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FINMA Enforcement Policy

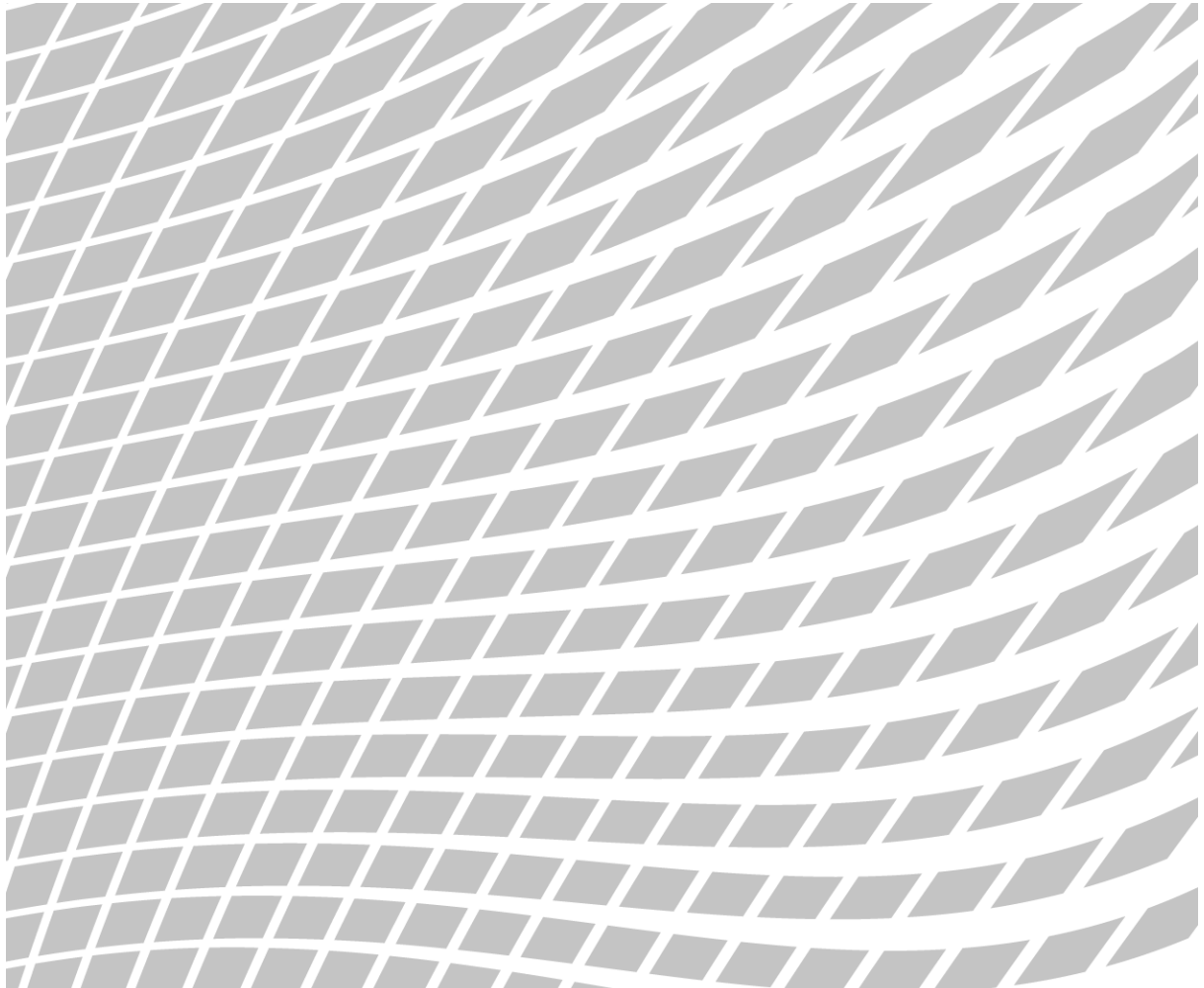


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Principle 1 FINMA enforces supervisory law, where needed

Where necessary, FINMA enforces supervisory law using measures available under administrative law. It identifies infringements of the law and other irregularities and implements corrective measures as well as sanctions to the extent that it is authorised to do so by law, thereby supporting and supplementing its monitoring of supervised persons and entities and the market.

