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Capital Adequacy Ordinance

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Capital Adequacy Ordinance, CAO 952.03

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Ordinance concerning Capital Adequacy and Risk Diversification for Banks and Securities Dealers (Capital Adequacy Ordinance, CAO)
issued by

The Swiss Federal Council,

pursuant to art. 3 para. 2 lit. b, art. 3g, art. 4 paras. 2 and 4, art. 4bis para. 2 and art. 56 of the Banking Act of 8 November 1934[1] (BA),

stipulates:

Heading 1: General Provisions

Chapter 1: Object, Scope and Definitions

Art. 1 Basic Principle

[1] To protect the interests of creditors and the stability of the financial system, banks and securities traders must ensure that risks are appropriately mitigated and that they hold adequate capital to support their business operations and the risk to which they are exposed.

[2] They must ensure that they hold adequate capital to cover credit risk, market risk, non-counterparty-related risk and operational risk.

Art. 2 Object

[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. specific requirements for systemically important banks.

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

Art. 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 1995[2] (hereinafter 'banks').

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[1] SR **952.0** ("SR" refers to the Systematic Compendium of Swiss Federal Legislation)
[2] SR **954.1**

Art. 4 Definitions

In this Ordinance the following terms mean the following:

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:* interests in the share capital of a company;

e. *regulatory-capital instruments*:* share holdings 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 by the Basel Minimum Standards;

g. *qualified interest rate instrument:* an interest rate instrument which:

   1. is rated between 1 and 4 by at least two recognized rating agencies;

   2. is rated between 1 and 4 by a single recognized rating agency, provided it is not rated lower by any other recognized rating agency;

   3. is not rated by a recognized rating agency but has a yield to maturity and residual term comparable to that of securities rated between 1 and 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 on a daily basis that are regularly published; or

   4. is not rated by a recognized rating agency (external rating), but is rated with a bank-internal rating of between 1 and 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 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]

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[3] The current Basel Minimum Standards are available on www.bis.org/bcbs and may be ordered from the Bank for International Settlements, Centralplatz 2, 4002 Basel.

* Translator's note: the original German term ("(Eigen)kapitalinstrument") used here is not the same as an equity instrument as used for other purposes but is used by the FINMA as per this paragraph for capital adequacy purposes. So, in order to avoid any possibility of confusion, the translators chose to coin the term "regulatory-capital instruments" for the English translation.

Art. 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:

a. to hold the positions for a short term;

b. to take advantage of short-term price movements; or

c. to realize arbitrage gains.

[4] Positions have to be valued frequently and accurately. The trading book has to be actively managed.

Art. 6 Rating Agencies

[1] The FINMA will 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 publishes a list of recognized rating agencies.

[3] The FINMA will withdraw recognition if a recognized rating agency no longer satisfies the recognition criteria.

Chapter 2: Consolidation

Art. 7 Consolidation Requirement

[1] Capital adequacy and risk diversification requirements have to be met at both the stand-alone institution level and at the level of the financial group and financial conglomerate (consolidation requirement).

[2] The consolidation requirement applies to any financial subsidiary as defined in art. 11 and 13 of the Banking Ordinance of 17 May 1972 (BO),[4] with the following exceptions:

a. equity shares in insurance companies are only to be consolidated for the purpose of meeting risk diversification requirements, subject to art. 12;

b. there is no obligation to consolidate collective capital investment schemes where such investments are managed on behalf of investors, or where founding capital is invested in

[4] SR **952.02**

investment companies.

[3] Should the bank hold regulatory-capital instruments in non-consolidated companies as per para. 2 lit. a, the applicable deduction approach applies.

[4] Should the bank hold regulatory-capital instruments in non-consolidated companies as per para. 2 lit. b, the applicable deduction approach applies without threshold value.

Art. 8 Types of Consolidation and Options of the Bank

[1] Majority interests in companies subject to consolidation have to be fully consolidated.

[2] In the case of interests jointly held with another shareholder or partner with 50% of the voting rights (joint ventures), the bank has the choice of applying the full or proportionate consolidation, or the corresponding deduction approach based on the Basel Minimum Standards.

[3] Minority interests of 20% or more in companies subject to consolidation can be consolidated proportionately or by applying the corresponding deduction approach, if the bank exerts a controlling influence either directly or indirectly jointly with other investors.

[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 have to be accounted for according to the proportion of investment.

[6] Interests accounted for with the corresponding deduction approach are not to be considered for the risk diversification.

[7] The corresponding deduction approach according to paragraphs 2 and 3 is made without threshold value.

Art. 9 Exceptional Treatment Approved by the Auditor

[1] With the auditor’s approval, the following interest can be treated as exempt from the consolidation requirement:

a. interests in companies which, on account of their size and business activities, are of no significance to compliance with the capital adequacy provisions;

b. significant group companies held for less than a year.

[2] 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 required to be consolidated 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] Interests exempt from consolidation as per paragraph 1 are subject to the corresponding deduction approach that does not refer to a threshold value.

Art. 10 Special Provisions

[1] In exceptional circumstances the FINMA may exempt specific banks as stand-alone institutions from selected or all of the capital adequacy and risk diversification requirements, provided the conditions

set out in art. 4 para. 3 of the BO have been met.[5]

[2] In the context of capital adequacy requirements to be met by the financial group or financial conglomerate, the FINMA is entitled to specify additional requirements regarding the appropriate level of capitalization of a company at the top of a financial group or financial conglomerate not subject to supervision at stand-alone level.

[3] The FINMA may permit a bank to consolidate its group companies active in the financial sector already at the level of the stand-alone institute (solo consolidation) due to their especially close relationship with the bank.

Art. 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 regulation 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 subsidiaries operate exclusively within Switzerland; and

b. the parent financial group or financial conglomerate is subject to appropriate consolidated supervision by a financial market regulatory authority.

Art. 12 Captives for Operational Risk

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, where necessary, may be consolidated at solo entity level (art. 10 para. 3).

Art. 13 Interests Outside the Financial Sector

The upper limits on a bank's qualifying interests in a company outside the financial sector as specified in art. 4 para. 4 of the BA are not applicable where:

a. such 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 carrying value and applicable upper limits for such interests is fully covered by unencumbered eligible capital.

Chapter 3: Statement and Disclosure of Adequate Capital

Art. 14 Capital Adequacy Reporting Form

[1] Banks must prove on a quarterly basis that they dispose of adequate capital. The FINMA stipulates the contents of the capital adequacy reporting form.

[2] The capital adequacy consolidation reporting form must be prepared half-yearly.

[3] The forms have to be submitted to the Swiss National Bank within six weeks after the end of each

[5] SR **952.02**

quarter or half-year.

Art. 15 Calculation Basis

When calculating the eligible and required capital for the capital adequacy reporting form, the bank has to rely on the accounting standards used in the financial statements and prescribed by the FINMA. The FINMA may grant exceptions to this general principle.

Art. 16 Disclosure

[1] Banks must adequately inform the public of their risks and their capital adequacy. The calculation of the eligible capital must be understandable in view of their financial reports.

[2] Private banks that do not publicly offer to accept deposits are excluded from this obligation.

[3] The FINMA issues implementing provisions and specifies which information must be disclosed in addition to the annual financial statements and the interim financial statements.

Chapter 4: Simplified Application

Art. 17

[1] Banks are entitled to apply specific provisions of this Ordinance including its clarifying implementing provisions designed by the FINMA in a simplified manner if:

a. this enables them to avoid excessive 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 make sure that the requirements are met and document the simplifications used.

Heading 2: Eligible Capital

Chapter 1: General Information

Art. 18 Regulatory-capital Components

[1] The eligible capital consists of the 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).

Art. 19 Loss Absorbency

[1] Regulatory-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 bylaws or at issue of the instrument.

Art. 20 Common Requirements to Capital

[1] Capital destined for eligible capital has to be either fully paid-in or generated internally.

[2] At issuance, it 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] Eligible 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] Regulatory-capital instruments with conditional convertibility or a debt waiver at the point of non-viability (art. 29) will be accounted for as capital components according to 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 art. 45 para. 2; and

b. the provisions for conversion capital of systemically important banks as per Heading 5.

Chapter 2: Calculation

Section 1: Common Equity Tier 1 Capital (CET1)

Art. 21 Components Eligible as Regulatory Capital

[1] The following are eligible as common equity tier 1 capital:

a. paid-in 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. the profit for the current business year after deducting the estimated percentage of profits to be distributed, provided a full income statement as specified under art. 25a para. 1 of the BO[6] or according to recognized international accounting standards has been submitted and reviewed by the auditor as per the FINMA's requirements.

