Homburger

International Structured Products Forum 2026

Legal and Regulatory Developments in Switzerland

Daniel Haeberli

September 1, 2026

Pending Financial Market Regulatory Projects

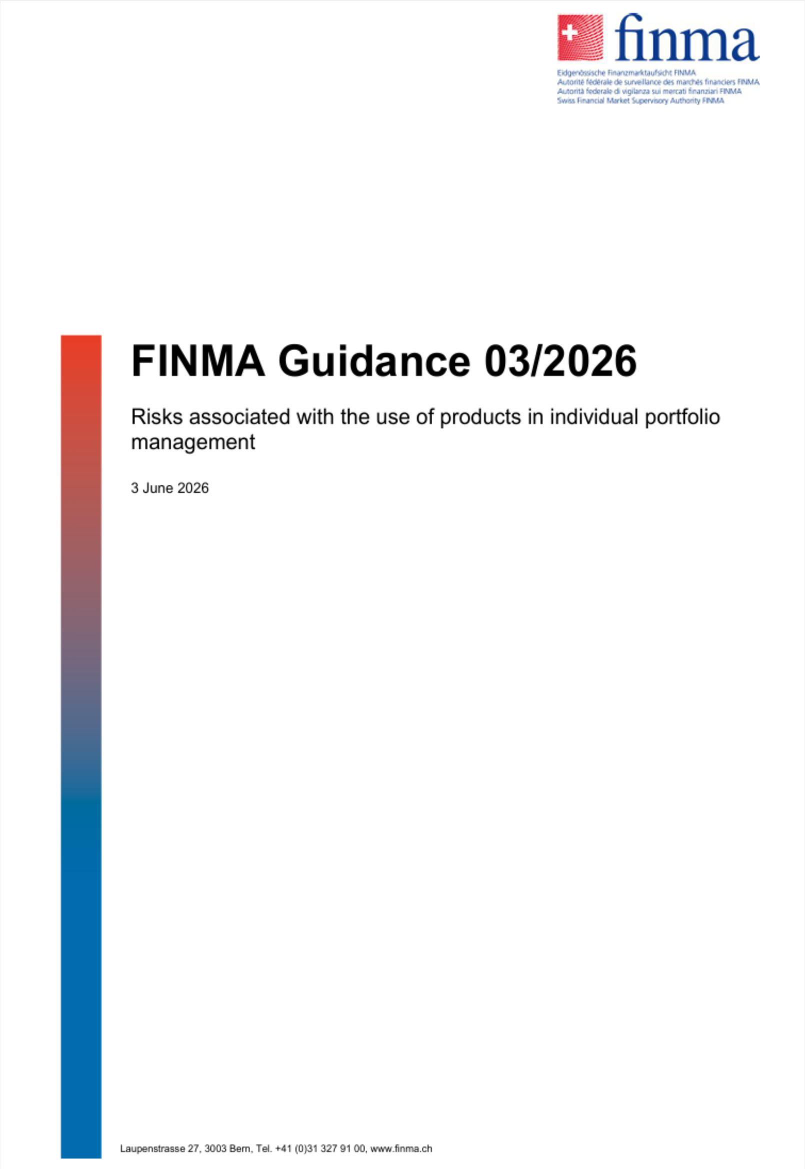
- Currently no pending Swiss regulatory projects targeted at structured products, but FINMA issued guidance on FinSA conduct of business rules referring to AMCs
- Regulatory projects at national level pending with the Swiss Federal Administration:
  - Too big to fail regulation- Swiss Federal Council has launched consultation on amendments to Banking Act

Too big to fail regulation

- In April 2024, the Swiss Federal Council published its report on banking stability ("TBTF Report")
  - The Federal Council lists 22 regulatory measures in the following six areas with the aim to increase financial stability:
    - Corporate Governance and Prudential Supervision,
    - Capital Requirements,
    - Early Intervention and Recovery,
    - Ensuring Liquidity in a Crisis,
    - Resolution Planning, and
    - Crisis Organization and Cooperation between Authorities
- In June 2025, the Swiss Federal Council publishes its report on lessons drawn from Credit Suisse crisis
- In April 2026, the Swiss Federal Counsel has adopted the dispatch on amending the Banking Act to introduce stricter capital requirements for systemically relevant banks
- On August 12, 2026, the Swiss Federal Counsil launches the consultation on amendments to the Banking Act providing for measures relating to corporate governance, supervision and crisis preparations.

