KPMG

FINMA Ordinance on the Trading Book and Banking Book and Eligible Capital of Banks and Securities Firms

(TBEO-FINMA)

SR 952.031.11
Dated 6 March 2024 (Status as on 1 January 2025)

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FINANCIAL SERVICES

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The Swiss Financial Market Supervisory Authority (FINMA),
based on Articles 5(4) and (5), 5a(2), 5b(4), 15, 20(5), 21(2), 23(2), 27(4bis), 30(4), 31(2)(b) and (3) of the Capital Adequacy Ordinance of 1 June 2012 (CAO)[1],
decrees:

Chapter 1: Objective

ARTICLE 1

This Ordinance governs the trading and banking books, as well as eligible capital.

Chapter 2: Trading Book and Banking Book

Section 1: Initial allocation and reclassification of positions

ARTICLE 2 Requirements for procedures, documentation and internal control

(Article 5(5) CAO)

1 The bank must establish clearly defined principles and procedures which guarantee the correct initial allocation and subsequent reclassification of positions to the banking book or trading book in accordance with Articles 4b–5a CAO. The principles and procedures must reflect the bank's risk management capabilities and practices and must be set out in policies.

2 Compliance with these policies must be documented and monitored on an ongoing basis.

3 Where compliance with the policies is not reviewed as part of the regulatory audit, it must be reviewed annually by:

a. the internal audit unit, or for banks in categories 4 and 5 in accordance with Annex 3 of the Banking Ordinance of 30 April[2] 201400 (BO) that meet the requirements of Article 83(3) CAO, by another internal control unit, provided that the latter is independent; or

1 SR **952.03**
2 SR **952.02**

b. an audit firm licensed to carry out audits in accordance with Article 11a(1)(a) of the Audit Oversight Ordinance of 22 August 20070[3].

4 FINMA may request the relevant documentation in accordance with section 25.13 of the Basel Committee's Minimum Standards for risk-based capital requirements (RBC), in the version set out in Annex 1 of the CAO.

ARTICLE 3 Possible derogations during initial allocation

(Article 5(3) and (4) CAO)

1 At the point of initial allocation, positions may in exceptional cases, by way of derogation from Article 5(3)(a) to (f) CAO, be allocated to the banking book instead of the trading book, provided that these positions are not held for any of the purposes set out in Article 5(2) CAO.

2 In derogation from Article 5(3)(g) CAO, credit and equity derivatives held in the banking book to hedge credit or equity risks and that result in a net short credit or equity position in the banking book due to overhedging may continue to be held in the banking book. For the purposes of calculating the minimum capital requirements for market risks, however, the net short credit or net short equity position shall be treated as though included in the trading book.

ARTICLE 4 Repostings

(Article 5a(2) CAO)

1 Instruments may not be reclassified from the trading book to the banking book or vice versa.

2 Selling an instrument from the trading book to the banking book or vice versa is also deemed to be a reclassification.

3 Reclassification is permitted exceptionally in extraordinary circumstances, in particular in the event of a change in accounting standards or the discontinuation of a trading business activity. Market events, changes in the liquidity of instruments or changes in the trading intent of an instrument are not deemed to be extraordinary circumstances.

4 Where a bank's own trading unit processes the purchase of a new instrument for the banking book from an external counterparty or the sale of an existing position in the banking book to an external counterparty for purely operational reasons and on behalf of the relevant banking book unit, this is not considered a transfer from the trading book to the banking book or vice versa, provided the position is not at any time assigned to the trading operation.

5 Where an item is reclassified as a trading transaction on the basis of its accounting treatment, it may be reclassified in accordance with Article 5(3)(a) of the CAO.

[3] SR **221.302.3**

ARTICLE 5 Reposting procedure and its effect
(Article 5a(2) CAO)

1 Reclassifications must be authorized by the bank's management. The bank's management may delegate the granting of authorizations. Such delegation and the corresponding escalation procedures must be set out in the internal policies specified in Article 7(3).

2 Reclassifications are irreversible, unless the characteristics of the position change.

ARTICLE 6 Surcharge on the minimum capital requirements
(Article 5a CAO)

1 The surcharge in accordance with Article 5a(1) CAO must be calculated at the time of the reclassification.

2 Over the term of the position, it may be reduced accordingly as the maturity date or the expiry date of the position approaches. Such reductions require FINMA's approval.

