

# Regulatory developments

Synopsis of the most important regulatory developments in the banking and asset management industry

Status: 1 May 2024



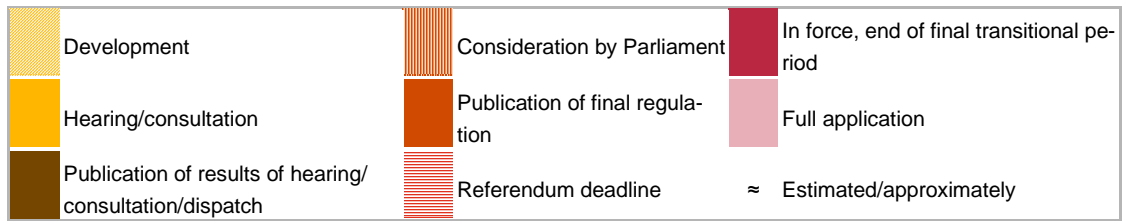
# Table of contents

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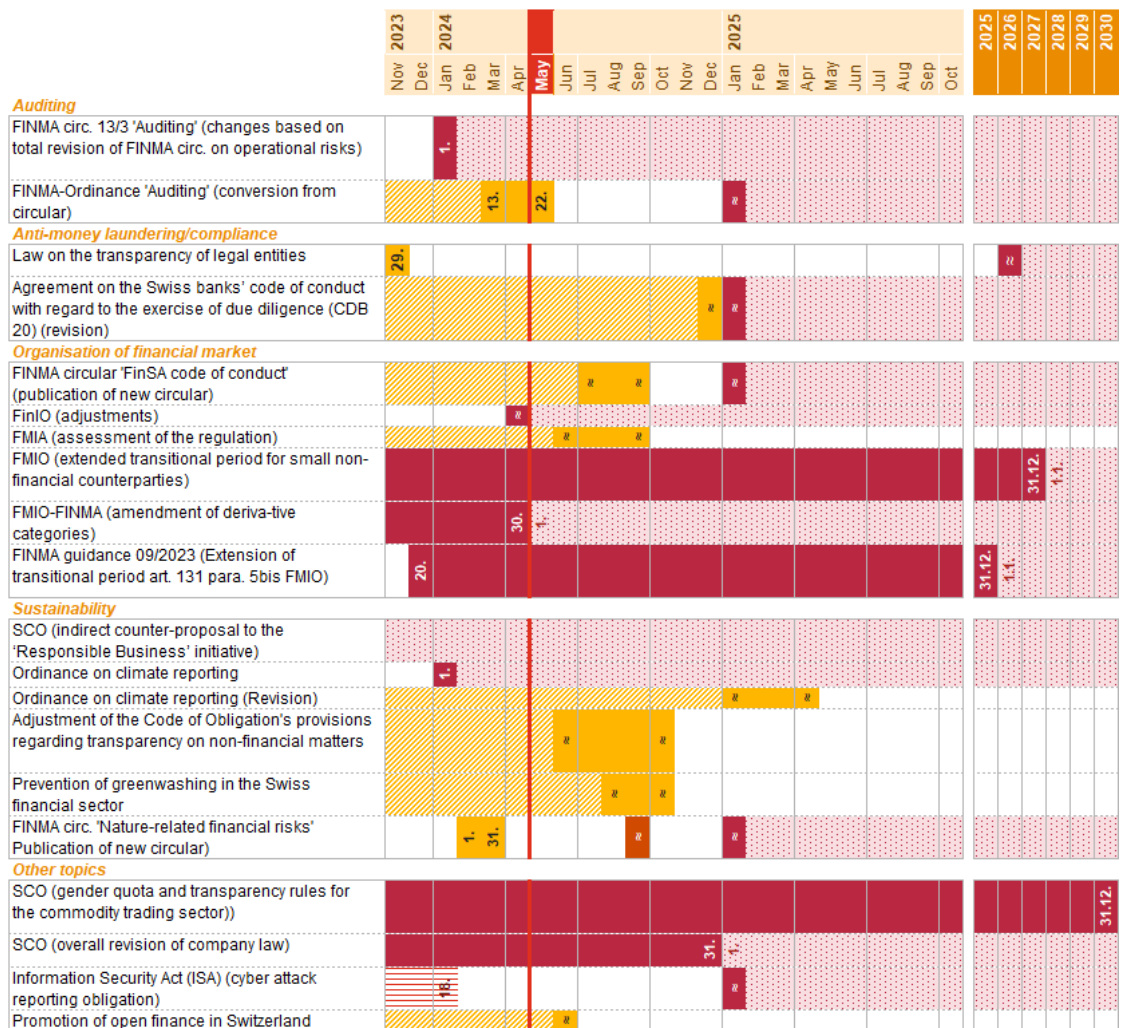
<b>1. Chronological project overview</b>	<b>4</b>
<b>1.1. Interdisciplinary projects</b>	<b>4</b>
<b>1.2. Banks/securities firms</b>	<b>5</b>
<b>1.3. Collective investment institutions</b>	<b>6</b>
<hr/>	
<b>2. Interdisciplinary projects</b>	<b>7</b>
<b>2.1. Auditing</b>	<b>7</b>
FINMA circular 13/3 'Auditing'   Amendments due to total revision of FINMA circular on operational risks	7
FINMA auditing ordinance   Transfer of circular	7
<b>2.2. Anti-money laundering/compliance</b>	<b>7</b>
Federal Act on the Transparency of Legal Entities	7
Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 20)   Total revision	8
<b>2.3. Organisation of financial market</b>	<b>8</b>
FINMA circular 'FinSA code of conduct'   Publication of new circular	8
Financial Institutions Ordinance (FinIO)   Adjustments	8
Financial Market Infrastructure Act (FMIA)   Partial revision	9
Financial Market Infrastructure Ordinance (FMIO)   Extended transitional period for small non-financial counterparties	9
FINMA Financial Market Infrastructure Ordinance (FMIO-FINMA)   Adjustment of derivatives categories	9
FINMA guidance 09/2023   Extension of transitional period art. 131 para. 5 <sup>bis</sup> FMIO	10
<b>2.4. Sustainability</b>	<b>10</b>
Code of Obligations   Indirect counterproposal to the 'Responsible Business Initiative'	10
Ordinance on climate reporting	10
Ordinance on climate reporting   Revision	11
Adjustment of the Code of Obligation's provisions regarding transparency on non-financial matters	11
Prevention of greenwashing in the Swiss financial sector	11
FINMA circular 'Nature-related financial risks'   Publication of new circular	12
<b>2.5. Other topics</b>	<b>12</b>
Code of Obligations   Amendment to the Law on companies limited by shares (gender quota and transparency rules for the commodity trading sector)	12
Code of Obligations   Amendment to the Law on companies limited by shares (overall revision of company law)	13
Information Security Act (ISA)   Cyber attack reporting obligation	13
Promotion of open finance in Switzerland	13
<hr/>	
<b>3. Banks/securities firms</b>	<b>14</b>
<b>3.1. Accounting and reporting</b>	<b>14</b>
FINMA Accounting Ordinance and total revision of FINMA circular 20/1 'Accounting – banks'	14
<b>3.2. Disclosure</b>	<b>14</b>
FINMA Ordinance on the Disclosure of Risks and Capital Requirements and the Principles of Corporate Governance (DisO-FINMA)   Replaces FINMA circular 16/1	14

