

Allocation Directives for the New Issues Market

Guidelines of the SBA | September 2023

1. Purpose

Art. 1

By stating the requirements in terms of objectivity and clarity, the purpose of these Directives is to ensure the highest standards of fairness and transparency in the allocation process, while taking the interests of the various parties involved (in accordance with Art. 3) into account, particularly in the event of oversubscription.

Art. 2

These Directives represent a professional code of conduct and do not affect the relationship under civil law between banks and their clients.

2. Scope of Application

Art. 3

The following parties are usually involved in the placement of securities:

- the issuer or the selling owner of the securities (hereinafter referred to as “the issuer”),
- the (potential) subscribers or investors (professional and institutional clients, as well as private clients),
- the banks or investment firms acting as syndicate banks,
- third-party banks that deal directly with investors (syndicate banks and third-party banks, hereinafter referred to as “banks”),
- market participants in general.

Art. 4

These Directives are applicable to all public offers (pursuant to FinSA) for securities in Switzerland in the form of equity securities pursuant to Art. 3 lit. a No. 1 FinSA and debt instruments pursuant to Art. 3 lit. a No. 2 FinSA (particularly shares, participation certificates and dividend rights certificates, as well as bonds and convertible and warrant bonds). They do not apply to structured products.

Art. 5

¹ These Directives are applicable to all banks domiciled in Switzerland, including branch offices and subsidiaries of foreign banks that engage in public offers in Switzerland. The latter may not circumvent these Directives by resorting to the banking and financial services of their head offices and parent companies, branch offices and subsidiaries outside Switzerland.

² The decision regarding the allocation of equity securities lies primarily with the issuer. These Directives do not apply insofar as the issuer makes direct allocations to individual investors. If the issuer is advised in this regard by the lead syndicate bank, the fairness requirements of these Directives must be taken into account in the provision of advice.

3. Principles

3.1 General

Art. 6

¹ The bank must regulate and document the allocation procedure for public offers in a manner which ensures that the procedure:

- is based on objective criteria (see Art. 7),
- can be verified by the bank’s competent bodies,
- is transparent to the external auditors and the supervisory authorities.

² The details of the allocation procedure may take into account an abridged time frame (e.g. to accommodate the shorter time windows in the case of bonds), subject to the principles stipulated in Art. 6 para. 1.

³ Various clients or client groups may be treated in a different way within a set of reasonable interest parameters (see also Art. 7).

⁴ There is no legal claim to an allocation.

⁵ Allocations against the promise of certain considerations are deemed prejudiced and are therefore prohibited; such considerations including in particular:

- the pledge to purchase more securities after the placement in the market (“laddering”),
- the payment of special commissions or commission premiums (“quid pro quo agreements”),
- the pledge or specific offer of business orders or propositions to the allocating bank (“spinning”).

3.2 Allocation Criteria

Art. 7

¹ Allocations must be fair and impartial. Any differing treatment of individual investors vis-à-vis others may occur solely on the basis of objective reasons. Allocation procedures that ensure the fair and impartial treatment of investors are based in particular on the objective criteria listed below, or combinations thereof:

- size of orders (incl. caps and floors),
- proportion of subscriptions,
- time of subscription order,
- subscription rate offers,
- regional aspects,
- expected holding period by the investor,
- investors’ portfolio structure,
- the bank’s improved quality, position and placement power in the investors’ medium and long-term interest,
- length and significance of the client relationship,
- casting lots, i.e. random allocation,
- other objective criteria.

² For syndicate banks, the following objective allocation criteria also apply in particular:

- quality of feedback before and during the offer,
- allocations at the issuer’s request (incl. friends and family),
- allocations at the issuer’s request with regard to the investor structure.

3.3 Allocation to Nostro Account

Art. 8

¹ Syndicate banks may, in principle, make allocations to their nostro account.

² In the case of equity securities, syndicate banks may only allocate a reasonable stake of a public offer to their nostro account (own holdings or trading portfolio, in particular for the purpose of market making, stabilisation or for other objective reasons) in consultation with the issuer. The definition of a reasonable stake in terms of allocation to the nostro account depends, for example, on the liquidity requirements during the initial trading days, the subscription volume and its quality, or the size of the transaction.

³ If a syndicate bank is unable to place its equity securities or debt instruments in full due to a lack of customer demand, it may hold the securities in its nostro account or sell them in the market (subject to contrary arrangements).

4. General Requirements and Supervision

Art. 9

Taking into account its size and role, the bank must establish the necessary internal rules and take appropriate measures to ensure compliance with these Directives.

5. Final Provisions

Art. 10

¹ The revised version of these Directives comes into force on 1 September 2023.

² Institutions which have completed the changeover to FinSA before the end of the transition period and have notified their audit company thereof in accordance with Art. 106 para. 2 FinSO may apply these Directives from this date.

³ A transition period of 6 months will apply if documentation needs to be updated as a result of these Directives.