Section 2: Documentation, reporting and disclosure requirements for divergent initial allocations and reclassifications

ARTICLE 7 Documentation requirements
(Articles 5(5) and 5a(2) CAO)

1 Divergent initial allocations in accordance with Article 3 and reclassifications in accordance with Article 4 must be documented on an individual basis.

2 The bank must set out principles and procedures for divergent initial allocations and reclassification. These principles and procedures must be set out in policies that are subject to the requirements for policies specified in Article 2.

3 These policies on alternative initial allocations and reclassifications and any amendments thereto must:

a. be approved by FINMA for banks in categories 1 and 2 in accordance with Annex 3 BO [4];

b. shared with FINMA by banks in category 3 in accordance with Annex 3 BO;

c. shared with FINMA upon request by banks in categories 4 and 5 in accordance with Annex 3 BO.

[4] SR **952.02**

ARTICLE 8 Reporting requirements
(Articles 5(5) and 5a(2) CAO)

1 All divergent initial allocations in accordance with Article 3 and reclassifications in accordance with Article 4 must be documented in a report. In particular, the date, materiality, instrument and justification must be provided.

2 The report must show whether a reclassification resulted in a reduction of the minimum capital at the time it was made and how the corresponding surcharge on the minimum capital was calculated in accordance with Article 5a(1) CAO.

3 The report must be prepared:

a. quarterly by banks of Categories 1 and 2 in accordance with Annex 3 BO [5].

b. annually by banks of Categories 3, 4 and 5 in accordance with Annex 3 BO.

4 Banks in categories 1, 2 and 3 must submit the report to FINMA.

ARTICLE 9 Duty to disclose
(Articles 5(5) and 5a(2) CAO)

The disclosure requirement regarding reallocations and any surcharges on the minimum capital requirement is governed by the FINMA Ordinance dated 6 March 2024[6] on the Disclosure Obligations of Banks and Securities Firms (DisO-FINMA).

Section 3: Internal Risk Transfer

ARTICLE 10 Definition

The internal transfer of risk is defined as the transfer of risk based on an internal written agreement:

a. within the banking book;

b. from the banking book to the trading book or vice versa;

c. within the trading book between different trading desks in the trading book).

ARTICLE 11 Reallocation from the banking book to the trading book

An internal transfer of risk from the trading book to the banking book is permissible, but will not be taken into account in the calculation of the minimum capital requirement.

[5] SR **952.02**
[6] SR **952.022.2**

ARTICLE 12 Transfer of credit and equity price risks from the banking book to the trading book

1 When calculating the minimum capital requirement to be held for the banking book, an internal transfer of risk from the banking book to the trading book may be taken into account in order to hedge credit and equity price risks in the banking book, provided the following conditions are met:

a. the bank has purchased an external hedge in the trading book from an eligible counterparty that has exactly the same characteristics as the internal hedge sold for the internal risk transfer from the trading book to the banking book, such that the risks are fully offset.

b. For credit risk positions, the external hedge must meet the requirements of Articles 67–75 of the FINMA Ordinance of 6 March 2024[7] on Credit Risks of Banks and Securities Firms;

2 The external hedge may consist of several positions with different counterparties, provided that the aggregate of the external hedges is equal to the internal hedge.

3 When calculating the minimum capital requirements for the trading book, the following applies:

a. Where the conditions set out in (1) are met, both the hedge sold internally to the banking book and the hedge purchased externally are taken into account.

b. Where the conditions set out in (1) are not met, any externally purchased hedge may be taken into account, but the internal hedge sold to the banking book may not.

4 Article 3(2) applies where an internal transfer of risk results in a net short position in the banking book with respect to credit or equity price risk.

ARTICLE 13 Transfer of general interest-rate risks from the banking book to the trading book

1 When calculating the minimum capital requirement to be held for the trading book, an in-house risk transfer from the banking book to the trading book in order to hedge general interest-rate risks in the banking book may be taken into account, if one of the following two cases applies:

a. the bank has purchased an external hedge in the trading book from an eligible counterparty that has exactly the same characteristics as the internal hedge sold for the internal risk transfer from the trading book to the banking book, such that the risks are fully offset.

b. The bank operates a trading desk used solely for internal risk transfer of general interest-rate risks from the banking book to the trading book (internal risk transfer desk, IRT desk).