<b>3.3. Capital adequacy/risk diversification</b>	<b>15</b>
Capital Adequacy Ordinance (CAO)   Gone-concern capital, deduction of financial interests in subsidiaries and other adjustments	15
Capital Adequacy Ordinance (CAO)   Basel III framework revision – Post-crisis reforms	15
Capital Adequacy Ordinance (CAO)   Extension of the transitional period for the use of the market value method	16
FINMA circulars 'Risk diversification' and 'Limitation of intra-group positions'   Transfer of circular	16
<b>3.4. Liquidity</b>	<b>16</b>
Banking Act (BankA)   Public liquidity backstop	16
Liquidity Ordinance (LiqO)   Liquidity requirements for systemically important banks	17
<b>3.5. Credit business</b>	<b>17</b>
SBA Guidelines on minimum requirements for mortgage loans   Adjustment	17
SBA Guidelines on assessing, valuing and processing loans secured against property   Adjustment	17
<b>3.6. Organisation/risk management</b>	<b>18</b>
SBA Recommendations for Business Continuity Management (BCM)   Repeal	18
FINMA circular 23/1 'Operational risks and resilience – banks'   Total revision of FINMA circular 08/21	18
<b>3.7. FinTech</b>	<b>18</b>
Improving the client protection of FinTech companies in accordance with art. 1b BankA	18
<b>3.8. Sustainability</b>	<b>19</b>
SBA Guidelines for financial service providers on the integration of ESG preferences and ESG risks into investment advice and portfolio management	19
SBA Guidelines for financial service providers on the integration of ESG preferences and ESG risks into investment advice and portfolio management   Removal of transaction-based investment advice from scope of application	19
SBA Guidelines for mortgage providers on the promotion of energy efficiency	19
<b>3.9. Other topics</b>	<b>20</b>
Banking Act (BankA)   Insolvency, deposit insurance, segregation	20
Banking Ordinance (BankO)   Insolvency, deposit insurance	20
esisuisse self-regulation for the deposit insurance scheme   Implementation of preparatory measures	21
FINMA Banking Insolvency Ordinance (BIO-FINMA)   Adjustments to BankA and BankO	21
SBA Allocation Directives for the New Issues Market (2023)	21
SBA Directives on the Independence of Financial Research (2018)   Adjustment	22
FINMA circular 'Consolidated supervision'   Publication of new circular	22
FINMA guidance 08/2023   Staking	22
<b>4. Collective investment institutions</b>	<b>23</b>
Collective Investment Scheme Act (CISA)   Introduction of funds not subject to authorisation	23
Collective Investment Schemes Ordinance (CISO)   Limited Qualified Investment Funds (L-QIF) and other adjustments	23
AMAS Self-regulation on transparency and disclosure for collective assets referring to sustainability	24

# 1. Chronological project overview



## 1.1. Interdisciplinary projects





### 1.3. Collective investment institutions

	2023		2024					2025										2026-2030												
	nov	dic	gen	feb	mar	apr	mag	giu	lug	ago	set	ott	nov	dic	gen	feb	mar	apr	mag	giu	lug	ago	set	ott	2025	2026	2027	2028	2029	2030
LICoI (Introduzione di fondi non soggetti all'obbligo di approvazione)					1.																									
OICoI (Limited Qualified Investment Funds L-QIF)					1.																									
AMAS – Autodisciplina relativa alla trasparenza e alla pubblicazione di informazioni da parte di patrimoni collettivi riferite alla sostenibilità										30.	1																			



## 2. Interdisciplinary projects

### 2.1. Auditing

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#### FINMA circular 13/3 'Auditing' | Amendments due to total revision of FINMA circular on operational risks

**Status:** • In force since 1 January 2024

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- Split of current 'Information Technology (IT)' audit field into two new audit fields: 'Management of information and communication technology (ICT) risks' and 'Management of cyber risks'.
- For the 'Management of information and communication technology (ICT) risks' audit field, gradual coverage over four years is now applied instead of six years as previously.
- Introduction of a new 'Operational Resilience' audit field.

