Article 29 paragraph 2 letter b against a registered client advisor;
- b. become aware that there is a criminal conviction against registered client advisor in accordance with Article 29 paragraph 2 letter a.

⁴ If the registration entity becomes aware that a client advisor no longer meets a registration condition, it shall delete him or her from the register.

⁵ The data in the advisor register shall be public and shall be made accessible through a searchable retrieval process.

Art. 33 Fees

¹ The registration entity shall charge cost-covering fees for its decisions and services.

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² The Federal Council shall regulate the fees. The regulations shall be in accordance with Article 46a of the Government and Administrative Organisation Act of 21 March 1997¹⁸.

Art. 34 Procedure

The procedure for register entry shall be in accordance with the Administrative Procedure Act of 20 December 1968¹⁹.

Title 3 Offering of Financial Instruments

Chapter 1 Prospectus for Securities

Section 1 General Provisions

Art. 35 Duty to publish a prospectus

¹ Anyone making a public offer for the purchase of securities in Switzerland or requesting admission of securities to trading on a trading venue in accordance with Article 26 letter a of the Financial Market Infrastructure Act of 19 June 2015²⁰ must publish a prospectus in advance.

² If the issuer of the securities does not participate in the public offer, it shall not have a duty to cooperate in the preparation of the prospectus.

Art. 36 Exceptions based on nature of the offer

¹ No prospectus must be published if the public offer:

- a. is aimed only at investors who are professional clients;
- b. is aimed at fewer than 500 investors;
- c. is aimed at investors who acquire securities with a value of at least CHF 100,000;
- d. has a minimum denomination of CHF 100,000;
- e. calculated over a period of 12 months does not exceed a total value of CHF 8 million.

² Each public offer for the resale of securities which were previously the subject of an offer in accordance with paragraph 1 shall be deemed to be a separate offer.

³ For purposes of this provision, unless there are indications to the contrary, the offeror may assume that professional and institutional clients have not made a declaration that they wish to be treated as retail clients.

¹⁸ SR 172.010

¹⁹ SR 172.021

²⁰ SR 958.1

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⁴ A financial service provider is not required to publish a prospectus for securities that are subsequently offered to the public:

- a. as long as a valid prospectus is available; and
- b. if the issuer or the persons who have responsibility for the prospectus have consented to its use.

⁵ The Federal Council may adjust the number of investors and the amounts in paragraph 1 letters b- taking account of recognised international standards and foreign legal developments.

Art. 37 Exceptions based on type of securities

¹ No prospectus must be published if the following types of securities are offered to the public:

- a. equity securities that are issued outside a capital increase in exchange for equity securities of the same class that have already been issued;
- b. equity securities issued or delivered upon conversion or exchange of financial instruments of the same issuer or group of companies;
- c. equity securities issued or delivered as a result of the exercise of a right attached to financial instruments of the same issuer or group of companies;
- d. securities which are offered for exchange on the occasion of a takeover, provided that information is available which is equivalent in content to a prospectus;
- e. securities offered or allotted on the occasion of a merger, demerger, conversion or transfer of assets, provided that information is available which is equivalent in content to a prospectus;
- f. equity securities distributed as dividends to holders of equity securities of the same class, provided that information is available on the number and type of equity securities and the reasons for and details of the offer;
- g. securities offered or allotted by employers or affiliated companies to current or former members of the board of directors or of executive management or to their employees;
- h. securities issued or unconditionally and irrevocably guaranteed by the Confederation or cantons, by an international or supranational corporation under public law, by the Swiss National Bank or by foreign central banks;
- i. securities issued by institutions with a non-material purpose to raise funds for non-commercial goals;
- j. medium-term notes;

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- k. securities with a maturity 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 provide for exemptions from the duty to publish a prospectus for other types of securities offered to the public, taking account of recognised international standards and foreign legal developments.