2 The minimum capital requirements for the IRT desk must be calculated separately from all other trading book positions, and the following requirements must be adhered to:

7 SR **952.033.21**

a. If the IRT desk purchases an internal hedge from another trading desk for an internal risk transfer, this internal hedge is taken into account in the calculation of the minimum capital requirements only if the other trading desk purchases an identical external hedge from a counterparty, so that the risks are fully offset.

b. If the IRT desk purchases a hedge directly from an external counterparty, this external hedge must be taken into account when calculating the IRT desk's minimum capital requirements.

3 The external hedge referred to in (1)(a) or (2)(a) may consist of several positions with different counterparties, provided that the aggregate of the external hedges is equal to the internal hedge.

4 Where the internal risk transfer from the banking book to the trading book is taken into account in the calculation of the minimum capital requirements as per (1) and (2), the associated internal hedge must also be taken into account in the calculation of interest-rate risks in the banking book.

ARTICLE 14 Transfer from one trading desk to another trading desk

1 Internal risk transfers between trading desks within the trading book must be taken into account when calculating the minimum capital requirements. Where one of these trading desks is the IRT desk, the restrictions set out in Article 13(2)(a) shall apply.

2 (1) applies by analogy to internal risk transfers within the trading book of currency, gold price and commodity risks originating in the banking book, which must be included in the calculation of minimum capital for market risks in accordance with Article 81a (2) CAO.

ARTICLE 15 Documentation and licensing requirement

1 Banks must document which risks are hedged with an internal risk transfer in the banking book. The requirements set out in Article 2 apply to the documentation, procedures and internal controls.

2 Where a bank with a license to apply the market risk model approach has an IRT desk, this must be approved by FINMA (section 25.25 RBC in the version specified in Annex 1 CAO).

Section 4: Prudent valuation

ARTICLE 16 Principle

The prudent valuation of positions in the trading book and the banking book in accordance with Article 5b CAO is to be based on mark-to-market prices or, if marking to market is not possible, on mark-to-model prices.

ARTICLE 17 General requirements

1 The bank must be able to guarantee a prudent and reliable valuation even in times of stress and to make use of alternative valuation methods when market prices, input variables or approaches for an ordinary valuation are no longer available, in particular due to illiquidity or market disruptions.

2 It must have in place policies and documented procedures for the valuation process in which it defines in particular:

a. how the valuation process is integrated into the risk management system;

b. how the need for valuation adjustments is assessed and how the valuation adjustments are calculated;

c. how market prices or input variables are verified regularly and independently of trading;

d. the responsibilities of the bodies involved in the valuation;

e. the sources of market information and the review of their suitability;

f. the rules for the use of unobservable inputs;

g. the frequency of valuation;

h. the timing of the collection of end-of-day prices;

i. the procedures for valuation adjustments;

j. the month-end and ad-hoc reconciliation procedures.

3 It must guarantee that the organizational unit responsible for the valuation process

a. is independent from trading;

b. performs a review of mark-to-model valuations at least monthly; and

c. reports on the valuation process, valuations and valuation adequacy to senior management.

ARTICLE 18 Valuation based on market prices

1 For prudent mark-to-market valuation, positions must be valued using easily identifiable close-out prices obtained from neutral sources.

2 The more prudent side of the bid-ask spread must be used as the close-out price for a long or short position. In the case of positions for which the bank is a significant market-maker and which it can close out at mid-market rates, it may use these mid-market rates.

3 Where possible and reasonable, the valuation must be based on observable inputs. Observable inputs from distressed sales need to be given appropriate consideration as well.

4 Unless a market price is not available in exceptional cases, valuations must be carried out at least daily.

ARTICLE 19 Valuation based on model prices: general requirements

1 For a prudent mark-to-model valuation, positions must be valued using a model based on market data.

2 To the extent possible, market data must be obtained from the same sources as the market prices. The suitability of market data for the diverse positions being valued should be reviewed regularly.

