



Ordinance concerning Capital Adequacy

(Capital Adequacy Ordinance, CAO)

252.03
dated 1 July 2016

Ordinance concerning Capital Adequacy and Risk Diversification for Banks and Securities Dealers

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2 Other Languages

DE: Verordnung über die Eigenmittel und Risikoverteilung für Banken und Effektenhändler
(Eigenmittelverordnung, ERV)

FR: Ordonnance sur les fonds propres et la répartition des risques des banques et des
négociants en valeurs mobilières (Ordonnance sur les fonds propres, OFR)

IT: Ordinanza sui fondi propri e sulla ripartizione dei rischi delle banche e dei commercianti
di valori mobiliari (Ordinanza sui fondi propri, OFoP)

Ordinance concerning Capital Adequacy and Risk Diversification for Banks and Securities Dealers

(Capital Adequacy Ordinance, CAO)

dated 1 June 2012 (version as at 1 July 2016)

The Swiss Federal Council,

pursuant to Article 3(2)(b), 3g, 4(2) and (4), 4^{bis}(2) and 56 of the Banking Act of 8 November 1934¹ (BA), *decrees:*

Title 1: General provisions

Chapter 1: Object, Scope and Definitions

ARTICLE 1 Principle

- 1 To protect the interests of creditors and the stability of the financial system, banks and securities traders shall ensure that risks are appropriately mitigated and that they hold adequate capital in view of their business operations and risk exposure.
- 2 They shall ensure that they hold adequate capital to cover credit risk, market risk, non-counterparty risk and operational risk.

ARTICLE 2 Subject

- 1 This Ordinance regulates:
 - a. the eligible capital;
 - b. the risks subject to capital adequacy requirements and the extent of such requirements;
 - c. risk diversification, in particular the limits for large exposures and the treatment of intra-group positions; and
 - d. the specific requirements for systemically important banks.
- 2 The Swiss Financial Market Supervisory Authority (FINMA) may issue implementing provisions.

ARTICLE 3 Scope

This Ordinance applies to banks as defined in the Swiss Banking Act and securities dealers as defined in the Swiss Stock Exchange and Securities Trading Act of 24 March 1995² (hereinafter 'banks').

¹ SR 952.0

² SR 954.1

ARTICLE 4 Definitions

For the purpose of this Ordinance, the following terms shall have the following meaning:

- a. regulated securities exchange: any institution that is adequately regulated and supervised in accordance with internationally recognized standards, the purpose of which is to facilitate the simultaneous purchase and sale of securities among several securities dealers and for which sufficient market liquidity is ensured;
- b. main index: an index comprising all securities traded on a regulated securities exchange (total market index) or a selection of major securities on such an exchange, or any index comprising the major securities of various regulated securities exchanges;
- c. regulated company: a company active in the financial sector that must comply with appropriate capital adequacy requirements in particular in regard to its business risks and that is supervised by a banking, securities exchange, or an insurance regulatory authority;
- d. equity shares: securities that represent interests in the share capital of a company;
- e. equity instrument: equity shares that qualify as Common Equity (CET1) or Additional Tier 1 Capital (AT1), as well as debt instruments that qualify as Additional Tier 1 Capital (AT1) or Tier 2 Capital (T2); and
- f. corresponding deduction approach: the “corresponding deduction approach” described in the Basel Minimum Standards;
- g. qualified interest rate instrument: an interest rate instrument:
 1. rated between 1 and 4 by at least two recognized rating agencies;
 2. rated between 1 and 4 by a single recognized rating agency, provided it is not rated lower by any other recognized rating agency;
 3. not rated by a recognized rating agency but with a yield to maturity and residual term comparable to that of securities rated 1–4, provided that the securities of the corresponding issuer are traded on a regulated securities exchange or on a representative market where at least three independent market makers quote rates on a daily basis that are regularly published; or
 4. not rated by a recognized rating agency (external rating), but is rated with a bank-internal rating of 1–4, provided the securities of the corresponding issuer are traded on a regulated securities exchange or on a representative market where at least three independent market makers quote rates on a daily basis that are regularly published.
- h. Basel Minimum Standards: the standards defined by the Basel Committee for Banking Supervision that are relevant for calculating the capital adequacy requirements.³

³ The current Basel Minimum Standards may be obtained from the Bank for International Settlements at Centralbahnplatz 2, 4002 Basel, or downloaded online at www.bis.org/bcbs.

ARTICLE 5 Trading Book

- 1 Banks may keep a trading book containing positions in financial instruments and commodities held with the intent of trading or in order to hedge other trading-book positions.
- 2 Banks may only allocate positions to the trading book, if:
 - a. there are no contractual restrictions on their tradability; or
 - b. they can be fully hedged at any time.
- 3 Trading intent exists if the bank intends to:
 - a. hold the positions for a short term;
 - b. take advantage of short-term price movements; or
 - c. realize arbitrage gains.
- 4 Positions shall be valued frequently and accurately. The trading book shall be actively managed.

ARTICLE 6 Rating Agencies

- 1 The FINMA may recognize a rating agency, if:
 - a. its rating methodology and ratings are objective;
 - b. it and its rating methodology are independent;
 - c. it makes its ratings and the corresponding underlying data publicly available;
 - d. it discloses its rating methodology, its code of conduct, its remuneration policy and the primary characteristics of its ratings;
 - e. it has adequate resources at its disposal; and
 - f. it and its ratings are credible.
- 2 The FINMA shall publish a list of recognized rating agencies.
- 3 The FINMA shall withdraw recognition if a recognized rating agency no longer satisfies the recognition criteria.

Chapter 2: Consolidation

ARTICLE 7 Consolidation requirement

- 1 Capital adequacy and risk diversification requirements have to be met at the single-entity level; in addition, they must also be met at the level of the financial group and the financial conglomerate (consolidation requirement).
- 2 The consolidation shall include all of the group companies active in the financial sector as described in Article 4 in conjunction with Article 22 of the Banking Ordinance of 30 April 2014⁴ (BO), with the following exceptions:⁵
 - a. equity interest in insurance companies are only to be consolidated for the purpose of meeting risk diversification requirements, subject to Article 12;
 - b. there is no requirement to consolidate collective capital investment schemes where such investments are managed on behalf of investors, or where founding capital is held in investment companies.
- 3 Should the bank hold equity instruments in the capital of non-consolidated companies as per (2)(a), the corresponding deduction approach applies.
- 4 Should the bank hold equity instruments in non-consolidated companies as per (2)(b), the applicable deduction approach applies without threshold value.

ARTICLE 8 Types of Consolidation and Choices Open to the Bank

- 1 Majority equity interests in companies subject to consolidation shall be fully consolidated.
- 2 In the case of interests jointly held with another shareholder or partner with 50% of the voting rights each (joint ventures), the bank has the choice of applying the full or proportionate consolidation, or the corresponding deduction approach.
- 3 Minority interests of 20% or more in companies subject to consolidation, in which the bank exerts a controlling influence either directly or indirectly jointly with other investors, may be consolidated proportionately or by applying the corresponding deduction approach.
- 4 For all other minority interests the corresponding deduction approach is applicable.
- 5 When applying the proportionate consolidation, the eligible and required capital as well as large exposures shall be accounted for in proportion to the investments made.

⁴ SR **952.02**

⁵ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS **2014** 1269).

- 6 Equity interests accounted for in the corresponding deduction approach shall not be considered for the risk diversification.
- 7 The corresponding deduction approach according to (2) and (3) shall be made without referring to a threshold value.

ARTICLE 9 Exceptional Treatment Approved by the Auditor

- 1 With the auditor's approval, the following equity interests may be treated as exempt from the consolidation requirement:
 - a. equity interests in companies which, on account of their size and business activities, are of no significance to the compliance with the capital adequacy provisions;
 - b. significant group companies held for less than a year.
- 2 Equity interests conferring more than 50% of the voting rights may, by way of exception, be consolidated on a proportionate basis, provided that the auditor consents to such a method and an agreement has been contractually stipulated that:
 - a. the bank's support of the company subject to consolidation is limited to the bank's own holding quota; and
 - b. the remaining shareholders or partners are obliged to provide support in proportion to their holding quota and are legally and financially able to fulfill that obligation.
- 3 Equity interests exempt from consolidation as per (1) are subject to the corresponding deduction approach without referring to a threshold value.

ARTICLE 10 Special Requirements

- 1 In exceptional circumstances, the FINMA may exempt specific banks from selected or all of the capital adequacy and risk diversification requirements at the level of single-entity institutions, provided the conditions set out in Article 17 of the BO⁶ have been met.⁷
- 2 In the context of capital adequacy requirements to be met by a financial group or financial conglomerate, the FINMA may specify additional requirements regarding the adequate level of capitalization of a company heading a financial group or financial conglomerate and which is not subject to supervision at single-entity level.
- 3 The FINMA may permit a bank to consolidate its group companies active in the financial sector already at the level of the single-entity institution (solo consolidation) due to their especially close relationship with the bank.

⁶ SR 952.02

⁷ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS 2014 1269).

ARTICLE 11 Financial Sub-Groups

- 1 The consolidation requirement applies to any financial group, even if such a financial group is controlled by a financial group or financial conglomerate already subject to supervision by the FINMA.
- 2 The FINMA may, by way of exception, exempt a financial sub-group from the consolidation requirement, in particular, if:
 - a. their group companies operate exclusively within Switzerland; and
 - b. the financial parent group or financial conglomerate is subject to adequate consolidated supervision by a financial market supervisory authority.

ARTICLE 12 Captives for Operational Risks

Subject to the FINMA's approval, subsidiaries set up for the sole purpose of providing intra-group insurance cover for operational risk (captive insurers) can be fully consolidated at financial group level in the same way as subsidiaries operating within the financial sector and, if appropriate, solo consolidation may be used (Article 10(3)).

ARTICLE 13 Equity Interests Outside the Financial Sector

The upper limits on a bank's qualifying interests in a company outside the financial sector as specified in Article 4(4) BA shall not be applicable where:

- a. such equity interests are acquired only temporarily in the course of a corporate restructuring or rescue;
- b. securities are acquired for the standard underwriting period; or
- c. the difference between the book value and applicable upper limits for such interests is fully covered by unencumbered eligible capital.

Chapter 3: Statement and Disclosure of Adequate Capital

ARTICLE 14 Capital Adequacy Report

- 1 Banks must prove on a quarterly basis that they dispose of adequate capital. The FINMA shall define the mandatory contents of the capital adequacy reports.
- 2 The capital adequacy reporting form on a consolidated basis must be prepared semi-annually.
- 3 The forms have to be submitted to the Swiss National Bank within six weeks after the end of each quarter or half-year.

ARTICLE 15 Calculation Basis

When calculating the eligible and required capital for the capital adequacy report, the bank shall rely on the financial statements that have been prepared according to the accounting standards prescribed by the FINMA. The FINMA may grant exceptions to this general principle.

ARTICLE 16 Disclosure

- 1 Banks must adequately inform the public of their risks and their capital adequacy. The calculation of the eligible capital must obviously be based on the financial reports.
- 2 Private bankers that do not publicly offer to accept deposits are excluded from this obligation.
- 3 FINMA shall enact technical implementing provisions. It in particular specifies which information must be disclosed in addition to the annual financial statements and the interim financial statements.

Chapter 4: Simplified Application

ARTICLE 17

- 1 Banks may apply specific provisions of this Ordinance including the FINMA's clarifying implementing provisions in a simplified manner, if:
 - a. this allows them to avoid disproportionate efforts;
 - b. they manage risks appropriately in view of their business operations; and
 - c. the bank's ratio of minimum required capital to eligible capital is at least maintained.
- 2 They shall make sure that the requirements are met and document the simplifications used.

Title 2: Eligible capital

Chapter 1: General

ARTICLE 18 Capital Components

- 1 Eligible capital consists of Tier 1 Capital (T1) and the Tier 2 Capital (T2).
- 2 Tier 1 Capital consists of Common Equity Tier 1 Capital (CET1) and Additional Tier 1 Capital (AT1).

ARTICLE 19 Loss Absorbency

- 1 Capital components absorb losses according to the following principles:

- a. Common Equity Tier 1 capital absorbs losses before the Additional Tier 1 capital;
 - b. Additional Tier 1 capital absorbs losses before Tier 2 capital.
- 2 Should individual instruments of the same capital component (outside CET1) absorb losses differently, the bank must specify this in its articles of incorporation or at issue of the instrument.

ARTICLE 20 Common Requirements regarding Capital

- 1 Capital must be paid in or generated internally in the amount used to cover capital adequacy requirements.
- 2 At issuance, the capital must not:
 - a. be directly or indirectly funded by the bank's lending to third parties;
 - b. be netted with other assets; or
 - c. be secured by the bank's own assets.
- 3 Capital is to be subordinated to the unsubordinated claims of all other creditors in the case of liquidation, bankruptcy or restructuring of the bank.
- 4 Capital instruments with conditional conversion or debt reduction that become applicable not only at the point of non-viability (Article 29) shall be accounted for as capital components depending on their characteristics before the conversion or the debt reduction, with the exception of the following:
 - a. if they are used to meet the requirements for additional capital as per Article 45(2); and
 - b. the provisions for conversion capital of systemically important banks as per Title 5.

Chapter 2: Calculation

Sub-section 2: Common Equity Tier 1 Capital (CET1)

ARTICLE 21 Eligible Elements

- 1 The following shall be eligible as Common Equity Tier 1 capital:
 - a. paid-in share capital;
 - b. disclosed reserves;
 - c. reserves for general banking risks after deduction of deferred taxes, if no corresponding provisions have been formed;

- d. profit carried forward;
 - e. ⁸the profit for the current business year after deducting the estimated percentage of profits to be distributed, provided a full income statement as specified under Article 42 BO⁹ or according to recognized international accounting standards has been submitted and reviewed by the auditor as per the FINMA's requirements.
- 2 Minority interests in regulated, fully consolidated companies are eligible, provided they are eligible in that entity itself. Capital surpluses attributed to minorities (calculated based on requirements that include capital buffers and additional capital) are not eligible.