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#### FINMA auditing ordinance | Transfer of circular

**Status:** • Consultation until 22 May 2024  
• Expected entry into force: 1 January 2025

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- Examination of the transfer of the circular into a FINMA ordinance on the basis of the ex-post evaluation.
- Elevation to the level of FINMA ordinance is for formal reasons and is not with the intention of making significant changes to the current auditing activities. Limited portion of the content remains in a circular.

### 2.2. Anti-money laundering/compliance

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#### Federal Act on the Transparency of Legal Entities

**Status:** • Consultation period until 29 November 2023  
• Expected entry into force: 1 January 2026, at the earliest

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- Preparation of a draft act for increased transparency and easier identification of the beneficial owners of legal entities.
- Introduction of a central federal register for the identification of beneficial owners:
  - Obligations to identify, verify and report the beneficial owners of the legal entities;
  - Obligations to identify, verify and report members of the Board of Directors acting in a fiduciary capacity, managing directors, shareholders and partners;
  - Documentation and retention obligations;
  - The central register will be accessible to the authorities as well as financial intermediaries, advisors and lawyers to fulfil the due diligence obligations according to the AMLA, but not publicly available.
- Financial intermediaries subject to a reporting obligation of differences between register entries and own information in the event a client does not make the necessary adjustments.
- Introduction of due diligence obligations for advisors and lawyers, in particular for certain services relating to real estate transactions and the foundation, conversion or sale of companies.
- Due diligence obligations regarding precious metals and gemstones trading in the case of cash payments exceeding CHF 15,000.
- Due diligence obligations regarding cash payments in real estate trading.

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### Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 20) | Total revision

- Status:**
- In revision
  - Expected entry into force: 1 January 2025, at the earliest

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- Total revision of the agreement to take account of the adjustments in AMLA, AMLO and AMLO-FINMA as well as FATF recommendations.
  - Does not include further specification of the verification and updating obligations defined in the revised AMLA.

## 2.3. Organisation of financial market

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### FINMA circular 'FinSA code of conduct' | Publication of new circular

- Status:**
- Hearing expected: Q2 2024
  - Expected entry into force: Q1 2025

- 
- Publication of basic questions regarding the implementation in practice and interpretation of the code of conduct according to the Financial Services Act (FinSA) and the Financial Services Ordinance (FinSO).

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### Financial Institutions Ordinance (FinIO) | Adjustments

- Status:**
- Consultation period until 23 December 2022
  - Second half of 2023, at the earliest

- 
- Adjustment of the provisions as part of the amendments to the Collective Investment Schemes Ordinance (CISO).
  - Adjustment of the deadlines and clarifications regarding the submission of the annual report, the summary audit report and the comprehensive audit report to FINMA for fund administrators and for fund managers.
  - Clarification regarding the exercise of supervision by FINMA and the appointment of the audit firm in the event that fund administrators or fund managers are acting as trustees.



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## Financial Market Infrastructure Act (FMIA) | Partial revision

- Status:**
- In revision
  - Consultation expected mid-2024

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- Preparation of a bill submitted for consultation on the amendment of the Financial Market Infrastructure Act (FMIA).
  - Simplifications and extensions in the area of financial market infrastructures:
    - Strengthen the stability of infrastructures by introducing new specific requirements;
    - Simplify the requirement regarding recognition of foreign trading venues;
    - Increase legal certainty as regards the definition of organised trading facilities and introduce a threshold for the authorisation of payment systems;
  - Simplifications and extensions in the area of derivatives trading:
    - Harmonise the reporting standard and take into account international developments of the reporting duty for derivatives transactions;
    - Exempt small non-financial counterparties from the duty to report derivatives transactions;
    - Give consideration to developments in Europe.
  - Simplifications and extensions in the areas of disclosure law, takeover law and market abuse provisions:
    - Harmonise, expand and transfer into federal law the issuer obligations that are important for market integrity in order to better prevent market abuse,
    - Modernise the trading supervision and reporting system in order to better identify market abuse by consolidating the existing offices in a central supervisory and reporting office.

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## Financial Market Infrastructure Ordinance (FMIO) | Extended transitional period for small non-financial counterparties

- Status:**
- In force since 1 January 2019
  - Transitional period until 1 January 2028

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- Preparation of a bill submitted for consultation on the amendment of the Financial Market Infrastructure Act (FMIA).
  - Extension of transitional period to 2028 in light of the possible exemption of small non-financial counterparties from the duty to report derivatives transactions.

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## FINMA Financial Market Infrastructure Ordinance (FMIO-FINMA) | Adjustment of derivatives categories

- Status:**
- In force since 1 February 2023
  - Transitional period: Compliance with the defined reporting requirements within 15 months of entry into force

- 
- Adjustment of the interest-rate derivatives categories subject to the obligation to clear trades via a counterparty in the EU.
  - Precise definition of the content to be reported in the event of reportable derivative transactions.

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## FINMA guidance 09/2023 | Extension of transitional period art. 131 para. 5<sup>bis</sup> FMIO

- Status:**
- Published on 20 December 2023
  - Extension of transitional period until 1 January 2026

- 
- Basic obligation, as of 2020, in accordance with the transitional provisions set out in art. 131 para. 5<sup>bis</sup> FMIO for the exchange of securities relating to OTC derivative transactions that are not settled centrally, which involve share options, index options or similar equity derivatives, such as derivatives based on a basket of shares. The original transitional period has already been extended several times.
  - Further extension of the transitional period in accordance with art. 131 para. 5<sup>bis</sup> FMIO until 1 January 2026.