[2] Minority capital shares in regulated, fully consolidated companies are eligible provided they are eligible for the company itself. Capital surpluses attributed to minorities (calculated based on requirements that include capital buffers and additional capital) are not eligible.

Art. 22 Eligibility of Corporate Capital

[1] Corporate capital is eligible as common equity tier 1 capital, provided:

a. it meets the requirements of art. 20;

b. it was issued directly according to the owners' resolution or authorization;

c. it does not constitute a company liability;

[6] SR **952.02.**

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 (share capital without voting rights) are eligible as common equity tier 1 capital, to the extent that they:

a. meet the requirements of para. 1; and

b. are liable in the same way as corporate capital in the form of common equity tier 1 capital.

[3] The FINMA takes the bank's legal form and the characteristics of its corporate capital into account when assessing whether the requirements of para. 1 and para. 2 lit. b mentioned above have been met.

Art. 23 Types of Corporate Capital

[1] Depending on the bank's legal form, the corporate capital is composed of the stock, equity, cooperative or endowment capital, or in the case of partnerships (private banks), the partnership capital contribution ("Kommanditeinlage").

[2] The FINMA may issue implementing provisions on the regulatory recognition of a bank's corporate capital.

Art. 24 Endowment Capital of Public-Law Banks

Should the maturity of the endowment capital be defined in the cantonal legislation or banks' bylaws, it may be eligible as common equity tier 1 capital, if the maturity:

a. serves to redefine the capital conditions; and

b. does not lead to a repayment of the endowment capital.

Art. 25 Capital Contribution of Private Banks

[1] Private banks may account capital contributions 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 capital contribution.

[2] Capital contributions may only be reduced in a way that involves all fully liable partners.

[3] The common equity tier 1 capital may only be decreased by reducing capital contributions if the remaining capital still satisfies the requirements of art. 41.

Art. 26 Cooperative Capital

[1] If the bylaws foresee a redemption of share certificates in the cooperative capital, it may be accounted as common equity tier 1 capital, provided the bylaws 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 art. 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 bylaws.

[3] A part in 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. a central organization as per art. 4 para. 3 BO[7], if the bank to be liquidated is part of this central organization.

[4] Bylaws may not pledge a payout to the share certificate holders even if an upper limit is specified.

Section 2: Additional Tier 1 Capital (AT1)

Art. 27 Eligibility

[1] A regulatory-capital instrument is eligible as AT1 capital, if:

a. it meets the requirements of art. 20 and art. 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 eligible to repay it five years after the issuance, at the earliest;

d. the bank points out at issuance that the supervisory authority will only approve a repayment, if:

    1. the remaining capital still satisfies the requirements of art. 41; or

    2. or 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 corporate capital in any way;

f. distributions to capital lenders by the bank are only made on a discretionary basis and only if corresponding distributable reserves are available;

g. it is excluded that distributions to capital lenders increase during the credit's lifetime due to issuer-specific credit risks.

[2] Equity shares are eligible as AT1 if they satisfy the requirements of para. 1.

[3] Liabilities that meet the requirements of para. 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

[7] SR **952.02.**

b. conversion to common equity.

[4] Issuance conditions for a regulatory-capital instrument 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 a regulatory-capital instrument's issuance, the FINMA must approve:

a. the contractually defined trigger event as per para. 3; and

b. the extent to which participation claims in an improvement according to para. 4 are admissible.

[6] By way of analogy, art. 21 para. 2 on the eligibility of minority capital shares in fully consolidated regulated companies also applies.

Art. 28 Availability within a Financial Group

Additional tier 1 capital issued by a special purpose entity is accounted for in the consolidation, provided it is made available to the ultimate holding company or an operative entity of the bank immediately and without limitation in the same or higher quality.

Art. 29 Point of Non-viability ("PONV")

[1] The terms of issue or the bylaws 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 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 by the public authorities; or

b. when the FINMA prescribes it to avoid bankruptcy.

[3] For equity shares accounted for as additional tier 1 capital but without a loss-absorbency mechanism as per para. 1, the contract or the bylaws must include an irrevocable waiver of any privileges with respect to the corporate capital denoted as common equity tier 1 capital should a point of non-viability be attained.

Section 3: Tier 2 Capital (T2)

Art. 30 Eligibility

[1] A regulatory-capital instrument is eligible as tier 2 capital if:

a. the requirements of art. 20 and 29 para. 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 art. 41; or
2. or sufficient capital as substitution is issued that is at least equivalent; and

e. it is ruled out that distributions to lenders of capital increase during maturity due to issuer-specific credit risks.

[2] During the last five years before final maturity, the eligibility of regulatory-capital instruments in the tier 2 capital will be reduced by 20 % of their nominal amount on an annual basis. In the last year, they will no longer be eligible.

[3] Art. 21 para. 2 as well as art. 28 and 29 para. 1 and 2 are applicable by way of analogy.

[4] The FINMA issues implementing provisions that outline how additional elements of the tier 2 capital might be 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 not comply with art. 25.; and

c. hidden reserves.

Section 4: Adjustments

Art. 31 General Information

[1] Adjustments to eligible capital must be calculated in the same manner for stand-alone entities as for consolidated groups.

[2] The relevant amount for an adjustment is 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 with adjustment provisions for banks using internationally accepted accounting standards.

Art. 32 Deduction from Common Equity Tier 1 Capital

The following positions must be fully deducted from the common equity tier 1 capital:

a. the operating loss carried forward as well as the current financial year's loss;

b. an uncovered need for value adjustments and provisions in the current financial year;

c. goodwill, including any goodwill included in the valuation of significant interests in financial institutions not subject to regulatory 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 excluded;

e. the expected losses, calculated according to the IRB approach, that exceeds the value adjustments calculated according to the Basel Minimum Standards (art. 77);

f. gains on sale related to securitization transactions;

g. recognized receivables held towards defined benefit pension funds as per the relevant provisions of the Basel Minimum Standards;

h. net long positions in own equity shares according to art. 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 expensed in the income statement;
i. qualifying interests in the capital of other financial institutions as long as these same financial institutions also hold capital of the bank ("reciprocal holdings");
j. in the stand-alone entity calculation, the net long positions calculated according to art. 52 of directly held interests in financial institutions to be consolidated;
k. deductions resulting from the bank's chosen deduction option within the consolidation provisions under art. 7 para. 4, art. 8 paras. 2 and 3 as well as art. 9 paras. 1 and 3.

Art. 33 Corresponding Deduction Approach

[1] Should the bank hold regulatory-capital instruments of a financial entity, the deductions are made according to the corresponding deduction approach. The value of these instruments must be deducted from the bank's capital component 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 is to make the deduction from the next higher capital component.

Art. 34 Deductions of Positions in Own Regulatory-Capital Instruments Outside of Common Equity

[1] Net long positions in regulatory-capital instruments of additional tier 1 capital and tier 2 capital in direct and indirect treasury holdings calculated according to art. 52 must be deducted using the corresponding deduction approach.

[2] In the corresponding deduction approach for instruments of the tier 2 capital as per para. 1, the limited eligibility as per art. 30 para. 2 (amortization) is not applicable to titles of the same issue, and therefore, nominal values may be netted.

Art. 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 art. 31 para. 3 and art. 32 lit. a-i and k.

[3] Threshold 2 amounts to 10% of the common equity tier 1 capital after all adjustments as per art. 31 para. 3 and art. 32, including a possible deduction from the common equity tier 1 capital due to the calculation of threshold 1 (pursuant to art. 37 paras. 2 and 3).

[4] Threshold 3 amounts to 17.65 % of common equity tier 1 capital after all adjustments as per art. 31 para. 3 and 32, including potential deductions from the common equity tier 1 capital due to the calculation steps of thresholds 1 and 2 (pursuant to art. 37 paras. 2 and 3, art. 38 para. 2 and art. 39 para. 1).

Art. 36 Applicable Deduction Approach for Regulatory-Capital Instruments

[1] Whether the deduction approach of art. 37 or that of art. 38 applies to regulatory-capital instruments in financial entities held by the bank depends on the percentage of equity shares held in these entities as calculated according to art. 52.

[2] Regulatory-capital instruments held in entities 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 art. 32 lit. i, j and k, must be treated with the method described in art. 38 para. 1.

Art. 37 Equity Shares in Financial Entities up to 10%

[1] A bank that holds no more than 10% equity shares in a financial entity in the form of common equity tier 1 capital must deduct from its own regulatory-capital components the carrying value of all regulatory-capital instruments held in the financial entity that exceed threshold 1. This also applies if the bank holds only non-common equity tier 1 capital regulatory-capital instruments in a financial entity.