ARTICLE 22 Eligibility of Share Capital

- 1 Share capital shall be eligible as Common Equity Tier 1 capital, provided:
- a. it meets the requirements of Article 20;
 - b. it was issued directly according to the owners' resolution or authorization;
 - c. it does not constitute a company liability;
 - d. it is clearly and separately documented on the balance sheet according to the applicable accounting standards;
 - e. it is available indefinitely and not subject to another statutory provision or contractual obligation of the bank;
 - f. dividends to the owners may be distributed from freely available reserves without any obligations or privileges; and
 - g. the owners do not hold any privileges or prerogative claims to proceeds during liquidation.
- 2 Preferred shares and participation capital may be considered as eligible as Common Equity Tier 1, if:
- a. they meet conditions stated in (1);
 - b. they can be used as collateral in the same manner as Common Equity Tier 1 share capital; and
 - c. the issuer (as a public limited company) has not listed its ordinary shares on a regulated exchange.¹⁰

⁸ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS **2014** 1269).

⁹ SR **952.02**

¹⁰ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS **2014** 1269).

- 3 The FINMA shall take into account the bank's legal form and the characteristics of its share capital when assessing whether the requirements of (1) and (2)(b) mentioned above have been met.

ARTICLE 23 Types of Share Capital

- 1 Depending on the bank's legal form, the share capital shall be composed of stock, equity, cooperative or endowment capital, or in the case of partnerships (private bankers), the partnership's capital contribution ("Kommanditeinlage").
- 2 The FINMA may issue implementing provisions on the regulatory recognition of a bank's share capital.

ARTICLE 24 Endowment Capital of Public-Law Banks

Should the due date of the endowment capital be defined in the cantonal legislation or banks' articles of incorporation, it may be eligible as Common Equity Tier 1 capital, if the due date:

- a. serves to redefine the conditions; and
- b. does not lead to a repayment of the endowment capital.

ARTICLE 25 Capital Contributions of Private Bankers

- 1 In the case of private bankers, capital contributions shall be eligible as Common Equity Tier 1 capital, provided:
 - a. their amount is defined in the partnership agreement to be approved by the FINMA;
 - b. interest or profit sharing is only paid in case of sufficient profit at the end of the financial year; and
 - c. the capital contributions are liable for losses to the same extent as the partnership's capital contribution.
- 2 Capital contributions may only be reduced in a way that involves all fully liable partners.
- 3 Common Equity Tier 1 capital may only be decreased by a reduction in capital contributions if the remaining capital still satisfies the requirements of Article 41.

ARTICLE 26 Cooperative Capital

- 1 If the articles of incorporation foresee a redemption of share certificates in the cooperative capital, it shall be eligible as Common Equity Tier 1 capital, provided the articles of incorporation foresee that a redemption:
 - a. may be denied at any time by the responsible bodies without stating any reasons; and

- b. solely occurs as long as the bank's remaining capital satisfies the requirements of Article 41.
- 2 A limitation on the claim to the liquidation proceeds must:
- a. affect all share certificate holders to the same degree; and
 - b. be foreseen in the articles of incorporation.
- 3 A part of the liquidation proceeds may only be forfeited if this occurs in favor of:
- a. a public-law institution or a tax-exempt private institution; or
 - b. ¹¹ a central organization as per Article 17 BO¹², if the bank to be liquidated belongs to such a central organization.
- 4 The articles of incorporation may not promise a payout to the share certificate holders even if an upper limit is specified.

Sub-section 2: Additional Tier 1 Capital (AT1)

ARTICLE 27 Eligibility

- 1 An equity instrument shall be eligible as AT1 capital, if:
- a. it meets the requirements of Articles 20 and 29;
 - b. it is not subject to any maturity and the bank, at the time of issuance, does not create an expectation that it will be repaid or that the supervisory authority's approval for such repayment be obtained;
 - c. the bank is only allowed to repay it after a minimum of five years after the issuance;
 - d. the bank points out at issuance that the supervisory authority will only approve a repayment, if:
 - 1. the remaining capital continues to satisfy the requirements of Article 41; or
 - 2. the bank issues a sufficient amount of capital that is at least equivalent;
 - e. it does not have any characteristics that would complicate an increase of the bank's share capital in any way;

¹¹ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS **2014** 1269).

¹² SR **952.02**

- f. the bank makes distributions to investors only on a discretionary basis and only if corresponding distributable reserves are available;
 - g. it is excluded that distributions to investors increase during the credit's lifetime due to issuer-specific credit risks.
- 2 Equity shares shall be eligible as AT1 if they satisfy the requirements of (1).
- 3 Liabilities that meet the requirements of (1) are accounted for as Additional Tier 1 capital if, in the event of a contractually defined trigger, but at the latest if the quota falls below 5.125 percent of the Common Equity Tier 1 capital, are waived by way of a:
- a. debt reduction; or
 - b. conversion to Common Equity Tier 1 capital.
- 4 Issuance conditions for capital instruments equipped with a conditional debt waiver may grant the capital lender a deferred conditional participation claim in the improvement of the bank's financial situation. However, such a clause must not substantially impair the bank's capital base at the time of the debt reduction.
- 5 Prior to an equity instrument's issuance, the FINMA shall approve:
- a. the contractually defined trigger event as per (3); and
 - b. the extent to which participation claims in an improvement according to (4) are admissible.
- 6 By way of analogy, Article 21(2) on the eligibility of minority equity shares in fully consolidated regulated companies also applies.

ARTICLE 28 Availability within a Financial Group

Additional Tier 1 capital issued by a special purpose entity shall be eligible for consolidation if it is made available to the group holding company or an operative entity of the bank immediately and without limitation in the same or higher quality.

ARTICLE 29 Point of Non-viability ("PONV")

- 1 The terms of issue or the articles of incorporation must include the provision that Additional Tier 1 capital contributes to the bank's recovery in the case of a point of non-viability by way of a complete debt reduction or a conversion. In this case the creditors' claims must be completely written off.
- 2 The conversion to Common Equity Tier 1 capital or the debt reduction has to occur at the latest:
- a. before a drawdown of emergency financial aid offered by the public authorities; or
 - b. if the FINMA prescribes it to avoid bankruptcy.

- 3 For equity shares eligible as Additional Tier 1 capital but without a loss-absorbance mechanism as per (1), the contract or the articles of incorporation must include an irrevocable waiver of any privileges with respect to the share capital denoted as Common Equity Tier 1 capital should a point of non-viability be attained.

Sub-section 3: Tier 2 Capital (T2)

ARTICLE 30 Eligibility

- 1 An equity instrument shall be eligible as Tier 2 capital if:
 - a. the requirements of Articles 20 and 29(1) and (2) are met;
 - b. its original maturity is in five years at the earliest and the terms of emission do not stipulate any repayment incentives for the bank;
 - c. the bank is only allowed to repay it after a minimum of five years after the issuance;
 - d. the bank indicates at the time of issue that the FINMA will only approve an early repayment, if:
 1. the remaining capital continues to satisfy the requirements of Article 41; or
 2. the bank issues a sufficient amount of capital that is at least equivalent; and
 - e. it is excluded that distributions to investors increase during the credit's lifetime due to issuer-specific credit risks.
- 2 During the last five years before final maturity, the eligibility of equity instruments in the Tier 2 capital shall be reduced by 20% of their nominal amount on an annual basis. In the last year, they will no longer be eligible at all.
- 3 Articles 21(2), 28 and 29(1) and (2) shall be applicable by way of analogy.
- 4 The FINMA shall issue implementing provisions that outline the prerequisites for additional elements of the Tier 2 capital to become eligible, in particular in regard to:
 - a. public-law banks;
 - b. the capital contributions of fully liable shareholders of private banks compared to those that do not comply with Article 25.; and
 - c. hidden reserves.

Sub-section 4: Adjustments

ARTICLE 31 General

- 1 Adjustments to eligible capital must be calculated in the same manner for single entities as for consolidated groups.
- 2 The adjustment shall be based on the carrying amount. Anticipated impacts from taxation may only be considered for reducing the adjustment, if:
 - a. the tax liability automatically expires together with the position it refers to; or
 - b. it is explicitly foreseen either in this ordinance or in the FINMA's implementing provisions.
- 3 The FINMA may issue implementing provisions that foresee adjustments for banks preparing their financial statements in accordance with internationally accepted accounting standards.

ARTICLE 31a¹³ Changes in the Fair Value of Own Liabilities due to a Change in the Bank's Credit Risk

- 1 When calculating Common Equity Tier 1 capital, all unrealized gains and losses of own liabilities due to a change in fair value because of a change in the bank's credit risk are to be neutralized.
- 2 Moreover, all of the value adjustments of derivative liabilities are to be neutralized if they result from the bank's own credit risk.
- 3 Value adjustments made due to the bank's own credit risk may not be netted with value adjustments due to counterparties' credit risk.

ARTICLE 32 Deductions from CET1

The following positions must be fully deducted from Common Equity Tier 1 capital:

- a. the operating loss carried forward as well as the current financial year's loss;
- b. any uncovered need for value adjustments and provisions in the current financial year;
- c. goodwill, including any goodwill included in the valuation of significant equity interests in financial sector entities outside the bank's scope of consolidation, and intangible assets, with the exception of mortgage servicing rights (MSR);
- d. deferred tax assets (DTA) that rely on the bank's future profitability, whereby netting with associated deferred tax liabilities within the same geographical and factual taxation jurisdiction is permitted; DTAs due to temporary differences are prohibited;

¹³ Inserted with Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS 2014 1269).

- e. the expected losses, calculated according to the IRB¹⁴ approach, that exceeds the value adjustments calculated according to the Basel Minimum Standards (Article 77);
- f. gains on sales related to securitization transactions;
- g. defined benefit pension fund assets as defined in the relevant provisions of the Basel Minimum Standards;
- h. net long positions in own equity shares according to Article 52 that are part of the Common Equity Tier 1 capital, that are directly or indirectly held as treasury shares, on and off the trading book, provided they have not already been recorded in the income statement;
- i. qualified equity interests in the capital of another financial sector entity as long as this same financial sector entity also holds capital of the bank (“reciprocal holdings”);
- j. in the single-entity calculation, the net long positions (calculated according to Article 52) of directly held interests in financial sector entities to be consolidated;
- k. deductions resulting from the bank’s chosen deduction option within the consolidation provisions as per Articles 7(4), 8(2) and (3), 9(1) and (3).

ARTICLE 33 Corresponding Deduction Approach

- 1 Should the bank hold investments in the equity instruments of a financial sector entity, the deductions shall be made according to the corresponding deduction approach. The value of these instruments must be deducted from the bank’s capital component in an amount which corresponds to the component at third-party company level.
- 2 If the bank does not hold any or insufficient capital to apply such a deduction in the corresponding component of the eligible capital, the bank shall make the deduction from the next higher capital component.

ARTICLE 34 Deductions of Positions in Own Equity Instruments Outside of Common Equity Tier 1 Capital

- 1 Net long positions in equity instruments of Additional Tier 1 capital and Tier 2 capital in direct and indirect treasury holdings calculated according to Article 52 must be deducted using the corresponding deduction approach.
- 2 In the corresponding deduction approach for instruments of Tier 2 capital as per (1), the limited eligibility as per Article 30(2) (amortization) is not applicable to titles of the same issue, which is why nominal values may be netted.

¹⁴ Stands for: internal ratings-based approach.

ARTICLE 35 Threshold Deductions

- 1 In the threshold deduction, the amount exceeding the threshold is deducted. To determine the threshold, the bank's positions are valued using a fixed percentage of its Common Equity Tier 1 capital according to the Basel Minimum Standards.
- 2 Threshold 1 amounts to 10% of the Common Equity Tier 1 capital after all adjustments as per Articles 31(3) and 32(a)-(i) and (k).
- 3 Threshold 2 amounts to 10% of the Common Equity Tier 1 capital after all adjustments as per Articles 31(3) and 32, including a possible deduction from the Common Equity Tier 1 capital due to the calculation of threshold 1 (pursuant to Article 37(1) and (2)).
- 4 Threshold 3 is to be defined in such a way that, after having considered all of the regulatory adjustments (including the deduction made to this very threshold in accordance with Article 40(1)), the residual amount of the three positions does not exceed 15 percent of the Common Equity Tier 1 capital.¹⁵

ARTICLE 36 Applicable Deduction Approach for Equity Instruments

- 1 Whether the deduction approach of Article 37 or that of Article 38 applies to investments in the equity instruments of financial sector entities by the bank shall depend on the percentage of equity shares calculated according to Article 52 (directly or indirectly) held in equity shares and other investment forms in such types of securities that synthetically present the same type of risk (securities held).¹⁶
- 2 Investments in equity instruments of entities held as Additional Tier 1 capital or Tier 2 capital, the equity shares of which must be fully deducted from the Common Equity Tier 1 capital as per Article 32(i)-(k), must be treated with the method described in Article 38(1).

ARTICLE 37 Equity Shares in Financial Sector Entities up to 10%

- 1 A bank that holds no more than 10% equity shares in a financial sector entity in the form of Common Equity Tier 1 capital must deduct from its own equity components the total carrying value of the total investments in equity instruments of all the financial sector entities that exceeds threshold 1. This shall also apply if the bank holds only equity instruments in a financial entity not deemed to be Common Equity Tier 1 capital.¹⁷
- 2 When applying the corresponding deduction approach, the deductible amount as per (1) shall first be proportioned to the bank's investments in equity instruments of the respective financial sector entities before it is deducted.
- 3 The part of the aggregated carrying values that is below the threshold as per (1) shall be risk-weight-

¹⁵ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS **2014** 1269).

¹⁶ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS **2014** 1269).

¹⁷ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS **2014** 1269).

ed. The risk weighting for each capital component shall depend on its allocation to either the banking or the trading book prior to the deduction.

ARTICLE 38 Equity Shares in Financial Sector Entities above 10%

- 1 A bank that holds more than 10% equity shares in a financial sector entity deemed to be Tier 1 capital, shall apply the corresponding deduction approach to all investments in any entity's equity instruments deemed to be Additional Tier 1 capital and Tier 2 capital held in such companies without any threshold.¹⁸
- 2 The bank shall deduct the sum of the total carrying value of all directly and indirectly held interests in Common Equity Tier 1 of such entities not in the consolidation scope which exceed threshold 2, for both single-entity and consolidated calculations.
- 3 Any amount calculated as per (2) that is below the threshold is treated according to Article 40.