Art. 38 Exceptions for admission to trading

¹ No prospectus must be published if the following types of securities are admitted to trading:

- a. equity securities which, over a period of twelve months, account in total for less than 20 percent of the number of equity securities of the same class already admitted to trading on the same trading venue;
- b. equity securities issued in connection with the conversion or exchange of financial instruments or as a result of the exercise of rights attached to financial instruments, provided that they are equity securities of the same class as the equity securities already admitted to trading;
- c. securities that are admitted to trading on a foreign trading venue whose regulation, supervision and transparency has been recognised as appropriate by the domestic trading venue or for which transparency for investors has been ensured by other means;
- d. securities for which admission is sought for a trading segment which is only open to professional clients trading for their own account or exclusively for the account of professional clients.

² The exceptions from the duty to publish a prospectus under Articles 36 and 37 shall also apply mutatis mutandis to admission to trading.

Art. 39 Information outside the duty to publish a prospectus

If there is no duty to publish a prospectus, the offerors or issuers shall treat the investors equally when providing them with material information on a public offer.

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Section 2 Requirements**Art. 40** Contents

¹The prospectus shall contain the information that is material for the investor's decision:

- a. regarding the issuer and the guarantor and provider of collateral, namely:
 1. board of directors, executive management, auditors and other bodies,
 2. the most recent half-yearly or annual financial statements or, if not yet available, information on assets and liabilities,
 3. the business situation,
 4. material prospects, risks and disputes;
- b. regarding the securities offered to the public or designated for trading on a trading venue: namely the associated rights, obligations and risks for investors;
- c. regarding the offer: namely the type of placement and the estimated net proceeds of the issue.

²The information shall be provided in an official language of the Confederation or in English.

³The prospectus shall also contain a summary of the material information in an understandable form.

⁴If the final issue price and the issue size cannot be stated in the prospectus, the prospectus must state the maximum possible issue price and the criteria and conditions by which the issue size can be determined. The details of the final issue price and the issue size are deposited with the reviewing entity and published.

⁵For offerings for which an exception under Article 51 paragraph 2 is claimed, the prospectus shall state that it has not yet been reviewed.

Art. 41 Exceptions

¹The reviewing entity may provide that information need not be included in the prospectus if:

- a. the disclosure would seriously harm the issuer and the exclusion would not mislead investors with respect to facts and circumstances that are material to the assessment of the quality of the issuer and the characteristics of the securities;
- b. the relevant information is only of minor importance and is not likely to influence the assessment of the business situation and material prospects, risks and disputes of the issuer or the guarantor or provider of collateral; or
- c. the information relates to securities traded on a trading venue and the periodic reporting of the issuer during the

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the past three years complied with the applicable accounting regulations.

² It may provide for further exceptions to a limited extent, provided that the interests of the investors are safeguarded.

Art. 42 References

The prospectus may contain, in all parts except the summary, references to previously or simultaneously published documents.

Art. 43 Summary

¹ The summary is intended to facilitate a comparison between similar securities.

² The summary must clearly emphasise that:

- a. it is to be understood as an introduction to the prospectus;
- b. the investment decision must be based not on the summary but on the information contained in the prospectus as a whole;
- c. liability for the summary exists only in the event that it is misleading, inaccurate or contradictory when read together with the other parts of the prospectus.

Art. 44 Division

¹ The prospectus may consist of a single document or of several individual documents.

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

- a. a registration form containing the details of the issuer;
- b. a description of the securities with details of the securities which are offered to the public or which are to be admitted to trading on a trading venue;
- c. the summary.

Art. 45 Base prospectus

¹ The prospectus may be prepared in the form of a base prospectus, in particular for debt securities issued in an offer programme or continuously or repeatedly issued by banks under the Banking Act²¹ or by securities firms under the FinIA²².

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

²¹ SR 952.0

²² SR ..., BBl 2018 3557

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³ The final terms and conditions shall be set out at the time of the public offer at least in a version with indicative details. At the end of the subscription period, they must be published in a final version and deposited with the reviewing entity.

