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Ordinance

on the Capital Adequacy and Risk Diversification

of Banks and Securities Firms¹

(Capital Adequacy Ordinance, CAO)

of 1 June 2012 (Status as of 1 August 2021)

The Swiss Federal Council,

based on Article 3 paragraph 2 letter b, Article 3g, Article 4 paragraphs 2 and 4, Article 4^{bis} paragraph 2, Article 10 paragraph 4 letter a and Article 56 of the Banking Act of 8 November 1934² (BankA)
and on Articles 46 paragraph 3 and 72 of the Financial Institutions Act of 15 June 2018³ (FinIA),⁴

ordains:

Title 1 General Provisions

Chapter 1 Purpose, Scope and Definitions

Art. 1 Principles

¹ To protect creditors and the stability of the financial system, banks and account-holding securities firms must mitigate their risks appropriately and hold adequate capital commensurate with their business activities and risks.⁵

² They shall provide capital backing for credit risks, market risks, non-counterparty risks and operational risks.

Art. 2 Subject matter

¹ This Ordinance governs:

- a. eligible capital;

AS 2012 5441

¹ Amended by Annex 1 No II 10 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

² SR 952.0

³ SR 954.1

⁴ Amended by Annex 1 No II 10 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

⁵ Amended by Annex 1 No II 10 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

- b. the risks to be backed with capital and the level of capital backing;
- c. risk diversification, i.e. the limits for risk concentrations and the treatment of intra-group exposures;
- d. the special requirements for systemically important banks.

² The Swiss Financial Market Supervisory Authority (FINMA) may issue technical implementing provisions.

Art. 3⁶ Scope

This Ordinance applies to banks in accordance with the BankA and account-holding securities firms pursuant to the FinIA (hereinafter banks).

Art. 4 Definitions

In this Ordinance:

- a. *regulated stock exchange* means an institution that is appropriately regulated and supervised according to internationally recognised standards whose purpose is to enable the simultaneous purchase and sale of securities among several securities firms⁷ and that also ensures this by means of sufficient market liquidity;
- b. *main index* means an index comprising all securities traded on a regulated stock exchange (total market index) or a selection of key securities on such an exchange, or an index comprising the key securities of various regulated stock exchanges;
- c. *regulated entity* means an entity active in the financial sector that must comply with appropriate capital adequacy requirements, particularly with regard to business risks, and that is regulated according to internationally recognised standards and supervised by a banking, securities or insurance supervisory authority;
- d. *equity security* means a security representing a financial interest in the share capital of an entity;
- e. *equity instrument* means equity securities that qualify as Common Equity Tier 1 capital or additional Tier 1 capital, as well as debt instruments that qualify as additional Tier 1 capital or Tier 2 capital;
- f. *corresponding deduction approach* means the corresponding deduction approach described in the Basel Committee's minimum standards;
- g. *qualifying interest rate instrument* means an interest rate instrument that has:

⁶ Amended by Annex 1 No II 10 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

⁷ Term in accordance with Annex 1 No II 10 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633). This amendment has been made throughout the text.

1. a rating of between 1 and 4 from at least two recognised rating agencies,
 2. a rating of between 1 and 4 from one recognised rating agency, provided it does not have a lower rating from another FINMA-recognised rating agency,
 3. no rating from a recognised rating agency, but has a yield to maturity and residual maturity comparable to those of securities with a rating of between 1 and 4, provided that the issuer's securities are traded on a regulated stock exchange or on a market where at least three market makers independent of each other normally quote rates on a daily basis that are published regularly, or
 4. no rating from a recognised rating agency (external rating), but has an internal bank rating (internal rating) corresponding to a rating of between 1 and 4, provided that the issuer's securities are traded on a regulated stock exchange or on a market where at least three market makers independent of each other normally quote rates on a daily basis that are published regularly;
- h. *Basel minimum standards* means those documents of the Basel Committee on Banking Supervision (BCBS) that are relevant for calculating capital adequacy requirements.⁸

Art. 5 Trading book

¹ Banks may keep a trading book of exposures in financial instruments and commodities held with the intent to trade or to hedge other exposures.