ARTICLE 20 Mark-to-model prices: specifications for models

1 Where available, the model must use generally accepted valuation methods for each individual position.

2 For models developed by the bank itself, the following requirements must be met:

a. It uses appropriate assumptions that have been evaluated and critically reviewed by suitably qualified parties uninvolved in developing the model.

b. It was developed or validated independently of the trading function, and the model assumptions as well as the technical implementation of the model have been validated independently of the trading function.

3 A backup copy of the model in question is kept. Valuations must periodically be verified using this backup copy.

4 The model must be reviewed regularly to ensure that its assumptions and results are appropriate.

ARTICLE 21 Mark-to-model prices: Requirements for senior management and risk management

1 Where a bank applies mark-to-model valuation, the following requirements apply:

a. Senior management must be aware of the positions for which valuation is performed and understand the degree of uncertainty that this creates in the reporting of the risks of business activities and the contribution of said activities to performance;

b. Risk management must be aware of the weaknesses of the model used and factor these into the valuation results as best as possible.

2 The bank must have a process for controlling changes to the model.

ARTICLE 22 Valuation adjustments

1 In the following cases at least, a formal review must be carried out to determine whether valuation adjustments will be required:

a. for credit spreads that have not yet been taken;

b. for close-out costs;

c. for operational risks;

d. for early repayment;

e. for investment and funding costs;

f. for future administrative costs;

g. for model risks.

2 For less liquid positions, the following factors must also be reviewed to decide whether and to what extent valuation adjustments are necessary:

a. the time it takes to sell a position or to hedge a position or its risks;

b. the average volatility of bid-ask spreads;

c. the availability of independent market prices;

d. the extent to which a valuation is performed based on model prices.

3 For large positions and legacy positions, the risk of increased losses upon liquidation must also be factored into the decision as to whether and to what extent valuation adjustments are necessary.

4 For complex products which must be valued by marking to model, in particular for securitizations and credit default swaps that are triggered by the default of a certain number of counterparties (n-th to default credit derivatives), the following model risks must also be factored into the decision as to whether and to what extent valuation adjustments are necessary:

a. flawed valuation methodology;

b. unobservable and erroneous calibration parameters in the valuation model.

5 Where possible, valuation adjustments should be made at the level of individual positions.

ARTICLE 23 Review of valuation adjustments, directives

1 The bank must review the appropriateness of the valuation adjustments made on an ongoing basis.

2 It must have policies in place that govern the conditions and procedures for valuation adjustments.

ARTICLE 24 Valuations by third parties

The requirements regarding valuation adjustments in accordance with Articles 22 and 23 also apply to valuations by third parties used by the bank.

Chapter 3: Eligible capital

Section 1: Principles

ARTICLE 25 Proof of allocation of capital components

At FINMA's request, the bank must provide proof of the correct allocation of its capital components.

ARTICLE 26 Inclusion of equity instruments of different quality

(Articles 20(5) and 22(1bis) CAO)

1 Equity securities of different quality may be simultaneously included as Common Equity Tier 1 capital (CET1) provided they have the same rights with regard to participation in profits and losses, including treatment in the event of liquidation.

2 For banks and financial groups that are under FINMA supervision, are organized as joint-stock companies and whose common shares are listed on a Swiss stock exchange or an equivalent foreign regulated market, (1) does not apply; only common shares may be included as Common Equity Tier 1 capital.

3 Equity securities that do not qualify as Common Equity Tier 1 capital are eligible as Additional Tier 1 (AT1) capital or Tier 2 (T2) capital, provided that they meet the relevant requirements.

ARTICLE 27 Participation capital

(Article 20(5) and (23) CAO)

1 Share capital in the form of participation capital is eligible as a capital component in accordance with Article 26.

2 Participation capital may also be eligible as Additional Tier 1 capital if neither a conversion to Common Equity Tier 1 capital nor a reduction of claims in accordance with Article 27(3) CAO is provided for in the articles of incorporation.

3 A requirement for eligibility under (1) and (2) is a provision in the bank's articles of incorporation whereby the absorption of losses on participation capital at the point of non-viability (PONV) meets the requirements of Article 29 CAO in that the participation capital irrevocably and without compensation loses any preferential treatment over other equity capital at the point of non-viability.