⁴ Approval of the final terms is not required.

Art. 46 Supplemental provisions

The Federal Council shall issue supplementary provisions taking account of the specific characteristics of issuers and securities, namely regarding:

- a. the format of the prospectus and base prospectus, the summary, the final terms and conditions and the supplements;
- b. the content of the summary;
- c. the minimum information to be included in the prospectus;
- d. the documents to which reference may be made.

Section 3 Simplifications

Article 47

¹ The Federal Council may make provisions for simplifying the duty to publish a prospectus and the duty to supplement for issuers that do not exceed two of the following amounts in the past financial year:

- a. balance sheet total of CHF 20 million;
- b. turnover of CHF 40 million;
- c. 250 full-time employees on an annual average.

² It may also specify simplifications in particular for:

- a. issuers that capitalise on a trading venue only to a small extent;
- b. issues of subscription rights;
- c. issuers who regularly offer securities to the public or whose securities are admitted to trading on a foreign trading venue whose regulation, supervision and transparency has been recognised as appropriate by a domestic trading venue.

³ It shall design the simplifications uniformly and shall take account in particular of:

- a. the type of securities issued;
- b. the issue size;
- c. the market environment;

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- d. the specific need of investors for transparent information;
- e. the business activity and size of the issuers.

Section 4 Collective Investment Schemes

Art. 48 Open-ended collective investment schemes

¹ For open-ended collective investment schemes in accordance with Title 2 of the CISA²³ the fund management company (Art. 32 FinIA²⁴) and the investment company with variable capital (SICAV) (Art. 13 para. 2 let. b CISA shall prepare a prospectus.

² The prospectus shall contain the fund regulations unless the interested parties are informed as to where it can be obtained prior to the conclusion of the contract or prior to subscription.

³ The Federal Council shall specify which information in addition to the fund regulations must be included in the prospectus.

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 CISA²⁵ shall prepare a prospectus.

² The prospectus shall namely include the information contained in the partnership agreement in accordance with Article 102 paragraph 1 letter h CISA.

³ Article 48 shall apply mutatis mutandis for the prospectus of the investment company with fixed capital under Article 110 CISA.

Art. 50 Exceptions

FINMA may exempt collective investment schemes under the CISA²⁶ in whole or in part from the provisions of this Chapter, provided that they are open exclusively to qualified investors in accordance with Article 10 paragraphs 3 and 3^{ter} CISA and that this does not impair the protective purpose of this Act.

²³ SR 951.31

²⁴ SR ...; BBl 2018 3557

²⁵ SR 951.31

²⁶ SR 951.31

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Section 5 Review of Prospectus**Art. 51 Duty to review**

¹ The prospectus shall be submitted to the reviewing entity prior to its publication. The reviewing entity shall review it for completeness, coherence and comprehensibility.

² The Federal Council may designate securities whose prospectus only needs to be examined after publication if a bank under the Banking Act²⁷ or a securities firm under the FinIA²⁸ confirms that the most important information about the issuer and the securities is available at the time of publication.

³ Prospectuses of collective investment schemes do not need to be reviewed. The duty to obtain approval for documentation of foreign collective investment schemes in accordance with Articles 15 paragraph 1 letter e and 120 CISA²⁹ remains reserved.

Art. 52 Reviewing entity

¹ The reviewing entity must be authorised by FINMA. FINMA may approve several reviewing entities if objectively justified.

² The reviewing entity shall be organised in such a way as to ensure the independent performance of its tasks.

³ It and the persons responsible for its management must guarantee irreproachable business conduct. It and the persons responsible for its management must also enjoy a good reputation and have the specialist qualifications required for their function.

