



Annual Report 2002

Summary

Legal basis

In 2002, the Control Authority, as the supervisory authority of financial intermediaries in the non-banking sector further substantiated the Money Laundering Act with regard to this sector. A significant milestone in this process was reached with the enactment of the Control Authority Ordinance concerning Financial Intermediation in the Non-Banking Sector as a Commercial Undertaking, which clearly defines the distinction between non-professional and professional activities. Only the latter are subject to the Money Laundering Act. Alternative and verifiable criteria now regulate this distinction clearly.

The Control Authority clarified a series of questions concerning the application of the Money Laundering Act with regard to directors of domiciliary companies and similar vehicles, trade in raw materials, transportation of valuables, as well as the subordination of a financial intermediary's employees to the Money Laundering Act.

The Control Authority also dealt with questions of interpretation such as the obligation to identify existing clients, the delegation of identification procedures to third parties, in particular in the case of financial leasing, and due diligence concerning money transfers abroad.

In order to improve transparency with regard to affiliations with SROs or the licensing of financial intermediaries by the Control Authority, and thus impede illegal financial intermediation, the Control Authority decided to make the names of affiliated and licensed financial intermediaries accessible on the Internet by means of a search engine. The corresponding measures are in preparation. As part of a pilot scheme, the Control Authority rejected by decree several of the many applications to block the release of data. The Federal Data Protection Commission will have to rule on appeals lodged against these decrees.

During the course of 2002, the Control Authority adapted its code of practice on fees. It will now waive the imposition of a fee for supplying information on the existence of a financial intermediary's affiliation to a SRO or direct subordination to the Control Authority, respectively, and for database mutations.

Self-regulating organisations

The cooperation between the Control Authority and the SROs was further expanded in 2002. The Control Authority analysed the annual reports of the SROs for 2000 and 2001. So as to eliminate detected deficiencies, it discussed the introduction of corrective measures with the SROs concerned. In addition, in 2002 all SROs were subject to an audit for the first time. The admission procedures and training of the affiliated financial intermediaries in all SROs were examined closely. In addition, each SRO was scrutinised in detail on individually determined subject areas. The audit results were overwhelmingly positive.

The Control Authority newly demands that all SROs should in future audit their members annually. The majority of SROs will already have reached this goal in the business year 2003.

For the sake of the independence of self-regulation, the Control Authority is working towards equality in terms of the composition of the bodies with members of the profession and outsiders who are closely acquainted with the subject matter. In addition it requires that members of the bodies sign a declaration of independence defining the exemption rules.

The Control Authority came to the conclusion that forwarding information on affiliated members to the relevant SRO was admissible insofar as this information was indispensable for the SRO to fulfil its legal supervisory tasks.

In 2002, in order to better be able to exercise its supervisory tasks over the SROs, and to facilitate appropriate harmonisation of standards, the Control Authority compiled a database entitled "Benchmarking SROs" listing the main characteristics of the SROs and thereby enabling a quick overview of any differences between them.

The Control Authority and the SROs had the opportunity to expand their cooperation during the Coordination Conference of the Control Authority, which dealt with criminal law topics concerning money laundering and at the quarterly meetings of the SROs' forum in which the Control Authority regularly takes part.

Directly subordinated financial intermediaries

2002 brought about the progress which had been hoped for concerning the processing of applications of directly subordinated intermediaries. The temporary task force that had been assisting the Control Authority since May 2001 in processing applications for authorisation, and in closing applications as a result of withdrawal and in preparing the dossiers, was dissolved at the end of August 2002 due to the fact that it had, to a large extent, fulfilled its purpose.

The Control Authority improved its working instruments and set up a database in order to check the status and progress of dossiers and to accelerate processing of the dossiers. It conducted more than one hundred authorisation hearings with applicants. Suspended dossiers were reactivated, initial audits were carried out with applicants and withdrawals settled by closing applications. The Control Authority devised a questionnaire to deter-

mine, in case of doubt, whether an applicant's financial intermediation qualified as non-professional. In addition, the activities of financial intermediation in the non-banking sector were categorised. In total the Control Authority dealt with over 900 dossiers and issued more than 700 decrees. Except for a few special cases, all authorisation applications from 2000 and 2001 were completed.

The Control Authority rejected the application of a company which, before filing its application, had already been operating for 18 months without authorisation and without SRO affiliation, i.e. which was operating illegally and which fulfilled only partially and insufficiently the obligations under the Money Laundering Act, without giving any further possibility for subsequent rectification and put the company into liquidation. The appeal of the company is still pending.

A one-man company which had submitted an authorisation application in due time, but which did not comply with the obligations of the Money Laundering Act and whose owner provided no guarantee of fulfilling the due diligence obligations underwent a similar fate. The application for authorisation was turned down and the activities of the financial intermediary were suspended by decree of the Control Authority.