ARTICLE 39 Further Deductions based on Threshold 2

- 1 The bank shall deduct separately from its Common Equity Tier 1 capital the following amounts that exceed threshold 2:
 - a. mortgage servicing rights; and
 - b. Deferred tax assets (DTAs) caused by temporary differences.
- 2 Amounts below the threshold are treated according to Article 40.

ARTICLE 40 Further Deductions based on Threshold 3

- 1 The carrying values calculated as per the procedures described in Articles 38(2), (3) and (39) that are below threshold 2 shall be aggregated and measured against threshold 3. The bank then has to deduct the amount exceeding threshold 3 from its Common Equity Tier 1 capital.
- 2 Amounts below threshold 3 must be risk-weighted at 250%.

Title 3: Required Capital

Chapter 1: General

ARTICLE 41 Composition

The required capital shall be composed of:

¹⁸ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS 2014 1269).

- a. minimum required capital;
- b. capital buffer;
- c. ¹⁹the countercyclical buffer;
- c^{bis}. ²⁰the extended countercyclical buffer; and
- d. additional capital.

ARTICLE 42 Minimum Required Capital

- 1 After the deductions according to Articles 31-40, banks must hold total capital in the amount of 8.0% of the risk-weighted positions as minimum capital. Thereof, a minimum of 4.5% of the risk-weighted positions must be held in the form of Common Equity Tier 1 capital and a minimum of 6% must be held in the form of Tier 1 capital.²¹
- 2 The risk-weighted positions shall be composed of:
 - a. positions weighted according to their credit risk (Article 49) and the risk-weighted positions from unsettled transactions (Article 76);
 - b. non-counterparty-related risks weighted according to Article 79;
 - c. the minimum required capital for market risks (Articles 80– 88) multiplied by a factor of 12.5;
 - d. the minimum required capital for operational risks (Article 89-94) multiplied by a factor of 12.5;
 - e. the minimum required capital for risks from guarantee obligations to central counterparties (Article 70) multiplied by a factor of 12.5; and
 - f. the minimum required capital held for risks from possible credit value adjustments (CVAs) caused by the counterparty credit risk of derivatives (Article 55) multiplied by a factor of 12.5.
- 3 A bank shall inform the FINMA and its external auditor as soon as its capital falls below the minimum required capital as per (1).
- 4 A bank holding less than the minimum required capital stipulated in (1) and (2) shall be considered to be non-compliant with the capital adequacy requirements set out in Article 25(1) BA.

ARTICLE 43 Capital Buffer

- 1 On top of the minimum capital, banks must also constantly hold a capital buffer of up to the amount

¹⁹ Version according to Section I of the Ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

²⁰ Inserted according to Section I of the Ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

²¹ Version according to Section I of the Ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

of the total capital ratio in accordance with the requirements of Annex 8. The higher, special requirements for systemically important banks as per Title 5²² shall remain applicable.

- 2 A bank whose capital buffer temporarily falls below the requirements due to exceptional and unpredictable circumstances, such as a Swiss-wide or international financial crisis, shall not be considered to be breaching capital requirements.
- 3 In the case of a shortfall, the FINMA shall set a bank-specific grace period for restoring the capital buffer.

ARTICLE 44 Counter-cyclical buffer

- 1 Upon the Swiss National Bank's request, the Swiss Federal Council may require that banks hold a counter-cyclical buffer of a maximum of 2.5% of their risk-weighted positions in Switzerland in the form of Common Equity Tier 1 capital, if this is necessary to:
 - a. enhance the banking sector's resilience against the risk of excessive credit growth; or
 - b. counteract excessive credit growth.
- 2 The Swiss National Bank shall consult the FINMA prior to issuing such a request and simultaneously inform the Federal Department of Finance. If the Swiss Federal Council approves the request, this ordinance shall be amended with a corresponding annex.
- 3 The counter-cyclical buffer may be limited to cover only certain credit positions. Should the prevailing criteria for the buffer no longer apply, it shall be abolished or adjusted to reflect the changed conditions. This procedure is based on (1) and (2).
- 4 Article 43(2) and (3) shall apply to the counter-cyclical buffer in analogy.

ARTICLE 44a²³ Extended countercyclical buffer

- 1 Banks with total assets of at least 250 billion Swiss francs, of which the total foreign commitment amounts to at least 10 billion Swiss francs, or with a total foreign commitment of at least 25 billion Swiss francs shall be required to hold an extended countercyclical buffer in the form of Common Equity Tier 1 capital.
- 2 For such banks, the amount of the extended countercyclical buffer shall correspond to the weighted average level of the countercyclical buffers which, in accordance with the published list by the Basel Committee, shall apply in those member states where the Bank's relevant receivables from the private sector are located; however, it shall not exceed 2.5 percent of the weighted positions. Amounts due from banks or the public sector shall not be considered to be amounts due from the private sector.

²² Version according to Section I of the Ordinance of 11 May 2016, in force since 1 July 2016 (AS 2016 1725).

²³ Inserted according to Section I of the ordinance of 11 May 2016, in force since 1 July 2016 (AS 2016 1725).

- 3 The weighting of the ratios for each member state shall correspond to the total capital requirement for credit exposures towards the private sector in that country divided by the Bank's total capital requirement for credit exposures towards the private sector.
- 4 The reference level for the extended countercyclical buffer for Switzerland shall correspond to the countercyclical buffer stipulated for all positions as per Article 44. A buffer as per Article 44 is eligible to be included in the extended countercyclical buffer.
- 5 Any countercyclical buffer limited to certain credit positions as per Article 44(3) shall not be eligible to be included in the extended countercyclical buffer.
- 6 Article 43(2) and (3) shall be applicable in analogy.

ARTICLE 45²⁴ Additional Capital

In special circumstances and on a case-by-case basis, the FINMA may demand that certain banks hold additional capital, namely if the minimum required capital as per Article 42 and the capital buffer as per Article 43 do not ensure an appropriate level of security in relation to the bank's:

- a. business activities;
- b. its risks taken;
- c. its business strategy;
- d. the quality of its risk management; or
- e. the development status of the techniques used.

ARTICLE 46 Leverage Ratio

- 1 The FINMA may oblige banks to report their leverage ratio based on the Basel Minimum Standards during an observation period.
- 2 The FINMA shall collect the necessary data to calculate the leverage ratio at the levels of the financial group and of the single entity.
- 3 The reporting shall use the capital adequacy reporting form.

ARTICLE 47 Parallel Calculations when using Model Approaches

For banks using a FINMA-approved model to determine the required capital (IRB, EPE model methodology²⁵, market risk approach or AMA²⁶), the FINMA may demand a parallel calculation to determine the

²⁴ Version according to Section I of the Ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

²⁵ Stands for: *Expected-Positive-Exposure (EPE)* modeling method.

²⁶ Stands for: *Advanced Measurement Approaches*.

required capital according to an appropriate standardized approach.

Chapter 2: Credit risk

Sub-section 1: General

ARTICLE 48 Term

When calculating the required capital, the term “credit risk” denotes the risk of a loss arising as a result of:

- a. a counterparty's failure to meet its contractual obligations; or
- b. a reduction in the value of financial instruments issued by a third party, notably equity shares, interest rate instruments or shares in collective investment vehicles.

ARTICLE 49 Risk-Weighted Positions

- 1 Positions must be weighted according to their risk if they show a credit risk and no deduction from the capital according to Articles 31-40 is foreseen.
- 2 The considered positions shall include:
 - a. receivables, including any claims arising from loan commitments not reported as assets in the balance sheet;
 - b. securitization receivables;
 - c. other off-balance sheet items converted into credit equivalents;
 - d. net positions in equity shares and interest rate instruments not held in the trading book;
 - e. net positions in equity shares and interest rate instruments held in the trading book, provided the de minimis approach (Article 82(1)(a)) is applied;
 - f. net positions in treasury shares and qualified interests held in the trading book.
- 3 Any position relating to a group of related counterparties as defined in Article 109 that is not broken down by counterparty shall be weighted according to the highest risk weight assigned to any of the individual counterparties within the group.

ARTICLE 50 Approaches

- 1 One of the following approaches is to be used to risk-weight individual positions to determine the minimum capital required for credit risks in accordance with Article 42(2)(a):

- a. a) SA-BIS²⁷ (Articles 63-75); or
 - b. b) IRB (Article 77).
- 2 The IRB and SA-BIS approaches may be combined.
 - 3 Using an IRB model approach shall require approval from the FINMA, which specifies the conditions for granting approval.
 - 4 FINMA shall issue implementing provisions in regard to credit risks and securitizations.

Sub-section 2: Calculating the positions

ARTICLE 51 Net position

- 1 Net positions shall be calculated as follows:

physical holdings plus outstanding securities from securities lending transactions less securities owed from securities borrowing transactions

+ unsettled spot and forward purchases (including financial futures and swaps)

./. unsettled spot and forward sales (including financial futures and swaps).

+ firm underwriting commitments, less sub-participations and firm subscriptions, if these eliminate the price risk for the bank

+ delivery claims from call purchases, delta-weighted.

./. delivery commitments from written calls, delta-weighted

+ underwriting commitments from written puts, delta-weighted.

./. delivery rights from put purchases, delta-weighted
- 2 Amounts already posted to the balance sheet as liabilities for value adjustments and provisions shall be deducted from the net position.
- 3 Positive net positions shall be referred to as net long positions, and the absolute amounts of negative net positions shall be referred to as net short positions.

²⁷ Stands for the so-called international standardized approach.

ARTICLE 52 Net Position of Investments in the Equity Instruments of Financial Sector Entities

- 1 The net positions of investments in the equity instruments of financial sector entities (taking into consideration the additional requirements in (2) and (3) below) shall be calculated as follows:

physical holdings plus synthetic positions as well as outstanding securities arising from securities lending transactions less securities owed arising from securities borrowing

+ unsettled spot and forward purchases (including financial futures and swaps)

./ . unsettled spot and forward sales (including financial futures and swaps).

./ . + underwriting positions kept for five working days or less

+ delivery claims from call purchases, delta-weighted.

./ . delivery commitments from written calls, delta-weighted

+ underwriting commitments from written puts, delta-weighted.

./ . delivery rights from put purchases, delta-weighted

- 2 For directly held instruments that are equity instruments or by which equity instruments are held indirectly or synthetically, with the exception of treasury shares, the netting of long and short positions in investments in an entity's equity instruments shall only be permissible, if:²⁸

a. the long and short positions refer to the same equity instrument; and

b. the maturity of the short position of the instrument either matches the maturity of the long position or has a residual maturity of at least one year.

- 3 In the case of own equity instruments, the following net positions must be determined for each component (CET1, AT1 and T2) and deducted from that component as per Articles 32-34:

a. net positions of directly or synthetically held own equity instruments, whereby long and short positions may only be netted if they refer to the same equity instrument and the short position does not bear a counterparty risk.

b. net position of own equity instruments that are held indirectly using a financial instrument, such as an index or an option on an index, may only be netted if the long and short positions refer to the same underlying instrument; a counterparty risk related to the short positions is subject to capital requirements.

²⁸ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS **2014** 1269).

ARTICLE 53 Positions in Off-balance sheet Transactions

- 1 Off-balance sheet transactions must be converted into a credit equivalent using credit conversion factors. This shall determine their risk-weighting.
- 2 Banks using the IRB approach shall calculate the credit equivalent for contingent liabilities and irrevocable commitments according to the SA-BIS provisions where the IRB has no corresponding provision.

ARTICLE 54 Contingent Liabilities and Irrevocable Commitments

- 1 For contingent liabilities and irrevocable commitments, the credit equivalent under SA-BIS must be calculated by multiplying the nominal or present value of the transaction by the corresponding credit conversion factor in accordance with Annex 1.
- 2 For contingent liabilities of which the bank has ceded sub-participations, it may treat these as if they were direct claims against each sub-participant.

ARTICLE 55 Risk of potential Credit Value Adjustments (CVAs) of Derivatives

- 1 Apart from credit default risks of derivative counterparties according to Articles 50 and 56, banks must also dispose of minimum required capital to cover the risk of a loss due to credit value adjustments (CVAs) of derivatives based on counterparty credit risks.
- 2 The FINMA shall define the method to calculate the minimum required capital in view of the calculation method chosen for credit equivalents (Article 56) and for market risks (Article 82). For this, it shall refer to the Basel Minimum Standards.
- 3 The FINMA shall provide banks that have neither chosen a model approach as per Article 56 nor as per Article 82 with a conservative simplified approach.

ARTICLE 56 Calculation Methods for Derivatives

- 1 Credit equivalents for derivative positions can be calculated using one of the following methods:
 - a. Current Exposure Method;
 - b. Standardized Method; or
 - c. Expected-Positive-Exposure (EPE) modeling method.
- 2 The use of the EPE model methodology requires approval from FINMA, which specifies the conditions for granting approval.
- 3 FINMA shall specify on how to calculate credit equivalents in the event of a legally or contractually required netting arrangement as per Article 61 in which more than two parties are involved.

- 4 The calculation methods shall be valid for all types of derivatives, no matter whether they are traded on an exchange or over the counter.

ARTICLE 57 Current Exposure Method

- 1 In the current exposure method, the credit equivalent shall correspond to the sum of the current replacement value and an add-on for potential future exposure ().
- 2 The FINMA shall determine on which basis the respective add-on for individual types of instruments is to be calculated and the amount of each add-on.

ARTICLE 58 Standardized method

In the standardized method, the credit equivalent shall be calculated by multiplying the greater of the two following amounts by a factor of 1.4:

- a. current market value of the derivatives, taking into account collateral provided;
- b. risk position defined by the regulator.

ARTICLE 59 EPE Modelling Method

- 1 The FINMA shall define how credit equivalents of derivatives are calculated according to the EPE modeling method. For this, it shall refer to the Basel Minimum Standards.
- 2 The credit equivalents shall be multiplied by the EPE factor. The FINMA shall specify the EPE factor on a case-by-case basis. The EPE factor shall amount to at least 1.2.