⁴ If the reviewing entity no longer meets the requirements specified in this Act, FINMA shall take the necessary measures to remedy the deficiencies. If the reviewing entity fails to remedy the deficiencies that jeopardise the performance of its tasks within a reasonable period of time, FINMA shall withdraw its authorisation.

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

Art. 53 Procedure and time limits

¹ The procedure of the reviewing entity shall be in accordance with the Administrative Procedure Act of 20 December 1968³⁰.

² The reviewing entity shall examine the prospectuses immediately upon receipt.

³ If it finds that a prospectus does not meet the legal requirements, it shall inform the person submitting the prospectus of this within 10 calendar days of receipt, stating the reasons, and request that the person make the required corrections.

²⁷ SR 952.0

²⁸ SR ...; BBl 2018 3557

²⁹ SR 951.31

³⁰ SR 172.021

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⁴ It shall decide on its approval within 10 calendar days of receipt of any corrected prospectus.

⁵ For new issuers, the time limit is 20 calendar days.

⁶ If the reviewing panel does not take a decision within the time limits specified in paragraphs 4 and 5, this shall not be deemed to be an approval of the prospectus.

Art. 54 Foreign prospectuses

¹ The reviewing entity may approve a prospectus prepared in accordance with foreign legal provisions if:

- a. it has been prepared in accordance with international standards established by international organisations of securities regulators; and
- b. the information requirements, including those relating to financial information, are equivalent to the requirements of this Act; audited separate financial statements are not required.

² It may provide that prospectuses approved under certain jurisdictions shall also be deemed to be approved in Switzerland.

³ It shall publish a list of countries whose prospectus approvals are recognised in Switzerland.

Art. 55 Validity

¹ Prospectuses shall be valid for a period of twelve months following their approval for public offer or admission to trading on a trading venue for securities of the same class and of the same issuer.

² Prospectuses for debt securities issued by a bank under the Banking Act³¹ or a securities firm under the FinIA³² in an offer programme are valid until none of the debt securities concerned is still being issued continuously or repeatedly.

Art. 56 Supplements

¹ A supplement to the prospectus must be prepared if, between the approval of the prospectus and the final closing of a public offer or opening of trading on a trading venue, new facts arise or are ascertained which could have a material effect on the valuation of the securities.

² The reviewing entity must be notified of the supplement immediately upon such new fact occurring or being established.

³ The reviewing entity shall decide within a maximum period of seven calendar days on the approval of the supplement. It shall then be published without delay.

³¹ SR 952.0

³² SR ..., BBl 2018 3557

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Summaries must be revised to include the information contained in the supplement.

⁴ The reviewing entity shall keep a list of facts which, by their nature, are not subject to approval. Supplements to such facts shall be published simultaneously with the notification to the reviewing entity.

⁵ If a new fact in accordance with paragraph 1 arises during a public offer, the tender period shall expire at the earliest two days after the publication of the supplement. Investors may withdraw subscriptions or purchase commitments until the end of the subscription period or offer period.

Art. 57 Fees

¹ The reviewing entity shall charge cost-covering fees for its decisions and services.

² The Federal Council shall regulate the fees. The regulations shall be in accordance with Article 46a of the Government and Administrative Organisation Act of 21 March 1997³³.

Chapter 2 Key Information Document for Financial Instruments

Art. 58 Duty to prepare key information document

¹ If a financial instrument is offered to retail clients, the originator of the financial instrument must first prepare a key information document.

² No key information document is required for financial instruments that may only be acquired for retail clients in the context of an asset management agreement.

³ The Federal Council may designate qualified third parties to whom the preparation of the key information document may be delegated. The originator shall remain responsible for the completeness and accuracy of the information in the key information document as well as for compliance with the obligations under Chapters 2-4 (Arts. 58-68).

⁴ If financial instruments are offered to retail clients on an indicative basis, at least a preliminary version of the key information document containing the relevant indicative information shall be prepared.

