

Regulations concerning Ongoing Subjection to Supervision

(OSFIN Regulations concerning Subjection to Supervision)

version of 25 May 2020

having regard to the Statutes of the Organisation de surveillance financière OSFIN [Supervisory Organisation for Financial Services OSFIN], the Association Commission has adopted the following provisions:

Chapter 1: General provisions

§1 Purpose and content

These Regulations set out the conditions and processes applicable to subjection to supervision as well as the ongoing supervision of operators subject to supervision.

Chapter 2: Subjection to supervision

§2 Right to be subject to supervision

¹ Pursuant to Article 21 FinIO [Swiss Ordinance on Financial Institutions], portfolio managers and trustees are entitled to be subject to supervision by a supervisory body if their internal rules and their operational organisation ensure that the supervisory requirements are satisfied.

² Portfolio managers and trustees (hereafter, the Financial Institution) have internal rules and an organisation that ensure that requirements under supervisory law are satisfied in particular if they comply with the conditions laid down by Article 9 FinIA [Swiss Federal Act on Financial Institutions], Articles 12 and 23 FinIO and Articles 23 to 27 OBA-FINMA [FINMA Ordinance on Money Laundering], in addition to the provisions of Articles 21 to 27 FinSA [Swiss Federal Act on Financial Services] and Articles 23 to 30 FINSO [Swiss Ordinance on Financial Services], insofar as they are subject to them.

§3 Application for subjection to supervision

¹ By submitting two signed copies of the standard-form examination agreement made available by OSFIN, the Financial Institution instructs OSFIN Organisation de surveillance financière (hereafter: OSFIN) to examine the conditions for subjection to supervision and to carry out a pre-examination of the conditions for authorisation.

² Upon receipt of the signed agreement, OSFIN shall submit an invoice to the Financial Institution for the supervisory fees in accordance with the fee scale along with a copy of the contract countersigned by OSFIN. It shall not start considering the matter until payment of the fees has been received.

§4 Filing of the necessary documents

¹ In order to enable OSFIN to carry out an examination of the conditions for subjection to supervision and a pre-examination of the conditions for authorisation, the Financial Institution shall provide OSFIN with the necessary documents.

² The Financial Institution shall accordingly allow OSFIN to access the platform established for this purpose by FINMA and shall file the necessary documents on the platform.

§5 Missing documents

¹ OSFIN shall request any missing documents and information from the Financial Institution. It shall set an appropriate time limit for it for responding, which may be extended upon request.

² Should OSFIN fail to receive the missing information or documents within the time limit set, it will be required to conclude that it is unable to confirm whether the conditions for subjection to supervision have been met, and hence may terminate the examination agreement in accordance with the terms of that agreement.

§6 Examination of the conditions for subjection to supervision and pre-examination of the conditions for authorisation

¹ OSFIN shall examine the conditions for subjection to supervision as soon as it has gained access to all of the necessary documents.

² In parallel with an examination of the conditions for subjection to supervision, OSFIN shall carry out a pre-examination of the conditions for FINMA authorisation and shall prepare the documents required for this purpose.

³ In order to comply with the conditions for subjection to supervision, the Financial Institution must have internal rules and an organisation that ensure that requirements under

supervisory law are satisfied. OSFIN shall carry out a substantive examination of the application on the basis of legal requirements with reference to a standardised internal form.

§7 Subjection to supervision

¹ Once the conditions for subjection to supervision have been met, OSFIN shall draft a supervisory agreement with the Financial Institution in duplicate for signature. It shall set out the rights and obligations in relation to subjection to supervision and ongoing supervision.

² Upon receipt of the signed supervisory agreement, OSFIN shall issue confirmation to the Financial Institution that the conditions for subjection to supervision have been met along with a countersigned copy of the supervisory agreement.

§8 Application for authorisation

¹ Upon receipt by it of confirmation that the conditions for subjection to supervision by OSFIN have been met, the Institution shall file an application for authorisation with FINMA.

² The application must be filed within one month of receipt of confirmation that the conditions for subjection to supervision have been met. In the event of the failure to comply with this one-month deadline, OSFIN shall carry out a review of the conditions for authorisation at the cost of the Financial Institution once the application for authorisation has been submitted to FINMA.

³ After the application for authorisation has been filed, OSFIN shall submit the documents and information relating to its pre-examination to FINMA.

⁴ In the event the Financial Institution has not filed its application for authorisation with FINMA within six months of confirmation that the conditions were met, OSFIN shall terminate the examination agreement and the supervisory agreement in accordance with the terms of those agreements.

Chapter 3: Supervision

§9 Start of supervision

¹ Ongoing supervision by OSFIN of the operator subject to supervision shall commence upon the issue of authorisation by FINMA to operate as a portfolio manager and/or trustee.

² With effect from this date, OSFIN shall receive supervisory fees, which shall be invoiced

to the operator subject to supervision in accordance with the fee scale. It shall also receive additional fees under the circumstances provided for in the supervisory agreement.

§10 Annual audits

¹ The operator subject to supervision must instruct an auditing company approved by OSFIN to carry out an annual audit concerning compliance with the FinIA, the AMLA [Swiss Anti-Money Laundering Act] and as the case may be the FinSA and the CISA [Swiss Federal Act on Collective Investment Schemes]. The auditing company must confirm its acceptance of the instruction in writing; it shall carry out the audit on the instructions of and at the cost of the operator subject to supervision, although on behalf of the Association.

² A report concerning the audit shall be submitted to OSFIN.