ARTICLE 28 Surcharge

(Article 20(5) CAO)

Where a bank's statutory reserves receive funds in excess of the nominal value (additional paid-in capital) in the course of issuing share capital, these are considered to be Common Equity Tier 1 capital regardless of the classification of the specific equity instrument.

ARTICLE 29 Profits of the Current Year

(Article 21(1)(e) CAO)

1 The expected profit distribution is determined on the basis of the concrete circumstances, in particular the distribution policy of previous years or the bank's planning.

2 The bank is not obliged to subsequently distribute the distributable amount deducted from the interim profit at a later date.

Section 2: Minority interests in the capital of consolidated companies

ARTICLE 30 Requirements for the eligibility of minority interests in the capital of consolidated companies as equity

(Articles 20(5), 21(2), 27(4bis) und (6) as well as 30(3) CAO)

Banks may include minority interests in the capital of fully consolidated companies as eligible capital if:

1 the fully consolidated company is a bank or a company that is subject to requirements comparable to those imposed on a bank and that is subject to supervision comparable to that imposed on a bank; and

2 the capital interests:

a. would be considered eligible capital components at the consolidating bank if the bank had issued them itself;

b. are held by investors that are not directly or indirectly affiliated with the consolidating bank, the holding company of the financial group or any other group company;

c. are not directly or indirectly in any way financed by the consolidating bank, the holding company of the financial group or any other group company.

ARTICLE 31 Limitation to the consolidated eligibility

1 Minority interests are only eligible for inclusion as capital at the consolidated level to the extent that they serve to meet the capital requirements in accordance with Articles 41–45a CAO by underpinning the risk-weighted positions with capital in the capital qualities in accordance with Article 42c CAO on a prorated basis.

2 Minority interests in excess of the capital adequacy requirements for the fully consolidated companies are not eligible at the consolidated level. These capital adequacy requirements are calculated as follows for each company, based on the lower of the following two values:

a. according to the locally applicable total capital adequacy requirements for the fully consolidated

company;

b. according to the capital adequacy requirements proportionally attributed to the minority interests in accordance with Articles 41–45a CAO and based on the categories set out in Article 42c CAO.

3 For a fully consolidated systemically important bank domiciled in Switzerland, the capital requirements in accordance with (2)(a) and (b) are calculated in accordance with Title 5 of the CAO, disregarding Chapter 4 thereof.

ARTICLE 32 Issuance of capital by a non-operational special purpose vehicle
(Articles 27(4bis), 28 and 30(4) CAO)

Additional Tier 1 capital or Tier 2 capital issued by a non-operating special purpose entity and transferred to the group is fully eligible.

Section 3: Capital of Public-Law Banks and Private Bankers

ARTICLE 33 Guarantee in favor of a public law bank
(Articles 20(5), 27(4bis) and 30(4)(a) CAO)

Public law banks may not take into account public-sector guarantees, in particular those of a municipality or canton, in their calculation of regulatory capital.

ARTICLE 34 Endowment capital
(Articles 20(5), 23 and 24 CAO)

1 The endowment capital of a public law bank is eligible as Common Equity Tier 1 capital if:

a. it is provided to the bank for an unlimited period or the conditions of Article 24 CAO are met;

b. it bears losses before other liabilities; and

c. the bank is not obliged to pay dividends to its owner.

2 Distributions include all forms of compensation to owners, regardless of their designation, with the exception of appropriate compensation for a State guarantee.

ARTICLE 35 Private bankers
(Articles 25 and 30(4) CAO)

1 In the case of private bankers, the eligibility of capital components is governed by the provisions of the partnership agreement concerning:

a. profit sharing;

b. the bearing of losses by the business as a going concern; and

c. any claim to the proceeds of liquidation.

2 The unlimited liability of partners is not eligible as capital. However, it may be compensated.

3 Capital contributions and limited partner contributions are both eligible to be counted simultaneously as CET 1 capital if:

a. any losses are borne at the same time and in proportion to the capital or limited partner contribution;

b. the entitlement to the result of any liquidation is proportionate; and

c. any difference in the profit participation among shareholders is attributable exclusively to any compensation for unlimited liability and not to any different treatment of the capital components.