Art. 59 Exceptions

¹ No key information document must be prepared by anyone offering securities in the form of shares, including securities equivalent to shares that confer participation rights, such as participation certificates or profit-sharing certificates, as well as debt securities without a derivative character.

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

³³ SR 172.010

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Art. 60 Contents

¹The key information document must contain the information that is material for investors to be able to make an informed investment decision and compare different financial instruments.

²The information shall include in particular:

- a. the name of the financial instrument and the identity of the originator;
- b. the nature and characteristics of the financial instrument;
- c. the risk and return profile of the financial instrument, indicating the maximum loss that the investors may incur on the invested capital;
- d. the costs of the financial instrument;
- e. the minimum holding period and tradability of the financial instrument;
- f. information on the authorisations and approvals associated with the financial instrument.

Art. 61 Requirements

¹The key information document must be easy to understand.

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

Art. 62 Adjustments

¹The originator shall regularly verify the information contained in the key information document and revise it if there are significant changes.

²The verification and revision of the information contained in the key information document may be delegated to qualified third parties. The originator shall remain responsible for the completeness and accuracy of the information in the key information document as well as for compliance with the obligations under Chapters 2-4 (Arts. 58-68).

Art. 63 Supplemental provisions

The Federal Council shall issue supplementary provisions regarding the key information document. It shall namely regulate:

- a. its contents;
- b. its scope, language and design;
- c. the modalities of making it available;
- d. the equivalence of foreign documents with the key information document in accordance with Article 59 paragraph 2.

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Chapter 3 Publication**Art. 64** Securities prospectus

¹ The offeror of securities or the person asking for their admission to trading must:

- a. deposit the prospectus with the reviewing entity upon its approval;
- b. publish the prospectus at the latest upon commencement of the public offer or admission of the relevant securities to trading.

² If a class of equity securities of an issuer is to be admitted for the first time to trading on a trading venue, the prospectus must be made available at least six working days before the end of the offering.

³ The prospectus may be published:

- a. in one or more newspapers with a circulation corresponding to the issue or in the Swiss Official Gazette of Commerce;
- b. by making it available at no charge in printed form at the registered office of the issuer or the office of the agent responsible for the issue;
- c. in electronic form on the website of the issuer, the guarantor or provider of collateral, the trading venue or the agent responsible for the issue; or
- d. in electronic form on the website of the reviewing entity.

⁴ If the prospectus is published in electronic form, hard copy versions must be made available at no charge upon request.

⁵ The reviewing entity shall prepare a list of the approved prospectuses and make it available for a period of twelve months.

⁶ If the prospectus is prepared as several individual documents or contains a reference, the individual documents and particulars constituting the prospectus may be published separately. The individual documents must be made available to the investors at no charge. Each individual document shall indicate where the other individual documents, which together constitute the full prospectus, are available.

⁷ The wording and presentation of the prospectus and the supplements that are published or made available to the public must at all times conform to the version deposited with the reviewing entity.

Art. 65 Prospectus for collective investment schemes

¹ The prospectus for a collective investment scheme must be published at the latest upon commencement of the public offer.

² For the publication Article 64 paragraphs 3, 4 and 6 shall apply mutatis mutandis.

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Art. 66 Key information document

¹ If a financial instrument for which a key information document must be prepared is offered to the public, the key information document must be published at the latest upon commencement of the public offer.

² Article 64 paragraphs 3 and 4 shall apply mutatis mutandis.

Art. 67 Changes to rights attached to securities

¹ The issuer shall publish any changes to the rights attached to the securities in sufficient time to ensure that investors can exercise their rights.

² In all other respects, the content and scope of the publication shall be in accordance with the terms and conditions of the issue. Article 64 paragraphs 3 and 4 shall apply mutatis mutandis.

³ Special statutory provisions remain reserved.

Chapter 4 Advertising**Article 68**

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

² The advertising must refer to the prospectus and the key information document relating to the applicable financial instrument and to how they may be obtained.