[2] When applying the deduction approach, the deductible amount as per para. 1 is first proportioned to the bank's regulatory-capital instruments held in the respective financial entities before it is deducted.

[3] The part of the aggregated carrying values that is below the threshold as per para. 1 is risk-weighted. The risk weighting for each capital component is done depending on its allocation to either the banking or the trading book before the deduction.

Art. 38 Equity Shares in Financial Entities above 10%

[1] A bank that holds more than 10% equity shares in a financial entity in the form of common equity tier 1 capital, has to apply the corresponding deduction approach to any regulatory-capital instruments of the additional tier 1 capital and tier 2 capital held in that financial entity without any threshold.

[2] From its common equity tier 1 capital the bank has to deduct, on solo entity level and on consolidated level, the aggregated carrying values of all directly and indirectly held shares in common equity of entities outside the scope of consolidation that exceeds threshold 2.

[3] Any amount calculated as per para. 2 that is below the threshold is treated according to art. 40.

Art. 39 Further Deductions based on Threshold 2

[1] The bank has to separately deduct from its common equity tier 1 capital the following amounts that exceed threshold 2:

a. mortgage servicing rights; and

b. DTAs caused by temporary differences.

[2] The amounts below the threshold are treated according to art. 40.

Art. 40 Deductions based on Threshold 3

[1] The carrying values calculated as per art. 38 para. 2, 3 and 39 that are below threshold 2 are 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%.

Heading 3: Required Capital

Chapter 1: General Information

Art. 41 Composition

The required capital is composed of:

a. minimum required capital;

b. capital buffer;

c. counter-cyclical buffer; and

d. additional capital.

Art. 42 Minimum Capital Requirements

[1] After the deductions according to art. 31-40, banks must hold total capital in the amount of 8.0% of the risk-weighted positions as minimum required capital ("Total Capital Ratio"). Thereby, a minimum of 4.5% of the risk-weighted positions must be held in the form of common equity tier 1 capital ("CET1 ratio") and a minimum of 6% must be held in the form of tier 1 capital ("T1 capital ratio").

[2] The risk-weighted positions are composed of:

a. positions weighted according to their credit risk (art. 49) and the risk-weighted positions from unsettled transactions (art. 76);

b. non-counterparty-related risks weighted according to art. 79;

c. the minimum required capital for market risks (art. 80-88) multiplied by a factor of 12.5;

d. the minimum required capital for operational risks (art. 89-94) multiplied by a factor of 12.5;

e. the minimum required capital for risks from guarantee obligations to central counterparties (art. 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 counterparty credit risk regarding derivatives (art. 55) multiplied by a factor of 12.5.

[3] A bank must inform the FINMA and its external auditor as soon as its capital falls below the minimum required capital as per para. 1.

[4] A bank holding less than the minimum required capital according to paras. 1 and 2 is considered to fail compliance with the capital adequacy requirements set out in art. 25 para. 1 BA.

Art. 43 Capital Buffer

[1] Banks must hold a capital buffer of 2.5% of their risk-weighted positions in the form of common equity tier 1 capital at all times.

[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, does not breach the capital requirements.

[3] In the case of a shortfall, the FINMA sets an individual grace period for restoring the capital buffer.

Art. 44 Counter-cyclical Buffer

[1] Upon the Swiss National Bank's request, the Swiss Federal Council may, if necessary, require the banks to 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 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 must consult the FINMA prior to issuing such a request and simultaneously informs the Federal Department of Finance. If the Swiss Federal Council approves the request, this ordinance will be amended with a corresponding appendix.

[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 will be abolished or adjusted to reflect the changed conditions. This procedure is based on paras. 1 and 2.

[4] Art. 43 paras. 2 and 3 also apply to the counter-cyclical buffer.

Art. 45 Additional Capital

1 The FINMA requires banks to hold additional capital. FINMA may exclude certain categories of banks from this obligation.

2 This additional capital should specifically cover the risks that are not covered or not sufficiently covered by the minimum required capital if applying a risk-oriented approach. Together with the capital buffer, the additional capital is meant to ensure compliance with minimum capital requirements as per art. 43 even in unfavorable conditions.

3 If a bank does not have additional capital as per para. 1, the FINMA may stipulate special measures to monitor and supervise the capital adequacy and risk situation.

4 Under certain circumstances, the FINMA may on an individual basis demand further capital, namely if the minimum required capital, the capital buffer and the additional capital do not ensure an appropriate level of security in view of that bank's business activities, its risks taken, its business strategy, the quality of its risk management or the state of development of the techniques used.

Art. 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 collects the necessary data to calculate the leverage ratio at financial group and at stand-alone entity level.

[3] The reporting is done using the capital adequacy reporting form.

Art. 47 Parallel Calculations when using Model Approaches

For banks using a FINMA-approved model to determine the required capital (IRB, EPE model methodology, market risk approach or AMA), the FINMA may demand a parallel calculation to determine the required capital according to an appropriate standardized approach.

Chapter 2: Credit Risks

Section 1: General Information

Art. 48 Definition

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

a. a failure to meet its contractual obligations by a counterparty; 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.

Art. 49 Risk-Weighted Positions

[1] Positions must be weighted according to their risk, provided that they contain credit risk and no deduction from the capital according to art. 31-40 is foreseen.

[2] The considered positions include:

a. receivables including any claims arising from loan commitments not reported as assets;

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 (art. 82 para. 1 lit. a) is applied;

f. net positions in treasury shares and qualifying interests held in the trading book.

[3] Any position relating to a group of related counterparties as defined in art. 109 that is not broken down by counterparty is weighted according to the highest risk weighting assigned to any of the individual counterparties within the group.

Art. 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 art. 42 para. 2 lit. a:

a. SA-BIS, art. 63-75; or

b. IRB; art. 77.

[2] the IRB and SA-BIS approaches may be combined.

[3] Adoption of the IRB approach requires the approval of the FINMA, which will specify the conditions for its approval.

[4] FINMA issues implementing provisions in regard to credit risks and securitizations.

Section 2: Calculation of Positions

Art. 51 Net Position

[1] Net positions are 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 must be deducted from the net position.

[3] Positive net positions are referred to as net long positions, and the absolute amounts of negative net positions are referred to as net short positions.

Art. 52 Net Position of Regulatory-Capital Instruments of Financial Entities

[1] The net positions of regulatory-capital instruments of financial entities under the consideration of the additional requirements under para. 2 and 3 are 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 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 instruments that are regulatory-capital instruments or by which regulatory-capital instruments are indirectly or synthetically held, with the exception of own regulatory-capital instruments, the netting of long and short positions is only permissible, if:

a. the long and short positions refer to the same regulatory-capital 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 regulatory-capital instruments, the following net positions must be determined for each component (CET1, AT1 and T2) and deducted as per art. 32-34 from that component:

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

b. net positions of regulatory-capital instruments that are held with 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.

Art. 53 Positions in Off-balance-sheet Transactions

[1] Off-balance-sheet transactions must be converted into a credit equivalent using credit conversion factors. This determines their risk-weighting.

[2] Banks using the IRB approach must calculate the credit equivalent for contingent liabilities and irrevocable commitments according to the SA-BIS provisions where the IRB has no corresponding provision.

Art. 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 Appendix 1.

[2] For contingent liabilities of which the bank has issued sub-holdings, it can treat these as if they were direct claims against the sub-participants.

Art. 55 Risk of potential Credit Value Adjustments (CVAs) of Derivatives

[1] Apart from credit default risks of derivative counterparties according to art. 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 defines the method to calculate the minimum required capital in view of the calculation method chosen for credit equivalents (art. 56) and for market risks (art. 82), referring to the Basel Minimum Standards.

[3] The FINMA provides banks that have neither chosen a model approach as per art. 56 nor as per art. 82 with a conservative simplified approach.

Art. 56 Calculation Methods for Derivatives

[1] Credit equivalents for derivatives positions can be calculated using one of the following methods:

a. mark-to-market method;

b. standardized method; or

c. Expected-Positive-Exposure (EPE) modeling method.

[2] Adoption of the EPE model requires approval from the FINMA, subject to specific conditions.

[3] FINMA will specify on how to calculate credit equivalents in the event of a legally or contractually

required netting arrangement as per art. 61 in which more than two parties are involved.

[4] The calculation methods are valid for all types of derivatives; no matter whether they are traded on an exchange or over the counter.