## 2.4. Sustainability

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### Code of Obligations | Indirect counterproposal to the 'Responsible Business Initiative'

- Status:**
- In force since 1 January 2022
  - Transitional period: First-time application for the financial year beginning one year after the entry into force, i.e. applicable to the 2023 financial year

- 
- Obligation to publish a report on non-financial matters, in particular on CO<sub>2</sub> objectives, social issues, human rights, employee concerns and the fight against corruption, applicable to:
    - Public Interest Entities;
    - with at least 500 full-time positions on an annual average on a group basis; and
    - which exceed one of the following criteria in two consecutive financial years:
      - Total assets: CHF 20 million;
      - Turnover: CHF 40 million.
  - Introduction of due diligence and transparency requirements in relation to minerals and metals from conflict zones and to child labour:
    - Compliance with duties of due diligence regarding the supply arising from the trade and processing of specified metals from conflict zones and high-risk areas;
    - Compliance with duties of due diligence when offering products or services that are under reasonable suspicion of being produced or supplied using child labour;
    - Reporting on the fulfilment of the duties of due diligence.
  - The report for the 2023 financial year must be approved and signed by the Board of Directors and approved by the General Meeting.

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### Ordinance on climate reporting

- Status:**
- In force since 1 January 2024

- 
- Precise definition of the contents of reporting on climate (in particular on CO<sub>2</sub> targets) required for large Swiss companies as part of the reporting on environmental issues in accordance with the Code of Obligations art. 964a–c. Other environmental issues are not covered by this Ordinance.
  - Regulation of the presumption that the climate reporting obligation for large Swiss companies is fulfilled if the reporting is based on the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). If a company applies guidelines or standards other than those of the TCFD, it must demonstrate that the reporting obligation is fulfilled in some other way.
  - The requirement to integrate climate reporting in the report on non-financial matters and to publish it on the company's website in a digital format (e.g. PDF or XBRL), which is both human and machine readable.
  - Requirement to publish the report in an internationally accepted machine-readable digital format within one year of entry into force.

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## Ordinance on climate reporting | Revision

**Status:** • Hearing expected: January 2025

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- Inclusion of minimum requirements for transition plans of financial institutions.
- Proportionate update of the reference to international standards with specific additional requirements
  - European Sustainability Reporting Standards (ESRS)
  - Standard des International Sustainability Standards Board (ISSB).
- For companies that must apply the ESRS because of their extraterritorial effect on business activities in the EU internal market: create legal certainty that Swiss requirements are also met.
- For other companies: apply the more pragmatic ISSB Standard as an alternative.
- Publish reports in machine-readable form and on an international platform.

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## Adjustment of the Code of Obligation's provisions regarding transparency on non-financial matters

**Status:** • Consultation expected: June 2024

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- Establish an internationally coordinated system for sustainable corporate governance for the protection of people and the environment and take into account the revised EU Directives on:
  - reporting on sustainability; and
  - corporate sustainability due diligence.
- Conduct an in-depth analysis of the effects of the future EU regulation on the due diligence obligations of third-country firms also active in the EU in the areas of human rights and the environment by the end of 2023.
- Draft a bill submitted for consultation to adjust sustainability reporting by June 2024;
  - Lowering the sustainability reporting requirement threshold from 500 to 250 employees;
  - Complying with specific and extensive due diligence and reporting obligations for companies with risks in the areas of child labour and conflict minerals;
  - Mandatory review by external auditors;
  - Choice of sustainability reporting according to EU standard or other equivalent standard (e.g. OECD standard).

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## Prevention of greenwashing in the Swiss financial sector

**Status:** • Consultation expected: August 2024

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- Implementation of the Federal Council's position on the prevention of greenwashing by creating a binding and enforceable cross-financial-market solution, taking into account the following elements:
  - Sustainability objectives: create a clear and common understanding in the financial market of the circumstances under which investment goals, products and services are considered sustainable;
  - Description of the applied sustainability approaches: publicly disclosed, transparent and comparable description of the approach to sustainable products or services;
  - Accountability: periodic reporting on defined sustainability goals and the development of key performance indicators for the strategy implementation;
  - Audit by an independent third party: ensuring the credibility of the sustainability goals through independent audit;
  - Binding nature and enforcement: clients, investors and insured persons may take legal action in the event of non-compliance.
- Development of a draft for principles-based government regulation at the level of an ordinance, if not implemented by means of self-regulation of the financial industry.

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## FINMA circular 'Nature-related financial risks' | Publication of new circular

**Status:** • Consultation until 31 March 2024 (completed)

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- Expected entry into force: 1 January 2025, transitional provisions

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- Specification of FINMA's supervisory expectations regarding the management of nature-related financial risks and the extent to which these must be taken into account in corporate governance and institution-wide risk management.
  - In particular, it specifies criteria for assessing the materiality of risks and how scenario analyses are to be incorporated. It also sets out how the main nature-related financial risks are to be embedded as risk drivers in the existing management of credit, market, liquidity and operational risks as well as in insurance activities.
  - The circular is based on the current recommendations of the international standard-setters.
  - The addressees are banks, securities firms and insurance companies in all supervisory categories and applying the principle of proportionality.

## 2.5. Other topics

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### Code of Obligations | Amendment to the Law on companies limited by shares (gender quota and transparency rules for the commodity trading sector)

**Status:** • In force since 1 January 2021

- Transitional periods up to 31 December 2030 at the latest

- 
- Gender quotas for the Board of Directors (min. 30% each) and Executive Board (min. 20%) of large, listed companies (>250 employees), 'comply or explain' clause, with transitional period for disclosing the information in the compensation report for
    - Board of Directors: at the latest as of the financial year beginning 5 years after the entry into force;
    - Executive Board: at the latest as of the financial year beginning 10 years after the entry into force.
  - Increased transparency requirements applicable to the commodities sector through the disclosure of payments to state-owned entities.
    - First-time application for the financial year beginning one year after the entry into force.