August 2026 – Amendments to the Banking Act proposed by the Swiss Federal Council

- Measures provided for in the amendments to the Banking Act
  - Introduction of senior manager regime for complex banks
    - Banks must define in a document the responsibility of its senior managers to ensure that responsibilities are clearly defined and assigned to specific individuals, allowing for targeted sanctions in case of misconduct
    - Sanctions
      - Claw back, cancellation or reduction of bonus payments
      - Withdraw recognition of proper business conduct
      - Prohibition from practicing a profession
  - Additional powers for the FINMA
    - Early intervention measures allowing FINMA to order measures earlier (i.e., before risk of insolvency)
    - Administrative sanctions allowing FINMA to issue fines to non-compliant financial institutions and to communicate more actively
- Consultation runs until November 19, 2026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FINMA Guidance 03/2026

Risks associated with the use of products in individual portfolio management

3 June 2026

Laupenstrasse 27, 3003 Bern, Tel. +41 (0)31 327 91 00, www.finma.ch

- FINMA Guidance highlights the regulatory expectations regarding the use of financial products in discretionary portfolio management and investment advisory services
  - Guidance is primarily addressed at portfolio managers using complex, high-risk or illiquid products, such as foreign funds and AMCs
  - FINMA identifies shortcomings in respect of, inter alia,
    - management of conflict of interest when using in-house products
      - where a conflict of interest cannot be avoided, financial service provider must ensure that clients do not suffer any disadvantage (implement product selection process and avoid risk concentration)
    - suitability assessment
      - ongoing review of whether product is suitable and appropriate throughout the business relationship
- Supervisory focus on conduct of business rules under FinSA

Federal Act on Financial Services (Financial Services Act, FinSA)

950.1

Bundesgesetz über die Finanzdienstleistungen

(Finanzdienstleistungsgesetz, FIDLEG)

vom 15. Juni 2018 (Stand am 1. März 2024)

Die Bundesversammlung der Schweizerischen Eidgenossenschaft,

gestützt auf die Artikel 95, 97, 98 und 122 Absatz 1 der Bundesverfassung[1],
nach Einsicht in die Botschaft des Bundesrats vom 4. November 2015[2],

beschliesst:

[1] SR **101**

[2] BBl **2015** 8901

1. Titel: Allgemeine Bestimmungen

Art. 1 Zweck und Gegenstand

[1] Dieses Gesetz bezweckt den Schutz der Kundinnen und Kunden von Finanzdienstleistern sowie die Schaffung vergleichbarer Bedingungen für das Erbringen von Finanzdienstleistungen durch die Finanzdienstleister und trägt damit zur Stärkung des Ansehens und der Wettbewerbsfähigkeit des Finanzplatzes Schweiz bei.

[2] Dazu legt es die Anforderungen für die getreue, sorgfältige und transparente Erbringung von Finanzdienstleistungen fest und regelt das Anbieten von Finanzinstrumenten.

- FinSA introduces conduct of business rules for financial service providers, such as
  - Information duties: financial service provider must give information about the financial service to be provided and associated risks when acting as portfolio manager.
  - Appropriateness and suitability tests: financial service provider must perform an appropriateness and suitability test when acting as portfolio manager.
  - Documentation and accountability: Service providers must document advisory discussions and the needs of their clients.
  - Transparency on compensation: Third-party payments (retrocessions) must be fully disclosed and, surrendered to the client unless explicitly waived.
  - Conflict of interest: financial service providers must identify, avoid, and explicitly disclose conflicts of interest.
- FINMA can take enforcement actions against individuals who breach conduct of business rules.