4 Where only the conditions set out in (3)(b) and (c) are met, only the senior loss-absorbing capital instruments will be eligible as Common Equity Tier 1 capital. The eligibility of the subordinated loss-absorbing capital component as Additional Tier 1 capital or as Tier 2 capital must be assessed on a case-by-case basis and considering the totality of the circumstances.

5 Where a bank's capital contribution or limited partner's contribution is provided for a limited period of time or where the partnership agreement provide for a claim to a distribution irrespective of the bank's operating result, such a contribution is eligible as Tier 2 capital at the most.

Section 4: Capital instruments outside of Common Equity Tier 1

ARTICLE 36 Extent of loss absorbency when the trigger is activated

(Article 27 CAO)

A write-down or a conversion in accordance with Article 27(3) CAO relating to an Additional Tier 1 debt instrument must be possible up to the full nominal value.

ARTICLE 37 Capital instruments in the financial group

(Articles 27(4bis), 28 and 30(4) CAO)

1 Where a Swiss bank issues Additional Tier 1 or Tier 2 capital through a prudentially supervised, fully consolidated entity abroad and where these funds are passed on to a domestic group unit by means of a group internal capital instrument, FINMA will decide as to the eligibility of these funds at the consolidated level. In doing so, it will take into account the requirements of the country in which the fully consolidated entity is domiciled with respect to PONV.

2 Where the capital instruments issued abroad in accordance with (1) provide for conversion into CET

1 capital in case of a PONV, the bank must ensure in the contractual clauses that the effect of a PONV on the group internal capital instrument does not contradict this.

3 Capital instruments issued by a non-operational special purpose vehicle may only be consolidated in accordance with Articles 28 and 30(3) CAO if the group internal capital instrument also contains a contractual provision on PONV.

ARTICLE 38 Assistance from the public sector

(Articles 27(4bis) and 29(2)(a) CAO)

The following are not deemed to be forms of assistance from the public sector in the sense of Article 29(2)(a) CAO:

a. actions by the public sector that are primarily commercial in nature and that could equally well have been taken by a third party;

b. actions by the public sector as the owner of a bank that a third-party owner in a comparable situation would also take to improve a bank's financial situation.

ARTICLE 39 Value adjustments and provisions: pursuant to the SA-BIS and the AO-FINMA

(Articles 20(4) and 50(1)(a) CAO)

1 In the case of positions treated in accordance with the international standardized approach for credit risk (SABIS) (Article 50(1)(a) CAO), value adjustments on non-impaired positions in accordance with Article 25 of the FINMA Accounting Ordinance of 31 October 2019[8] (AO-FINMA) and provisions in accordance with Article 28(6) AO-FINMA may be:

a. eligible as Tier 2 capital; or

b. netted with the corresponding asset or off-balance sheet items before these are risk weighted.

2 Up to 1.25% of the items weighted according to credit risks in accordance with Article 49(1) of the CAO, excluding items in accordance with (e) of that article, are eligible as Tier 2 capital.

3 The netting specified in (1)(b) must be carried out within the exposure categories outlined in Article 63 of the CAO.

4 If different risk weightings are applied within a given exposure category, value adjustments and provisions must be allocated proportionally. This allocation by risk weight shall be based on the unweighted portion related to the relevant set of exposures versus the total of all unweighted exposures in that exposure category.

5 The netted value adjustments and provisions may not be included in the Tier 2 capital.

[8] SR **952.024.1**

ARTICLE 40 Value adjustments and provisions: pursuant to the SA-BIS and the AO-FINMA (Article 31(3) CAO)

1 Banks using a recognized international accounting standard must treat the value adjustments and provisions for default risks recorded in accordance with the respective standard by analogy with Article 39.

2 The value adjustments and provisions of levels 1 and 2, as determined in accordance with the International Financial Reporting Standard 9 (IFRS 9) of the International Accounting Standards Board, as amended, are eligible for inclusion as Tier 2 capital to cover default risks on non-impaired claims.

