

Press release

Date: 21 January 2010
Embargo: -

FINMA appeals Federal Administrative Court ruling

The FINMA Board of Directors has decided to refer the Federal Administrative Court ruling on the order to release client data to the US authorities to the Federal Supreme Court. In doing so, FINMA is using the opportunity to have Switzerland's supreme court pass judgment on the extent of the Financial Market Supervisory Authority's legal latitude in crisis situations.

On 5 January 2010 the Federal Administrative Court, as the court of first instance, ruled that the order issued by FINMA on 18 February 2009 to disclose client data to the US authorities was unlawful. In its ruling the court stated that the client data should not have been disclosed on the basis of the insolvency provisions of the Swiss Banking Act.

According to financial market legislation, FINMA is responsible for ensuring the general functioning of the financial markets. Mindful of this responsibility, the FINMA Board of Directors, having consulted the Federal Council, in February 2009, ordered the disclosure of client data as it considered this as the only way to avoid the real threat of the US authorities starting proceedings against the bank, which would have threatened its existence and seriously worsened its liquidity situation, in turn impacting all the bank's clients and the whole Swiss economy.

FINMA based its decision on Articles 25 and 26 of the Swiss Banking Act, which give it the authority and obligation to impose unspecified preventive measures if it has reasonable grounds to suspect serious liquidity problems. These measures may affect individual creditors' rights in the same way as payment moratoriums or payment bans which, unlike the preventive measures, have been specified in law. These measures may be imposed unilaterally and are not contingent on restructuring or bankruptcy procedures.

In referring the matter to the Supreme Court, FINMA is using the opportunity to have Switzerland's supreme court pass judgment on the extent of the Financial Market Supervisory Authority's legal latitude in crisis situations.

Contact

Dr Alain Bichsel, Head of Communications, Phone +41 (0)31 327 91 70, alain.bichsel@finma.ch