³ Advertising and other information to investors regarding financial instruments must correspond with the information contained in the prospectus and the key information document.

Chapter 5 Liability**Article 69**

¹ Any person who in prospectuses, in the key information document or in similar communications makes incorrect or misleading statements or statements that do not comply with the legal requirements, without exercising due care, shall be liable to the purchaser of a financial instrument for any damage caused thereby.

² Liability for information contained in the summary shall only apply if it is shown that such information is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

³ Liability for false or misleading statements about material prospects shall only apply if the statements were made or disseminated against better judgment or without reference to the uncertainty of future developments.

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Chapter 6

Offering of Structured Products and Forming of Special Purpose Funds

Art. 70 Structured products

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

- a. a bank in accordance with the Banking Act³⁴;
- b. an insurance company in accordance with the ISA³⁵;
- c. a securities firm in accordance with the FinIA³⁶;
- d. a foreign institution subject to equivalent prudential supervision.

² The issuance of structured products to retail clients by special purpose vehicles is permitted, provided that:

- a. these products are offered by:
 1. financial intermediaries in accordance with the Banking Act, the FinIA and the CISA³⁷,
 2. insurance companies in accordance with the ISA,
 3. a foreign institution subject to equivalent supervision, and
- b. a security is provided that meets the requirements of paragraph 1.

³ The Federal Council shall regulate the requirements for the security.

Art. 71 Internal special purpose funds

¹ Internal special purpose funds of a contractual nature for the collective management of the assets of existing clients may only be established by banks under the Banking Act³⁸ and securities firms under the FinIA³⁹ if they fulfil the following conditions:

- a. They shall include clients in the internal special purpose fund only on the basis of a long-term asset management or investment advisory relationship.
- b. They shall not issue any share certificates to it.

³⁴ SR 952.0

³⁵ SR 961.01

³⁶ SR ... SR BBl 2018 3557

³⁷ SR 951.31

³⁸ SR 952.0

³⁹ SR ...; BBl 2018 3557

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c. They do not offer the participation publicly and they do not advertise it.

² A key information document in accordance with Articles 58-63 shall be prepared for internal special purpose funds.

³ The establishment and liquidation of internal special purpose funds must be reported to the supervisory audit company.

⁴ In the case of bankruptcy of the bank or securities firm, assets and rights belonging to the special purpose fund will be segregated in favour of the investors.

Title 4 Provision of Documents

Art. 72 Entitlement

¹ The client shall at all times be entitled to receive a copy of his or her dossier as well as all other documents relating to him or her which the financial service provider has prepared in the course of the business relationship.

² With the client's consent, the documents may be provided in electronic form.

Art. 73 Procedure

¹ Anyone wishing to assert a claim shall submit a corresponding request in writing or in another form verifiable by text.

² The financial service provider shall provide the client a copy of the relevant documents at no charge within 30 days of receipt of the request.

³ If the financial service provider does not comply with the request for the provision of documents, the client may petition the courts.

⁴ Any refusal on the part of the financial service provider to provide the documents may be taken into account by the competent court when deciding on the costs of the proceeding in a later legal dispute.

Title 5 Ombud Services

Chapter 1 Mediation

Art. 74 Principle

Disputes about legal claims between the client and the financial service provider shall be settled by an ombud service in the context of a mediation procedure to the extent possible.

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Art. 75 Proceeding

¹ The proceeding before the ombud service must be unbureaucratic, fair, rapid, impartial and inexpensive or at no charge to the client.

² It is confidential. Statements made by the parties in the context of the mediation proceeding and correspondence between a party and the ombud service may not be used in any other proceeding.

³ The parties are not entitled to review the correspondence of the respective other party with the ombud service.

