

FINMA issues industry bans

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According to the Federal Act on the Swiss Financial Market Supervisory Authority (FINMA), if FINMA detects a serious violation of supervisory provisions it may prohibit the individual responsible from acting in a management capacity over any person or entity subject to its supervision. The prohibition may be imposed for a period of up to five years. In order to clarify its practice, FINMA published its Enforcement Policy in September 2014 and announced that it will use enforcement action as a visible means of achieving its supervisory objectives. It also pointed out that its enforcement activities are primarily directed against serious violations of market integrity and market manipulation performed by all participants in the Swiss securities market. Where licensed market participants and their employees are concerned, FINMA will act in response to serious market abuse in similar markets in and outside Switzerland. Among other measures, FINMA can take targeted action against individuals responsible for serious violations of supervisory law.

In an October 2014 press conference, FINMA's chief executive officer Mark Branson emphasised that the numerous fines imposed on financial institutions in the aftermath of the 2008 financial crisis did not encourage professionals to change their behaviour. Hence, it was necessary to target the individuals concerned and issue industry bans.

As an example, in October 2014 Andreas Waespi resigned as chief executive officer of Bank Coop AG after FINMA banned him from managerial positions for three years following an investigation of market manipulation at the bank that had previously employed him.

According to the same principles, FINMA recently issued industry bans of between one and five years against six managers and traders formally employed in the UBS foreign exchange and precious metals business. In November 2014 FINMA began enforcement proceedings against 11 UBS managers and traders with the aim of clarifying their involvement and knowledge of misconduct in foreign exchange and precious metals trading. FINMA concluded that the individuals in question were directly responsible for the serious breaches of regulation. It consequently issued industry bans against the then responsible heads of global foreign exchange trading and global foreign exchange spot trading, prohibiting them from holding senior management positions at institutions supervised by FINMA for periods of four and five years, respectively. FINMA also issued industry bans of at least one year against four foreign exchange and precious metals traders who worked on the spot trading desk.

According to FINMA, those responsible for the management of foreign exchange trading tolerated, and at times encouraged, behaviour which was improper and contrary to client interests. Managers were aware that traders used chat groups to share information and knew of the associated risks, but they failed to implement adequate systems and controls to consistently monitor compliance with internal and external rules. Traders shared confidential client information – sometimes revealing client identity to third parties – deliberately triggered stop-loss orders and engaged in front running. They also repeatedly attempted to manipulate foreign exchange benchmarks.

Four other enforcement proceedings against UBS traders were discontinued in August 2015. FINMA issued only reprimands and took no further action against these individuals.

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