Art. 57 Mark-to-market Method

[1]In the mark-to-market method the credit equivalent corresponds to the sum of the current replacement value and the safety margin (add-on).

[2] The FINMA determines on which basis the respective add-on for individual types of instruments is to be identified and the amount of each add-on.

Art. 58 Standardized Method

In the standardized method, the credit equivalent is 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 collaterals;

b. risk position defined by the regulator.

Art. 59 EPE Modeling Method

[1] The FINMA defines how credit equivalents of derivatives are calculated according to the EPE modeling method.

[2] The credit equivalents are multiplied by the EPE factor. The FINMA will specify the EPE factor on a case-by-case basis. The EPE factor amounts to at least 1.2.

Art. 60 Interest Rate Instruments and Equity Shares

[1] The net position of interest rate instruments or equity shares of a financial entity that qualify as regulatory-capital instruments is calculated as per art. 52.

[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 are calculated as per art. 51.

[3] For positions not held in the trading book, physical holdings are valued at carrying value.

[4] Paras. 1 and 2 also apply to interest rate instruments and equity shares held in the trading book, provided the de minimis approach (art. 82 para. 1 lit. a) is applied.

Art. 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 collaterals.

[2] If required, banks must demonstrate to their external auditors or the FINMA that the risk-mitigating measures are legally enforceable in the jurisdictions concerned.

[3] FINMA will specify these risk-mitigating measures.

Art. 62 Collateralized Transactions

[1] A bank may choose to adopt one the following approaches to handle collaterals as defined in art. 61 para. 1 lit. d:

a. simplified approach; or

b. comprehensive approach.

[2] In the simplified approach, the collateralized portion of the position is allocated to the protection provider's position category.

[3] In the comprehensive approach, the position is netted against the collateralized portion of the position. The net position remains in the category of the original position.

[4] FINMA will specify these approaches in more detail.

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

Art. 63 Position categories

[1] The banks must assign individual positions to position categories.

[2] Positions in the following categories can be risk-weighted using external ratings:

a. central governments and central banks;

b. public-law entities;

c. BIS, 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.

Art. 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 assigns the ratings of recognized rating agencies to rating categories and determines 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 weightings of the category "unrated" have to be used.

Art. 65 Use of External Ratings at Group Level

The ratings used at the level of the stand-alone companies can be used at group level.

Art. 66 Calculation of the Risk-weighted Positions

[1] Positions in the position categories as specified in art. 63 para. 2 are risk-weighted according to Appendix 2 for SA-BIS.

[2] Positions in the position categories as specified in art. 63 para. 3 lit. a-e and g are risk-weighted according to Appendix 3.

[3] Positions in the position category as specified in art. 63 para. 3 lit. f are risk-weighted according to Appendix 4.

[4] Net positions in interest rate instruments as defined in art. 60 have to be assigned to the issuer's position category and risk-weighted accordingly.

[5] For positions in the form of regulatory-capital instruments of financial entities, the risk-weighting as per paras. 3 and 4 applies to the portion of the net position as per art. 52 that was not deducted from the capital using the relevant deduction approach (art. 33).

Art. 67 Local Currency Positions to Central Governments or Central Banks

If the regulatory authority of a country other than Switzerland provides a lower risk weighting according to art. 66 para. 1 for local currency positions to the central government or central bank of that country, then banks are entitled to risk-weight such positions accordingly, provided that these positions are refinanced in the local currency of that country and the banking supervision is adequate. This analogous risk-weighting is applicable to the portion of a position refinanced in local currency.

Art. 68 Banks and Securities Dealers

[1] Securities dealers can only be assigned to the position category "banks and securities dealers" (art. 63 para. 2 lit. a lit. d) if they are subject to regulation equivalent to that of banks.

[2] Netted positions arising from off-balance-sheet transactions are assigned to the maturity bucket of the shortest of the netted positions.

Art. 69 Stock Exchanges and Clearing Houses

[1] Clearing houses are institutions through which contractual obligations of traded contracts are settled.

[2] The 0% or 2% weighting for credit risks in accordance with Appendix 2 only applies if a regulated central counterparty directly enters into the transaction between two market participants, and an adequate, comprehensive collateralization system is established as a basis for the functions exercised by this central counterparty.

[3] This collateralization system is 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] FINMA stipulates the additional criteria for central counterparties in connection with derivatives and repo or repo-like transactions based on the Basel Minimum Standards.

Art. 70 Credit Risks and Guarantees to Central Counterparties

[1] For banks acting as clearing members for a central counterparty for derivatives traded on an exchange or over the counter and repo and repo similar transactions, the FINMA defines the approach to calculate the minimum required capital for risks that derive from explicit and implicit guarantees to the central counterparty. For this, the FINMA refers to the Basel Minimum Standards.

[2] Central counterparties are clearing houses acting as a contracting party between counterparties of contracts and guaranteeing the delivery of the contracts during their entire lifetime.

[3] Clearing members are authorized to enter as a party into a direct transaction with the central counterparty, independent of whether they act on their own behalf or as an intermediary between the central counterparty and other market players.

Art. 71 Unrated Corporate Positions

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

Art. 72 Direct or Indirect Mortgage-backed Positions

[1] Residential property is occupied or rented out by the borrower itself.

[2] Construction loans and loans for land must be assigned to the real estate categories specified in Appendix 3 depending on the future use of the financed property.

[3] The risk weighting 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 provided.

[4] Pledged retirement capitals and pledged pension benefit entitlements as per art. 30b of the Swiss Federal Law on Occupational Retirement, Survivors' and Disability Pension Plans of 25 June 1982[8] and art. 4 of the Federal Ordinance on the Tax Deduction of Contributions to Recognized Pension Plans of 13 November 1985[9] are considered as the borrower's capital when calculating the risk-weighted position as per Appendix 3, if:

[8] SR **831.40.**
[9] SR **831.461.3.**

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 para. 5 are fulfilled.

5 The risk weighting for mortgage-backed positions according to Appendix 3 is 100% as long as the credit business does not comply with the self-regulation minimum standards recognized by the FINMA (art. 7 para. 3 of the Financial Market Supervision Act of 22 June 2007[10]). The minimum standards must include:

a. the borrower has contributed a reasonable minimum of capital to finance the property that neither originates from a pledge nor from an advance withdrawal as per art. 30 b and 30c of the Federal Act on Occupational Retirement, Surviving Dependants' and Disability Pension (BVG);

b. the loan will be amortized in a reasonable timeframe and amount.

Art. 73 Equity Shares

1Net positions in equity shares are risk-weighted in accordance with Appendix 4. Excluded are net positions that:

a. are to be deducted from the capital components pursuant to art. 31-40; or

b. are to be risk-weighted pursuant to art. 40 para. 2.

Art. 74 Lombard Loans

Lombard loans may be risk-weighted on an individual basis within the corresponding position category using the simplified approach (art. 62 para. 1 lit. a) or the comprehensive approach (art. 62 para. 1 lit. b).

Art. 75 Loans, Repo and Repo-like Transactions with Securities

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

Art. 76 Positions Arising from Unsettled Transactions

1Positive replacement values for positions from unsettled currency, securities and commodity transactions 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%

10 SR **956.1**

46 or more	1250%

[2] Positions from unsettled transactions that are to be settled in another way must be calculated as follows:

a. The bank that has made the initial payment/delivery must treat the position as a loan if the second leg has not 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 are risk-weighted at 1250 %.

[3] Repurchase agreements, reverse repurchase agreements and securities lending and borrowing transactions must be treated exclusively in accordance with art. 75.

Section 4: IRB

Art. 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-IRB[11]); or

b. the advanced IRB approach (A-IRB[12]).

[2] The FINMA clarifies the calculation method, based on the Basel Minimum Standards.

[3] In the absence of specific guidelines under the IRB approach, the SA-BIS provisions apply accordingly.

Chapter 3: Non-counterparty-related Risks

Art. 78 Definition

The term "non-counterparty-related risks" denotes 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.

Art. 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, provided they are not deducted from the common equity tier 1 capital according to art. 32 lit. c.

A credit balance of the equalization account ("Ausgleichskonto") is risk-weighted at 0%.

[11] Refers to the Foundation IRB
[12] Refers to the Advanced IRB

Chapter 4: Market Risks

Section 1: General Information

Art. 80 Basic Principle

[1] Banks have to provide sufficient capital to cover the market risks 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] FINMA issues technical implementing provisions on market risk.

Art. 81 Definition

The term "market risk" denotes 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.

Art. 82 Calculation Methods

[1] The minimum required capital for market risks 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 more than one of these approaches are used, the minimum required capital is the sum of the minimum required capital calculated from each approach.