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## Code of Obligations | Amendment to the Law on companies limited by shares (overall revision of company law)

- Status:**
- In force since 1 January 2023
  - Adaptation of the articles of incorporation and organisational regulations to the new law within two years of its entry into force

- 
- Implementation of the provisions of the Ordinance against excessive remuneration in listed companies limited by shares (ERCO) in federal law.
  - Establishes guidelines for signing-on bonuses and compensation for prohibition of competition.
  - Liberalisation of the incorporation and capital provisions.
  - Revision of the provisions relating to impending illiquidity, capital impairment and over-indebtedness (art. 725 et seq CO).
  - Better alignment of the law on companies limited by shares (Company Law) to the new Accounting Law, e.g. regarding a company's own shares and the use of foreign currencies in accounting and financial reporting.
  - Proposed solutions with regard to shares held that are not recorded in the stock register (so-called 'dispo shares').
  - More flexibility for conducting general meetings by electronic means.

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## Information Security Act (ISA) | Cyber attack reporting obligation

- Status:**
- Expected entry into force: 1 January 2025

- 
- Introduction of an obligation to report cyber attacks on critical infrastructures within 24 hours of their detection to the National Cybersecurity Centre (NCSC) with the aim of:
    - detecting at an early stage attack patterns on critical infrastructures;
    - warning the potentially affected persons;
    - recommending appropriate prevention and defence measures.
  - Companies that are subject to the Banking Act, the Insurance Oversight Act or the Financial Market Infrastructure Act are considered organisations subject to the reporting obligation.
  - Reporting a cyber attack provides entitlement to assistance from the NCSC when dealing with an incident.

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## Promotion of open finance in Switzerland

- Status:**
- Development of measures to promote open finance by June 2024

- 
- Extension of open finance by promoting the exchange of financial data via standardised and secure data interfaces at the request of clients.
  - The Federal Council favours a market-based approach in principle.
  - Call for more concrete progress and greater commitment in the opening up of data interfaces.
  - Preparation of measures by June 2024 if the financial sector in the event that the financial sector does not sufficiently commit to opening up its interfaces.

## 3. Banks/securities firms

### 3.1. Accounting and reporting

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#### FINMA Accounting Ordinance and total revision of FINMA circular 20/1 'Accounting – banks'

- Status:**
- In force since 1 January 2020
  - Transitional periods for the creation of value adjustments for expected losses and for inherent default risks until 31 December 2025 at the latest

- 
- Application of the provisions for the creation of value adjustments for default risks for the FY2021 financial statements at the latest.
  - The intention is for value adjustments to be created on a straight-line basis for expected or inherent default risks during a transitional period lasting until 31 December 2025.
  - The amount of any shortfall may also be booked in full at an earlier date up to the end of 2025.

### 3.2. Disclosure

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#### FINMA Ordinance on the Disclosure of Risks and Capital Requirements and the Principles of Corporate Governance (DisO-FINMA) | Replaces FINMA circular 16/1

- Status:**
- Consultation until 25 October 2022
  - Entry into force: 1 January 2025

- 
- Replacement of current FINMA circular 16/1 'Disclosure – banks' by a FINMA ordinance.
  - Extension of the duties of disclosure in the areas of:
    - Credit valuation adjustment (CVA);
    - Regulatory treatment of problematic activities;
    - Qualitative and quantitative information on operational risks;
    - Comparison of risk-weighted assets calculated using model-based and standardised approaches;
    - Encumbered/ceded assets.
  - Adjustment of the existing individual disclosure templates and tables.

### 3.3. Capital adequacy/risk diversification

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#### Capital Adequacy Ordinance (CAO) | Gone-concern capital, deduction of financial interests in subsidiaries and other adjustments

- Status:**
- In force since 1 January 2019
  - Transitional periods for additional gone-concern minimum capital requirements until 2025
- 
- Introduction of gone-concern minimum capital for domestic systemically important banks (D-SIBs).
  - Investments in group companies active in financial services: deduction of financial interests from capital (from an individual company perspective) replaced by a financial interest risk-weighting for group companies based in:
    - Switzerland: 250%;
    - Abroad: 400%.
  - Group companies that provide the services necessary for the continuation of a bank's business processes are subject to consolidated supervision by FINMA.

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#### Capital Adequacy Ordinance (CAO) | Basel III framework revision – Post-crisis reforms

- Status:**
- Entry into force: as of 1 January 2025 (interim report on entry into force: July mid-2024)
  - Phased increase of output floors for internal model-based approaches until 2028
  - Publication of the ordinances to implement the final Basel III standards (March 2024)
- 
- Adjustment of the standardised approach for weighting credit risks through
    - Greater differentiation of risk weights rather than using flat rates, especially for exposures secured by residential or commercial property depending on the loan-to-value ratio; and
    - Further assessment requirements for the application of external ratings.
  - Use of the advanced IRB approach not allowed for certain exposure classes, especially exposures to corporates and to financial institutions.
  - Adjustment of the calculation methodology of credit valuation adjustments (CVAs).
  - Replacement of previous approach to minimum capital requirements for operational risk (basic indicator, standardised and advanced measurement approaches) by a standardised approach based on earnings and historical losses.
  - Adjustment of the calculation methodology of the leverage ratio and introduction of a leverage ratio buffer for global systemically important banks (G-SIBs).
  - Output floor set for the internal model-based approaches at a minimum 72.5% of risk-weighted assets calculated using the standardised approaches.
  - Simplified implementation of the rules for category 3 to 5 banks.
  - Replacement of the previous FINMA circulars by FINMA ordinances:
    - Ordinance on the Trading Book and Banking Book and Eligible Capital (TBEO-FINMA): Replaces FINMA circular 13/1 'Eligible capital – banks';
    - Ordinance on the Leverage Ratio and Operational Risks (LROO-FINMA): Replaces FINMA circular 15/3 'Leverage ratio – banks' and the quantitative part of the FINMA circular 08/21 'Operational risks – banks';
    - Ordinance on Credit Risks (CreO-FINMA): Replaces FINMA circular 17/7 'Credit risks – banks';
    - Ordinance on Market Risks (MarO-FINMA): Replaces FINMA circular 08/20 'Market risks – banks'.