ARTICLE 41 Value adjustments in accordance with the IRB (Article 30(4) CAO)

1 Banks using the internal ratings-based approach (IRB) may, with FINMA's approval, include any surplus of value adjustments before tax as Tier 2 capital.

2 A surplus exists if the value adjustments in accordance with section 35.4 of the Basel minimum standard for the calculation of risk-weighted assets for credit risks (CRE) in the version set out in Annex 1 CAO exceed the expected losses calculated in accordance with the IRB.

3 The surplus can be taken into account up to a maximum of 0.6 percent of the sum of the IRB risk weighted assets.

ARTICLE 42 Reserves eligible as Tier 2 capital (Article 30(4)(c) CAO)

1 The following are eligible as Tier 2 capital:

a. hidden reserves in the item "provisions", provided they are disclosed in a separate account and identified as capital.

b. hidden reserves in the items "participations" and "tangible fixed assets".

c. Reserves in equity securities and bonds in financial assets to be recognized at the lower of cost or market.

2 Deferred tax liabilities (DTL) must be deducted from the hidden reserves specified in (1)(a) and (b) before they are recognized, unless a corresponding provision for tax liabilities is formed.

3 The audit firm must confirm the eligibility of the components in accordance with (1)(a) and (b) as Tier 2 capital in its report in accordance with Article 9 of the Financial Market Audit Ordinance of 5 November 2014[9].

[9] SR **956.161**

4 The reserves in accordance with (1)(c) are eligible up to a maximum of 45% of the unrealized profit.

ARTICLE 43 Subordination of capital instruments of cantonal banks with a state guarantee

(Articles 27(4bis) and 30(4)(a) CAO)

Cantonal banks with a state guarantee may include subordinated loans granted to them as Additional Tier 1 capital or as Tier 2 capital only if the coverage of these loans by the state guarantee is expressly excluded under the contractual provisions or by law.

ARTICLE 44 Capital contributions by partners with unlimited liability at private bankers

(Article 30(4)(b) CAO)

In the case of private bankers, capital contributions by partners with unlimited liability that do not meet the requirements of Article 25 CAO may be included as Tier 2 capital if:

a. they meet the joint requirements for eligible capital in accordance with Article 20 CAO; and

b. the bank may only make a payment of credit balances to partners if the remaining eligible capital meets the requirements specified in Articles 41–47e CAO.

Section 5: Adjustments

ARTICLE 45 Netting of deferred tax liabilities

(Article 31(2) as well as Article 32(1)(d) and (2) CAO)

1 The netting of deferred tax liabilities (DTL) with deferred tax assets (DTA) in accordance with Article 32(2) CAO is possible only to the extent that the DTL have not already been taken into account in determining the relevant amount of an asset in accordance with Article 31(2) CAO.

2 Before any netting, DTL must be allocated proportionately to the following two categories of DTA, reflecting the proportion of DTA in these categories:

a. DTA resulting from timing differences subject to the threshold deductions under Article 39(1)(b) of the CAO; and

b. DTA in connection with operational losses, which are fully deductible under Article 32(1)(d) CAO.

ARTICLE 46 Software

Where software is treated as an intangible asset under the applicable accounting standard, its value must be deducted from Common Equity Tier 1 capital in accordance with Article 32(1)(c) CAO.

ARTICLE 47 Defined benefit pension fund assets

1 By way of derogation from Article 32(1)(f) CAO, the bank does not have to deduct defined benefit

pension fund assets from Common Equity Tier 1 capital if it has unrestricted power of disposal over the assets at all times.

2 Unrestricted power of disposal does not exist in particular where the bank requires the approval of a body of the occupational pension fund in order to dispose of the assets.

3 Specifically, it does not have to deduct loans to an occupational pension fund that do not grant the occupational pension fund any offsetting entitlement, in particular no entitlement to offsetting against contribution claims.

ARTICLE 48 Deduction options within the scope of the consolidation provisions

Articles 35-38 and 40 CAO do not apply to deductions in accordance with Article 32(1)(i) CAO that the bank makes on the basis of a deduction option provided for in the consolidation provisions.