ARTICLE 60 Interest-rate Instruments and Equity Shares

- 1 The net position shall be determined in accordance with Article 52 if the interest rate instruments or equity shares in question are investments in the equity instruments of financial sector entities.
- 2 Net positions for interest-rate instruments and equity shares from the same issuer that have the same risk weighting but are not held in the trading book shall be calculated as per Article 51.
- 3 For positions not held in the trading book, physical inventory shall be valued at book value.
- 4 (1) and (2) shall also apply to interest-rate instruments and equity shares held in the trading book, provided the de minimis approach (Article 82(1)(a)) is applied.

ARTICLE 61 Risk-mitigating measures

- 1 The following risk-mitigating measures may be taken into account when calculating positions:
 - a. legal and contractual netting;

- b. guarantees;
 - c. credit derivatives; and
 - d. other collateral.
 - e. If required, banks must demonstrate to their external auditors or the FINMA that the risk-mitigating measures are legally enforceable in the jurisdictions concerned.
- 2 FINMA shall specify these risk-mitigating measures.

ARTICLE 62 Collateralized transactions

- 1 A bank may choose to adopt one the following approaches to handle collateral as defined in Article 61(1)(d):
- a. simplified approach; or
 - b. comprehensive approach.
- 2 In the simplified approach, the collateralized portion of the position shall be allocated to the protection provider's position category.
- 3 In the comprehensive approach, the position shall be netted against the collateralized portion of the position. The net position shall remain in the category of the original position.
- 4 FINMA shall specify these approaches in more detail.

Sub-section 3: Position Categories and their Risk Weightings under SA-BIS

ARTICLE 63 Position Categories

- 1 Banks shall assign individual positions to position categories.
- 2 Positions in the following position categories may be risk-weighted using external ratings:
- a. central governments and central banks;
 - b. public-law entities;
 - c. Bank for International Settlements (BIS), International Monetary Fund (IMF) and multilateral development banks;
 - d. banks and securities dealers;

- e. joint institutions;
 - f. stock exchanges and clearing houses;
 - g. corporations.
- 3 No external ratings may be used for the following position categories:
- a. individuals and small businesses (retail positions);
 - b. domestic mortgage bonds;
 - c. directly or indirectly mortgage-backed positions;
 - d. subordinate positions;
 - e. overdue positions;
 - f. equity shares and units in collective investment vehicles;
 - g. other positions.

ARTICLE 64 Use of External Ratings

- 1 Banks using the SA-BIS approach may use ratings supplied by rating agencies to risk-weight positions, provided such agencies are recognized by the FINMA for that purpose.
- 2 The FINMA shall assign the ratings of recognized rating agencies to rating categories and determine the risk weighting for each category.
- 3 The use of external ratings must be based on a concrete, institution-specific methodology that must be strictly adhered to.
- 4 Where a bank risk-weights positions according to the ratings of external rating agencies, it must, as a principle, risk-weight all positions except the position category 'corporations' according to external ratings. Where a bank also risk-weights positions in the position category 'corporations' according to external ratings, it must, as a principle, risk-weight all positions in this category according to external ratings.
- 5 If a bank does not use external ratings to risk-weight positions, or no external ratings from a recognized rating agency are available, the risk weights of the category "unrated" have to be used.

ARTICLE 65 Use of External Ratings at Group Level

The ratings used in the companies to be consolidated can be used at group level.

ARTICLE 66 Calculation of the Positions to be Risk-weighted

- 1 For SA-BIS purposes, positions in the position categories specified in Article 63(2) shall be risk-weighted according to Annex 2.
- 2 Positions in the position categories specified in Article 63(3)(a)-(e) and (g) shall be risk-weighted according to Annex 3.
- 3 Positions in the position category as specified in Article 63(3)(f) shall be risk-weighted according to Annex 4.
- 4 Net positions in interest-rate instruments as defined in Article 60 have to be assigned to the issuer's position category and risk-weighted accordingly.
- 5 For positions in the form of investments in the equity instruments of financial sector entities, the risk-weighting as per (3) and (4) shall apply to the portion of the net position as per Article 52 that was not deducted from the capital using the corresponding deduction approach (Article 33).

ARTICLE 67 Local Currency Positions to Central Governments or Central Banks

If the supervisory authority of a country other than Switzerland provides a lower risk weighting than the one stipulated in Article 66(1) for local currency positions to the central government or central bank of that country, then banks shall be entitled to risk-weight such positions accordingly, provided that these positions are refinanced in the local currency of that country and the banking supervision of that country is adequate. This same risk-weighting shall be applicable to the portion of a position refinanced in local currency.

ARTICLE 68 Banks and securities dealers

- 1 Securities dealers can only be assigned to the position category "banks and securities dealers" (Article 63(2)(d)) if they shall be subject to supervision equivalent to that of banks.
- 2 Netted positions arising from off-balance-sheet transactions shall be assigned to the maturity band of the shortest of the netted positions.
- 3 Positions to banks without external rating, with the exception of short-term, self-liquidating letters of credit for trade financing, may not be assigned a risk weight which is lower than the risk weight for positions to the banks' country of incorporation.²⁹

ARTICLE 69 Stock Exchanges and Clearing Houses

- 1 Clearing houses are institutions through which contractual obligations of traded contracts shall be settled.
- 2 The 0% or 2% weighting for credit risks in accordance with Annex 2 shall only apply if a regulated central counterparty directly enters into the transaction between two market participants, and an

²⁹ Inserted with Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS 2014 1269).

adequate, comprehensive collateralization system is established as a basis for the functions exercised by this central counterparty.

- 3 This collateralization system shall be in particular regarded as adequate and comprehensive if:
 - a. contracts are marked to market daily with daily margin calls;
 - b. the expected changes in value for the day ahead are collateralized on an ongoing basis with a high confidence level; and
 - c. unexpected losses are hedged.
- 4 The FINMA shall stipulate the additional criteria for central counterparties in connection with derivatives and repo or repo-like transactions based on the Basel Minimum Standards.

ARTICLE 70 Credit Risks and Guarantees to Central Counterparties

- 1 The FINMA shall define how to calculate the minimum required capital for risks arising from explicit and implicit guarantees to the central counterparty for banks acting as clearing members for a central counterparty for derivatives traded on an exchange or over the counter and repos and repo-like transactions. For this, the FINMA shall refer to the Basel Minimum Standards.
- 2 Central counterparties shall be deemed to be clearing houses that act as a contracting party between counterparties of contracts, guaranteeing the delivery of the contracts during their entire lifetime.
- 3 Clearing members shall be authorized to enter into a direct transaction with the central counterparty as a party, regardless of whether they act on their own behalf or as an intermediary between the central counterparty and other market participants.

ARTICLE 71 Unrated Corporate Positions

If a bank risk-weights corporate positions using ratings, any unrated positions shall be assigned the risk weight of 100% or that of the relevant central government, if the latter is higher than 100%.

ARTICLE 72 Positions in directly or indirectly mortgage-backed loans

- 1 Residential property shall be deemed to be real estate occupied or rented out by the borrower itself.
- 2 Construction loans and loans for land shall be assigned to the real estate categories specified in Annex 3 depending on the future use of the financed property.
- 3 The risk weight of 35% for foreign residential properties can only be applied where an adequate risk management equivalent to the one applied to Swiss residential properties is ensured.
- 4 Pledged retirement capitals and pledged pension benefit entitlements as per Article 30b of the Swiss Federal Law Occupational Old Age, Survivors' and Invalidity Pension Provision (OPA) of

25 June 1982³⁰ and Article 4 of the Federal Ordinance on the Tax Deduction of Contributions to Recognized Pension Plans of 13 November 1985³¹ shall be considered as the borrower's capital when calculating the risk-weighted position as per Annex 3, if:

- a. the pledge represents additional security for a mortgage-backed claim;
- b. the property in question is used by the borrowers themselves; and
- c. the minimum requirements of (5) are fulfilled.

5 If the credit business does not comply with one of the self-regulation standards recognized by the FINMA as a minimum standard (Article 7(3) pursuant to the Financial Market Supervision Act of 22 June 2007³², the risk weight for mortgage-backed positions according to Annex 3 shall be 100%. The minimum requirements shall be:

- a. that the borrower has contributed a reasonable amount of minimum of capital to finance the property that originates neither from a pledge nor from an advance withdrawal as per Articles 30b or 30c OPA, respectively;
- b. the amortization of the loan is reasonable in regard to timeframe and amount.

ARTICLE 73 Equity shares

Net positions in equity shares shall be risk-weighted in accordance with Annex 4. Excluded are net positions that:

- a. are to be deducted from the capital components in accordance with Articles 31-40; or
- b. are to be risk-weighted in accordance with Article 40(2).

ARTICLE 74 Lombard Loans

Lombard loans may be risk-weighted separately within the corresponding position category using the simplified approach (Article 62 (1)(a)) or the comprehensive approach (Article 62(1)(b)).

ARTICLE 75 Loans, Repo and Repo-like Transactions with Securities

Within their relevant position category, loans, repo and repo-like transactions with securities may be risk-weighted separately using the simplified, the comprehensive or the EPE modeling approach.

ARTICLE 76 Positions Arising from Unsettled Transactions

1 Positive replacement values for positions from unsettled currency, securities and commodity trans-

³⁰ SR **831.40**

³¹ SR **831.461.3**

³² SR **956.1**

actions with a risk of loss due to late or erroneous processing (positions from unsettled transactions) and which should be settled on a "delivery against payment" or "payment against payment" basis via a payment or securities clearing system must be risk-weighted as follows:

Number of bank working days after the agreed settlement date	Risk Weighting
5-15	100%
16-30	625 %
31-45	937,5%
46 or more	1250 %

- 2 Positions from unsettled transactions that are to be settled in another way must be treated as follows:
 - a. The bank that has made the initial payment/delivery shall treat the position as a loan until the second leg has been received. In the case of immaterial positions, banks may choose to apply a 100% risk weight instead of a rating-based risk weight.
 - b. If the second leg has not been received until five business days after the agreed settlement date, the value transferred plus any positive replacement value shall be risk-weighted at 1250 %.
- 3 Repurchase agreements, reverse repurchase agreements and securities lending and borrowing transactions shall be treated only in accordance with Article 75.

Sub-section 4: IRB

ARTICLE 77

- 1 Banks using the IRB approach for determining the risk-weighted positions and the capital required for credit risk may choose from the following approaches :
 - a. the simplified IRB approach (F-IRB³³); or
 - b. the advanced IRB approach (A-IRB³⁴).
- 2 The FINMA shall specify the calculation in more detail. For this, it shall refer to the Basel Minimum Standards.
- 3 In the absence of specific guidelines under the IRB approach, the SA-BIS provisions shall apply accordingly.

³³ Stands for: Foundation IRB

³⁴ Stands for: Advanced IRB

Chapter 3: Non-counterparty risk

ARTICLE 78 Term

The term "non-counterparty-related risks" shall denote the risk of a loss as a result of changes in the value of or liquidation of non-counterparty-related assets such as real estate and other tangible assets.

ARTICLE 79 Risk-Weighting

- 1 In order to cover non-counterparty-related risks with capital, the following positions must be risk-weighted at 100%:
 - a. real estate;
 - b. other tangible assets and assets recorded in the balance sheet under "other assets", that are subject to depreciation, unless they are deducted from the Common Equity Tier 1 capital as per Article 32(c).
- 2 A credit balance of the equalization account shall be risk-weighted at 0%.

Chapter 4: Market risk

Sub-section 1: General

ARTICLE 80 Principle

- 1 Banks shall provide sufficient capital to cover the market risk inherent to interest rate instruments and equity shares held in the trading book as well as currency, gold and commodity positions across the entire bank.
- 2 The FINMA shall issue technical implementing provisions on market risk.

ARTICLE 81 Term

The term "market risk" shall denote the risk of a loss as a result of changes in the value of a position due to changes in price-determining factors such as share or commodity prices, exchange rates and interest rates and their corresponding volatilities.

ARTICLE 82 Calculation Approaches

- 1 The minimum required capital for market risk may be calculated using the following approaches:
 - a. de minimis approach;
 - b. standardized approach to market risk; or

- c. model approach to market risk.
- 2 Where several of these approaches are used, the minimum required capital shall be the sum of the minimum required capital calculated from each approach.

Sub-section 2: De Minimis Approach;

ARTICLE 83

- 1 Banks that do not exceed certain thresholds may calculate the minimum capital required for interest rate instruments and equity shares held in the trading book in accordance with Articles 66-76. In doing so, they must apply the same guidelines as with the approach used for covering credit risks.
- 2 The FINMA shall determine the thresholds.

Sub-section 3: Standardized Approach for Market Risk

ARTICLE 84 Interest-rate Instruments in the Trading Book

- 1 The minimum capital required to cover the specific risk associated with interest-rate instruments shall be determined by multiplying the net position for each issue by the factors specified in Annex 5.
- 2 The FINMA shall issue implementing provisions to calculate the minimum capital required to cover the specific risks associated with interest-rate instruments from securitizations where the risk is divided into tranches.
- 3 The minimum capital required to cover the general market risk associated with interest-rate instruments shall equal the total value calculated for each currency using the maturity method or the duration method.

ARTICLE 85 Equity Instruments in the Trading Book

- 1 The minimum capital required to cover the specific risks associated with equity instruments shall equal 8% of the total net positions for each issue.
- 2 The minimum capital required to cover general market risks associated with equity instruments shall equal 8% of the total net positions for each national market.

ARTICLE 86 Foreign-exchange Positions

The minimum capital required to cover the market risks associated with foreign-exchange positions shall equal 8% of the total value of either the net long positions or the total value of net short positions, whichever one is higher.

ARTICLE 87 Gold and Commodity Positions

- 1 The minimum capital required to cover the market risk associated with gold positions shall equal 8% of the net position.
- 2 The minimum capital required to cover the commodity risks shall be determined by the maturity band approach or by the simplified approach.

Sub-section 4: Model-based Approach for Market Risk

ARTICLE 88

- 1 Using the market risk model approach requires approval from the FINMA, which shall specify the conditions for granting approval.
- 2 Referring to the Basel Minimum Standards, the FINMA shall specify which model-based approach for market risk shall be used to calculate the minimum capital. For this, it shall refer to the Basel Minimum Standards.
- 3 The FINMA defines the multipliers for the market risk model approach on a case-by-case basis, taking into account the institute's compliance with the approval requirements and the accuracy of the estimates of the institute's risk aggregation model. The multipliers shall be at least 3.0 in each case.