Principle 2 Ensuring the integrity of the market as mandated by law

Investors, insured persons, creditors, issuers, supervised persons and entities, and the general public have a right to expect integrity in markets and in market participants. This right is codified in supervisory law. By enforcing this law, FINMA executes its mandate to supervise awarded by the Financial Market Supervision Act (FINMASA) and the financial market laws (the Banking Act, the Insurance Supervision Act, the Insurance Contract Act, the Stock Exchange Act, the Collective Investment Schemes Act, the Anti-Money Laundering Act and the Mortgage Bond Act).

The aim of professional and carefully considered enforcement is to combat misuse, eradicate irregularities and prevent damage to investors, insured persons, creditors, supervised persons and entities, and the general public, thereby enhancing the credibility of supervision in the financial market and amongst the general public in Switzerland and abroad.

Principle 3 Enforcement with measured judgement

The outcome of the FINMA's enforcement proceedings can have a severe impact on the legal positions of the parties concerned. Before FINMA instigates such proceedings, therefore, it considers all the relevant circumstances carefully and explores alternative options.

It looks at criteria such as the dangers for investors, insured persons, creditors, supervised persons and entities, the reputation of the financial centre, and the seriousness of the violation of supervisory law, as well as the time of its occurrence. It also looks at the functions held by those responsible for the violation. Further important factors, however, include available resources, public expectations and the (corrective) measures that have been taken by the parties concerned.

Proceedings may only be initiated once approval has been granted by a member of FINMA's Extended Executive Board.

Principle 4 Rapid and focussed proceedings

FINMA conducts its proceedings rapidly and determinedly, i.e. normally within six to twelve months or even within a shorter period. This is in its own best interests, and generally also in those of the parties involved. It opposes any attempts by the parties to slow down proceedings. It continually checks whether the object of the proceedings can or must be restricted. In cases where there is considerable media interest, in particular, the general public and the parties involved expect a speedy conclusion to the proceedings. FINMA takes this into account, although the legal requirements granting due process always take precedence.

Principle 5 Fair and transparent proceedings

FINMA carries out its proceedings fairly and rigorously safeguards the parties' statutory procedural rights, such as their right to access records and their entitlement to a legal hearing. It informs the parties concerned that proceedings have been instigated, keeps them updated as to the progress of the proceedings, and notifies them should proceedings be discontinued. In exceptional circumstances, it may delay providing such information in the interests of the proceedings. FINMA refrains from harassment in all its forms.

Principle 6 Reluctance in proceedings against individuals

FINMA exercises caution about the initiation of proceedings against individuals. FINMA concentrates on addressing the more significant irregularities committed by supervised persons or entities, except in the case of market supervision and disclosure issues, that base on misconduct by individuals.

Measures demanding changes in personnel may be required if supervised persons or entities fail to take necessary steps of their own accord or if activities are being examined for which the authorization stipulated by financial market legislation is missing (applicability proceeding).

Principle 7 No proceedings against individuals no longer holding a senior position

FINMA does not normally initiate supervisory proceedings against any individual who has possibly been liable for a serious violation of supervisory law in his/her position of responsibility if said individual is no longer active in the sector FINMA supervises. This policy ensures the best use of FINMA's resources and avoids costs for the parties concerned. Nevertheless, if there is sufficient likelihood of an individual acquiring a senior position in the sector supervised, he or she may ask that, where necessary, FINMA conduct proceedings to investigate any outstanding allegations against him or her and

that it make a determination in respect of the position in question. Such persons are notified by letter (undertaking letter) from the FINMA as to these principles, which are also published on its website.

Principle 8 Measured use of prohibitions on practising a profession

FINMA "may" prohibit individuals responsible for "serious violations of supervisory provisions" from practising their profession and hence ban them from "acting in a management capacity" at "any person or entity subject to its supervision" for up to five years (Art. 33 FINMASA). FINMA carefully considers the use of this measure that has a severe impact on the individual concerned within the margin set out by law. It takes account of the criteria stipulated in Principle 3 for the initiation of proceedings. The position of the persons concerned is particularly significant. FINMA deems the risk to be higher, if representatives of the highest levels of management are responsible for a serious violation. However, it must be possible to prove their responsibility in a concrete and legally valid manner. This requires careful examination of the evidence.

