Market Abuse Practices – Impact of the New Financial Market Regulation

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- **Prohibition of certain capital market transactions**
- **Incorporation of the existing supervisory rules**
- **Safe harbour rules**

1. Introduction

The new Federal Financial Market Infrastructure Act (FinfraG) has provided the framework to ensure transparency and the proper functioning of the securities and derivatives market as well as the equality of investors' treatment.

To achieve this purpose, FinfraG regulates the market abuse practices, such as insider trading and market manipulation, not only from a supervisory perspective but also from a criminal law perspective.

The supervisory rules on the unlawful dealing with insider information and market manipulation under the Stock Exchange Act (SESTA) has been fully incorporated into FinfraG without any substantial changes.

2. Overview of the New Financial Market Regulation

UNLAWFUL DEALING WITH INSIDER INFORMATION

FinfraG, in principle, prohibits certain capital market transactions or acts that are based on insider information. In particular, acts are unlawful if:

- a person, who knows or should know about the insider relevance of the information, exploits this information to acquire or to sell securities or who recommends to another person to acquire or to sell securities admitted to trading on a stock exchange or similar platform in Switzerland or to use financial instruments derived from those securities;

- a person, who knows or should know about the insider relevance of the information, discloses such information to another person.

As FinfraG incorporates the existing supervisory rules without any substantial changes, insider information means any confidential information, which, if disclosed to the public, will significantly effect the securities' price admitted for trading on a Swiss stock exchange or an alternative trading platform. In other words, such information must be price-sensitive.

MARKET MANIPULATION

FinfraG also prohibits certain capital market transactions or acts that distort the free market's pricing mechanism in relation to securities. In particular, acts are unlawful if:

- a person publicly disseminates information, which gives false or misleading signals to the market regarding the supply, demand, or price of securities admitted to trading on a stock exchange or similar platform in Switzerland; or
- a person carries out transactions or executes purchase or sales orders, which gives false or misleading signals regarding the supply, demand, or price of securities admitted to trading on a stock exchange or similar platform in Switzerland.

Notably, FinfraG's supervisory rules cover various manipulative transactions; for example, such as "Painting the Tape", "Wash Trades", or "Squeezing". Thus, the supervisory provisions have a wide scope of application and they include several safe harbor rules for the market participants.

3. Key Points for Market Participants

FinfraG's scope of application are wide and thus cover various dealings in relation to insider trading and manipulative practices.

Under the new regulatory rules on market abuse, the Swiss Federal Council also adopts an ordinance that may provide for certain safe harbor rules for market participants. Like under SESTA, the safe harbor rules may very likely permit certain transactions, for example, in relation to share buy-backs or price stabilization measures upon public offerings and communication of inside information, for example, in relation to performing statutory or contractual duties.

Against this background, market participants should consider FinfraG's broad scope and be aware of the exemptions from prohibited capital market transactions and communication to ensure proper business conduct.

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