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### Capital Adequacy Ordinance (CAO) | Extension of the transitional period for the use of the market value method

**Status:** • In force since 1 January 2024

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- Banks in supervisory categories 4 and 5 may use the market value method in accordance with the no longer valid version of the CAO from 2016 for the conversion of derivatives into their credit equivalents until 31 December 2023.
- Adjustment of the transitional period until 31 December 2024, until the entry into force of the revised Basel III framework – post-crisis reform.

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### FINMA circulars 'Risk diversification' and 'Limitation of intra-group positions' | Transfer of circular

**Status:** • Consultation expected: in the course of 2024

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- The implementing regulations for the risk diversification regulations are to be transferred to a FINMA ordinance in the course of 2024.
- Selective, specific adjustments are planned.

## 3.4. Liquidity

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### Banking Act (BankA) | Public liquidity backstop

**Status:** • Federal Dispatch published 6 September 2023  
• Consideration by Parliament pending

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- Public liquidity backstop to allow the Confederation and the Swiss National Bank to bolster the liquidity of a systemically important bank if this is required for it to continue as a going concern.
- Measures for systemically important banks regarding remuneration during the period of recourse to state aid.
- Clarification of the provisions relating to the reserve capital (Vorratskapital), reporting obligations and maintenance of a register by cooperative banks.
- Charging systemically important banks an annual lump sum for the risk of a potential provision of a default guarantee.
- Provisions on liquidity assistance loans, guarantees, further measures and merger-related transactions, which were based on the Emergency ordinance of 16 March 2023.



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## Liquidity Ordinance (LiqO) | Liquidity requirements for systemically important banks

- Status:**
- In force since 1 July 2022
  - Transitional periods until 31 December 2023

- 
- Definition of the basic requirements to be met by all systemically important banks and additional institution-specific requirements to ensure the necessary liquidity to absorb liquidity shocks.
  - Introduction of requirements related to liquidity needs, in addition to the liquidity requirements applicable to all banks, for:
    - Risks arising from the extension of loans;
    - Cliff risk and stress scenario using a 90-day time horizon.
  - Transitional period of
    - 3 months to comply with reporting obligations
    - 18 months to comply with the basic requirements.

## 3.5. Credit business

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### SBA Guidelines on minimum requirements for mortgage loans | Adjustment

- Status:**
- Recognition by FINMA as a minimum regulatory standard on 27 March 2024
  - Entry into force: 1 January 2025 (simultaneous with final Basel III standards)

- 
- Reduction of the minimum requirements for investment property mortgage loans.
  - Repeal of the tighter requirements imposed in 2019 and standardisation of the specifications for all property types:
    - Minimum down payment: 10%;
    - Maximum amortisation period to two thirds of the collateral value: 15 years.

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### SBA Guidelines on assessing, valuing and processing loans secured against property | Adjustment

- Status:**
- Recognition by FINMA as a minimum regulatory standard on 27 March 2024
  - Entry into force: 1 January 2025 (simultaneous with final Basel III standards)

- 
- Inclusion of regulations on not-for-profit social housing.
  - Obligation to record the purchase price, the collateral's value and the basis for calculation of each real estate collateral.
  - Requirements regarding the independence of internal bank functions in the valuation of real estate collateral and in the use of valuation models.
  - Provisions for plausibility checks of creditworthiness and sustainability in cases of periodic resubmission.

## 3.6. Organisation/risk management

### SBA Recommendations for Business Continuity Management (BCM) | Repeal

**Status:** • Repealed as of 31 December 2023

- Parts of the SBA Recommendations previously recognised as self-regulation are now addressed by the total revision of FINMA circular 23/1 'Operational risks and resilience – banks'.
- Recognition of the corresponding parts of the SBA Recommendations as a minimum standard is to be repealed with the entry into force of the circular.

### FINMA circular 23/1 'Operational risks and resilience – banks' | Total revision of FINMA circular 08/21

**Status:** • In force since 1 January 2024  
• Transitional periods for operational resilience aspects until 31 December 2025

- Reclassification of the quantitative capital requirements for operational risks into the final Basel III regulations.
- Clarification of the role and responsibilities of the Board of Directors in relation to operational risks.
- Obligation to regularly and independently assess the effectiveness of key controls and the separation of duties, responsibilities and competences to ensure independence and to prevent conflicts of interest.
- Obligation to perform risk and control assessments of significant changes in the products, activities, processes and systems.
- Requirements for minimum periodicity and content of internal reporting to the supreme governing body and to the management.
- Requirements for change management in the field of information and communication technology (ICT) and ensuring the separation of ICT environments for development, testing and production.
- Expansion of the specifications for operating the ICT infrastructure and incident management.
- Clarification of measures for managing cyber risks.
- Clarification of the handling of critical data and increasing the desired level of protection compared to previous specifications.
- Adoption of an updated version of the previous SBA Recommendations for Business Continuity Management (BCM).
- Implementation of operational resilience specifications.
- Relaxation of the rules for banks and investment firms in supervisory categories 4 and 5, as well as banks in the regime for small banks and non-account-holding securities firms.

