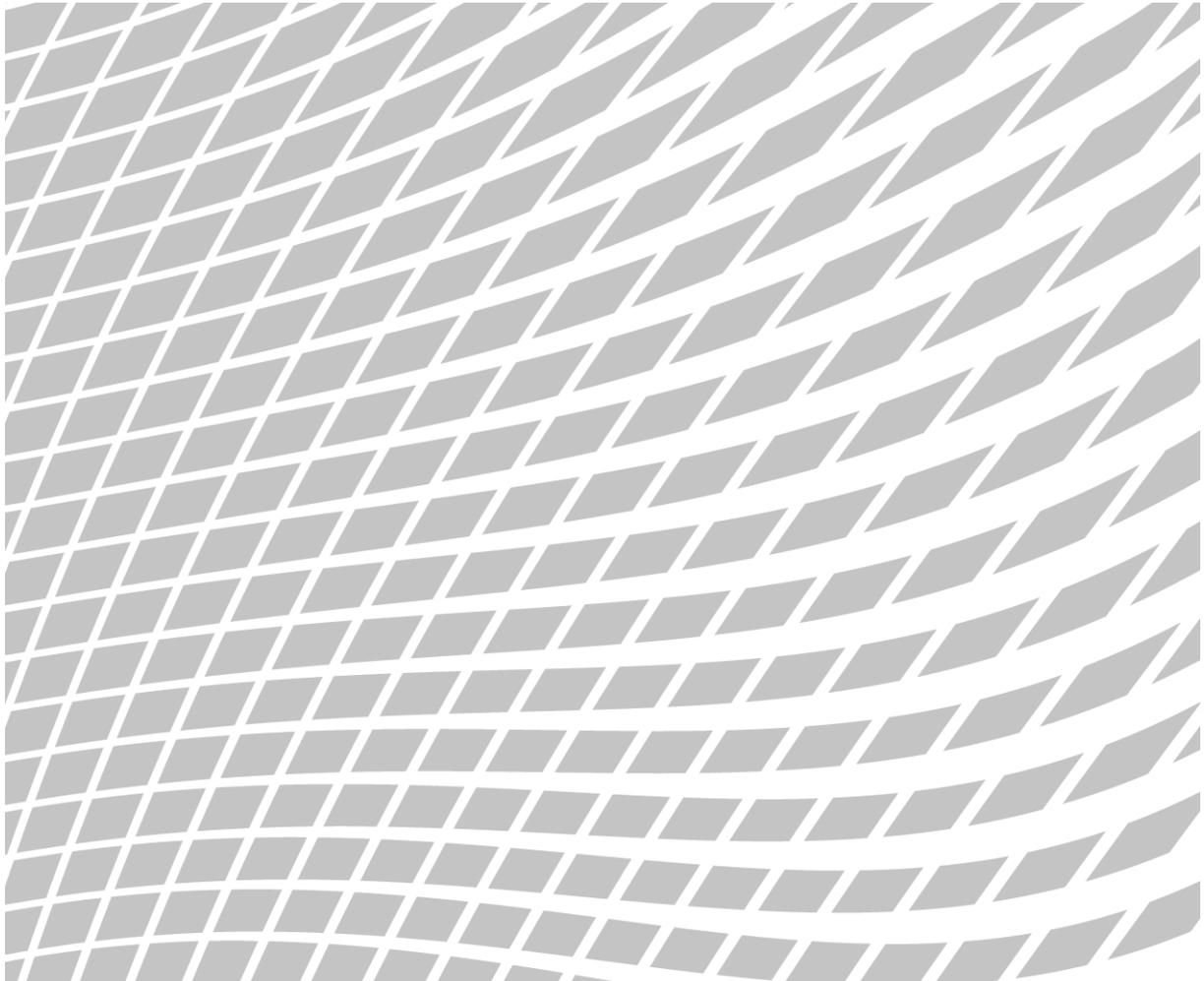


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FINMA Enforcement Policy

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Principle 1 FINMA enforces supervisory law, where necessary

Where necessary, FINMA enforces supervisory law using measures available under administrative law. FINMA identifies infringements of the law and other irregularities, and takes measures to correct and sanction to the extent that it is empowered to do so by law. This supports and enhances its monitoring of supervised institutions and the market.