If FINMA is considering issuing instructions for the removal of a person from the top level of a company's management (proceedings on the guarantee of proper business conduct), it will not necessarily connect this with any proceedings to prohibit said person from practising his/her profession. Nonetheless, if FINMA has prohibited a person from practising his/her profession, FINMA reserves the right to examine whether this person can guarantee proper conduct of business affairs as a member of the top level of management of a supervised person or entity, even after the prohibition has expired.

Principle 9 Selective use of FINMA agents

As far as appropriate and possible, FINMA mandates third-party specialists to clarify the facts of supervisory issues on site or to carry out other tasks, such as implementing measures stipulated by FINMA. These agents (e.g. investigators and liquidators) are selected in a transparent process and FINMA closely monitors their activities as well as the resulting costs that have to be covered by the parties involved.

Principle 10 Internal separation of functions and organisation

Wherever possible, FINMA ensures that the persons engaged in the ongoing monitoring of institutions are not the same as those responsible for enforcement proceedings against those institutions.

FINMA ensures that all organisational units follow a coherent standard in their proceedings. It provides training for the persons in charge of enforcement in order to maintain a professional standard. It draws the conclusions necessary for supervisory activities from its enforcement activities.

With the exception of orders controlling proceedings (e.g. preliminary measures and asset realisation), enforcement rulings are made either by members of the enforcement committee comprising members of the Executive Board or, in cases with far-reaching implications, by the Board of Directors.

Principle 11 Cooperation with criminal and other authorities

Supervisory law is the overriding law for FINMA. FINMA therefore does not wait for the outcome of criminal proceedings before carrying out its own investigations regarding suspected violations of supervisory law. Likewise, it does not suspend its own proceedings if parallel criminal proceedings are initiated.

FINMA supports the work of the criminal authorities as far as possible and in accordance with its resources e.g. in market supervision and the subordination process. It coordinates its proceedings with the criminal authorities as far as possible and necessary except where such coordination unacceptably delays its proceedings or jeopardises them.

FINMA decides in each individual case when to notify the criminal authorities and whether to postpone its investigation until the criminal authorities have finished theirs. FINMA expects equally cooperative conduct from the criminal authorities within the margins of the provisions in the applicable code of criminal procedure.

In accordance with its legal obligation, FINMA files criminal complaints against any parties where there are reasonable grounds for suspecting financial market offences pursuant to the Swiss Criminal Code, reporting requirements pursuant to the Stock Exchange Act are violated, or unauthorised activity is detected.

FINMA cooperates with other Swiss authorities and foreign authorities supervising the financial market within the legal framework in order to help them fulfil their mandates. At the same time, it expects equivalent cooperation from these authorities. FINMA reluctantly authorises FINMA bodies and employees to make statements as witnesses in proceedings before other authorities.

Principle 12 Cooperation with self-regulatory organisations

To enforce supervisory law, FINMA works closely with self-regulatory organisations that have a state sanctioned supervisory function. Within the scope authorised by the applicable provisions, it exchanges information with self-regulatory organisations that they need in their role as self-regulators to impose sanctions on their members.

Principle 13 Restrained communication on enforcement

FINMA does not generally provide any information on individual proceedings, nor does it confirm, deny or comment on its investigations or individual actions and steps, even when invited to do so. FINMA reserves the right, however, to correct information that is wrong or misleading.

If FINMA decides to inform the media of certain proceedings, in principle, it does so actively. In such cases, it generally gives the name of the supervised persons and entities involved and states the object of the proceedings. It exercises restraint in disclosing the names of private individuals, for reasons of privacy law. Even in cases where it actively provides information, it normally provides no details of individual aspects of the proceedings such as their status, the various steps involved or the exact schedule. If FINMA has issued information on certain proceedings, it will generally provide information regarding their outcome on an active basis immediately following its decision. If it discontinues the proceedings, it can decide not to issue any information if those concerned so request.

In cases of media interest, FINMA notifies the parties concerned of its information policy. Media releases are submitted to the parties shortly before general release. Once decisions have been taken regarding takeover offers on listed companies, FINMA immediately issues information on the measures taken and the reasons for them, to the extent that they are of significance to participants in the market. It also decides on a case-by-case basis whether to impose the publication of the legal ruling including personal details in order to achieve its supervisory purposes.

FINMA communicates threatened bankruptcy orders and protective measures that have a direct impact on supervised or unsupervised creditors of institutions immediately upon their being issued.