Section 2: De Minimis Approach

Art. 83

[1] Banks that do not exceed certain thresholds are entitled to calculate the minimum capital required for interest rate instruments and equity shares held in the trading book in accordance with art. 66-76. In doing so, they must apply the same guidelines as with the approach used for covering credit risks.

[2] FINMA determines the thresholds.

Section 3: Standardized Approach to Market Risk

Art. 84 Interest Rate Instruments Held in the Trading Book

[1] The minimum capital required to cover the specific risks associated with interest rate instruments is determined by multiplying the net position for each issue by the factors specified in Appendix 5.

[2] The FINMA issues implementing provisions to calculate the minimum capital required to cover the specific risks associated with interest rate instruments from securitizations for which the risk is divided into tranches.

[3] The minimum capital required to cover the general market risks associated with interest rate instruments is equal to the total value calculated for each currency using the maturity method or the

duration method.

Art. 85 Equity Instruments Held in the Trading Book

[1] The minimum capital required to cover the specific risks associated with equity instruments equals 8% of the total net positions for each issue.

[2] The minimum capital required to cover the general market risks associated with equity instruments equals 8% of the total net positions for each national market.

Art. 86 Foreign-exchange Positions

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

Art. 87 Gold and Commodity Positions

[1] The minimum capital required to cover the market risk associated with gold positions equals 8% of the net position.

[2] The minimum capital required to cover the commodity risks is to be determined by the maturity bucket approach or by the simplified approach.

Section 4: Model Approach for Market Risk

Art. 88

[1] Using the market risk model approach requires approval from the FINMA, which specifies the conditions for granting approval.

[2] Referring to the Basel Minimum Standards, the FINMA specifies which market risk model approach is to be used to calculate the minimum capital.

[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 are at least 3.0 in each case.

Chapter 5: Operational Risks

Section 1: General Information

Art. 89 Definition

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

Art. 90 Calculation Methods

[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[13]).

[2] Application of an AMA requires approval from FINMA.

[3] FINMA issues implementing provisions in regard to the approaches.

Art. 91 Earnings Indicator

[1] Banks using the basic indicator or standardized approach to determine the minimum capital to cover 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. interest income;

b. fee and commission income;

c. trading income;

d. income from equity shares that need not be consolidated; and

e. income from real estate.

[2] All income generated from outsourcing agreements in which the bank acts as service provider must be considered as a component of the earnings indicator.

[3] If the bank acts as principal of 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 it.

Section 2: Approaches

Art. 92 Basic Indicator Approach

[1] The minimum required capital corresponds to 15% of the average of the income indicators of the three previous years. The only years that can be taken into account are the years in which the earnings indicator was positive.

[2] The FINMA may make the use of the basic indicator approach dependent on additional qualitative risk management requirements.

Art. 93 Standardized Approach

[1] The minimum required capital is calculated as follows:

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 para. 2.

b. The resulting values are summed up for each year. In doing so, negative values from individual business lines can be offset with positive values from other business lines.

c. The minimum required capital corresponds to the three-year average. When calculating the average, any negative sum is set to zero.

[13] Advanced Measurement Approaches

[2] Business activities are to be assigned to the following business lines and multiplied by the following rates:

a.	Corporate finance / advisory	18%
b.	Trading and sales	18%
c.	Retail banking	12%
d.	Commercial banking	15%
e.	Payment and settlement	18%
f.	Custodian and fiduciary services	15%
g.	Institutional investment management	12%
h.	Retail brokerage	12%

[3] The FINMA may make the use of the standardized approach dependent on additional qualitative risk management requirements.

Art. 94 Institution-specific Approaches (AMA)

[1] Banks may use an institution-specific approach (AMA) to determine the minimum required capital.

[2] The FINMA will approve the use of an AMA if the bank has a model allowing it to quantify operational risks on the basis of internal and external loss data, scenario analyses as well as key factors of the business environment and the internal control framework.

Heading 4: Risk Diversification

Chapter 1: General Provisions

Section 1: Purpose

Art. 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 art. 31-40.

[2] Banks have to limit and monitor their large exposures.

Art. 96 Market Risk

All banks must specify appropriate internal limits for all material market risks for their operations. Such limits must include bank premises and other real estate.

Section 2: Upper Limits of Large Exposures

Art. 97 Upper Limit of Individual Large Exposures

An individual large exposure must not exceed 25% of the adjusted eligible capital as per art. 31-42.

Art. 98 Exceeding the Upper Limit

[1] The upper limit for a large exposure may only be exceeded if:

a. the excess is covered by free eligible capital; or

b. the excess is solely due to an affiliation between previously unconnected counterparties, or an affiliation between the bank and other financial entities.

[2] Where capital is used to cover a large exposure exceeding the limit, this must be mentioned in the capital adequacy reporting form as specified in art. 14.

[3] The amount that exceeds the upper limit due to the reasons given in para. 1 lit. b must not be increased further. The excess must be remedied within two years after the affiliation's legal implementation.

Art. 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 subsidiaries fully integrated into the capital and consolidated risk diversification (fully consolidated) may be excluded from the upper limits specified in art. 97, if the subsidiaries:

a. are themselves subject to an adequate supervision; or

b. have on their part solely subsidiaries as counterparties that are themselves subject to an adequate supervision.

[2] The FINMA is authorized to restrict the comprehensive exclusion of intra-group positions according to para. 1 in its implementing provisions.

[3] Intra-group positions to other subsidiaries are subject to the regular upper limit of 25% of the adjusted eligible capital as per art. 31-40 on an aggregated level.

Section 3: Reporting requirements with regard to Large Exposures

Art. 100 Disclosure of Large Exposures

[1] Every three months, the bank must submit a list of all existing large exposures at individual level as at selected reporting dates to its supervising body responsible for overall management, 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 art. 97 are to be disclosed prior to being deducted from the freely available eligible capital (art. 98 para. 1 lit. a).

[4] If a large exposure involves a member of the bank's supervising body or a qualified shareholder as per art. 3 para. 2 lit. c[bis] 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 (Organgeschäfte)".

[5] Any large exposure in regard to other subsidiaries is disclosed in the list under the term "Group transactions (Gruppengeschäft)". In addition, the components of the group transaction position that are excluded from the upper limit as per art. 99 para. 1 and 112 para. 2 lit. d must be disclosed as well.

[6] The external auditor verifies the bank's internal monitoring of large exposures and assesses its progress.

Art. 101 Disclosure of Unauthorized Excesses

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

Art. 102 Disclosure of Intra-group Positions

Every three months, the bank must submit a statement of intra-group positions as per art. 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 subsidiaries as per art. 99 para. 1 and para. 2.

Section 4: Calculation Principles

Art. 103 Firm Underwriting Commitments from Issuances

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

a. Submitted sub-holdings and firm subscriptions may be deducted from firm underwriting commitments from issuing debt certificates and equity shares, provided that the bank's associated market risk is eliminated.

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 issuance's 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.

Art.104 Equity Shares and Subordinated Debt Certificates

Regulatory-capital instruments that are deducted from the capital as per art. 31-40c may not be considered when determining the total position amount.

Art. 105 Individual Value Adjustments and Individual Provisions

Individual value adjustments and individual provisions made for positions, off-balance-sheet transactions and net long positions are to be deducted prior to assigning risk weightings to individual positions.

Art. 106 Positions Arising from Unsettled Transactions

After the fifth bank working day, unsettled transactions (art. 63) are to be included in the total position amount in the amount of the full exposure.

Art. 107 Derivatives

Derivatives are to be converted to their credit equivalent as per art. 56-59.

Art. 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.

Art.109 Groups of Related Counterparties

[1] The total exposure to a group of related counterparties is the sum of the total position for each counterparty.

[2] Two or more individual persons or legal entities are deemed to be a group of related counterparties and are to be treated as a stand-alone entity, if:

a. one of them directly or indirectly holds more than half of the voting rights of the other or exercises a dominant 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 or are controlled by it;
d. they form a syndicate; or
e. the counterparties are connected through a mutual refinancing source.

[3] Multiple syndicates are not considered 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 are not considered to be related counterparties to its 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 claims in securitization positions, holdings in investment capital or other loans that are covered with assets, the bank must choose the borrower in a manner that accounts for the economical substance and the business risks inherent in the structure of the transactions and particularly of the possible large exposures.

[6] Collective investment schemes and, in the case of collective investment schemes with sub-funds (umbrella funds), each sub-fund must be considered as an independent counterparty. Where a bank has current information on the composition of the assets of a collective investment scheme, it can instead assign the corresponding investments to the respective issuers.