Market Supervision

Market supervision was taken up over the course of the year and drew initial results. The Control Authority developed its approach to cases of market supervision and gained initial experience with its application. Where financial intermediation was suspected without SRO affiliation and without authorisation from the Control Authority, it opened an investigation against the suspected company or person. A questionnaire was initially sent to the suspected financial intermediary, which duly had to be returned to the Control Authority completed and enclosing specific business documents. In certain cases, the Control Authority carried out an audit on the spot. If no breach of the law was detected, the Control Authority closed proceedings, otherwise it took measures to restore legal compliance. The financial intermediary was given the opportunity to express an opinion on the measures under consideration. If it was the case of an activity subject to the Money Laundering Act and the authorisation requirements were fulfilled, authorisation was either granted or the financial intermediary was obligated to seek an SRO affiliation. Even so, in cases where illegal activities had been conducted, the financial intermediary was also reported to the Federal Department of Finance for conducting business without authorisation. If it was a case of an activity covered by the Money Laundering Act and the authorisation requirements were not fulfilled, measures were taken to call a halt to the activity. Such measures may extend to the liquidation of the company as can be seen from the cases described.

The immediate execution of the liquidation and the withdrawal of the suspensive effect of a possible appeal as ordered by the Control Authority in several cases was not entirely upheld in an appeal ruling of the Federal Department of Finance because the legal right to appeal would be restricted in its impact if the financial intermediary affected by the liquidation had already been liquidated at the time of the possible removal of the liquidation decree by the appeals court. In contrast, the removal of the suspensive effect of an appeal

on the ordered precautionary measures in the liquidation decree, which were imposed to immediately stop further illegal activities, was upheld.

Auditing

The auditing function of the Control Authority was built up expanded in 2002 and was expanded to the level at which it should always have been. The Control Authority conducted audits at various levels. By means of audits in authorisation procedures of financial intermediaries under the control of the Control Authority, it checked the implementation of the obligations under the Money Laundering Act, namely the compliance with due diligence obligations and the existence of the necessary organisational measures. The 38 audits of this type in the majority of cases had positive results so that authorisations could be granted.

Other audits conducted were in connection with market supervision and were necessary to establish if there had been any illegal activity. In the majority of the 39 audits of this type carried out in 2002, no infringement of the Money Laundering Act could be determined. In the other cases, suspension of activities was enforced, and, in some cases, coupled with the liquidation of the financial intermediary.

Yet other audits were in connection with the Control Authority's supervision over the SROs.

The regular annual audit of the financial intermediaries under the control of the Control Authority was out-sourced to external auditors accredited by the Control Authority. However, it will periodically audit these financial intermediaries itself so as to sufficiently get acquainted with them. At the start of 2002, in an initial accreditation procedure, 84 auditors were accredited. Through a new procedure, unlimited in time, further auditors can become accredited. For accredited MLA-auditors the Control Authority organised a training course in the three official languages. It will supervise the activities of the external MLA-auditors that will begin with the first annual audits from 2003 onwards. In order to achieve a consistent level of quality and standardisation of the external MLA-audits, and to ensure the drawing up of comparable documents on audits, in 2002 the Control Authority drew up working papers for conducting MLA-audits and later revised these on the basis of initial experience. The audit concept and the working papers were published in a circular, which defines, amongst other things, the area of responsibility of the MLA-auditors from the acceptance of the mandate to reporting. An additional information letter defined the minimum content of the audit reports.

International matters

As one of the supervisory authorities in the Money Laundering Act, the Control Authority is represented in the Swiss Delegation to the Financial Action Task Force on Money Laundering (FATF) and regularly takes part in the work of this body. In 2002 the revision of the 40 recommendations on combating money laundering saw considerable progress and

clarifications were made on implementing the special recommendations on combating the financing of terrorism enacted after 11th September 2001.

Within the scope of Swiss support of international endeavours on combating the financing of terrorism, the Control Authority transmitted a number of lists with names of persons and organisations which apparently were involved in the financing of terrorism to the SROs and the financial intermediaries directly under its control, and gave the necessary instructions as to what precautions had to be taken. These dealt with enhanced due diligence, blocking assets and the obligation to notify.

Other activities of the Control Authority

In 2002, the Control Authority participated actively in the coordinating committee of the federal authorities assigned to implementing the Money Laundering Act. The committee organised a media event on the Swiss system to combat money laundering and published a brochure on this subject

Within the scope of preparatory work on legislative and similar issues conducted by other authorities in matters concerning the Control Authority, the latter consistently comments on any relevant questions. In 2002, this especially concerned the Money Laundering Ordinance of the Swiss Federal Banking Commission, the revision of the Insurance Supervisory Act and the circular of the Swiss Federal Banking Commission on public advertising relating to legislation on investment funds.

The new structures of the Control Authority passed in 2001 were completed in 2002 and the new personnel received the appropriate training. In addition the Control Authority started its own comprehensive website which gives an insight into the work and organisation, as well as legal principles and decisions of the Control Authority. Participation in seminars and conferences of SROs, universities and private organisers allowed the Control Authority to provide information on its work and practice.