



# 2006 Annual Report

## Summary

### Legal basis

In implementing the Ordinance on the Supervisory Fee and Charges of the Anti-Money Laundering Control Authority (AMLCA), which came into force on 1 January 2006, the AML Control Authority for the first time levied a supervisory fee from the SROs and DSFIs, in the second half of 2006. In doing so, the data collection carried out on the SROs and DSFIs constituted the basis for the calculation of the individual supervisory fee. Ten SROs have filed appeals against the decisions on the supervisory fee made by the AML Control Authority.

In 2006 as in previous years, the AML Control Authority, as the supervisory authority on financial intermediaries in the non-banking sector, continued to specify the practical implications of the provisions of the Anti-Money Laundering Act for this sector. The AML Control Authority published its revised practice on credit transactions subject to the Anti-Money Laundering Act (AMLA) in accordance with Art. 2 para. 3a. In doing so, major emphasis was placed on the difference between simply lending money, which does not fall within the scope of the Anti-Money Laundering Act, and conducting credit transactions. If specific requirements are continuously fulfilled, it may be assumed that the provision of credit between a company and its members, and loans between an employer and an employee and between closely-linked people are simple loans that are not subject to the Act. In addition, the AML Control Authority has broached the issue of the distinction between a credit transaction and the acquisition of financial products, and has separately defined the threshold for the professional basis applicable to credit transactions that are subject to the Act. The revised practice of the AML Control Authority has met with a resoundingly positive response from the market.

In 2006, the AML Control Authority in consultation with the other supervisory authorities also undertook an extensive interpretation of the obligations on record keeping in terms of Art. 7 AMLA with regard to the electronic storage of documents, and published a related circular. One of the issues considered was the requirements relating to documentation in cases where the server on which the documents were stored electronically is not located in Switzerland.

### Self-regulatory organisations

Within the scope of the normal audit period in 2005/2006, the AML Control Authority examined the AMLA training events organised by the SROs in terms of quality and adherence to regulatory requirements, with an inspection being carried out on one training event per SRO. The result of these examinations can be rated overall as positive.

In 2006 the AML Control Authority informed the SROs that offences beyond the activities subject to the Anti-Money Laundering Act, such as for example the unlawful acceptance of investments from the public, could jeopardise their duty to maintain proper business conduct. In accordance with the regulations and statutes of all SROs, the good reputation of the financial intermediary is required for continued SRO membership. The SROs are thus duty bound to take the necessary measures where possible violations of financial market laws have oc-

curred. In certain circumstances, this also includes making a request to the member to have its subordination to banking, stock exchange or collective capital investment laws checked at the Swiss Federal Banking Commission (SFBC).

In 2006 for the second time coordination talks took place between representatives of the AML Control Authority and the SRO Forum. Within the scope of the coordination talks, which serve as a discussion and information forum, a number of current topics were jointly discussed.

### **Directly subordinated financial intermediaries**

Compared with previous years, the number of DSFIs remained stable in 2006. In the context of its supervisory activities, the AML Control Authority noted an increase in changes in the organisation and activities of the DSFIs and a drop in the so-called follow-up letters in the case of minor deficiencies relating to compliance with and implementation of due diligence obligations.

In spite of the growing acceptance of criteria for identifying business relationships and transactions involving greater risks, the DSFIs are still encountering difficulties in identifying such relationships and applying the criteria. During the review of the risk criteria in 2006, the AML Control Authority noted that there had been some inadequate choices of the risk criteria according to the activities or client structure of the financial intermediaries. In individual cases, only partial application of the appropriate criteria could be noted, which gave rise to improvements being carried out by the financial intermediaries concerned.

Alongside the familiar difficulties in implementing the risk criteria, within the scope of inspections of the audit reports, the AML Control Authority discovered in places insufficient documentation and implementation of special investigations relating to transactions. The required procedure was also not followed in documentation when third parties were involved and in establishing the identity of the beneficial owners.

In 2006 the AML Control Authority rejected several applications for a licence to practise as a financial intermediary. In all of these cases, the rejections of the applications ensued because the applicant did not submit the data and documents required for the AML Control Authority to assess the application, in spite of several requests to do so. Furthermore the AMLCA had to withdraw the licence to practise as financial intermediary by decree from one financial intermediary. Infringements of the due diligence obligations, organisational deficiencies and a lack of knowledge of the mechanisms used to combat money laundering on the part of the financial intermediary concerned were so serious that continued fulfilment of the licensing requirements could no longer be assumed.