Chapter 5: Operational risks

Sub-section 1: General

ARTICLE 89 Term

Operational risk shall denote the risk of a loss resulting from the inadequacy or failure of internal processes, people or systems, or from external events. This shall include legal risks, but excludes strategic and reputational risks.

ARTICLE 90 Calculation Approaches

- 1 Banks may choose from the following methods to determine the minimum capital required to cover operational risk:
 - a. the basic indicator approach;
 - b. the standardized approach; or
 - c. institution-specific approaches (AMA)
- 2 Application of an AMA shall require approval from FINMA.

- 3 The FINMA shall issue implementing provisions in regard to the approaches.

ARTICLE 91 Earnings Indicator

- 1 Banks using the basic indicator or standardized approach to determine the minimum capital for operational risk must determine an earnings indicator for each of the three previous years. This must be equal to the sum of the following income statement positions:
- a. ³⁵Gross interest income;
 - b. Fee and commission income;
 - c. ³⁶Net results from trading operations and from the fair-value option;
 - d. income from equity interests not subject to consolidation; and
 - e. income from real estate.
- 2 All income generated from outsourcing agreements where the bank acts as service provider must be considered as a component of the earnings indicator.
- 3 If the bank acts as a client for an outsourced service, the corresponding expenses may only be deducted from the earnings indicator if the services are outsourced within the same financial group and are accounted for on a consolidated basis.
- 4 When determining the earnings indicator, banks may apply internationally recognized accounting standards instead of Swiss accounting standards, provided the FINMA approves this.

Sub-section 2: Approaches

ARTICLE 92 Basic Indicator Approach

- 1 The minimum required capital shall correspond to 15% of the average of the income indicators of the three previous years. The only years that shall be taken into account are the years in which the earnings indicator was positive.
- 2 The FINMA may subject the use of the basic indicator approach to additional qualitative risk management requirements.

ARTICLE 93 Standardized Approach

- 1 The minimum required capital shall be calculated as follows:

³⁵ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS **2014** 1269).

³⁶ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS **2014** 1269).

- a. For each business line and for each of the three previous years an earning indicator has to be determined and multiplied by the factor specified in (2).
 - b. The resulting values shall be added up for each year. In doing so, negative values from individual business lines shall be offset with positive values from other business lines.
 - c. The minimum required capital shall correspond to a three-year average. When calculating the average, any negative sum shall be set to zero.
- 2 Business activities shall be assigned to the following business lines and multiplied by the following rates:
- | | |
|---|------|
| a. Corporate finance/consulting | 18 % |
| b. Trading | 18 % |
| c. Private banking | 12 % |
| d. Commercial banking | 15 % |
| e. Payment operations / securities clearing and settlement operations | 18 % |
| f. Custodial and fiduciary transactions | 15 % |
| g. Institutional asset management | 12 % |
| h. Securities brokerage business | 12% |
- 3 The FINMA may subject the use of the standardized approach to additional qualitative risk management requirements.

ARTICLE 94 Institution-specific Approaches (AMA)

- 1 Banks may use an institution-specific approach (AMA) to determine the minimum required capital.
- 2 The FINMA shall approve the use of an AMA if the bank has a model allowing it to quantify operational risks using internal and external loss data, scenario analyses as well as key factors of the business environment and of the internal control framework.

Title 4: Risk Diversification

Chapter 1: General Provisions

Sub-section 1: Object

ARTICLE 95 Large exposures

- 1 A large exposure exists if the total position to a single counterparty or a group of related counterparties is equal to or greater than 10% of the bank's adjusted eligible capital as per Articles 31-40.
- 2 Banks shall limit and monitor their large exposures.

ARTICLE 96 Market Risk

All banks must specify appropriate internal limits for all material market risks for their operations. Such limits must include the bank's office buildings and other real estate.

Sub-section 2: Upper Limits of Large Exposures

ARTICLE 97 Upper Limit of Individual Large Exposures

A bank's large exposure must not exceed 25% of the adjusted eligible capital as per Articles 31-40.

ARTICLE 98 Exceeding the Upper Limit

- 1 The upper limit for large exposures may only be exceeded, if:
 - a. the excess is covered by unencumbered eligible capital; or
 - b. the excess is solely a consequence of the affiliation of previously unconnected counterparties, or an affiliation between the bank and other financial entities
- 2 If capital is used to cover the excess large exposure, this must be documented in the capital adequacy reporting form as per Article 14.
- 3 The bank shall not increase the amount by which the upper limit has been exceeded as per explanations provided in (1)(b).. The excess must be remedied within two years after the affiliation's legal implementation.

ARTICLE 99 Intra-group Positions

- 1 If a bank is part of a financial group or financial conglomerate subject to an adequate consolidated supervision, intra-group positions to group companies fully integrated into the capital and consolidated risk diversification (fully consolidated) may be excluded from the upper limits specified in Article 97, if the subsidiaries:

- a. are themselves subject to an adequate supervision; or
 - b. have on their part solely group companies as counterparties that are themselves subject to an adequate supervision.
- 2 The FINMA shall be authorized to restrict the comprehensive exclusion of intra-group positions according to (1) in its implementing provisions.
 - 3 Intra-group positions to other group companies shall be subject to the regular upper limit of 25% of the adjusted eligible capital as per Articles 31-40 on an aggregated level.

Sub-section 3:

Reporting Requirements with regard to Large Exposures

ARTICLE 100 Disclosure of Large Exposures

- 1 As at selected reporting dates, the bank shall submit a quarterly list of all existing large exposures at individual level to its governing body for guidance, supervision and control and, within one month, to the statutory auditor using a form specified by the FINMA.
- 2 At a consolidated level, an equivalent report must also be submitted every six months, within six weeks.
- 3 Large exposures as per Article 97 are to be disclosed prior to being deducted from the unencumbered available eligible capital (Article 98(1)(a)).
- 4 If a large exposure involves a member of the bank's supervising body or a qualified shareholder as per Article 3(2)(cbis) of the Swiss Banking Act or a closely affiliated individual or company, the large exposure must be disclosed in the list under the term, "transactions with affiliated parties (Organ-geschäfte)".
- 5 Any large exposure held from/towards other group companies shall be disclosed in the list under the term "Group transactions (Gruppengeschäft)". The components of the group transaction position that are excluded from the upper limit as per Articles 99(1) and 112(2)(d) must be disclosed as well.
- 6 The external auditor shall verify the bank's internal monitoring of large exposures and assess their development.

ARTICLE 101 Disclosure of Unauthorized Excesses

If a bank detects a large exposure that exceeds the upper limit without being subject to an exception under Article 98(1), it shall notify its external auditor and the FINMA immediately.

ARTICLE 102 Disclosure of Intra-group Positions

Every three months, the bank must submit a statement of intra-group positions as per Article 99, together with a list of existing large exposures to the auditors and the governing body responsible for overall management, supervision and control. In doing so, it must distinguish between group companies as defined in Article 99(1) and (3).

Sub-section 4: Calculation Principles

ARTICLE 103 Firm Underwriting Commitments Arising from Issuances

Issuer-specific positions for firm underwriting commitments from issuances are to be calculated as follows:

- a. Ceded sub-participations and firm subscriptions may be deducted from firm underwriting commitments from issued debt certificates and equity shares if this eliminates the bank's market risk.
- b. The resulting amount is to be multiplied by one of the following credit conversion factors:
 1. 0.05 from and including the date on which the firm underwriting commitment was irrevocably entered into;
 2. 0.1 on the issuance's payment date;
 3. 0.25 on the second and third bank working day after the subscription payment date;
 4. 0.5 on the fourth bank working day after the issuance's payment date;
 5. 0.75 on the fifth bank working day after the issuance's payment date;
 6. 1 from and including the sixth bank working day after the issuance's payment date.

ARTICLE 104 Equity Shares and Subordinated Debt Certificates

When determining the total position amount, investments in an entity's equity instruments deducted from capital as per Articles 31-40 may not be considered.

ARTICLE 105 Individual Value Adjustments and Individual Provisions

Prior to risk weighting individual positions, individual value adjustments and individual provisions made for positions, off-balance-sheet transactions and net long positions shall be deducted.

ARTICLE 106 Positions Arising from Unsettled Transactions

Transactions that remain unsettled after the fifth bank working day (Article 76) shall be included in the total position amount in the amount of the full exposure.

ARTICLE 107 Derivatives

Derivatives shall be converted to their credit equivalent as per Articles 56-59.

ARTICLE 108 Netting

The legal and contractual netting of claims with liabilities to counterparties is permissible to the same extent as in the calculation of the capital.

ARTICLE 109 Groups of Related Counterparties

- 1 The total exposure to a group of related counterparties shall be the sum of the total exposure to each counterparty.
- 2 Two or more natural persons or legal entities shall be deemed to be a group of related counterparties and are to be treated as a single entity, if:
 - a. one of them directly or indirectly holds more than half of the voting rights of the other or exerts a controlling influence over it in some other way;
 - b. there is clear evidence of a financial dependency between them such that it seems likely that if one gets into financial distress, the others will encounter payment difficulties;
 - c. they are held by the same individual or legal entity as equity interest or are controlled by it;
 - d. they form a syndicate; or
 - e. the counterparties are connected through a mutual refinancing source.
- 3 Multiple syndicates shall not be deemed to be interrelated counterparties even if an individual or all the syndicates are identical; nor are other positions to be added to individual syndicates.
- 4 Legally independent public-sector companies shall not be deemed to be related counterparties to their controlling public-law entity, if:
 - a. the public-law entity is not legally liable for the liabilities of the company; or
 - b. it is a bank.
- 5 For receivables in securitization positions, units in investment capital or other, asset-backed loans, the bank shall choose the borrower in such a manner that it satisfies the economical substance and the business risks inherent to the structure of the transactions and, in particular, the possible large exposures arising thereof.

- 6 Collective investment schemes shall be deemed as independent counterparties and, in the case of collective investment schemes with sub-funds (umbrella funds), the same is true of each sub-fund. Where a bank has up-to-date information on the composition of the assets of a collective investment scheme, it can instead assign the corresponding investments to the respective issuers.

ARTICLE 110 Positions to a Syndicate

- 1 Positions to a syndicate are attributed to the individual syndicates according to their share.
- 2 In the case of joint and several liability, the bank shall attribute the entire position to the particular syndicate that had the highest credit rating at the time of the credit approval.

ARTICLE 111 Positions of Group Companies

From the perspective of every bank in a financial group or financial conglomerate, group companies shall represent a group of affiliated counterparties.

Sub-section 5: Alleviating or Tightening Provisions

ARTICLE 112

- 1 In exceptional circumstances, the FINMA may alleviate or tighten the applicable risk diversification requirements.
- 2 In particular, it may:
 - a. reduce notification limits or upper limits for specific total position amounts;
 - b. define upper limits for any real estate directly or indirectly held by a bank;
 - c. permit short-term exceeding of upper limits on prior request;
 - d. stipulate that the upper limit exemption as per Article 99(1) does not apply for some or all subsidiaries or that it only applies to specific subsidiaries that do not comply with the requirements described in Article 99(1);
 - e. exempt specific group companies not operating in the financial sector from being included in the aggregated position as per Article 99(1) and (3);
 - f. exempt equity interests that are not to be consolidated according to Article 99(1)(a) from inclusion in the aggregate position according to Article 99(2);
 - g. reduce or increase the applicable risk weights for a specific counterparty;
 - h. set a time limit other than the one foreseen in Article 98(3).

Chapter 2: Total Positions and their Risk Weighting

ARTICLE 113 Total position

- 1 The total position of a counterparty shall be the result of the following positions:
 - a. positions risk-weighted according to Article 115, under consideration of the exclusions stipulated in Article 114;
 - b. positions according to Articles 117 and 118;
 - c. off-balance-sheet transactions converted to their credit equivalents (Article 119);
 - d. positions resulting from loans, repo and repo-like transactions with securities (Article 122);
 - e. net *long* positions in securities (Article 123).
- 2 When calculating the total position, the bank shall include at least the irrevocable credit limits communicated to the counterparty.

ARTICLE 114 Exclusions from the Total Position

The following positions shall be excluded from the calculation of the total position of a counterparty:

- a. positions to:
 1. central banks and central governments risk-weighted at 0%; and
 2. the BIS, the IMF and certain multilateral development banks as stipulated by the FINMA;
- b. positions covered by an explicit guarantee from the counterparties as per (a);
- c. positions in domestic (Swiss) mortgage bonds (Pfandbrief);
- d. mortgage-backed positions covered by residential property either located in Switzerland or abroad either occupied or rented out by the borrowers themselves, up to a maximum of 50% of the corresponding property's market value;
- e. positions covered by cash deposits that are either deposited at the bank itself, pledged or at least equivalently collateralized;
- f. positions covered by debt certificates issued by the bank itself and pledged or deposited with the bank; and
- g. positions to a central counterparty as defined in Article 69(2) and (3).

ARTICLE 115 Risk Weighting

- 1 As a general rule, positions to a single counterparty shall be assigned a risk weight of 100%.
- 2 A risk weight of 20% applies to positions to public-sector entities of the *rating* categories 1 or 2.

ARTICLE 116 Upper Limit on Large Exposures to Banks and Securities Dealers

By way of derogation from Article 97, the upper limit on individual large exposures to banks and securities dealers, if they are neither nationally nor internationally systemically important banks or financial groups, shall amount to:

- a. 100% of the adjusted eligible capital as per Articles 31-40, provided the total does not amount to more than CHF 250 million;
- b. CHF 250 million, provided the adjusted eligible capital as per Articles 31-40 amounts to between CHF 250 million and CHF 1,000 million.

ARTICLE 117 Collateralized Positions

- 1 Banks may include the secured component of the collateralized positions either in the third party's or the counterparty's total position, provided that the position is secured by any of the following instruments and the requirements of Article 61 are met:
 - a. third-party debt certificates or equity shares as well as units in collective investment schemes;
 - b. third-party fiduciary deposits; or
 - c. third-party guarantees, provided the risks of maturity and currency mismatches are adequately mitigated.
- 2 If the collateral consists of third-party debt certificates, equity shares, shares in collective investment schemes or fiduciary deposits, banks shall be entitled to calculate the specific positions according to Article 118.