⁴ An application for mediation is admissible at any time if:

- a. it has been submitted in accordance with the rules specified in the procedural regulations of the ombud service or using the form provided by the ombud service;
- b. the client credibly asserts that he or she has previously informed the financial service provider of his or her position and attempted to reach an agreement with him or her;
- c. it is not manifestly abusive or a mediation proceeding has already been conducted in the same matter; and
- d. neither a conciliation authority nor a court, arbitral tribunal or administrative authority is or has been involved in the matter.

⁵ The proceeding shall be conducted in the official language of the Confederation chosen by the client. Any divergent agreements between the parties remain reserved, insofar as they comply with the procedural regulations of the ombud service.

⁶ The ombud service freely evaluates the cases submitted to it and is not subject to any instructions.

⁷ The ombud service shall take the appropriate measures to mediate, provided that this does not appear hopeless from the outset.

⁸ If no agreement can be reached or if such an agreement appears hopeless, the ombud service may, on the basis of the information available to it, provide the parties with its own factual and legal assessment of the dispute and include it in the notice concluding the proceedings.

Art. 76 Relationship to conciliation proceeding and other proceedings

¹ The submission of a mediation request to an ombud service does not exclude a civil action and does not prevent such an action.

² After conducting a procedure before an ombud service, the party acting as the plaintiff may unilaterally waive the conciliation proceedings under the Civil Procedure Code⁴⁰.

⁴⁰ SR 272

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³ The ombud service shall terminate the proceeding as soon as a conciliation authority, a court, an arbitral tribunal or an administrative authority is involved in the matter.

Chapter 2 Duties of Financial Service Provider

Art. 77 Duty to affiliate

Financial service providers must affiliate to an ombud service at the latest upon commencement of their activities.

Art. 78 Obligation to participate

¹ Financial service providers who are affected by an application for mediation with an ombud service must participate in the proceeding.

² They must comply with notices to appear, requests for statements of position and requests for information from the ombud service within the set time limits.

Art. 79 Duty to inform

¹ Financial service providers shall inform their clients of the possibility of a mediation proceeding through an ombud service:

- a. when entering into a business relationship within the framework of the duty to provide information under Article 8 paragraph 1 letter c;
- b. when rejecting a legal claim asserted by the client; and
- c. at any time upon request.

² The information shall be provided in an appropriate form and shall include the name and address of the ombud service to which the financial service provider is affiliated.

Art. 80 Financial participation

Financial service providers shall make financial contributions to the ombud service to which they are affiliated. The contributions shall be calculated in accordance with the contribution and cost regulations of the ombud service.

Chapter 3 Admission and Exclusion

Art. 81 Admission

An ombud service is obliged to admit a financial service provider if he or she fulfils the conditions for affiliation.

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Art. 82 Exclusion

Financial service providers who repeatedly fail to comply with the duties under Articles 78-80 shall be excluded from the ombud service.

Art. 83 Duty to inform

The ombud service shall inform the competent supervisory authorities as well as the registration office of the financial service providers affiliated to it and of those to whom it has denied affiliation or whom it has excluded.

Chapter 4 Recognition and Publication**Art. 84** Recognition

¹The ombud services must be recognised by the Federal Department of Finance (FDF).

²Organisations that meet the following conditions shall be recognised as ombud services:

- a. They and the persons engaged by them to conduct the mediations carry out their duties impartially, transparently, efficiently as well as organisationally and financially independently and shall not accept any instructions.
- b. They ensure that the persons engaged by them to conduct the mediations have the necessary specialist knowledge.
- c. They have organisational regulations that ensure the proper functioning of the ombud service and regulate the conditions for affiliation.
- d. They have procedural regulations which specify the proceeding in accordance with Article 75.
- e. They have a contribution and cost regulations in accordance with Article 80.

³The FDF shall publish a list of the ombud services.

⁴If for certain financial service providers there is no possibility to affiliate to an ombud service, the FDF may oblige an ombud service to accept such financial service providers. If there is no suitable ombud service for several financial service providers, the Federal Council may establish such an ombud service.