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

Investors, insured persons, creditors, issuers, supervised institutions and the general public have a right to expect integrity in markets and market participants. This right is codified in supervisory law. Through its enforcement activities, FINMA executes its mandate to supervise set out in the Financial Market Supervision Act (FINMASA) and the financial market laws (the Banking Act, the Stock Exchange Act, the Insurance Supervision Act, the Insurance Contract 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, remedy irregularities and prevent damage to investors, insured persons, creditors, supervised institutions 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 FINMA's enforcement proceedings can have a severe impact on the legal positions of the parties concerned. Before FINMA institutes such proceedings, therefore, it considers all the relevant circumstances carefully and explores alternative options.

It looks at criteria such as dangers for investors, insured persons, creditors and supervised institutions, as well as the reputation of the financial centre, the seriousness of the violation of supervisory law and 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 instituted 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. FINMA opposes any attempts by the parties to slow down proceedings. It continually checks whether the object of the proceedings can or must be restricted. Particularly in cases where there is considerable media interest, 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 instituted, 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 instituting proceedings against individuals. Except in the case of financial market supervision and disclosure issues that are based on misconduct by individuals, FINMA concentrates on addressing irregularities committed by supervised institutions previously detected in the course of its regular supervision.

Personnel-related measures may be required if supervised institutions fail to take necessary steps of their own accord or if activities are being conducted for which authorisation stipulated by financial market legislation has not been granted (subordination proceedings).

Principle 7 No proceedings against individuals no longer holding a senior position (i.e. persons no longer required to provide assurance of proper business conduct)

FINMA does not normally institute 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 (providing assurance of proper business conduct) in the sector supervised, the person concerned may, if necessary, ask FINMA to conduct proceedings to investigate any outstanding allegations against him or her, and that it makes a determination in respect of the position in question. Such persons are notified by letter (letter from FINMA concerning the assurance of proper business conduct) as to these principles and may publish them, for instance, 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 institution 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 instituting 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 an institution's management (proceedings regarding the assurance 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 provide assurance of proper business conduct as a member of the top level of management of a supervised institution, 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, liquidators and bankruptcy 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 persons responsible for conducting enforcement proceedings against those institutions.

FINMA ensures that all organisational units concerned follow consistent and coherent standards in their proceedings. It provides training for the persons in charge of enforcement in order to maintain professional standards. 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

Criminal authorities

Supervisory proceedings instituted by FINMA and criminal proceedings conducted by the criminal authorities that deal with the same subject matter are carried out separately. This means that they can be held simultaneously or successively. The investigations and proceedings of both authorities are coordinated where possible and necessary.

In cases where FINMASA provisions or financial market legislation have been breached, FINMA's main priority is to investigate the facts under supervisory law. FINMA focuses on remedying irregularities and restoring order. To the extent possible and in line with its resources, FINMA supports the work carried out by the criminal authorities within the regulatory framework.

Where FINMA obtains knowledge of common felonies and misdemeanours, or of offences against FINMASA or financial market legislation, it notifies the competent prosecution authorities. There must be reasonable grounds for suspicion for a complaint to be filed. The duty to notify does not require special scrutiny of the scope of the offences nor does it include any general duty to investigate. FINMA only files complaints when it is convinced that a statutory offence has been committed objectively.

FINMA decides in each individual case when to notify the criminal authorities, basing its decision on the following points: danger for third parties, gathering evidence and its usability by the various authorities, impact of a criminal complaint on FINMA's investigations under supervisory law (avoiding excessive delays) and the duration of proceedings (inter alia in view of prescription under criminal law).

Other authorities

Within the legal framework, FINMA cooperates with other Swiss and foreign authorities that supervise financial markets to enable them to fulfil their mandates. At the same time, it expects similar cooperation from those authorities. FINMA exercises restraint when it must authorise 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. In line with the legal framework, FINMA 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 investigation measures and procedural actions, 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 institutions involved and states the object of the proceedings. It exercises restraint in disclosing the names of private individuals as a party to the proceedings, 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 immediately following its decision. Where FINMA discontinues proceedings, it can decide not to issue any information if those concerned so request.

In cases that attract media interest, FINMA notifies the parties concerned of its information policy. Press releases are submitted to the parties shortly before general release. Where 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 market participants. 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 bankruptcy orders and protective measures that have a direct impact on supervised or unsupervised creditors of institutions immediately upon their being issued.