ARTICLE 118 Eligibility of Collateral

- 1 Banks using the simplified approach under SA-BIS as per Article 62(1)(a) may take into account collateral as defined in Article 117(1).
- 2 Banks using the comprehensive approach as specified in Article 62(1)(b) or the F-IRB approach must calculate the fully adjusted position values for collateralized positions according to Article 62(3).
- 3 Banks using the A-IRB approach may either calculate collateralized positions according to (2) or use their own *loss-given-default* (LGD) and *exposure-at-default* (EAD) values, provided that:

- a. the effects of financial collaterals can be reliably estimated independently of other LGD-relevant aspects; and
 - b. the procedure corresponds to the approach chosen for capital adequacy requirements.
- 4 Collateral may be eligible for capital adequacy under the approach specified in (2) and (3) provided the resulting large exposures are adequately limited and monitored. Otherwise, the procedure specified in Article 117(1) must be applied.
 - 5 The procedures specified in (2) and (3) may only be used if the bank performs periodical stress tests in regard to large credit exposures, including realizable value of all such collateral.

ARTICLE 119 Off-balance Sheet Transactions

Off-balance sheet transactions shall be converted to their credit equivalents as defined in Articles 120 and 121 and risk-weighted at the rate applicable to that specific counterparty defined in Article 115.

ARTICLE 120 Contingent Liabilities and Irrevocable Commitments

- 1 The credit equivalent for contingent liabilities shall be determined by multiplying the nominal or present value of the corresponding transaction with the applicable credit conversion factor defined in Article 53(2) or Article 54(1).
- 2 By way of derogation from the paragraph above, the nominal value of each transaction shall be multiplied by the credit conversion factor 1.0 for irrevocable loan commitments.
- 3 The following credit conversion factors shall apply to irrevocable loan commitments in the context of a syndicated loan:
 - a. 0.0 from the date on which the commitment was made by the bank until the date on which the commitment is accepted and confirmed by the counterparty;
 - b. 0.5 from and including the date on which the counterparty accepts the commitment made by the bank until the syndication phase begins;
 - c. 0.5 for the non-syndicated tranche during the syndication phase, as well as 1.0 for the planned own tranche;
 - d. 1.0 for all non-syndicated tranches after a period of 90 days (residual risk).
- 4 Contingent liabilities and irrevocable loan commitments in which the bank has ceded sub-participations shall be treated according to Article 117(1).

ARTICLE 121 Derivatives

- 1 Derivatives shall be treated pursuant to Article 107.

- 2 If a derivative transaction remains unsettled at maturity, the provisions of Article 106 shall apply.

ARTICLE 122 Loans, Repo and Repo-like Transactions with Securities

Loans, repo and repo-like transactions are to be treated in accordance with Article 118.

ARTICLE 123³⁷ Issuer-specific Total Position

Taking into consideration the exceptions stated in Article 114, net long positions for each issuer held on and off the trading book shall be calculated separately for debt and equity share positions according to Articles 51 and 52. Firm underwriting commitments from issuances may be treated as per Article 103. The issuer-specific total position shall be the result of the sum of the individual net long positions.

Title 5: Provisions for Systemically Important Banks

Chapter 1: General Provisions

ARTICLE 124 Principle

- 1 The particular requirements set out in this title shall be applicable to systemically important banks in addition to the capital adequacy and risk diversification requirements in Titles 3 and 4 of this ordinance.
- 2 Subject to Article 125, these particular requirements must be complied with at the level of the financial group as well as at the level of the individual entity in case the individual entities in question perform systemically important functions of the financial group.³⁸
- 3 The level of requirements shall be determined at the highest level of the financial group. It shall be decisive for determining the capital requirements of the financial group and all individual entities that carry out systemically important functions.³⁹

ARTICLE 124a⁴⁰ Internationally and not internationally active systemically important banks

- 1 Those systemically important banks identified by the "Financial Stability Board" as "Global Systemically Important Banks" are deemed to be internationally active.
- 2 If a bank no longer qualifies pursuant to (1), FINMA may continue to deem systemically important banks to be internationally active where this proves necessary due to their intense commitment abroad.
- 3 All other systemically important banks are not considered to be internationally active.

³⁷ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS **2014** 1269).

³⁸ Version according to Section I of the Ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

³⁹ Inserted according to Section I of the ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

⁴⁰ Inserted according to Section I of the ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

ARTICLE 125 Alleviated Provisions for Financial Groups and Single Entities

- 1 The FINMA may grant alleviations at the level of the single entity if:
 - a. the requirements at the level of the financial group increase due to the requirements imposed at individual-entity level; and
 - b. the bank has taken reasonable measures to avoid increased requirements at financial group level.
- 2 Measures enforcing the implementation of a specific corporate structure or organization shall be considered unreasonable.
- 3 Changes to the corporate structure or organization shall entitle a bank to alleviated provisions only if doing so will satisfy the requirements of (1).
- 3^{bis} Alleviations at the level of the individual entity are only granted if these entities' direct share in the domestic systemically important functions of the financial group do not exceed a total of five percent or if their importance for the continuation of the financial group's domestic systemically important functions is otherwise low.⁴¹
- 3^{ter} The capital adequacy requirements at individual-entity level shall meet at least the Basel Minimum Standards even when factoring in the alleviations.⁴²
- 4 In particular, the following alleviated provisions may be granted individually or in combination according to (1):
 - a. the capital adequacy requirements for single entities are defined in view of the requirements of the financial group. For systemically important individual entities, the capital shall amount to at least 14% of risk-weighted positions;
 - b. the deductions for equity interests are reduced;
 - c. the capital adequacy requirements are reduced for intra-group exposures; and
 - d. the group's financing is facilitated.
- 5 The particular requirements applicable at the level of the financial group and at the level of systemically important single entities as well as the granted alleviated provisions shall be published by:
 - a. the FINMA as a high-level summary; and
 - b. the bank or financial group concerned in its normal disclosures, also mentioning the capital ratio.

⁴¹ Inserted according to Section I of the ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

⁴² Inserted with Section I of the ordinance of 11 March 2016, in force since 1 July 2016

ARTICLE 125a⁴³ Total Exposure

- 1 The total exposure shall be equivalent to the denominator of the leverage ratio calculated as per the guidelines issued by the Basel Minimum Standards. It shall be based on accounting values and take into consideration on and off-balance sheet items.
- 2 The FINMA shall issue technical implementing measures in accordance with the Basel Minimum Standards.

Chapter 2:

Conversion capital and debt instruments for loss absorbency in the case of insolvency measures⁴⁴

ARTICLE 126 Conversion Capital⁴⁵

- 1 Conversion capital is defined as capital as per Article 11(1)(b) in connection with Article 13 BA as well as capital from bonds with a debt waiver as per Article 11(2) BA that satisfies the requirements of this chapter.
- 2 Conversion capital must be issued to investors outside the financial group by either:
 - a. the group's holding company;
 - b. a group company that was specifically created for this purpose by financial groups and financial conglomerates made up mainly of banks; or
 - c. another group company, subject to the FINMA's approval.

ARTICLE 126a⁴⁶ Debt instruments for loss absorbency in the course of insolvency measures

- 1 Debt instruments used for loss absorbency in the case of insolvency measures (bail-in bonds) may only be used to fulfill the requirements as loss-absorbing funds in accordance with Chapter 4, if they:
 - a. are paid-in in full;
 - b. are issued by a Swiss entity;

⁴³ Inserted according to Section I of the ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

⁴⁴ Version according to Section I of the ordinance of 11 May 2016, in force since 1 July 2016

⁴⁵ Version according to Section I of the Ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

⁴⁶ Inserted according to Section I of the ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

- c. are subject to Swiss law and feature a Swiss place of jurisdiction; in substantiated cases, FINMA may grant exceptions if it is substantiated that a FINMA-ordered conversion or debt write-down is enforceable in the jurisdictions concerned;
 - d. are issued by the ultimate parent company or, within the limits of international standards with FINMA approval, by a group company established solely for this purpose, if it is ensured that they can be used for loss absorbency in restructuring proceedings;
 - e. are legally or contractually subordinate to the issuer's other liabilities, or structurally subordinate to other group companies' liabilities;
 - f. do not include an option for early termination for creditors;
 - g. are not subject to set-off or secured or guaranteed in a manner that would limit the loss absorbency in the case of insolvency measures;
 - h. contain in their terms and conditions an unconditional and irrevocable clause in which the creditors agree to a potential conversion or debt write-down ordered by a supervisory authority in case of restructuring proceedings;
 - i. do not include any derivatives transactions and are not, with the exception of hedging transactions, linked to derivatives transactions;
 - j. have not been acquired directly or indirectly through funding from the issuing bank or any of its group companies;
 - k. are issued with FINMA's approval and may be redeemed prematurely only with its approval, if this were to lead to a shortfall in meeting the quantitative requirements of the additional loss-absorbing funds.
- 2 FINMA may deem loans that meet the criteria as per (1) equivalent to bail-in bonds.
- 3 The redemption of debt instruments pursuant to (1) and (2) that were issued with FINMA approval and are to be redeemed early without FINMA's approval are to be reported to FINMA.

ARTICLE 127 Eligibility of Share Capital⁴⁷

- 1 Conversion capital may be attributed to certain capital components as far as it contributes to the loss absorbency in case of a trigger event ("trigger"). The loss absorbency must take place in the following forms:
- a. debt reduction because of a debt waiver;
 - b. conversion into Common Equity Tier 1 capital of the bank.

⁴⁷ Version according to Section I of the ordinance of 11 May 2016, in force since 1 July 2016

- 2 According to Article 11(4) BA, the FINMA shall only approve such eligibility if the bank proves that the effects occur as intended by the BA and its implementing ordinances and the requirements of both the commercial and capital market laws are satisfied.
- 3 Before its conversion, the conversion capital must fulfill at least the requirements for Tier 2 capital as per Article 30 of this ordinance.

ARTICLE 127a⁴⁸ Eligibility of bail-in-bonds

- 1 Bail-in bonds which meet the requirements of Article 126a are eligible to be included in the additional loss-absorbing funds in accordance with Chapter 4 up to their principal amount, provided their residual maturity is at least one year. If their residual maturity is less than two years, the principal amount may be included only at a rate of 50 percent.
- 2 The additional loss-absorbing funds shall have staggered maturities so that the requirements regarding the amount of such funds can be met even in the event of temporarily impaired borrowing conditions.
- 3 Insofar as (in application of Article 30(2)) Tier 2 capital can no longer be included as regulatory capital in the period of five to one year prior to maturity, it may, within the limits of international standards, be included in the same manner as bail-in bonds if it is ensured that these financial instruments absorb losses prior to bail-in bonds.
- 4 Systemically important banks shall be prohibited from holding capital instruments with a conversion trigger or debt write-off of other banks or bail-in bonds of other Swiss or foreign systemically important banks at their own risk. However, positions held for the purpose of providing bid/ask prices in market-making and short-term positions held in connection with issuing activities are excluded from this prohibition.

Chapter 3:⁴⁹ Going-concern capital of banks

ARTICLE 128 Principle

- 1 Systemically important banks shall hold sufficient regulatory capital to continue their operations even if they incur large losses.
- 2 The required capital is determined based on:
 - a. the leverage ratio; and
 - b. the amount relative to the risk-weighted assets (RWA ratio).

⁴⁸ Inserted according to Section I of the Ordinance of 11 May 2016, in force since 1 July 2016 (AS 2016 1725).

⁴⁹ Version according to Section I of the ordinance of 11 May 2016, in force since 1 July 2016

ARTICLE 129 Total capital requirement

- 1 The total capital requirement is the result of a base requirement plus surcharges for both the bank's market share and its size as measured by its total exposure.
- 2 The base requirement amounts to:
 - a. 4.5 percent of the leverage ratio;
 - b. 12.86 percent of the RWA ratio.
- 3 In order to determine the surcharges, the FINMA periodically allocates the banks to different buckets, based on their market share and total exposure. The applicable values and surcharges are defined in Annex 9. The surcharges are calculated annually as at the end of the second quarter.
- 4 The overall market share is the higher of the average market shares of the domestic credit business and the domestic deposit business based on the statistical survey of the Swiss National Bank as at the end of the previous calendar year.

ARTICLE 130 Minimum regulatory capital and capital buffer

- 1 Systemically important banks must permanently hold minimum regulatory capital in the amount of:
 - a. 3 percent of the leverage ratio;
 - b. 8 percent of the RWA ratio.
- 2 In addition, they must hold a capital buffer in the amount necessary to meet the total capital requirement.
- 3 The capital buffer shall be available at all times. It may temporarily be fallen short of if the bank incurs losses.
- 4 If the buffer falls below the required amount, the bank must indicate the measures and the time frame in which it plans to replace it. FINMA shall approve this deadline. If the bank fails to fulfill the capital requirements once this deadline has passed, the FINMA may order any further measures necessary.

ARTICLE 131 Capital quality

In order to meet the requirements, the regulatory capital shall have at least the following quality:

- a. Requirements in regard to the leverage ratio:
 1. Minimum capital: Common Equity Tier 1: to satisfy minimum capital requirements a maximum of 1.5% may be Additional Tier 1 Capital in the form of conversion capital, the trigger event of which occurs if the Common Equity Tier 1 relative to the RWA is below 7% (conversion capital with a high trigger),

2. Capital buffer: Common Equity Tier 1;
- b. Requirements in regard to the RWA ratio:
1. Minimum capital: Common Equity Tier 1; to satisfy the capital buffer a maximum of 3.5% may be Additional Tier 1 Capital in the form of conversion capital with a high trigger,
 2. Capital buffer: Common Equity Tier 1; to satisfy the capital buffer a maximum of 0.8% may be Additional Tier 1 Capital in the form of conversion capital with a high trigger,

ARTICLE 131a Countercyclical buffers

The countercyclical buffers as per Articles 44 and 44a must be satisfied in addition to the capital requirements regarding the risk-weighted assets stipulated in this title.

ARTICLE 131b Additional Capital

Under special circumstances and on a case-by-case basis, FINMA may demand that certain banks hold additional capital or capital of a higher quality, depending on the criteria outlined in Article 45.