Art. 85 Review of recognition

¹Changes that affect the fulfilment of the conditions for recognition under Article 84 shall be submitted to the FDF for approval.

²If an ombud service no longer fulfils the conditions for recognition, the FDF shall set it an appropriate time limit for rectification.

³If such rectifications are not made within such time limit, the FDF shall withdraw its recognition.

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Art. 86 Reporting

The ombud service shall publish an annual report of its activities.

Title 6 Supervision and Exchange of Information**Art. 87** Supervision

¹ The competent supervisory authority shall monitor that the financial service providers it supervises comply with the requirements for the provision of financial services and the offering of financial instruments.

² Within the framework of the supervisory instruments at its disposal, it may issue orders to prevent or eliminate violations of these requirements.

³ Private law disputes between financial service providers or between financial service providers and clients shall be decided by the competent court or arbitral tribunal.

Art. 88 Exchange of information

FINMA, the supervisory organisation, the registration entity, the reviewing entity, the ombud service and the FDF may provide each other information that is not publicly available that they require for the performance of their tasks.

Title 7 Criminal Provisions**Art. 89** Violation of the rules of conduct

A fine of up to CHF 100,000 shall be imposed on any person who wilfully:

- a. makes false statements or conceals material facts in fulfilling the duty to inform under Article 8;
- b. seriously violates the duties to conduct an adequacy and suitability test in accordance with Articles 10-14;
- c. violates the provisions of Article 26 regarding the disclosure of compensation from third parties.

Art. 90 Violation of the rules on prospectuses and key information documents

¹ A fine of up to CHF 500,000 shall be imposed on any person who wilfully:

- a. makes false statements or conceals material facts in the prospectus or in the key information document under Title 3;
- b. does not publish the prospectus or the key information document under Title 3 at the latest upon commencement of the public offer.

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² A fine of up to CHF 100,000 shall be imposed on any person who wilfully fails to provide the key information document prior to the subscription or the conclusion of the contract.

Art. 91 Illicit offering of financial instruments

A fine of up to CHF 500,000 shall be imposed on any person who wilfully:

- a. offers structured products to retail clients without complying with the conditions under Article 70;
- b. establishes an internal special purpose fund without complying with the conditions under Article 71.

Art. 92 Exceptions

Articles 89-91 shall not apply to persons and entities supervised in accordance with Article 3 FINMASA⁴¹ and to the persons working for them.

Title 8 Final Provisions

Art. 93 Implementing provisions

The Federal Council shall enact the implementing provisions.

Art. 94 Amendment of other legislation

The amendment of other legislation is set out in the Annex.

Art. 95 Transitional provisions

¹ The Federal Council may provide for a transitional period to meet the requirements under Article 6.

² Client advisors in accordance with Article 28 shall apply to the registration entity for entry in the register within six months of the entry into force of this Act.

³ Financial service providers shall affiliate to an ombud service in accordance with Article 74 within six months of the entry into force of this Act.

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

- a. to securities for which a public offer has been made or for which admission to trading on a trading venue has been requested prior to the entry into force;

⁴¹ SR 956.1

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b. to financial instruments offered to retail clients prior to the entry into force.

⁵The Federal Council may extend the time limit for securities referred to in paragraph 4 should this be indicated due to the delayed start of operations of the reviewing entity.

Art. 96 Referendum and commencement

¹This Act is subject to an optional referendum.

²The Federal Council determines the date on which this Act comes into force.

³This Act shall only come into force together with the FinIA⁴².

Council of States, 15 June 2018

National Council, 15 June 2018

The President: Karin Keller-Sutter

The President: Dominique de Buman

The Secretary: Martina Buol

The Secretary: Pierre-Hervé Freléchoz

Date of publication: 26 June 2018⁴³

Expiration of the referendum period: 4 October 2018

⁴² SR ...; BBl 2018 3557

⁴³ BBl 2018 3615

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