

Principles of Enforcement

(Enforcement Policy)

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Purpose

With this enforcement policy the Federal Audit Oversight Authority (FAOA) provides the audit profession and other interested parties with greater transparency as to its policies in carrying out enforcement (cf. goal 7 of the strategic goals 2016-19). The document will be published on the FAOA homepage.

Enforcement

In this context, the term „enforcement“ includes all investigations, proceedings and measures the FAOA uses to enforce applicable law and to verify and, if appropriate, punish relevant law violations by coercive means.

Principle 1: The FAOA also enforces applicable law by coercive means where necessary

Audit stakeholders (shareholders, creditors, employees, the general public, the state, but also the board of directors and management of the audited entity) are entitled to audit services prescribed by Federal law that are properly performed and of appropriate quality.

Enforcement aims to rectify deficiencies, restore order and preventatively punish violations of the law. In so doing, the FAOA strengthens the position of audit stakeholders as well as the credibility of financial reporting and of financial markets oversight. It is therefore justified for the FAOA to also enforce applicable law by coercive means if appropriate. This is done by way of orders which are subject to appeal before the court.

Principle 2: Enforcement based on sound judgement

Where necessary, the FAOA starts an enforcement proceeding under the provisions of the Administrative Procedure Act (APA; SR 172.021). Such proceedings can negatively impact the legal position of those concerned. Consequently, the FAOA weighs up all significant facts carefully and considers possible alternative actions before opening a proceeding.

The FAOA thereby takes account of all relevant criteria and particularly the risk to audit stakeholders, the credibility of financial reporting and of the financial markets oversight, the severity and timing of the law violation and the function of the responsible persons. The FAOA further considers the availability of resources, the valid expectations of the general public and other audit stakeholders, as well as possible remedial actions by the parties concerned.

In determining its measures the FAOA takes account of whether a breach can be regarded as light, moderate, severe or very severe. Measures that come into question are reprimands and licence withdrawals.

Principle 3: Information sources

The FAOA follows up rigorously on indications of relevant law violations. These arise particularly from licensing procedures, inspections of audit firms under state oversight, other enforcement proceedings, reports from licensed individuals and firms, notifications by other authorities, media reports or notifications by other third parties. The FAOA facilitates the submission of anonymous notifications and protects the identity of notifying third parties within the legal framework.

Principle 4: Fast and focused proceedings

The FAOA conducts its proceedings expeditiously and resolutely and strives for first instance completion of proceedings within six to twelve months of opening them. Grave transgressions are handled as a priority. The FAOA recognises media interest in swift results but gives precedence to the legal requirements for a fair process (cf. principle 5). The FAOA strictly opposes attempts to delay proceedings and, conversely, checks on an ongoing basis whether the issue at hand can and must be restricted.

Principle 5: Fair and transparent proceedings

The FAOA conducts its proceedings fairly and respects the statutory procedural rights of the parties. It informs the parties about the opening and, if requested, status and cessation of a proceeding. Informants are not parties to a proceeding.

Principle 6: Parties to proceedings

Enforcement proceedings are directed primarily against licence holders (individuals and audit firms, Art. 17 AOA; SR 221.302), unlicensed individuals who work for audit firms under state oversight (Art. 18 AOA) and unlicensed individuals and audit firms who perform audit work requiring a licence.

In general, the FAOA does not conduct proceedings against individuals and firms who may have violated legal obligations but have given up their licence and no longer work in the audit field. However, if they re-apply for a licence the FAOA considers the circumstances that led them to give up the original licence.

Principle 7: Internal organisation

Within the FAOA, those responsible for the supervision of audit firms under state oversight are not the same as those responsible for enforcement proceedings against them.

The FAOA ensures that all proceedings are conducted in a consistent and coherent way. It trains those responsible for enforcement to maintain a professional standard.

The Board of Directors is consulted in advance on proceedings of great importance.

Principle 8: Cooperation with prosecuting and other authorities

The FAOA ensures that its contacts with prosecuting and other authorities serve its own aims.

Prosecuting authorities

FAOA enforcement proceedings and the criminal proceedings of prosecuting authorities with the same factual subject matter are separate proceedings and can therefore be conducted concurrently or successively. The approach of the FAOA and the prosecuting authorities is coordinated as far as possible and necessary.

Insofar as a violation of audit and audit oversight law provisions is suspected, the FAOA gives priority to evaluating this. It focuses on measures to rectify irregularities and ensures that order is restored (cf. principle 1). The FAOA supports the work of the prosecuting authorities within the legal framework and taking account of its own resources.

If aware of crimes and offences and violations of audit oversight law (Art. 40 AOA), the FAOA notifies the responsible prosecuting authorities. Notification is conditional upon there being rea-

sonable grounds for suspicion. The FAOA reports an offence only if it is convinced that at least the objective element of the criminal act is highly probable.

Other state authorities

Within the legal framework (principle of official secrecy and administrative assistance only if a legal basis exists and relevant conditions are met), the FAOA cooperates with other domestic authorities and foreign audit oversight authorities to assist them in fulfilling their respective duties. At the same time, it also expects corresponding cooperation from these authorities. The FAOA exercises caution in authorising its officers and employees to give evidence at the proceedings of other authorities. The FAOA grants no file access with respect to envisaged or ongoing civil litigation.

Auditors’ professional associations

In the absence of a legal basis, the FAOA does not cooperate with auditors’ professional associations. To ensure its independence it also does not strive to do so.

Principle 9: Cautious communication

As a rule, the FAOA does not provide information on individual proceedings. Also in response to inquiries, it generally does not confirm, deny or comment upon proceedings or stages of proceedings. However, it reserves the right to correct false or misleading information.

The FAOA can publicise ongoing or completed proceedings given overwhelming public or private interest (Art. 19 para. 2 AOA). In this case, it generally provides information proactively. It can also name the individuals and audit firms and/or the audited entities concerned. It is cautious in referring to the names of individuals for privacy reasons. Even when proactively providing information it generally gives no specific details of the proceeding.

As a rule, where the FAOA has provided information on an ongoing proceeding it also proactively provides information on its outcome, immediately upon first instance completion or final judgement. If it discontinues the proceeding it can abstain from providing information at the request of those concerned.

Legally binding court rulings are published on the FAOA homepage.

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