Chapter 4:⁵⁰ Additional loss-absorbing funds

ARTICLE 132 Additional loss-absorbing funds of systemically important banks active internationally

- 1 Internationally active systemically important banks pursuant to Article 124a shall permanently hold additional funds to ensure a potential restructuring and resolution in accordance with chapters 11 and 12 of the Banking Act.
- 2 The amount of these additional funds shall be equal to the total capital requirement, consisting of the base requirements and the surcharges as per Article 129.
- 3 The additional funds shall be held in the form of bail-in bonds that meet the requirements of Article 126a. However, (4) and (5) shall remain applicable.
- 4 If a bank holds the additional funds in the form of conversion capital, the triggering event of which occurs when the eligible Common Equity Tier 1 falls below 5.125% of the RWA (conversion capital with low trigger), it receives preferential recognition in the extent of up to 2% regarding the leverage ratio and up to 5.8% regarding the RWA ratio. For this amount of conversion capital, the requirements as per (1) shall be reduced by the factor 0.5.
- 5 Regulatory capital that a bank does not use to meet the requirements as per Articles 128-131 shall be eligible towards complying with the requirements as per this Chapter, within the limits of international standards.

⁵⁰ Originally before Article 133. Version according to Section I of the Ordinance of 11 May 2016, in force since 1 July 2016 (AS 2016 1725).

ARTICLE 133 Discounts

- 1 Following a consultation with the Swiss National Bank's input, the FINMA shall determine the discounts granted for measures taken to improve the financial group's resolvability as per the provisions of Articles 65 and 66 BO⁵¹, based on:
 - a. the effectiveness of the measures to improve the consolidated group's global resolvability; and
 - b. the interdependencies between the different discount groups.
- 2 Taking into account any discounts, the amount of the additional funds must not fall below the requirement of 3% regarding the leverage ratio or below 8.6% regarding the RWA ratio.
- 3 The reduction of the required additional capital must not lead to:
 - a. any falling short of international standards after taking into account the eligibility of conversion capital as per Article 132(4);
 - b. jeopardizing the implementation of the emergency plan.
- 4 No discount is granted for evidence that the emergency plan ensures the continuity of the systemically important functions at the point of non-viability as per Article 9(2)(d) BA.
- 5 FINMA may consult foreign supervisory and resolution authorities regarding the bank's proposed measures and may take into account their assessment of the improvement of the consolidated group's global resolvability when lowering the required additional funds.

ARTICLES 134 and 135

Repealed

Chapter 5: Special Risk Diversification Provisions

ARTICLE 136 Large exposures

- 1 At most, large exposures may amount to 25% of the part of the Common Equity Tier 1 capital that is not used to fulfill the requirements made of the additional loss-absorbing funds.⁵²
- 2 The upper limit for large exposures may only be exceeded, if:

⁵¹ SR **952.02**

⁵² Version according to Section I of the Ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

- a. ⁵³ the excess is covered by Common Equity Tier 1 capital that is not used to cover the capital required for the bank's going concern; or
 - b. the excess is solely a consequence of the affiliation of previously unconnected counterparties, or an affiliation between the bank and other financial entities.
- 3 If capital is used to cover the excess large exposure, this must be documented in the capital adequacy reporting form as per Article 14.
 - 4 The excess stated in (2)(b) may not be increased further. It must be remedied within two years.

Title 6: Transitional and Final Provisions

Chapter 1: Transitional provisions

Sub-section 1: Transitional provisions of 1 June 2012⁵⁴

ARTICLE 137 Capital Adequacy Requirements for Credit Risk, Non-Counterparty-Related Risks and Market Risks under Previous Law

- 1 Banks that have risk-weighted their positions under previous law according to the Swiss Standard Approach (SA-CH) may continue to use this approach until 31 December 2018 in order to calculate their risk-weighted positions based on their credit risk (Article 42(2) a)), with the exception of positions which are directly or indirectly secured by asset-backed mortgages. These may deduct 75% of the value adjustments and provisions in the balance sheet from the risk-weighted positions to cover positions that require capital, provided these are not netted.⁵⁵
- 2 Banks making use of this approach must determine their risk-weighted positions for non-counterparty-related risks (Article 42(2)(b)) and their minimum required capital for market risk (Article 42(2) (c)) as per previous law as well.

ARTICLE 138 Other Applications of the SA-CH for Calculating Large Exposures under Previous Law

- 1 Banks applying the SA-CH to credit risk during the transition period as per Article 137 may determine their large exposures under previous law according to the Swiss approach to risk diversification.
- 2 However, beginning on 1 January 2013, they must risk-weight positions to banks and securities dealers with 100% and adhere to the upper limits of large exposures to banks and securities dealers as per Article 116.

⁵³ Version according to Section I of the Ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

⁵⁴ Inserted according to Enclosure Sect. 1 of the ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

⁵⁵ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS **2014** 1269). The correction of 10 November 2015 shall only pertain only to the French text (AS **2015** 4297).

ARTICLE 139 Entry into Force of the Capital Adequacy Requirements for Exchange-Traded Derivatives and Credit Risks to Central Counterparties

The FINMA shall decide on the date from which the Basel Minimum Standard provisions must be observed for exchange-traded derivatives (Article 56(4)) and credit risk to central counterparties (Articles 69 and 70).

ARTICLE 140 Eligible Capital

- 1 Equity instruments in Additional Tier 1 capital and Tier 2 capital that were issued after 12 September 2010 and which do not meet the relevant new requirements in regard to their regulatory eligibility shall no longer be considered as capital as at 1 January 2013. (3) shall remain applicable.
- 2 Equity instruments that were issued before 12 September 2010 may be attributed decreasingly over a time period of ten years as per Article 141 and shall no longer be considered as capital as at 1 January 2022.
- 3 Equity instruments in Additional Tier 1 capital and Tier 2 capital that were issued between 12 September 2010 and 31 December 2011 and for which there are no contractual provisions in case of an impending point of non-viability (Article 29) shall be decreasingly eligible as per Article 141.

ARTICLE 141 Eligibility of Core Capital and Supplementary Capital under Previous Law

- 1 Participation capital and other components of the core capital under previous law that shall no longer be considered as Common Equity Tier 1 capital or Additional Tier 1 capital and were issued before 12 September 2010 may still be attributed over a time period of 10 years as prescribed in (6) and (7). The participation capital of banks not organized as public limited companies shall be excluded; however, the participation capital of such banks may still be attributed as Common Equity Tier 1 capital under the same approach.
- 2 Supplementary capital issued before 12 September 2010 under previous law that is not eligible as Tier 2 capital as per this ordinance shall be decreasingly eligible as Tier 2 capital as described in (1).
- 3 With the entry into force of this ordinance, the regulatory capital shall be divided into the following components, applicable from 1 January 2013 to 31 December 2022 at the latest:
 - a. Common Equity Tier 1 capital; as per the new provisions;
 - b. Additional Tier 1 capital; as per the new provisions;
 - c. Tier 1 under previous law; pursuant to (1);
 - d. Tier 2 capital; as per the new provisions; and
 - e. Tier 2 under previous law; pursuant to (2).
- 4 Components as per (3)(b) and (c) form Additional Tier 1 capital until 31 December 2021 at the latest, while the components as per (d) and (e) form Tier 2 capital.

- 5 All capital components as per (1) and (2) shall be documented quantitatively at the time when this ordinance enters into force and added up for each category.
- 6 The values determined as per (5) as at 1 January 2013 shall be reduced by 10% annually, beginning on 1 January 2013. These values shall make up the upper limit of the maximum eligible capital components in the respective year under previous law. These values are eligible only up to the amount in which the bank has outstanding equity instruments of the corresponding quality.
- 7 If an existing capital instrument can no longer be accounted for as Additional Tier capital as per (6) due to the increasingly limited eligibility, it may be counted as Tier 2 capital once it no longer qualifies as Additional Tier capital, provided it meets the requirements for Tier 2 capital.

ARTICLE 142 Phase-in of adjustments

- 1 Deductions from the Common Equity Tier 1 capital inexistent under previous law shall now be made over the course of 5 years in stages of 20% each year, ascending as follows:
 - a. 20% of the applicable value from 1 January 2014;
 - b. 40% of the applicable value from 1 January 2015;
 - c. 60% of the applicable value from 1 January 2016;
 - d. 80% of the applicable value from 1 January 2017; and
 - e. 100% of the applicable value from 1 January 2018.
- 2 The part of the positions as per (1) that is not subject to a deduction shall be considered as required capital according to the risk weighting under previous law.
- 3 Deductions under previous law that were previously made from the core capital in full or in part shall be gradually shifted to a deduction from Common Equity Tier 1 capital, according to the calculation steps of (1).
- 4 For the part of the positions as per (3) that is not subject to a deduction, the deduction under previous law will be made over the course of 5 years in steps of 20% each year, descending as follows:
 - a. 100% of the applicable value from 1 January 2013;
 - b. 80% of the applicable value from 1 January 2014;
 - c. 60% of the applicable value from 1 January 2015;
 - d. 40% of the applicable value from 1 January 2016;
 - e. 20% of the applicable value from 1 January 2017.
- 5 As of 1 January 2018, the additional deduction as per (4) shall no longer apply.

- 6 Up to 31 December 2017, threshold 3 (Article 35(4)) shall amount to 15% of the Common Equity Tier 1 capital after taking into consideration all regulatory adjustments with exception of the deduction from threshold 3.⁵⁶
- 7 New deductions from Additional Tier 1 capital or from Tier 2 capital shall be implemented using the same step-by-step approach as in (1)-(5).

ARTICLE 143–147⁵⁷

ARTICLE 148 Applicability of the Previous Law to Systemically Important Banks

The previous law in regard to special requirements to their capital for systemically important banks remains in force until 31 December 2018 at the latest.

ARTICLE 148a⁵⁸

Sub-section 2:⁵⁹

Transitional provision in regard to the amendment of 11 May 2016

ARTICLE 148b Quality of capital

- 1 With respect to the required quality of capital as per Article 131, the following is eligible:
- a. conversion capital with a high trigger in the form of Tier 2 capital that already exists at the time this amendment enters into force: until maturity or until the date of the first possibility to call, but no longer than until 31 December 2019, as conversion capital with a high trigger in the form of Additional Tier 1 capital;
 - b. conversion capital with a low trigger in the form of Additional Tier 1 capital that already existed at the time this amendment enters into force: until the date of the first possibility to call as conversion capital with a high trigger in the form of Additional Tier 1 Capital;
 - c. conversion capital, which in accordance with (a) is no longer eligible: until one year before maturity, as funds for meeting the requirements of Articles 132 and 133;
 - d. conversion capital, which in accordance with (b) is no longer eligible: until the bank exercises the call, as funds for meeting the requirements of Articles 132 and 133.

⁵⁶ Version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS **2014** 1269).

⁵⁷ Repealed by Section I of the ordinance of 11 May 2016, with effect from 1 July 2016 (AS **2016** 1725)

⁵⁸ Inserted with Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014 (AS **2014** 1269). Repealed by Section I of the ordinance of 11 May 2016, with effect from 1 July 2016 (AS **2016** 1725).

⁵⁹ Inserted according to Section I of the ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

- 2 With respect to the required quality of capital in accordance with Article 131, conversion capital with a trigger of 5 percent issued before the effective date of the amendment of 1 July 2016:
 - a. provided it is in the form of Tier 2 capital: until maturity or until the date of the first possibility to call, but no longer than until 31 December 2019, as conversion capital with a high trigger in the form of Additional Tier 1 capital;
 - b. provided that it is in the form of Additional Tier 1 capital: until the date of the first possibility to call as conversion capital with a high trigger, in the form of Additional Tier 1 Capital;
 - c. provided it is no longer eligible in accordance with (a) and (b): until one year prior to maturity as funds for meeting the requirements of Articles 132 and 133.

ARTICLE 148c Regulatory capital necessary for the bank's going concern

- 1 With the entering into force of the amendment of 1 July 2016, the requirement of Article 129 shall amount to 3 percent regarding the leverage ratio and 10.75 percent regarding the RWA ratio. Additional Tier 1 capital in the form of conversion capital with a high trigger shall be eligible for up to a maximum of 0.70 percent regarding the leverage ratio and 2.625 percent regarding the RWA ratio.
- 2 In 2017, the requirement of Article 129 shall amount to 3.5 percent regarding the leverage ratio and 12.0 percent regarding the RWA ratio. Additional Tier 1 capital in the form of conversion capital with a high trigger shall be eligible for up to a maximum of 0.9 percent regarding the leverage ratio and 3 percent regarding the RWA ratio.
- 3 In 2018, the requirement of Article 129 shall amount to 4.0 percent regarding the leverage ratio and 12.86 percent regarding the RWA ratio. Additional Tier 1 capital in the form of conversion capital with a high trigger shall be eligible for up to a maximum of 1.1 percent regarding the leverage ratio and 3.4 percent regarding the RWA ratio.
- 4 In 2019, the base requirements pursuant to Article 129 for both the leverage ratio and the RWA ratio, as well as half of the surcharges each for the market share and the total exposure must be met. Additional Tier 1 capital in the form of conversion capital with a high trigger shall be eligible for up to a maximum of 1.3 percent regarding the leverage ratio and 3.9 percent regarding the RWA ratio.

ARTICLE 148d Additional loss-absorbing funds

- 1 With the entering into force of the amendment of 1 July 2016, the requirement of Article 132 shall amount to 1.0 percent regarding the leverage ratio and 3.5 percent regarding the RWA ratio.
- 2 In 2017, the requirement pursuant to Article 132 shall amount to 1.875 percent regarding the leverage ratio and 5.84 percent regarding the RWA ratio plus one quarter of each surcharge for the market share and for the total exposure.
- 3 In 2018, the requirement pursuant to Article 132 shall amount to 2.75 percent regarding the leverage ratio and 8.18 percent regarding the RWA ratio plus one half of each surcharge for the market share and for the total exposure.

- 4 In 2019, the requirement pursuant to Article 132 shall amount to 3.625 percent regarding the leverage ratio and 10.52 percent regarding the RWA ratio plus three quarter of each surcharge for the market share and for the total exposure.
- 5 Any reduction of requirements in accordance with (1)-(4) due to a discount as per Article 133 shall remain applicable.