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Rundschreiben 2025/2
Verhaltenspflichten nach FIDLEG/FIDLEV

Umsetzung der Verhaltenspflichten nach FIDLEG/FIDLEV bei Finanzdienstleistern

Referenz:	FINMA-RS 25/2 „Verhaltenspflichten nach FIDLEG/FIDLEV“
Erlass:	31. Oktober 2024
Inkraftsetzung:	1. Januar 2025
Rechtliche Grundlagen:	FINMAG Art. 7 Abs. 1 Bst. b FIDLEG Art. 3, 8, 9, 11, 12, 19, 25, 26 FIDLEV Art. 3, 7, 9, 10, 12, 16–17, 24–28, 29

Adressaten (indikative Angaben)

BankG				VAG			FINIG					
Banken	Finanzgruppen und -kongl.	Personen nach Art. 1b BankG	Andere Intermediäre	Versicherer	Vers.-Gruppen und -Kongl.	Vermittler	Vermögensverwalter	Trustees	Verwalter von Koll.vermögen	Fondsleitungen	Kontoführende Wertpapierhäuser	Nicht kontoführ. Wertpapierhäuser
X							X		X	X	X	X

FinfraG						KAG						GwG		Andere	
Handelsplätze	Zentrale Gegenparteien	Zentralverwahrer	Transaktionsregister	Zahlungssysteme	Teilnehmer	SICAV	KmG für KKA	SICAF	Depotbanken	Vertreter ausl. KKA	Andere Intermediäre	SRO	SRO-Beaufsichtigte	Prüfgesellschaften	Ratingagenturen

- FINMA issues Circular on Conduct of Business Rules under the FinSA / FinSO; Circular entered into force on January 1, 2025
- Purpose of the circular is to create transparency and legal certainty regarding FINMA's supervisory practice on selected aspects of the rules of conduct under the FinSA
- The circular mainly specifies the way in which transparency is to be created for clients so that they can make informed investment decisions, in particular
  - transparency about the type of financial service
  - transparency about the risks associated with financial instruments
  - transparency regarding compensation from third parties and retrocession
  - transparency regarding conflicts of interest, especially when using in-house products
- FINMA circulars merely serve to create transparency regarding FINMA's supervisory practice and to clarify questions of interpretation but must not introduce new obligations that are not provided for in the FinSA or FinSO

SSPA AMC Recommendations

SSPA

Recommendations regarding Actively Managed Certificates (SSPA AMC Recommendations)

1. Introduction

"Actively Managed Certificates" ("AMCs") are structured products whose underlying asset is managed on a discretionary basis during the term of the product in accordance with a specific investment strategy. The issuer (synthetically) implements its investment strategy or an investment strategy proposed by a third party (the "AMC Advisor"), whereby the AMC Advisor may, at its discretion, compose and restructure the underlying asset in accordance with the framework of the investment strategy. The performance of an AMC therefore depends on the AMC Advisor's ability to (synthetically) implement the investment strategy. Investors must be informed transparently in the product documentation on the investment strategy, its implementation by the AMC Advisor and the costs associated with the AMC. 1

As with other structured products, the investor in an AMC has no recourse to the underlying asset, but against the issuer of the AMC or the guarantor to the extent of its guarantee. Investors must be made aware of the issuer risk in the product documentation. 2

These recommendations constitute minimum requirements for the appointment of AMC Advisors in connection with the issuance of AMCs and for ensuring transparency with regard to the investment strategy, its implementation and the associated costs. 3

- AMC Recommendations establish a minimum standard for
  - appointing an AMC Advisor ("Know your AMC Advisor")
  - ensuring transparency with regard to the investment strategy and its implementation; and
  - disclosure of fees charged at AMC-level and prohibition of double dipping (no compensation for or in connection with any underlying component)
- AMC Recommendations entered into force in 2020

New SSPA Guidelines on Tracker Certificates linked to non-tradable Underlyings

SSPA

SSPA Guidelines on Tracker Certificates linked to non-tradable Underlyings

Version: May 13, 2025

I. Introduction

Art. 1

1 Structured products of the category "Tracker Certificate" (1300) according to the SSPA Swiss Derivative Map that are linked to non-tradable underlyings or underlyings with limited tradability[1] must be distinguished from Tracker Certificates that are linked to tradable underlyings.

2 With these guidelines (the "**Guidelines**"), the Swiss Structured Products Association SSPA (**SSPA**) aims to set a minimum transparency standard for (i) identifying and labeling Tracker Certificates that are linked to non-tradable underlyings and (ii) disclosing the risks resulting from such non-tradable underling(s).

3 The obligation to label Tracker Certificates that are linked to non-tradable underlyings shall highlight the potential lack of an established market or secondary trading platform for such underlyings and the risk disclosure obligation shall enable investors to make an informed investment decision.