³ Any operators subject to supervision that submit to supervision by OSFIN during the first half of any given calendar year (year N) shall have until 30 June of the following year (year N+1) in order to submit the first audit report. Other operators subject to supervision must submit the audit by 30 June in the next year but one (year N+2).

⁴ The first audit must cover the entire period of subjection to supervision.

⁵ Thereafter, an audit must take place at the end of each calendar year; the report in question must be received by OSFIN no later than 30 June. Each audit shall cover the operations conducted since the previous audit.

§11 Frequency of audits

¹ Provided that at least two consecutive audits have been carried out, OSFIN may extend the frequency of audits to once at most every four years, depending upon the activities of the operator subject to supervision and the corresponding risks. The operator subject to supervision shall be informed concerning this.

² During the years in which no periodic audit is carried out, operators subject to supervision shall transmit a report to OSFIN concerning the conformity of their operations in the form of a standardised report.

§12 Other supervisory instruments

¹ Under special circumstances, in particular in the event of any suspected infringement or unrectified irregularities, OSFIN may decide to carry out other supervisory action in relation to the operator subject to supervision.

§13 Measures in the event that violations are established

¹ Should any violations or irregularities come to light, OSFIN shall set an appropriate time limit for the operator subject to supervision to rectify its circumstances. The operator subject to supervision shall confirm to OSFIN in writing within this time limit that it has fully rectified the circumstances.

² OSFIN shall take any necessary action in order to monitor rectificatory action, depending upon the severity of the objection made and the risk represented by the operator subject to supervision.

³ If this time limit for confirming that rectificatory action has been taken is not complied with, OSFIN shall issue a reminder by registered letter, setting a very short time limit for confirming in writing that rectificatory action has been taken. OSFIN shall inform FINMA immediately in the event that no such confirmation is received.

Chapter 4: Continuing fulfilment of conditions and disclosure of changes

§14 Continuing fulfilment of conditions for subjection to supervision

¹ The operator subject to supervision must fulfil the conditions for subjection to supervision and ensure continuing fulfilment therewith at all times.

² The operator subject to supervision shall disclose to OSFIN in writing using the form made available by OSFIN immediately and unsolicited any change in the facts that enabled it to become subject to supervision.

³ Upon receipt of notification concerning any changes, OSFIN shall examine whether the conditions for subjection to supervision and authorisation are still met.

⁴ Should OSFIN conclude that the conditions for subjection to supervision or authorisation are no longer met following notification of the change, it shall instruct the operator subject to supervision to re-establish compliance within an appropriate time limit.

⁵ In the event that the operator subject to supervision fails to re-establish compliance within the time limit set, following the issue of two reminders OSFIN shall be entitled to terminate the examination agreement if the operator subject to supervision no longer holds FINMA authorisation.

⁶ In the event that the operator subject to supervision already holds FINMA authorisation and is subject to ongoing supervision by OSFIN, OSFIN shall inform FINMA that compliance was not re-established within the time limit set.

§15 Significant changes in facts

¹ In the event of any significant change in facts pursuant to Article 8(2) FinIA, the operator subject to supervision shall seek authorisation from FINMA before continuing its operations. OSFIN shall carry out a pre-examination of the request concerning the changes.

² FINMA must authorise any significant changes.

Chapter 5: End of subjection to supervision and of supervisory oversight

§16 End of subjection to supervision

¹ The supervisory agreement may be deemed to have lapsed automatically without any requirement for termination, or may be terminated in the ordinary manner.

² The conditions for the end of subjection to supervision shall be set out in the supervisory agreement.

Chapter 6: Approval process for auditing companies and supervision

§17 Approval

¹ OSFIN shall grant approval to auditing companies and the lead auditors.

² The approval conditions are set out in Article 43k FINMASA [Swiss Financial Market Supervision Act] and Articles 13 and 14 OOS [Swiss Ordinance on Supervisory Organisations].

§18 Applications for approval

¹ Applications for approval shall be submitted to OSFIN using a standardised form. The examination fees for the application shall be invoiced upon receipt.

² The application shall be examined by a specialist official after payment of the fees has been made. An internal form shall be used in order to examine whether the conditions are met. Supplementary information or documents may be requested from the auditing company.

³ Should the specialist official consider that the conditions have been met, he/she shall submit the file to the Management.

⁴ In the event of acceptance by the Management, confirmation of approval shall be issued to the auditing company and to the approved auditors. They shall be informed concerning the fact that approval conditions must be complied with on an ongoing basis and that FINMA directives on auditing are applicable.

⁵ The Director shall keep a list of approved auditing companies and auditors.

§19 Supervision

¹ Auditing companies shall be supervised by OSFIN, which shall regularly check whether the approval conditions are being met on an ongoing basis by the auditing company and by the lead auditor, whether the time limits specified are being complied with and whether auditing activities are being duly documented.

² OSFIN shall also carry out regular quality checks. For this purpose, it may in particular request working documents, put questions in writing or orally, set time limits, issue reminders, convene meetings, issue reprimands, cancel auditing instructions or, in the event of serious breaches or repeated irregularities, OSFIN may withdraw approval for a specified period or indefinitely.

³ The quality of the auditing work shall be reviewed upon receipt of each report by OSFIN. A standardised form shall be used.

⁴ Compliance with the approval conditions shall be reviewed annually by a specialist official. This official shall ask the auditing company and the lead auditors for any necessary documents and information (training, insurance, etc.).

Chapter 7: Final provision

§20 Entry into force

These Regulations shall enter into force with effect from the date on which OSFIN is granted authorisation by FINMA to operate as a supervisory organisation.