Art. 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 a joint and several liability, the bank has to attribute the entire position to the particular syndicate that had the highest credit rating at the time of the credit approval.

Art. 111 Positions of Subsidiaries

From the perspective of every bank within the financial group or financial conglomerate, subsidiaries represent a group of affiliated counterparties.

Section 5: Alleviating or Tightening Provisions

Art. 112

[1] In exceptional circumstances, the FINMA is entitled to alleviate or tighten the applicable risk diversification requirements.

[2] In particular it is entitled to:

a. reduce disclosure 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 limits on prior request;

d. stipulate that the upper limit exemption as per art. 99 para. 1 for some or all subsidiaries does not apply or that it only extends to specific subsidiaries that do not comply with the requirements described in art. 99 para. 1;

e. exempt specific subsidiaries not operating in the financial sector from inclusion in the aggregated position as per art. 99 para. 2;

f. exempt holdings that are not to be consolidated according to art. 99 para. 1 lit. a from inclusion in the aggregate position according to art. 99 para. 2;

g. reduce or increase the applicable risk weightings for a specific counterparty;

h. set a time limit other than the one foreseen in art. 98 para. 3.

Chapter 2: Total Positions and their Risk Weighting

Art. 113 Total Positions

[1] The total position of a counterparty is the result of the following positions:

a. positions risk-weighted according to art. 115, under consideration of the exclusions stipulated in art. 114;

b. positions according to art. 117-118;

c. off-balance-sheet transactions converted to their credit equivalents (art. 119);

d. positions resulting from loans, repo and repo-like transactions with securities (art. 122);

e. net long positions in securities (art. 123).

[2] When calculating the total position, at least the irrevocable credit limits communicated to the counterparty must be included.

Art. 114 Exclusions from the Total Position

The following positions are excluded from the calculation of the total position:

a. positions to:
   1. central banks and central governments risk-weighted at 0%; and
   2. the BIS, the IMF and certain multilateral development banks stipulated by the FINMA;
b. positions covered by an explicit guarantee from the counterparties as per lit. a;
c. positions in domestic (Swiss) mortgage bonds (Pfandbrief);
d. positions covered by residential mortgages either located domestically or abroad (i.e. in or outside Switzerland) that are either occupied by the borrower himself or rented out, 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 art. 69 para. 2 and 3.

Art. 115 Risk Weighting

[1] As a general rule, positions to a single counterparty are assigned a risk weighting of 100%.

[2] A risk weighting of 20% applies to positions to public-sector entities of the rating classes 1 or 2.

Art. 116 Upper Limit on Large Exposures to Banks and Securities Dealers

By way of derogation from art. 97, the upper limit on individual large exposures to banks and securities dealers, if they are neither nationally nor internationally systemically relevant banks or financial groups, amounts to:

a. 100% of the adjusted eligible capital as per art. 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 art. 31-40 amounts to between CHF 250 million and CHF 1,000 million.

Art. 117 Collateralized Positions

[1] Banks may include the collateralized component of the collateralized positions either in the third party's or the counterparty's total position, provided that the position is collateralized by any of the following instruments and the requirements as per art. 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 limited.

[2] If the collateral consists of third-party debt certificates, equity shares, shares in collective investment schemes or fiduciary deposits, banks are entitled to calculate the specific positions according to art. 118.

Art. 118 Eligibility of Collateral

[1] Banks using the simplified approach under SA-BIS as per art. 62 para. 1 lit. a may take into account collateral defined in art. 117 para. 1.

[2] Banks using the comprehensive approach as specified in art. 62 para. 1 lit. b or the F-IRB approach must calculate the fully adjusted position values for collateralized positions according to art. 62 para. 3.

[3] Banks using the A-IRB approach may either calculate collateralized positions according to para. 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 chosen approach for capital adequacy requirements.

[4] Collateral may be eligible for capital adequacy under the approach specified in para. 2 and 3 provided the resulting large exposures are adequately limited and monitored. Otherwise, the procedure specified in art. 117 para. 1 must be applied.

[5] The procedures specified in paras. 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.

Art. 119 Off-balance-sheet Transactions

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

Art. 120 Contingent Liabilities and Irrevocable Commitments

[1] The credit equivalent for contingent liabilities is determined by multiplying the nominal or present value of the corresponding transaction with the applicable credit conversion factor defined in art. 53 para. 2 or art. 54 para. 1, respectively.

[2] By way of derogation from the paragraph above, for irrevocable loan commitments, the nominal value of each transaction is multiplied by the credit conversion factor 1.0.

[3] The following credit conversion factors 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 are treated according to art. 117 para. 1.

Art. 121 Derivatives

[1] Derivatives are to be treated pursuant to art. 107.

[2] If a derivative transaction remains unsettled at maturity, art. 106 applies.

Art. 122 Loans, Repo and Repo-like Transactions with Securities

Loans, repo and repo-like transactions are to be treated according to art. 118.

Art. 123 Issuer-specific Total Positions

Under consideration of the exceptions stated in art. 114, net long positions for each issuer held on and off the trading book are calculated separately for debt and holding positions according to art. 51, whereas firm underwriting commitments may be treated according to art. 103. The issuer-specific total position is the result of the sum of the individual net long positions.

Heading 5: Provisions for Systemically Important Banks

Chapter 1: General Provisions

Art. 124 Basic Principle

[1] The particular requirements set out in this heading are applicable to systemically important banks in addition to the capital adequacy and risk diversification requirements in Headings 3 and 4 of this ordinance.

[2] These particular requirements must be satisfied at the level of the financial group as well as at level of each entity that is considered to be systemically important, with the exception of art. 125.

Art. 125 Alleviated Provisions for Financial Groups and Individual Entities

[1] The FINMA grants alleviated provisions at individual entity level, if:

a. the requirements at financial group level increase due to the requirements imposed at stand-alone 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 are considered unreasonable.

[3] Changes to the corporate structure or organization make a bank entitled to alleviated provisions only if doing so will satisfy the requirements of paragraph 1.

[4] In particular, the following alleviated provisions may be granted individually or in combination according to paragraph 1:

a. the capital adequacy requirements for individual entities are defined in view of the requirements of the financial group. For systemically important individual entities the capital must amount to at least 14% of risk-weighted positions;

b. the deductions for interests are reduced;

c. the capital adequacy requirements are reduced for intra-group exposures; and

d. the group's financing is exempt.

[5] The particular requirements at financial group level and at systemically important stand-alone entity level as well as the granted alleviated provisions are to be disclosed by:

a. the FINMA in regard to their main features; and

b. the bank or financial group concerned in its ordinary disclosures, including the capital ratio.

Chapter 2 Eligible Conversion Capital

Art. 126 Description and Issuance

[1] Conversion capital is defined as capital as per art. 11 para. 1 lit. b in connection with art. 13 BA as well as capital from bonds equipped with a debt waiver as per art. 11 para. 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 subsidiary 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.

Art. 127 Eligibility

[1] Conversion capital may be attributed to certain regulatory-capital components as far as it contributes to the loss absorbency in case of a trigger event ("trigger"). The loss absorbency must be in the following forms:

a. debt reduction towing to a debt waiver;

b. conversion into common equity tier 1 capital of the bank.

[2] According to art. 11 para. 4 BA, the FINMA only approves 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 art. 30 of this ordinance.

Chapter 3 Risk-Weighted Capital Adequacy Requirements

Art. 128 Minimum Requirements

With their common equity tier 1 capital, systemically important banks must permanently fulfill the minimum requirement of 4.5%of the risk-weighted positions based on art. 42 para. 2 of this ordinance.

Art. 129 Capital Buffer

[1] Systemically important banks must dispose of a capital buffer of 8.5% of the risk-weighted positions

pursuant to art. 42 para. 2.

[2] The requirements for the capital buffer must be satisfied using common equity tier 1 capital. Conversion capital is eligible in the amount of a maximum of 3% of the risk-weighted positions, triggered when eligible common equity tier 1 capital falls below 7% of the risk-weighted positions.

[3] As a rule, the capital buffer must be available at all times. It may temporarily fall short if the bank incurs losses, but it must immediately be recreated once the bank is able to generate profits again.

[4] If the capital buffer falls below the required amount, the bank must indicate the measures and the time frame in which it plans to recreate it. FINMA approves this time limit. If the bank fails to recreate the capital buffer within the specified time frame, the FINMA may order appropriate measures.

