

### Update on the New Rules on Stock Exchange Offences and Market Abuse

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In CapLaw-2010-2, we presented a preliminary overview on the draft bill with respect to the revision of the Stock Exchange Act that the Federal Council had sent into consultation until 30 April 2010. The initial consultation draft has proposed more effective and efficient provisions to sanction misconduct in the market, in particular, with a view to developments in international regulations for securities markets. At its meeting on 8 September 2010, the Federal Council took note of the findings received in connection with the consultation procedure and instructed the Federal Department of Finance (FDF) to prepare a message (*Botschaft*) by spring 2011 to amend the Stock Exchange Act.

In terms of content, the tests for criminal prosecution of insider trading will need to be revised. In addition, new first degree incriminated conduct on insider trading and market manipulation that qualify as crimes (*Verbrechen*) are to be introduced. The criminal appeal procedures will be streamlined by transferring the authority to prosecute and assess stock exchange offences to the Office of the Attorney General of Switzerland (OAG) and the Federal Criminal Court (FCC). The regulatory ban on market manipulation will also apply to unregulated entities, such as hedge funds and private investors; FINMA will receive authority to sanction any violations within the scope of administrative proceedings.

Some issues, such as how far market supervision should be extended to unregulated entities or the amount of fines afforded to a breach of shareholdings disclosure obligations, require an in-depth examination. The Federal Council has instructed the FDF to carry out further investigations and to make a proposal on the further course of action by the end of 2010.

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