## 3.7. FinTech

### Improving the client protection of FinTech companies in accordance with art. 1b BankA

**Status:** • Consultation expected: 1st half of 2024

- Adaptation of financial market regulation to improve the client protection of companies in accordance with art. 1b BankA.
- Improvement of depositor protection by separating client funds from other assets in the event of the bankruptcy of a FinTech company.
- Review of the repeal of the CHF 100 million limit on public deposits.

## 3.8. Sustainability

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### SBA Guidelines for financial service providers on the integration of ESG preferences and ESG risks into investment advice and portfolio management

- Status:**
- In force since 1 January 2023
  - Transitional periods:
    - until 1 January 2024 for training and for application to new customer relationships
    - until 1 January 2025 for application to existing customer relationships

- 
- Binding self-regulation for SBA members; non-members can adopt the guidelines on a voluntary basis. These guidelines **are currently neither recognised nor approved as self-regulation by FINMA** and therefore do not constitute regulatory requirements.
  - Establish a uniform minimum standard for consideration of ESG preferences and ESG risks in investment advice and portfolio management to prevent greenwashing.
  - Regulation of:
    - obligations for the provision of information;
    - collection and consideration of ESG preferences of clients;
    - documentation and accountability;
    - requirements for providing employee training and professional development;
    - Internal Audit conducts a review of compliance with the guidelines at least every 3 years.

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### SBA Guidelines for financial service providers on the integration of ESG preferences and ESG risks into investment advice and portfolio management | Removal of transaction-based investment advice from scope of application

- Status:**
- In force since 3 October 2023

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- Binding self-regulation for SBA members; non-members can adopt the guidelines on a voluntary basis. These guidelines **are currently neither recognised nor approved as self-regulation by FINMA** and therefore do not constitute regulatory requirements.
  - Clarification that ESG preferences do not need to be collected for non-portfolio-based investment advice services (i.e. transaction-based investment advice).
  - The transitional periods of the guidelines that came into force on 1 January 2023 will not be adjusted.

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### SBA Guidelines for mortgage providers on the promotion of energy efficiency

- Status:**
- In force since 1 January 2023
  - Transitional period for adapting banks' internal processes until 1 January 2024

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- Binding self-regulation for SBA members; non-members can adopt the guidelines on a voluntary basis. These guidelines are currently neither recognised nor approved as self-regulation by FINMA and therefore do not constitute regulatory requirements.
  - Encourage mortgage providers to consider long-term value retention and energy efficiency when offering clients advice on financing a property.
  - Allow different conditions in the areas of loan-to-value, affordability, amortisation and interest rates that distinguish between the financing of sustainable properties and non-sustainable properties.
  - Take measures to identify and collect relevant information available to the public on the climate efficiency of buildings (especially labels and certificates).
  - Provide regular training for client advisers and mortgage specialists regarding the procedure for long-term value retention and energy efficiency.

## 3.9. Other topics

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### Banking Act (BankA) | Insolvency, deposit insurance, segregation

**Status:** • In force since 1 January 2023

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- Measures to improve depositor and customer protection:
  - Period in which insured deposits are paid out in the event of bankruptcy shortened to seven working days;
  - Banks may deposit securities with a secure third-party custodian or grant cash loans to the deposit insurance institution amounting to 50% of the contribution obligation;
  - Relaxation of requirement to hold liquidity for potential cash outflows to the depositor protection scheme;
  - The scheme's systemic upper limit is to be increased to 1.6% of the total amount of insured deposits and at least CHF 6 billion;
  - Obligation of each bank to make preparations rapidly to draw up payment schedules, contact depositors and execute payments on the basis of the lists of depositors.
- Legal basis of instruments for restructuring banks which affect the rights of owners and creditors and were previously only regulated in the FINMA Banking Insolvency Ordinance (BIO-FINMA).
- Introduction in the Federal Intermediated Securities Act (FISA) of the obligation to segregate proprietary assets and customers' assets recorded in custody accounts throughout the entire domestic 'custody chain' and for the first 'link' in the custody chain abroad.
- Improving the function of the Swiss mortgage bond system in the event of the insolvency of a member bank by adapting the Mortgage Bond Act (MBoA).
- Adjustment of banks' self-regulation to protect privileged deposits within five years at the latest.

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### Banking Ordinance (BankO) | Insolvency, deposit insurance

**Status:** • In force since 1 January 2023  
• Transition period to deposit half of the mandatory contribution in the form of securities or cash loans until 30 November 2023

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- Adoption of the amendments to the Banking Act on the topics of insolvency and deposit insurance.
- Resolvability:
  - Requirements regarding the assessment of the ability to restructure and liquidate internationally important banks in Switzerland and abroad;
  - Clarification of the financial and organisational requirements for companies not subject to supervision that belong to a systematically important banking group and that are material to its business.
- Deposit insurance:
  - Definition and description of privileged deposits, amounts and depositors;
  - Adoption of detailed provisions in the areas of IT infrastructure, personnel and processes for preparatory measures that ensure, in the course of normal business activities, a payment schedule is drawn up, depositors are contacted and the privileged amounts are guaranteed;
  - Further provisions for systemically important banks and relaxation of the rules for banks with fewer than 2,500 depositors;
  - Review of preparatory measures by regulatory audit firm as part of the basic regulatory audit.
- Measures in the event of insolvency risk:
  - To enable the issue of financial instruments in the event of the restructuring of cantonal banks.
- Determination of the supervisory categories of banks:
  - Adjustment and increase of the thresholds for total assets, insured deposits and assets under management to take account of developments in the financial market;
  - Introduction of a requirement to review the thresholds at least every five years.