Art. 130 Progressive Component

[1] Systemically important banks must permanently maintain a progressive component. It is determined by applying the progression rate as per art. 131 to the risk-weighted positions based on art. 42 para. 2.

[2] The progressive component must be satisfied with the conversion capital, which is triggered when the eligible common equity tier 1 capital falls below 5% of the risk-weighted positions.

[3] The bank may opt to satisfy the requirements of the progressive component with common equity tier 1 capital. In this case, this portion of common equity must be considered as tier 2 capital.

Art. 131 Progression Rate

[1] The progression rate relevant for the calculation of the progressive component is set annually by the FINMA as at the end of the second quarter and must be implemented by the beginning of the following calendar year.

[2] The progression rate is calculated at financial group level. The progression rate is decisive for determining the required capital for the financial group as well as all systemically important individual entities.

[3] The progression rate is calculated from the sum of the additional charge for the market share and the additional charge for the size of the financial group minus the alleviation granted for the measures taken to improve the ability of recovery and liquidation of the financial group in and outside of Switzerland. Additional charges and alleviations granted are determined as follows:

a. the charge for the market share of the financial group is 0% for a market share of up to 10% of domestic systemically important businesses. For each half percentage point that the market share exceeds 10%, the charge increases by 0.15 percentage points. The higher of the average market shares of the domestic credit business and the domestic deposit business is applied, based on the statistical survey of the Swiss National Bank as at the end of the previous calendar year.

b. The charge for the size of the financial group amounts to 0% for a total commitment of up to CHF 250bn that has been adjusted as per art. 135 by the increase in the Swiss gross domestic product since this ordinance has entered into force. For each unit of CHF 25bn that exceeds the adjusted total commitment of CHF 250bn, the charge increases by 0.06 percentage points.

c. The alleviation granted for measures taken to improve the financial group's ability to recover and liquidate at a global level as per the provisions of art. 22-22*b* BO[14] is determined by the FINMA following a hearing of the Swiss National Bank's input

[14] SR **952.02.**

regarding the effectiveness of the measures taken to improve the financial group's ability of global recovery and liquidation, taking into account the interactions between the different discount groups. The alleviation granted must not jeopardize the implementation of the emergency plan.

[4] No alleviation is granted for evidence that the emergency plan ensures the continuity of the systemically important functions at the point of non-viability as per art. 9 para. 2 lit. d BA.

[5] The FINMA may consult foreign supervisory and bankruptcy authorities regarding the bank's proposed measures and may take into account their assessment of the improvement of the financial group's ability of global recovery and liquidation when granting discounts.

[6] The progression rate is at least 1%, irrespective of charges and reliefs.

Art. 132 Counter-cyclical Buffer

The counter-cyclical buffer as per art. 44 must be satisfied in addition to the capital requirements stipulated in this heading.

Chapter 4 Capital Adequacy Requirements with No Risk-Weighting (Leverage Ratio)

Art. 133 Principle

[1] Systemically important banks must fulfill particular capital adequacy requirements relative to their total commitment.

[2] The capital adequacy requirements consist of a basic requirement, a capital buffer and a progressive component. Subject to art. 134, they are informed by the provisions of Chapter 3 in regard to risk-weighted capital.

Art. 134 Calculation

The non-risk-weighted capital adequacy requirements calculated based on the total commitment amounts to 24% of the percentages of:

a. the basic requirements as per art. 128 para. 1;

b. the capital buffer as per art. 129 paras. 1 and 2; and

c. the progression rate as per art. 131 para. 1.

Art. 135 Total Commitment

[1] The total commitment corresponds to the sum of the following non-risk-weighted positions:

a. the total of all balance-sheet positions with the exception of positions in derivatives minus individual value adjustments, individual provisions and credit value adjustments (CVAs);

b. the total of the credit equivalents of derivatives calculated using the mark-to-market method (art. 56 para. 1 lit. a), taking into account netting but not the risk-mitigating measures such as, notably, collateral;

c. the total of the credit equivalents of all remaining off-balance sheet transactions,

whereby the credit conversion factor for all loan commitments that may be terminated at any time and unconditionally is set at 10%; otherwise it is at 100%;

d. the negative value of the total of all deductions from the tier 1 capital, as far as these deductions may be allocated to balance sheet or off-balance sheet positions.

[2] In determining the balance sheet position values according to para. 1 lit. a, risk-mitigating measures in the form of collateral, guarantees, credit derivatives or the offsetting of claims and deposits must not be considered. When valuing balance-sheet positions, netting with collateralized cash deposits may be taken into account for positions in loans, repo and repo-like transactions with securities.

[3] No cross-product netting is allowed for this netting.

[4] The total commitment is defined by taking the average of the last three values as at the end of the month.

Chapter 5 Special Risk Diversification Provisions

Art. 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 cover the progressive component.

[2] The upper limit for large exposures may only be exceeded, if:

a. the excess is covered by common equity tier 1 capital that is not used to cover the required capital as per art. 128 and 129; 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 art. 14.

[4] The excess stated in para. 2 lit. b may not be increased further. It must be remedied within two years.

Heading 6: Final Provisions and Transitional Arrangements

Chapter 1 Transitional Provisions

Art. 137 Capital Adequacy Requirements for Credit Risks, 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 to value their risk-weighted positions based on their credit risk (art. 42 para. 2 lit. a). They may deduct 75% of the value adjustments and provisions disclosed as liabilities in the balance sheet from the risk-weighted positions to cover positions that require capital.

[2] Banks making use of this must determine their risk-weighted positions for non-counterparty-related risks (art. 42 para. 2 lit. b) and their minimum required capital for market risk (art. 42 para. 2 lit. c) as per previous law as well.

Art. 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 art. 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 art. 116.

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

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

Art. 140 Eligible Capital

[1] Regulatory-capital 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 will no longer be considered as capital as at 1 January 2013, under reservation of para. 3.

[2] Regulatory-capital instruments that were issued before 12 September 2010 may be attributed decreasingly over a time period of ten years as per art. 141 and will no longer be considered as capital as at 1 January 2022.

[3] Regulatory-capital 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 (art. 29) may be attributed decreasingly as per art. 141.

Art. 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 can 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 paras. 6 and 7. The participation capital of banks that are not organized as corporations is 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 may be decreasingly attributed as tier 2 capital as described in para. 1.

[3] With the entry into force of this ordinance the regulatory capital will 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 para. 1;

d. tier 2 capital; as per the new provisions; and

e. tier 2 under previous law; pursuant to para. 2.

[4] Components as per para. 3 lit. b and c form additional tier 1 capital until 31 December 2021 at the latest, while the components as per lit. d and e form tier 2 capital.

[5] All regulatory-capital components as per paras. 1 and 2 will be documented quantitatively at the time when this ordinance enters into force and each category will be added up.

[6] The values determined as per para. 5 as at 1 January 2013 will be reduced by 10% annually, beginning on 1 January 2013. These define the upper limit of the maximum eligible regulatory-capital components in the respective year under previous law. The attribution may only be made up to the amount in which the bank has outstanding regulatory-capital instruments of adequate quality.

[7] If an existing regulatory-capital instrument can no longer be accounted as additional tier 1 capital due to the increasingly limited eligibility as per paragraph 6, it may be considered as tier 2 capital once it no longer qualifies as additional tier 1 capital, provided it meets the requirements for tier 2 capital.

Art. 142 Introductory Phase of Amended Adjustments

[1] Deductions inexistent under previous law will now have to be made from the common equity tier 1 capital 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 para. 1 that is not subject to a deduction is to be considered as required capital according to the risk weighting under previous law.

[3] Deductions under previous law that were fully or partially made from the previous core capital will be gradually shifted to a deduction from common equity tier 1 capital, according to the calculation steps of paragraph 1.

[4] For the part of the positions as per paragraph 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 paragraph 4 no longer applies.

[6] Until 31 December 2017, the threshold value 3 (art. 35 para. 4) amounts to 15%.

[7] New deductions from additional tier 1 capital or from tier 2 capital will be introduced along the same gradual approach as in paragraphs 1-5.

Art. 143 Minimum Required Capital as per Art. 42 Para. 1 in 2013 and 2014

[1] The CET1 ratio must amount to:

a. 3.5% in 2013;

b. 4.0% in 2014.

[2] The T1 ratio must amount to:

a. 4.5% in 2013;

c. 5.5% in 2014.

Art. 144 Capital Buffer as per Art. 43 from 2016 to 2018

The annual capital buffer amounts to:

a. 2016: 0.625%

b. 2017: 1.250%

c. 2018: 1.875%

Art. 145 Minimum Requirement for Systemically Important Banks

The rate for the minimum requirement as per art. 128 para. 1 amounts to 3.5% as of 1 January 2013, and 4% as of 2014.