² They may allocate exposures to the trading book only if:

- a. they are unencumbered by contractual agreements regarding their tradability; or
- b. they can be fully hedged at all times.

³ An intent to trade exists if the bank intends to:

- a. hold the exposures for the short term;
- b. benefit from short-term fluctuations in market prices; or
- c. realise arbitrage gains.

⁴ The exposures must be valued frequently and accurately. The trading book must be actively managed.

Art. 6 Rating agencies

¹ FINMA may recognise a rating agency if:

- a. its rating methodology and ratings are objective;

⁸ The current Basel minimum standards may be obtained from the Bank for International Settlements at Centralbahnplatz 2, 4002 Basel, or viewed online at www.bis.org/bcbs

- b. the agency and its rating procedure are independent;
- c. it makes its ratings and the underlying information available;
- d. it discloses its rating methodology, its code of conduct, the basis for its remuneration and the main characteristics of its ratings;
- e. it has sufficient resources; and
- f. the agency and its ratings are credible.

² FINMA shall publish a list of recognised rating agencies.

³ If it finds that a recognised rating agency no longer meets the recognition requirements, it shall withdraw such recognition.

Chapter 2 Consolidation

Art. 7 Consolidation requirement

¹ The capital adequacy and risk diversification requirements must be met not only at the level of the individual entity, but also at the level of the financial group and financial conglomerate (consolidation requirement).

² Consolidation shall include all group companies operating in the financial sector as described in Article 4 in conjunction with Article 22 of the Banking Ordinance of 30 April 2014⁹ (BankO), with the following exceptions:¹⁰

- a. subject to Article 12, financial interests in the insurance sector shall be consolidated only within the framework of the risk diversification requirements;
- b. there shall be no collective investment consolidation requirement concerning the management of collective investments on behalf of investors or the holding of the initial capital of investment companies.

³ If the bank holds equity instruments in an unconsolidated company in accordance with paragraph 2 letter a, these shall be subject to the corresponding deduction approach.

⁴ If the bank holds equity instruments in an unconsolidated company in accordance with paragraph 2 letter b, these shall be subject to the corresponding deduction approach without reference to a threshold.

Art. 8 Consolidation types and options available to the bank

¹ Majority interests in companies subject to consolidation must be fully consolidated.

⁹ SR 952.02

¹⁰ Amended by Annex 2 No 4 of the Banking Ordinance of 30 April 2014, in force since 1 Jan. 2015 (AS 2014 1269).

² In the case of financial interests held jointly with a second shareholder or partner where each holds 50% of the voting rights (joint ventures), the bank may choose full consolidation, proportionate consolidation or the corresponding deduction approach.

³ In the case of minority interests of at least 20% in companies subject to consolidation over which the bank exerts a controlling influence directly or indirectly with other shareholders, the bank may opt for proportionate consolidation or the corresponding deduction approach.

⁴ The corresponding deduction approach shall be applied for all other minority interests.

⁵ With proportionate consolidation, the eligible and required capital, as well as the risk concentrations, must be taken into account in proportion to the financial interest in question.

⁶ Financial interests accounted for using the corresponding deduction approach shall not be included in risk diversification.

⁷ The corresponding deduction approach under paragraphs 2 and 3 shall be applied without reference to a threshold

Art. 9 Alternative treatment with the consent of the audit firm

¹ With the audit firm's consent, the following financial interests may be treated as exempt from the consolidation requirement:

- a. financial interests in companies which, due to their size and business activities, are insignificant for compliance with the capital adequacy requirements;
- b. significant group companies held for less than a year.

² Financial interests conferring more than 50% of the voting rights may exceptionally be consolidated on a proportionate basis with the audit firm's consent if it is contractually stipulated that:

- a. the support for the company subject to consolidation is limited to the bank's proportionate share; and
- b. the other shareholders or partners are obliged to provide support to the extent of their proportionate share and are legally and financially capable of fulfilling that obligation.

³ Financial interests that are exempt from the consolidation requirement in accordance with paragraph 1 shall be subject to the corresponding deduction approach without reference to a threshold