

## Press release

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# BSI in serious breach of money laundering regulations

Through business relationships and transactions linked to the corruption scandals surrounding the Malaysian sovereign wealth fund 1MDB, BSI AG committed serious breaches of money laundering regulations and “fit and proper” requirements. This is the outcome of enforcement proceedings launched by the Swiss Financial Market Supervisory Authority FINMA. In the case of 1MDB, the bank executed numerous large transactions with unclear purpose over a period of several years and, despite clearly suspicious indications, did not clarify the background to these transactions. Among other measures, FINMA has ordered the disgorgement of profits amounting to CHF 95 million. FINMA has also launched enforcement proceedings against two of the bank’s former top managers. At the same time, FINMA announces its approval of the takeover of BSI by EFG International with the condition that BSI will be integrated and thereafter dissolved. This takeover is a positive development providing clients and employees with a perspective for the future.

FINMA launched enforcement proceedings against BSI in 2015 after indications that the bank had breached money laundering regulations. The problems related to business relationships and transactions in the context of the corruption scandal involving the Malaysian sovereign wealth fund 1MDB. FINMA investigated a large number of transactions, as well as the internal processes and organisational control functions at the bank. The proceedings were concluded in May 2016. FINMA also closed its investigation and sanctioned BSI’s misconduct in the Petrobras case. In connection with the same two cases, FINMA has investigated more than twenty other Swiss banks and launched proceedings against six of those banks.

### **1MDB: deliberate management decision**

In the context of 1MDB, misconduct on the part of BSI was particularly serious. On numerous occasions, business relationships relating to 1MDB were discussed at top management level. This was particularly the case when at the end of 2013 FINMA highlighted to the bank the many serious risks inherent in the client relationships and pressed the bank for further clarification. Nevertheless, the bank’s Board of Directors and Executive Board knowingly and repeatedly expressed their intention to

continue with these financially lucrative client relationships without adequately clarifying the numerous clear risk indicators or controlling the said risks.

### **BSI in breach of money laundering regulations**

In its proceedings against BSI, FINMA found serious shortcomings in the bank's anti-money laundering processes resulting from inadequate risk management and the failure of the internal control system. FINMA's findings are as follows:

- In the period from 2011 to April 2015, there were serious shortcomings in identifying transactions involving increased risk. These failures related in particular to business relationships with politically exposed persons (PEPs), the origin of whose assets was not sufficiently clarified, and whose dubious transactions involving hundreds of millions of US dollars were not satisfactorily scrutinised.
- The bank repeatedly, systematically and for an extended period breached its obligation to establish the necessary documentation for transactions with increased risks.
- In the context of 1MDB, the bank had business relationships with a range of sovereign wealth funds whose accounts were booked in both Singapore and Switzerland. The fact that this was BSI's largest and most profitable client group was reflected in the remuneration paid to the bank employees involved.
- The fees charged were above average and out of line with normal market rates. Senior management at the bank did not question why the sovereign wealth funds should use a private bank to provide institutional services and pay excessive out-of-market fees for doing so.
- In the context of the 1MDB case, the bank failed to adequately monitor relationships with a client group with around 100 accounts at the bank. Transactions were executed within the client group and with third parties without the bank adequately clarifying their commercial justification.
  - In one case involving a deposit of 20 million US dollars, for example, the bank was happy to accept the client's explanation that the funds involved were a "gift". In another case, an account was credited with more than 98 million US dollars without any effort to clarify its commercial background.
  - The bank executed transactions involving similar amounts even though in some cases the explanations and contractual documents obtained contradicted the purpose of the account as stated when it was opened.
  - Transactions were often generically justified on the basis of loan agreements, although the agreements provided no sufficient explanation of the real background to the transaction in question.
  - Finally, in many cases there were clear indications of pass-through transactions. In one case, 20 million US dollars were routed through a variety of accounts within the bank on the same day before eventually being transferred to another bank. Transactions of this kind are often a clear indication of money laundering. Nevertheless, the bank failed to properly document or carry out plausibility checks on these transactions

or was happy to accept the explanation that the beneficial owner of all the accounts was the same person or that the transactions were being executed for "accounting purposes".