### **Market supervision**

In 2006 the AML Control Authority stepped up its market supervision activities. It is a key concern of the AML Control Authority that it has a presence in Swiss financial centres and is able through its activities to exercise a preventive effect.

At the start of 2006 the AML Control Authority launched the "Zoom" project in the cantons of Appenzell Innerrhoden and Aargau, Glarus and Uri. As part of this project, the AML Control Authority focused on companies from the property management, trusts and asset management sectors and initiated a total of 185 proceedings. The "Zoom" project may be seen as successful market supervision by the AML Control Authority focusing on intercepting companies which are acting illegally. The presence of the AML Control Authority through its higher profile in the areas under examination was considered by those concerned to be positive for the most part.

In addition to the "Gold" operation, which examined the precious metal dealer network throughout Switzerland, the AML Control Authority also carried out a further activity-oriented project called "TOM". The focus of this project was currency exchange transactions in the canton of Ticino. In spite of the fact that the "TOM" project was not completed by the end of

2006, the record here is a positive one with regard to valuable awareness-raising activities in providing information about money laundering.

Confirming its practice, the Federal Supreme Court reaffirmed that fees are due for market supervision procedures that the AML Control Authority opens on the basis of suspicions. According to the Swiss Federal Supreme Court, market supervision constitutes one of the tasks to be undertaken by the AML Control Authority. The AML Control Authority may use the resources provided by the law against service providers whose subordination to the AMLA is at issue or which has to be established to begin with.

### **Audit Activity**

As of the end of 2006, a total of 18 financial intermediaries had applied to the AML Control Authority for authorisation for risk-oriented audit cycles. More than half of the applications were approved. The rejection of applications was due to the fact that financial intermediaries concerned did not yet fulfil the requirements for the extended audit cycles or that the AML Control Authority had not yet been able to audit them.

At the start of 2006, the AML Control Authority examined fulfilment by accredited auditors of the criteria introduced in 2004, which ensures control of the activities of the auditors and the exchange of information between the auditors and the AML Control Authority. Only audit firms who have at least one mandate with a DSFI can keep their accreditation. This examination led at the end of 2006 to a significant reduction in auditors who, due to not being able to fulfil the criteria on the number of mandates, relinquished accreditation with the AML Control Authority.

Within the scope of a project in 2006, the AML Control Authority examined the possibility to improve the quality of SRO audits by using risk management techniques. The analysis drawn up by the AML Control Authority identifies possible risks in the SROs under review, detecting and measuring the risk on the basis of indicators and drawing up risk strategies. This analysis constitutes the basis for the future audit programmes of SRO audits.

### **Coordination with other authorities**

Also in 2006, the special supervisory authorities, the AML Control Authority and the Money Laundering Reporting Office Switzerland (MROS), together with the Service for Analysis and Prevention of the Federal Office of Police met on a regular basis and exchanged information on the status of various projects and their work in certain committees.

In 2006 the Federal Council approved its dispatch on the Federal Financial Market Supervisory Authority. Along with organisational issues, the Financial Market Supervision Act also contains principles on financial market regulation, supervision instruments and measures. To prepare for the integration of the three authorities, the head of the Federal Department of Finance has set up a project organisation under the leadership of the Chairman of the Swiss Federal Banking Commission. Senior executives and employees from the three authorities to be integrated as well as employees from the Federal Finance Administration are collaborating on the sub-projects which have come into existence within the scope of the four project sectors.

As part of the revision of the Anti-Money Laundering Ordinance of the Federal Office of Private Insurance, which came into force on 1 January 2007, the AML Control Authority commented on the preliminary draft and the draft of the new text. In doing so it supported adjustments in line with existing texts from the SFBC and the AML Control Authority and in addition made recommendations to the FOPI concerning simplifications.

### **International aspects**

As one of the supervision authorities set out in the Anti-Money Laundering Act, the AML Control Authority is part of the Swiss Delegation represented in the Financial Action Task Force on Money Laundering (FATF) and regularly takes part in the work of this committee. In 2006

the FATF proceeded with assessments of the member states. In addition, the states which have already been examined (Switzerland is one of these), are to be urged to report regularly on the elimination of the deficiencies noted in the country report.

As in previous years, Switzerland has supported international efforts in combating terrorism. This year as well, the AML Control Authority forwarded a number of lists with the names of people and organisations allegedly involved in terrorist activities to the financial intermediaries directly subordinated to it. At the request of the State Secretariat for Economic Affairs (SECO), the AML Control Authority provided information to the non-banking sector and other interested parties about modifications in connection with the United Nations Sanctions List.