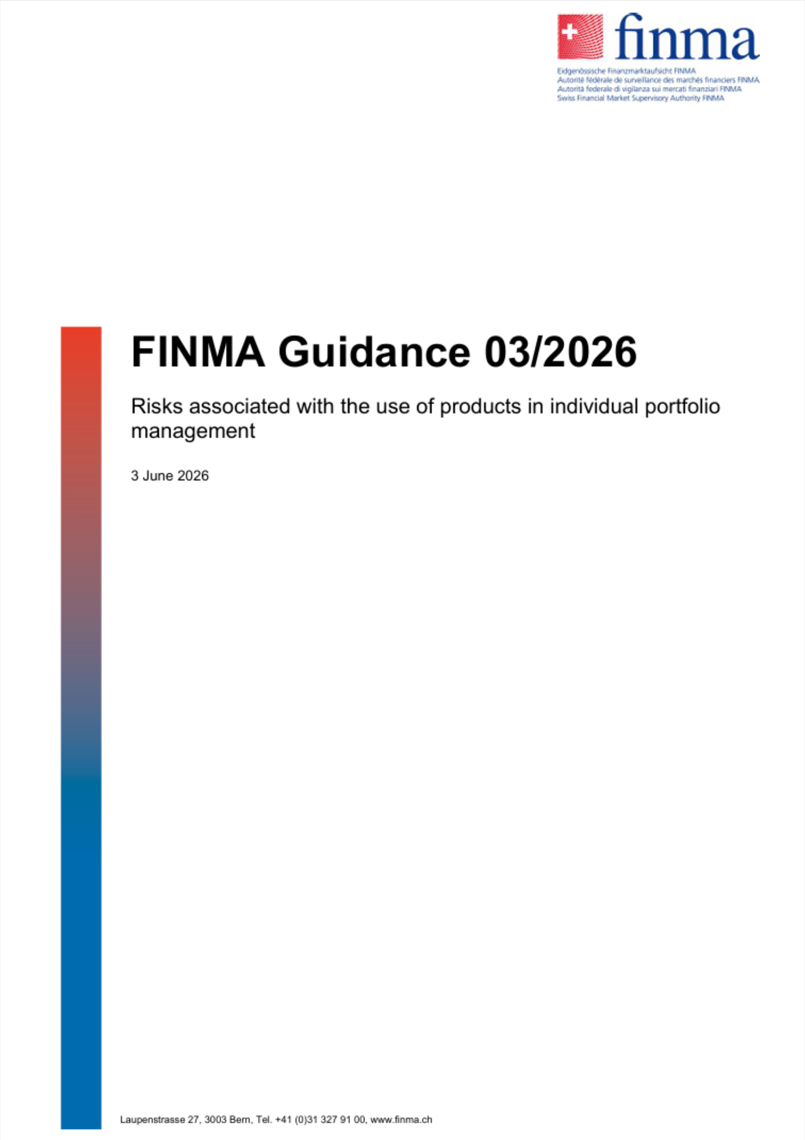
II. Purpose, scope and nature of the Guidelines

Art. 2

4 The purpose of these Guidelines is to increase transparency in respect of Tracker Certificates that are linked to non-tradable underlyings by labeling such financial instruments and informing investors about the risk of investing in such financial instruments.

5 These Guidelines are considered to be "best practice" and may be deviated from, provided that such deviation can be justified on a case-by-case basis.

