

Press release

Date: 18 February 2009

Embargo:

FINMA makes possible settlement between UBS and the US authorities and announces the results of its own investigation

FINMA welcomes the settlement reached between UBS and the US authorities thereby avoiding the looming threat of formal criminal charges being filed against the bank in the USA. In order to avert the drastic consequences such charges would have for UBS and the stability of the Swiss financial system, FINMA has ordered that a limited quantity of client data be handed over to the US authorities immediately. FINMA is also publishing the results of the investigation carried out by the Swiss Federal Banking Commission (SFBC) in relation to this matter. The SFBC ruling reprimands UBS for a severe breach of certain provisions of the Swiss Banking Act by individual staff members and serious shortcomings in dealing with the legal risks associated with its business with US clients.

Berne, 18 February 2009 – Thanks to the intervention of FINMA the investigation by the US Department of Justice (DoJ), which has been ongoing for over a year, could be concluded with a settlement that also covers the proceedings of the US Securities and Exchange Commission (SEC). It has not been possible to reach full agreement with the US Internal Revenue Service (IRS). The US authorities accused UBS of having actively helped American clients to defraud the US tax authorities and of having provided securities investment advice to US investors without a licence. Despite the cooperation displayed by the bank and the Swiss authorities, and the pending administrative assistance proceedings of the Swiss Federal Tax Administration, the DoJ made a settlement conditional on the immediate handover of a limited quantity of client data. Through this settlement the threatening institution by the DoJ of criminal charges against the bank could be avoided.

Such charges could have had drastic consequences for UBS and its liquidity situation and ultimately put its existence at risk. To avert this threat, FINMA ordered UBS to surrender a limited quantity of client data and handed it over to the US authorities. This client data is the subject of the pending request for administrative assistance that had been submitted to the Swiss Federal Tax Administration; as a result of the settlement this request will now be withdrawn by the US authorities. FINMA has taken these protective measures under Articles 25 and 26 of the Swiss Banking Act to protect the

interests of creditors and investors of UBS clients and to ensure the stability of the Swiss financial system.

Results of the SFBC investigation

FINMA is also publishing a brief report of the results of the investigative proceedings conducted by the SFBC between May and December 2008, which ended with the issue of an order. The main topic of the proceedings was the question of whether UBS adequately captured, limited and supervised the legal and reputational risks associated with the implementation of the Qualified Intermediary Agreement (QIA) and the US supervisory restrictions on the cross-border provision of financial services.

The SFBC found that in a limited number of cases individual members of UBS staff acted contrary to the provisions of the QIA. They accepted written statements obtained from clients for US tax purposes of which they knew or should have known did not accurately reflect the US tax status of these clients. In addition, for an extended period of time individual members of UBS staff ignored US supervisory restrictions requiring a licence for the provision of cross-border financial services to US investors. The SFBC concluded that in so doing UBS had severely breached its obligations under the Swiss Banking Act to at all times remain fit and proper as well as adequately organized. Specifically, the manner in which it captured, limited and supervised the legal risks associated with the cross-border business with US private clients was ultimately deficient.

However, the SFBC found that UBS was not negligent in the implementation of the QIA. The SFBC came to the conclusion that the senior management of UBS did not have any knowledge of the fraudulent manoeuvres to the detriment of the US tax authorities or of the fact that individual members of UBS staff were failing to comply with supervisory regulations in direct breach of internal directives.

The SFBC has imposed a sanction on UBS by banning it from engaging in the cross-border business with private clients resident in the USA in the future. The bank already announced of its own accord in summer 2008 that it withdraws from the cross-border business with private clients resident in the USA. The order by the SFBC underpins this step from a supervisory perspective. The SFBC has also required the bank to suitably capture, limit and supervise the legal and reputational risks generally inherent in the cross-border provision of services. FINMA will monitor the way in which the EBK order is put into practice.

The brief report by FINMA on the SFBC investigation can be found at <http://www.finma.ch/d/aktuell/Documents/kurzbericht-ubs-x-border-20090218-e.pdf>.

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