ARTICLE 49 Net position

For the purposes of calculating the net position in accordance with Articles 32(1)(g) and 34 CAO in conjunction with Article 4(1)(f) CAO, the bank must determine whether other contractual obligations to acquire own equity instruments exist on top of the forms of investment listed in Article 52 CAO and, if so, include such instruments in the calculation.

ARTICLE 50 Deduction by threshold value for equity instruments

1 Equity instruments held indirectly or synthetically are also deemed to be equity instruments in with the sense of Article 33(1) CAO.

2 Indirectly held equity instruments are equity instruments that are held in a company that in turn holds equity instruments in a financial sector entity.

3 Synthetically held equity instruments are financial contracts whose value is directly linked to the value of the equity instrument of a financial sector entity.

Section 6: Special provisions for banks with recognized international accounting standards

ARTICLE 51 Additional corrections Principle

Banks that prepare their consolidated financial statements in accordance with a recognized international accounting standard are required to base the calculation of eligible capital and minimum capital requirements as well as risk diversification rules at consolidated level on the financial statements prepared in accordance with the international standard used. The consolidated financial statements are authoritative for the scope of consolidation in accordance with Article 7 CAO.

ARTICLE 52 Additional adjustments in accordance with the IFRS standard

Banks preparing their consolidated financial statements in accordance with the IFRS standard[10] must make the following adjustments when calculating eligible capital and minimum capital:

a. Deduction of positive valuation differences included in reserves and minority interests relating to equity securities, equity-like instruments, debt securities and other assets whose fair value measurement directly affects equity (other comprehensive income, OCI);

b. Deduction of unrealized gains and addition of unrealized losses relating to liabilities measured at fair value in the current and previous years due to the change in own creditworthiness recognized in OCI;

c. Deduction of positive valuation differences relating to investment properties that are included in the current year's income statement, in reserves, profits carried forward and minority interests;

d. Deduction of positive valuation differences recognized in OCI for other property, plant and equipment included in reserves and minority interests;

e. Deduction of gains and addition of losses from the valuation of cash flow hedges recognized in OCI.

ARTICLE 53 Additional adjustments in accordance with the US-GAAP standard

For banks that prepare their consolidated financial statements in accordance with the United States Generally Accepted Accounting Principles (US GAAP) of the Financial Accounting Standards Board[11], Article 52 applies by analogy.

ARTICLE 54 Further adjustments

1 For any further adjustments, the bank requires the approval of FINMA. To the extent necessary to assess the appropriateness of these adjustments, FINMA may request additional information.

2 FINMA may require additional corrections insofar as this is appropriate from a supervisory perspective, in particular in the event of significant periodic fluctuations in eligible capital or significant unrealized gains.

ARTICLE 55 Notification of changes to US GAAP financial statements

Whenever the US GAAP standard or the internal procedures for applying the standard change, the bank must contact FINMA immediately and provide it with information on the valuation principles applied to financial instruments. FINMA will order any necessary adjustments to the internal procedures and

[10] The standard can be downloaded for a fee online at: www.ifrs.org > Issued Accounting Standards > IFRS Accounting Standards Navigator.

[11] The standard can be downloaded free of charge online at: www.fasb.org > Standards > Accounting Standards Codification.

valuation principles.

ARTICLE 56 Exposure values for calculating minimum capital requirements

1 Where net unrealized gains on assets after taxes are deducted from Common Equity Tier 1 capital, the minimum capital requirement for these assets may be calculated on the basis of their book value less gross unrealized profits before taxes.

2 Where unrealized net losses on assets after taxes are added to Common Equity Tier 1 capital, the minimum capital requirement for these assets must be calculated on the basis of their book value plus gross unrealized losses before taxes.

ARTICLE 57 Basis of the individual financial statements for regulatory purposes

1 The eligible capital, the minimum capital and the items for risk diversification must be calculated at the level of the individual institution based on the statutory annual financial statements and the interim financial statements in accordance with Chapter 4, Section 1 of the Banking Ordinance[12].

2 In exceptional circumstances, the bank may, with the approval of FINMA, calculate the eligible capital, the minimum capital and the risk diversification items at the level of the individual institution on the basis of a recognized international standard.

Chapter 4: Entry into force

ARTICLE 58

This Ordinance shall enter into force on 1 January 2025.

[12] SR **952.02**

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