- The bank executed substantial transactions for the foreign sovereign wealth funds, in some cases involving hundreds of millions of US dollars, without adequately clarifying the background to them.
  - The sovereign wealth funds' assets were typically invested through specially created intermediate structures. BSI supported the development of these structures with the aim of achieving a higher level of confidentiality for the investment activities. Ultimately, however, BSI was therefore unable to determine how these assets were invested.
  - This was recognised by some within the bank and flagged up as an issue. In 2012, one employee of the bank sent the following communication to management: "My team is implementing these transactions without really knowing what we are doing and why and I am uncomfortable with this. [...] there should be a stronger governance process around all this." However, no further action was taken by the bank in this regard.
- The client advisor responsible for these relationships was repeatedly notably uncooperative in terms of compliance, particularly in dealing with the inadequate clarification of transactions. Management was aware of the situation but gave their support to the client advisor instead of the Compliance department. Consequently, no corrective action was taken and bonuses, for example, were unaffected. In fact, the opposite was the case. The client advisor in question was one of the bank's top earners.
- Exceptions to the bank's internal rules were made for important clients and justified as special client service. Management was informed, but took no action to monitor these exceptions.
- Overall, the management of the BSI Group during this period did not adequately supervise its subsidiary in Singapore, even though they had close and frequent contact and the Group's executive management was represented on the subsidiary's Board of Directors.

**Summary:** FINMA has therefore come to the following conclusions: The deficiencies identified constitute serious breaches of the statutory due diligence requirements in relation to money laundering and serious violations of the principles of adequate risk management and appropriate organisation. BSI was therefore in serious breach of the requirements for proper business conduct. Right up to top management level there was a lack of critical attitude needed to identify, limit and oversee the substantial legal and reputational risks inherent in the relationships.

### **FINMA orders the disgorgement of profits and launches proceedings against individuals**

In addition to taking action to restore compliance with the law, FINMA has taken the following measures:

- **Disgorgement of illegally generated profits:** The serious breaches of supervisory law linked to the client relationships the bank maintained over the period under investigation enabled it to charge high fees. FINMA has ordered the disgorgement of illegally generated profits in the amount of CHF 95 million. The money disgorged will go to the Swiss Confederation.

- **Clarification of individual responsibility:** In enforcement proceedings launched in May 2016, FINMA is investigating two former top managers to determine what they knew about these breaches of the law, how they behaved and their individual responsibility. FINMA reserves the right to launch further such proceedings.

### **FINMA approves full takeover of BSI by EFG with conditions**

At the same time as the closure of the proceedings, FINMA has approved the full takeover of BSI by EFG International under the condition that BSI must be completely integrated and dissolved within 12 months. None of the BSI top management responsible for the misconduct will be allowed to take up leadership positions at EFG. This takeover is a positive development providing clients and employees with a perspective for the future.

### **Good cooperation between authorities**

The transactions described above were executed between banks in a variety of jurisdictions and across several continents and financial centres. FINMA therefore worked together with several foreign regulatory authorities when conducting its investigations. Cooperation with Singapore's financial market supervisory authority (the Monetary Authority of Singapore, MAS) was particularly intensive. It carried out on-site investigations at the BSI subsidiary in Singapore in parallel to FINMA's proceedings and identified comparable control failures there. MAS has also informed about its intention today to withdraw the BSI's local licence and impose a fine of approx.13 million Singapore dollars (approx. CHF 9 million). In Switzerland FINMA has worked closely together with the Office of the Attorney General, which has also launched criminal proceedings.

FINMA acknowledges the positive cooperation of the newly installed directors of BSI during its investigations.

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[Telephone conference with Mark Branson \(link to dial-in numbers\)](#)