ARTICLE 148e Bail-in-bonds issued before the effective date of the amendment of 11 May 2016

- 1 FINMA shall retroactively approve the eligibility of bail-in-bonds issued by internationally active systemically important banks as per Article 124a before the effective date of the amendment of 1 July 2016, provided the conditions of Article 126a are met.
- 2 Until 31 December 2012, bail-in bonds issued by a special purpose entity may also be approved.

ARTICLE 148f Extended countercyclical buffer

The extended countercyclical buffer may, as measured by the risk-weighted positions, amount to a maximum of

- a. from the taking effect of the amendment of 1 July 2016: 0.625 percent;
- b. In 2017: 1.25 percent;
- c. In 2018: 1.875 percent.

Chapter 2: Final provisions

ARTICLE 149 Repeal of the Previous Law

The Capital Adequacy Ordinance of 29 September 2006⁶⁰ is hereby repealed.

ARTICLE 150 Amendments to the Previous Law

The amendments to the previous law are regulated in Annex 6.

ARTICLE 151 Entry into force

- 1 This ordinance shall enter into force on 1 January 2013, subject to (2) and (3).
- 2 Article 43 shall enter into force on 1 January 2016.
- 3 The entry into force of the provisions of Title 5, with the exception of Articles 126 and 127, shall be subject to the approval by the Swiss Federal Assembly.⁶¹

⁶⁰ [AS 2006 4307, 2008 5363 Annex Sect. 8, 2009 6101, 2010 5429 and 2012 3539]

⁶¹ Approved by the Swiss Federal Assembly on 18 September 2012 (BBI 2012 8395).

Annex 1⁶²
(ARTICLE 54(1))
Credit Conversion Factors when applying SA-BIS

Number Contingent liabilities and irrevocable loan commitments	Credit conversion factors
	SA-BIS
1. Loan commitments	
1.1 with firm commitment and with an agreed initial maturity of less than one year	0.20
1.2 with firm commitment and with an agreed initial maturity of more than one year	0.50
1.3 callable at any time and unconditionally, or automatically becoming invalid if the borrower's credit rating deteriorates	0.00
2. Builder guarantees for construction projects in Switzerland and abroad	0.50
3. Self liquidating guarantees from commodity trades	0.20
3.1 Short-term self-liquidating letters of credit for trade transactions, such as documentary letters of credit, that are secured by the underlying freight	0.20
4. Obligations to pay up shares and margin calls	
4.1 on equity shares not recognized as equity interest	1.00
4.2 on equity shares, if they pertain to equity interests not to be consolidated	1.00
4.3 on equity shares, if they pertain to equity interests to be consolidated or equity shares in the insurance sector	1.00
5. Guarantees	
5.1 Transaction-related contingent liabilities, such as performance guarantees, tender guarantees, product warranties and standby letters of credit that are related to particular transactions	0.50
5.2 Note Issuance Facilities (NIFs) and Revolving Underwriting Facilities (RUFs)	0.50
6. Other contingent liabilities	1.00
6.1 Direct credit substitutes such as general loan guarantees including standby letters of credit serving as financial guarantees for loans and securities, and acceptances, including endorsements, that have the character of acceptances	1.00
6.2 Other contingent liabilities	1.00

⁶² Adjusted version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS 2014 1269). The correction of 10 May 2016 pertains only to the French text (AS 2016 1359).

Remarks:

- 1 Other contingent liabilities (under 6.2) in particular include:
 - Sale and repurchase agreement operations with recourse options, where the credit risk remains with the bank [§83 (ii) of the Basel Minimum Standards];
 - Lending of securities and deposit of securities as collateral, as well as repurchase agreements and similar transactions, such as repos and reverse repos and securities lending [§84 of the Basel Minimum Standards];
 - Forward purchases, forward deposits and only partly paid-in shares and securities, which represent irrevocable commitments with certain draw-down [§84(i) of the Basel Minimum Standards];
- 2 If a commitment is given to provide an off-balance-sheet position, banks may apply the lower of the two sets of applicable credit conversion factors [§86 the Basel Minimum Standards].

Annex 2⁶³
(ARTICLE 66(1))

Position Categories as per SA-BIS when applying External Ratings and their Risk Weighting

Section	Position categories (SA-BIS) with the option to use external ratings	Rating classes								
		1	2	3	4	5	6	7	w/o rating	fixed at
1.	central governments and central banks									
1.1	central governments and central banks	0 %	0 %	20 %	50 %	100 %	100 %	150 %	100 %	–
1.2	Swiss Confederation and the Swiss National Bank, provided that the debt is in the national currency and is also refinanced in it	–	–	–	–	–	–	–	–	0 %
2.	Public-law entities									
2.1	Public-law entities	20 %	20 %	50 %	100 %	100 %	150 %	150 %	100 %	–
2.2	Unrated public-law entities, provided they have the authority to levy taxes or their liabilities are entirely and unlimitedly guaranteed by a sovereign entity	–	–	–	–	–	–	–	–	50 %
2.3.	Unrated Cantons	–	–	–	–	–	–	–	–	20 %

⁶³ Adjusted version according to Annex 2 Sect. 4 of the Banking Ordinance of 30 April 2014, in force since 1 January 2015 (AS **2014** 1269).

Section Position categories (SA-BIS) with the option to use external ratings	Rating classes								
	1	2	3	4	5	6	7	w/o rating	fixed at
3. BIS, IMF and multilateral development banks									
3.1. Multilateral development banks	20 %	20 %	50 %	50 %	100 %	100 %	150 %	50 %	–
3.2. Bank for International Settlements (BIS), International Monetary Fund (IMF), certain multilateral development banks as specified by the FINMA	–	–	–	–	–	–	–	–	0 %
4. Banks and securities dealers									
4.1 Bank and securities dealers, initial maturity of debt < 3 months	20 %	20 %	20 %	20 %	50 %	50 %	150 %	20 %	–
4.2 Bank and securities dealers, initial maturity of debt > 3 months	20 %	20 %	50 %	50 %	100 %	100 %	150 %	50 %	–
5. Joint institutions									
5.1 Joint institutions of the banks, recognized by the FINMA	20 %	20 %	50 %	100 %	100 %	150 %	150 %	100 %	–
5.2 Deposit liabilities to the holders of the deposit protection fund	–	–	–	–	–	–	–	–	20 %
6. Stock exchanges, clearing houses and central counterparties									
6.1 Stock exchanges, clearing houses and central counterparties	20 %	20 %	50 %	100 %	100 %	150 %	150 %	100 %	–

Section	Position categories (SA-BIS) with the option to use external ratings	Rating classes								
		1	2	3	4	5	6	7	w/o rating	fixed at
6.2	Central counterparties, provided credit risks are directly related to the delivery of the contract traded on an exchange or OTC as guaranteed by a central counterparty (particularly derivatives, repo or repo-like transactions where the central counterparty guarantees the servicing of the debt over the course of the entire term).	-	-	-	-	-	-	-	-	2 %
6.3	Börsen und Clearinghäuser, sofern Kreditrisiken in direk.tem Zusammenhang mit der durch eine zentrale Gegenpartei garantierten Leistungserfüllung von Geschäften stehen, wo die zentrale Gegenpartei lediglich die Abwicklung garantiert (insbesondere Kassageschäfte).	-	-	-	-	-	-	-	-	0 %
7	Company	20 %	20 %	50 %	100 %	100 %	150 %	150 %	100 %	-

Annex 3
(ARTICLE 66(2))

Position Categories according to SA-BIS without the Use of External Ratings and their Risk Weighting

Position categories (SA-BIS) without external ratings	Risk weights
	SA-BIS
1. Individuals and small businesses (retail positions)	
1.1 Retail positions, if the total position value as per Article 49(1), excluding residential mortgage-backed security, does not exceed CHF 1.5m or 1% of all retail positions to a single counterparty.	75 %
1.2 Other retail positions	100 %
2. Mortgage bonds	
2.1 Swiss mortgage bonds (Pfandbrief)	20 %
3. Positions in directly or indirectly secured mortgage loans	
3.1 Residential properties in Switzerland and abroad, up to two-thirds of the current market value.	35 %
3.2 Residential properties in Switzerland and abroad, above two thirds and up to 80% of the current market value	75 %
3.3 Residential properties in Switzerland and abroad, above 80 % of the current market value	100 %
3.4 Other properties and objects	100 %

Position categories (SA-BIS) without external ratings	Risk weights
	SA-BIS
4. Subordinated positions	
4.1 Subordinated positions to public-law entities with a risk weight of a maximum of 50%, as per Annex 2 (SA-BIS)	are weighted like non-subordinated positions
4.2 Other subordinated positions	
5. Overdue positions	
5.1 Positions with individual value adjustments as per no. 3.1, whereby mortgage-backed loans as per nos. 3.2 - 3.4 count as non-secured	100 %
5.2 Non-secured parts of the positions with individual value adjustments, if these amount to at least 20% of the outstanding amount	100 %
5.3 Non-secured parts of the positions adjusted by individual value adjustments, if these amount to less than 20% of the outstanding amount	150 %
6. Other positions	
6.1 Liquid assets excluding the positions that fall under Annex 2, no. 6.2	0 %
6.2 Credit equivalents from call commitments and additional funding commitments	100 %
6.3 Other positions (incl. accruals and deferrals)	100 %

Annex 4
(ARTICLE 66(3))

Risk Weights for Equity Shares and Shares in Collective Investment Schemes according to SA-BIS

Position category equity shares as well as shares in collective investment schemes			Risk weights	
			SA-BIS	
1.1 Equity shares held as financial assets, or – if the bank applies the de minimis approach – in the trading book		They are traded on a regulated exchange.		
		Yes	100 %	
		No	150 %	
1.2 Units in collective investment schemes	Shares in collective investment schemes authorized for public distribution in Switzerland	Units in collective investment schemes where the prospectus offers the daily redemption of shares		
		Yes	Yes	100 %
		–	No	150 %
		No	–	150 %
1.3 Units in real estate funds		They are traded on a regulated exchange.		
		Yes	100 %	
		No	150 %	

Position category equity shares as well as shares in collective investment schemes		Risk weights
		SA-BIS
1.4	Equity interests in industries other than banking, financial and insurance	
	They are traded on a regulated exchange.	
	Yes	100 %
	No	150 %
1.5	Equity interests in the banking, financial and insurance sector provided they are not deducted from Common Equity Tier 1 or from Additional Tier 1 capital or risk-weighted as per Article 40(2) at 250%.	150 %

Annex 5
(ARTICLE 84(1))

**Rates for Calculating Capital Adequacy Requirements
for the Specific Risk of Interest Rate Instruments
according to the Standardized Approach to Market Risk**

Category	Rating class	Rate	
Central governments and central banks	1 or 2	0.00 %	
	3 or 4	0.25 % (residual maturity < 6 months)	
			1.00% (residual term to maturity > 6 months and ≤ 24 months)
			1.60% (residual maturity > 24 months)
	5 or 6	8.00 %	
	7	12.00%	
	Not rated	8.00 %	
Qualifying interest rate instruments (Article 4(g))		0.25 % (residual term to maturity ≤ 6 months)	
		1.00% (residual term to maturity > 6 months and ≤ 24 months)	
		1.60% (residual maturity > 24 months)	
Other	5	8.00 %	
	6 or 7	12.00 %	
	Unrated	8.00 %	

Annex 6
(ARTICLE 150)

Amendments to the Previous Law

...⁶⁴

⁶⁴ Amendments may be seen in AS **2012** 5441.

Annex 7⁶⁵
(ARTICLE 44(2))

Counter-cyclical Buffer

- 1 For directly and indirectly held mortgage-backed credit positions in domestic residential property as per Article 72, banks shall be obliged to have a counter-cyclical buffer in the form of CET1.
- 2 The buffer shall amount to 2 percent of the risk-weighted credit positions.

⁶⁵ Inserted with Section I of the Ordinance of 13 February 2013 (AS **2013** 693). Version according to Section I of the ordinance of 22 January 2014, in force since 30 June 2014 (AS **2014** 437).

Annex 8⁶⁶
(ARTICLE 43(1))

Minimum regulatory capital, capital buffer and total capital ratio

(in % of the risk-weighted positions)

Category as per Annex 3 BO ⁶⁷	1 and 2	3	4	5
Minimum capital requirements.			8.0%	
– of which CET1			4.5%	
– of which AT1 or higher			1.5%	
– of which T2 or higher			2.0%	
Capital Buffer	4.8%	4.0%	3.2%	2.5%
– of which CET1	3.7%	3.3%	2.9%	2.5%
– of which AT1 or higher	0.5%	0.3%	0.1%	–
– of which T2 or higher	0.6%	0.4%	0.2%	–
Total capital ratio	12.8%	12.0%	11.2%	10.5%

⁶⁶ Inserted according to Section II of the ordinance of 11 May 2016, in force since 1 July 2016 (AS **2016** 1725).

⁶⁷ SR 952.02

Annex 9⁶⁸ (ARTICLE 129)

Surcharges

1 Surcharges for market share

1.1 For a market share up to 27 percent

Bucket	Market share	Surcharge on Leverage Ratio	Surcharge on RWA ratio
M1	< 12%	0%	0%
M2	< 17%	0.125%	0.36%
M3	< 22%	0.25%	0.72%
M4	< 27%	0.375%	1.08%

1.2 For a market share of 27 percent and higher

For each additional 5 percentage points of market share the requirement regarding the leverage ratio shall increase by 0.125 percentage points and regarding the RWA ratio by 0.36 percentage points.

2.0 Surcharge for the total exposure

2.1 For a total exposure of up to 1,250 billion Swiss francs

Bucket	Total exposure	Surcharge on Leverage Ratio	Surcharge on RWA ratio
G1	< CHF 650bn	0%	0%
G2	< CHF 850bn	0.125%	0.36%
G3	< CHF 1,050bn	0.25%	0.72%
G4	< CHF 1,250bn	0.375%	1.08%

2.2 For a total exposure of more than 1,250 billion Swiss francs

For each additional CHF 200bn of total exposure the requirement regarding the leverage ratio shall increase by 0.125 percentage points and regarding the RWA ratio by 0.36 percentage points.

⁶⁸ Inserted according to Section II of the ordinance of 11 May 2016, in force since 1 July 2016 (AS 2016 1725).

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