Art. 146 Capital Buffer of Systemically Important Banks

[1] The annual rates for the capital buffer as per art. 129 para. 1 and for the eligibility of the conversion capital, respectively, as per art. 129 para. 2 amount to:

a. 2013: 3.5% or 1%, respectively;

b. 2014: 4.5% or 1.75%, respectively;

c. 2015: 5.125% or 2.25%, respectively;

d. 2016: 6.25% or 2.625%, respectively;

e. 2017: 7.125% or 2.875%, respectively;

f. 2018: 7.875% or 3%, respectively.

Art. 147 Progressive Component

[1] The annual progression rate as per art. 131 amounts to:

a. 2013: 25%;

b. 2014: 45.28%;

c. 2015: 62.5%;

d. 2016: 75%;

e. 2017: 85.4%;

f. 2018: 93.75%.

[2] In derogation of art. 130 para. 2, conversion capital, which is triggered if the eligible common equity tier 1 capital falls below 7% of the total position amount of the risk-weighted positions, may be attributed to the progressive component until the end of 2017. Such conversion capital may also be

attributed to the capital buffer and to the progressive component, but all-in-all, only up to 3% of the risk-weighted positions.

Art. 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.

Chapter 2 Final Provisions

Art. 149 Repeal of Previous Law

The Capital Adequacy Ordinance dated 29 September 2006[15] is repealed.

Art. 150 Amendments to the Previous Law

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

Art. 151 Entry into Force

1 This ordinance enters into force on 1 January 2013, with the exception of paragraphs 2 and 3.

2 Art. 43 enters into force on 1 January 2016.

3 The entry into force of the provisions of Heading 5, with the exception of art. 126 and 127, is subject to approval by the Swiss Federal Assembly.

[15] AS **2006** 4307; AS **2007** 1073; AS **2008** 5363; AS **2009** 6101 and AS **2010** 5429

Appendix 1
(art. 54 para. 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
4.	**Call commitments and additional funding commitments**	
4.1.	on equity shares not booked as holdings	1.00
4.2.	on equity shares, if they pertain to holdings not to be consolidated	1.00
4.3.	on equity shares, if they pertain to holdings to be consolidated or equity shares in the insurance sector	1.00
5.	**Guarantees**	
5.1.	not used to cover doubtful receivables	0.50
5.2.	used to cover doubtful receivables	0.50
6.	**Other contingent liabilities**	**1.00**

Appendix 2
(art. 66 para. 1)

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

No.	Position categories (SA-BIS) with the option to use external ratings	Rating categories								
		1	2	3	4	5	6	7	Unrate d	Fixed
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, Swiss National Bank, European Central Bank, European Union	-	-	-	-	-	-	-	-	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 raise taxes or their liabilities are entirely and unlimitedly guaranteed by a sovereign entity	-	-	-	-	-	-	-	-	50%
2.3.	Unrated Cantons	-	-	-	-	-	-	-	-	20%
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 specified by the FINMA	-	-	-	-	-	-	-	-	0%
4.	**Banks and securities dealers**									

No.	Position categories (SA-BIS) with the option to use external ratings	Rating categories								
		1	2	3	4	5	6	7	Unrated	Fixed
4.1.	Banks and securities dealers, initial maturity of receivable ≤ 3 months	20%	20%	20%	20%	50%	50%	150%	20%	-
4.2.	Banks and securities dealers, initial maturity of receivable > 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%	-
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	Stock exchanges and clearing houses, provided credit risks are directly related to the delivery of transactions where the central counterparty solely guarantees the execution of the transaction (particularly spot transactions).	-	-	-	-	-	-	-	-	0 %
7.	**Corporates**	20%	20%	50%	100%	100%	150%	150%	100%	-

Appendix 3
(art. 66 para. 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 weightings
		SA-BIS
1.	**Individuals and small businesses (retail positions)**	
1.1.	Retail positions, if the total position value as per art. 49 para. 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 (Pfandbrief)**	
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%
4.	**Subordinated positions**	

4.1.	Subordinated positions to public-law entities with a risk-weighting as per Appendix 2 (SA-BIS) of a maximum of 50%	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 loans as per nos. 3.2 - 3.4 count as non-collateralized	100%
5.2.	Non-collateralized positions with individual value adjustments, if these amount to at least 20% of the outstanding amount	100%
5.3.	Non-collateralized positions adjusted with 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 under Appendix 2, no. 6.2	0%
6.2.	Credit equivalents from call commitments and additional funding commitments	100%
6.3.	Other positions (incl. accrued and deferred items)	100%

Appendix 4
(art. 66 para. 3)

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

<table>
<tr><td rowspan="2"></td><td colspan="3" rowspan="2">Position category equity shares as well as shares in collective investment schemes</td><td>Risk weightings</td></tr>
<tr><td>SA-BIS</td></tr>
<tr><td rowspan="3">1.1.</td><td rowspan="3">Equity shares held as financial assets, or – if the bank applies the de minimis approach – in the trading book</td><td rowspan="3"></td><td>They are traded on a regulated exchange.</td><td></td></tr>
<tr><td>Yes</td><td>100%</td></tr>
<tr><td>No</td><td>150%</td></tr>
<tr><td rowspan="4">1.2.</td><td rowspan="4">Shares in collective investment schemes</td><td>Shares in collective investment schemes authorized for public distribution in Switzerland</td><td>Shares in collective investment schemes where the prospectus offers the daily redemption of shares</td><td></td></tr>
<tr><td>Yes</td><td>Yes</td><td>100%</td></tr>
<tr><td>-</td><td>No</td><td>150%</td></tr>
<tr><td>No</td><td>-</td><td>150%</td></tr>
<tr><td rowspan="3">1.3.</td><td rowspan="3">Shares in real estate funds</td><td colspan="2">They are traded on a regulated exchange.</td><td></td></tr>
<tr><td colspan="2">Yes</td><td>100%</td></tr>
<tr><td colspan="2">No</td><td>150%</td></tr>
<tr><td>1.4.</td><td>Equity shares in industries other</td><td colspan="2">They are traded on a regulated exchange.</td><td></td></tr>
</table>

	than banking, financial and insurance	Yes	100%
		No	150%
1.5.	Equity shares 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 art. 40 para. 2 at 250%.		150 %

Appendix 5
(art. 84 para. 1)

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

Category	Rating	Rate
Central governments and central banks	1 or 2 3 or 4 5 or 6 7 Unrated	0.00% 0.25% (residual term to maturity ≤ 6 months) 1.00% (residual term to maturity > 6 months and ≤ 24 months) 1.60% (residual term to maturity > 24 months) 8.00% 12.00% 8.00%
Qualifying interest rate instruments (art.4 lit. g)		0.25% (residual tern to maturity ≤ 6 months) 1.00% (residual term to maturity > 6 months and ≤ 24 months) 1.60% (residual term to maturity > 24 months)
Other	5 6 or 7 Unrated	8.00% 12.00% 8.00%

Appendix 6

(art. 149)

Amendments to Previous Law

The following ordinances will be amended as indicated below:

1. Collective Investment Schemes Ordinance as of 22 November 2006[16]

Art. 48 para. 3

3 If the fund management company performs other services as per art. 29 of this law, the operational risks arising from these transactions are to be covered by capital using the basic indicator approach as per art. 92 of the CAO dated ...[17].

2. Banking Ordinance as of 17 May 1972[18]

Art. 4 para. 2

2 If an existing corporation is converted into a bank, the fully paid in capital may amount to less than CHF 10m, provided the common equity tier 1 capital as per art. 21 CAO dated ...[19] and taking into account the adjustments stipulated in art. 31-40 CAO reaches this amount. The FINMA decides on such cases on a case-by-case approach.

3. Stock Exchange Ordinance as of 2 December 1996[20]

Art. 22 para. 6

6 For banks the provisions set out in the CAO dated...[21] apply.

Art. 29 para. 3

6 The capital of securities dealers not subject to the Banking Act of 8 November 1934[22] must amount to at least one fourth of the yearly absorbed costs, provided that:

a. the requirements as per art. 42 and art. 43 of the CAO[23] are lower; and

b. the common equity tier 1 capital as per art. 21 of the CAO does not amount to CHF 10m

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16 SR **951.311**
17 SR **952.03**
18 SR **952.03**
19 SR **952.03**
20 SR **954.11**
21 SR **952.03**
22 SR **952.0**
23 SR **952.03**