- Increase transparency in respect of Tracker Certificates linked to non-tradable underlyings
- Labeling obligation
  - Tracker Certificates linked to non-tradable underlyings should be specifically labeled in order to make them better distinguishable from "traditional" Tracker Certificates and highlight the potential lack of an established market or secondary trading platform
  - "Product linked non-tradable / illiquid Underlyings"
- Risk disclosure
  - Description of additional risks resulting from non-tradable underlying(s), such as lack of liquidity, absence of a market, valuation challenges, regulatory or legal transfer restrictions
- Guidelines entered into force on July 1, 2025, with grandfathering of Tracker Certificates issued prior to January 1, 2026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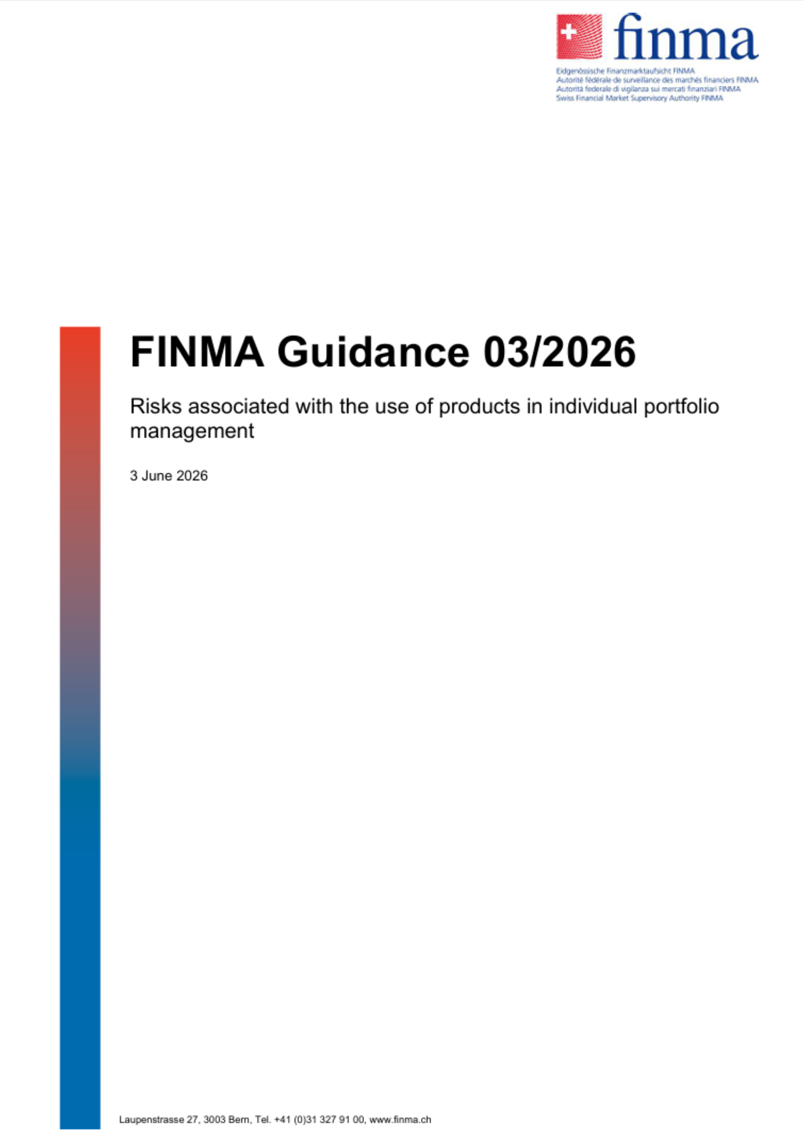
— Conclusion and take away 1/2

- FINMA Guidance is not targeted at structured products as such but rather at portfolio managers using complex, high-risk, illiquid products, such as AMCs.
- FINMA has a focus on compliance with the conduct of business rules under the FinSA and will, ultimately, enforce compliance by opening enforcement proceedings against non-complying financial services providers.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- Conclusion and take away 2/2
  - Banks acting as issuers of structured products do not provide a financial service within the meaning of the FinSA and are therefore not subject to the conduct of business rules under the FinSA.
  - Banks acting as issuers are not responsible for distributors to comply with the conduct of business rules under the FinSA; however, banks must ensure proper business conduct and manage their (reputation) risks
    - Documentation of relationship with distributor is important
      - On boarding process (due diligence questionnaire; "Know your Distributor")
      - Distribution Agreement
      - Periodic review and assessment of relationship

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— SSPA's next steps

- Review and, if necessary, amend SSPA AMC Recommendations to better address issues raised by FINMA
- Reach out to FINMA to inform about actions taken by the SSPA (i.e., issuance of AMC Recommendations and Guidelines on Tracker Certificates with non-tradable Underlyings) and ask whether FINMA expects any (further) actions by the SSPA
- Continue discussion in SSPA Expert Group Legal & Regulation

Homburger

Thank you for your attention.

Homburger AG
Prime Tower
Hardstrasse 201
CH-8005 Zürich

Daniel Haeberli
daniel.haeberli@homburger.ch
T +41 43 000 16 33
M +41 78 805 49 36