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- Adaptation of the Mortgage Bond Ordinance (MBoO):
    - Clarification of the rules governing the management of coverage, in particular its classification and safekeeping;
    - Clarification of the tasks of the investigating officer appointed by FINMA in cooperation with the central mortgage bond institutions.

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### esuisse self-regulation for the deposit insurance scheme | Implementation of preparatory measures

- Status:**
- In force since 1 January 2023
  - Transitional period until 31 December 2027

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- Establish the organisational requirements for drawing up the list of depositors and for the payout process by means of
    - measures to maintain critical IT systems, services and service agreements;
    - Availability of a sufficient number of persons;
  - Implementation of the preparatory measures in the event of a bank's closure, in particular
    - Processes for drawing up the depositor list at any time within 72 hours;
    - Formulation of client letters and reply forms, incl. tools for partial automation;
    - Processes for sending client letters within seven working days;
    - Technical facilitation of the processing of payment instructions by preparing the existing e-banking system so it can be used;
    - Processes for processing client payment instructions within seven working days of receipt.

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### FINMA Banking Insolvency Ordinance (BIO-FINMA) | Adjustments to BankA and BankO

- Status:**
- Hearing expected: Q3 2024
  - Expected entry into force: Q3 2025

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- Adoption of the amendments to the Banking Act and the Banking Ordinance.
  - Review of a potential consolidation of the various insolvency regulations of FINMA (BIO-FINMA, IBO-FINMA and Ordinance on the Bankruptcy of Collective Investment Schemes, CISBO-FINMA) into a new FINMA Insolvency Ordinance.

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### SBA Allocation Directives for the New Issues Market (2023)

- Status:**
- In force since 1 September 2023
  - Transitional period for adapting documentation until 29 February 2024

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- Replaces SBA Allocation Directives for the New Issues Market from 2004.
  - Content revised and updated based on the Financial Services Act (FinSA):
    - Extends the scope of application from equity securities to equity securities and debt instruments;
    - Updates the list of objective reasons for differential treatment;
    - Differentiates between allocations to nostro accounts made by syndicate banks and allocations to nostro accounts made by third-party banks
    - Updates the final provisions, refers to FinSA transitional periods.
  - These Allocation Directives **no longer apply as self-regulation recognised or approved by FINMA as of 1 September 2023**, but will continue in the form of voluntary self-regulation.

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## SBA Directives on the Independence of Financial Research (2018) | Adjustment

**Status:** • In revision

- Adjustment of the guidelines of the Swiss Bankers Association recognised by FINMA as a minimum standard.

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## FINMA circular 'Consolidated supervision' | Publication of new circular

**Status:** • Hearing expected: Q3 2024  
• Expected entry into force: Q2 2025

- Documentation of the current practice of consolidated supervision of financial groups under the Banking Act and FinIA, with clarifications and specifications in selected key areas from a supervisory perspective.

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## FINMA guidance 08/2023 | Staking

**Status:** • Published on 20 December 2023

- Regulation of various legal interpretation issues related to staking services in the custody of crypto-based assets.
- Overview of risks and risk mitigation measures for various variants of staking crypto-based assets.

## 4. Collective investment institutions

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### Collective Investment Scheme Act (CISA) | Introduction of funds not subject to authorisation

**Status:** • In force since 1 March 2024

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- Introduction of a category of funds that are not subject to authorisation by FINMA.
- Limited Qualified Investment Funds (L-QIF) would be reserved for qualified investors such as pension funds and insurers.

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### Collective Investment Schemes Ordinance (CISO) | Limited Qualified Investment Funds (L-QIF) and other adjustments

**Status:** • In force since 1 March 2024

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- Implementation provision for changes in the Collective Investment Schemes Act (CISA) to the Limited Qualified Investment Funds (L-QIF) with special regulations in the following areas:
  - Investment regulations;
  - Transparency, reporting and statistics;
  - Accounting, valuation, financial reporting and publication obligations;
  - Audit.
- Further adjustments to the Collective Investment Schemes Ordinance in the following areas:
  - Legal definition of a collective investment scheme: specification of the requirement of two independent investors;
  - Distinction between collective investment schemes and structured products: reinstatement of the legal distinction between collective investment schemes and structured products by means of labelling;
  - Remuneration of ancillary costs: extension of the exhaustive list of permissible ancillary costs;
  - Liquidity: explicit provisions on liquidity and adequate liquidity risk management;
  - Exchange Traded Funds (ETF): new provisions, in particular on disclosure;
  - Side pockets: creation of side pockets, subject to FINMA's approval;
  - Securities lending and repo transactions: improving transparency requirements;
- Investment violations: principles-based codification of the duty to provide information in the event of investment violations.

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## AMAS Self-regulation on transparency and disclosure for collective assets referring to sustainability

- Status:**
- In force since 30 September 2023
  - Transition period until 30 September 2024 to adapt fund regulations, partnership agreement or prospectus

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- Binding self-regulation for AMAS members and other market participants. These guidelines are **currently neither recognised nor approved as self-regulation by FINMA**.
  - Ensuring transparency, quality and positioning of asset management and collective assets referring to sustainability.
  - Requirements of asset managers and producers of collective investment schemes in the following areas:
    - Organisation, processes and risk control;
    - Knowledge in the area of sustainability;
    - Documentation of the sustainability policy;
    - Diligence in the selection, instruction and monitoring of sustainability research, sustainability data and analysis tools;
    - Sustainability report.

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