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Circular 1/2010

on the reporting to the Audit Oversight Authority by Audit firms under state oversight
(Circ. 1/2010)

of 31 March 2010 (status as on 1 January 2015)

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I. Background

- 1 The purpose of this Circular is to set out in more detail the content of the reports to be submitted by audit firms under state oversight (Art. 9 and 9a AOA1) to the Oversight Authority in line with the differing circumstances of their operation, and to avoid unnecessary administrative costs.
- 2 Audit firms under state oversight are required to report to the Oversight Authority within the context of the following instruments:
 - Annual updating of the firm's licensing documents as at 30 June and submission by 30 September; documents with unchanged validity need not be resubmitted (Art. 14 para. 1 AOA);
 - Immediate information, in writing, of any circumstances that are relevant to the oversight (Art. 14 para. 2 AOA, section IV below);
 - Annual report on compliance with the provisions of oversight regulations as at 30 June and submission by 30 September (known as the Supervisory Report, Art. 30 para. 1 AOO 2); in the calendar year in which the full licence was granted or renewal of the licence was enacted, no Supervisory Report is to be submitted (Art. 30 para. 2 AOA).
- 3 The updated licence documents are to be submitted together with the Supervisory Report (Art. 31 AOO).
- 4 In addition, the FAOA may at any time take action and request from the audit firms under state oversight, their employees, the persons they engage for audit services and the companies being audited, all information and documents it needs to carry out its work (Art. 15a para. 1 AOA).
- 5 Furthermore, the FAOA subjects audit firms under state oversight to a detailed inspection on a regular basis, at least once every three years. If it suspects that statutory duties have been infringed, the Oversight Authority shall conduct an appropriate investigation. Audit firms under state oversight exclusively performing auditing services for financial intermediaries directly subordinate to FINMA shall be inspected by the Oversight Authority every five years (Art. 16 para. 1^{bis} and 1^{ter} AOA).
- 6 As part of an inspection, the Oversight Authority assesses in particular whether the audit firm's licence documents are complete and correct (Art. 7 para. 1 let. a OO-FAOA3). Inspections by the Oversight Authority are essentially risk-oriented (Art. 8 OO-FAOA). This results in practice in there being variations with respect to the frequency and intensity of the FAOA's inspections.
- 7 The nature and scope of the information required by the Oversight Authority depends strongly on whether the audit firm concerned is subject to inspection on an annual or a multi-year basis.

¹ Federal Act of 16 December 2005 on the Licensing and Oversight of Auditors (AOA; SR 221.302)

² Ordinance of the Swiss Federal Council of 22 August 2007 on the Licensing and Oversight of Auditors (AOO; SR 221.302.3)

³ Ordinance of the Swiss Federal Audit Oversight Authority of 17 March 2008 on the Oversight of Audit Firms (OO-FAOA; SR 221.302.33)

II. Audit firms under state oversight with annual inspection cycle

- 8 Audit firms under state oversight with more than 50 public interest entities (Art. 2 let. c no. 1 AOA) are inspected on an annual basis, unless in individual cases the Oversight Authority considers a multi-year inspection cycle to be appropriate. Audit firms are required to submit documents and provide information to the Oversight Authority as part of this annual inspection. Furthermore, in addition to the inspection, regular discussions are held between the audit firms and the Oversight Authority.
- 9 In view of the information sources specified above, audit firms under state oversight with annual inspection are not required to submit either a Supervisory Report or updated licence documents.

III. Audit firms under state oversight with multi-year inspection cycle

- 10 Audit firms under state oversight with up to 50 public interest entities (Art. 2 let. c no. 1 AOA) are inspected at least once every three years, unless in individual cases the FAOA considers an annual inspection cycle to be appropriate. Audit firms with a multi-year inspection cycle are required to submit a Supervisory Report by 30 September of the relevant calendar year (reporting date: 30 June). The Oversight Authority provides the audit firms concerned with timely notification of their respective inspection cycles.
- 11 By their nature, audit firms with inspection on a multi-year basis do not have the same sources of information as audit firms subject to inspection on an annual basis (section II above). The submission of a Supervisory Report is intended to remedy this information deficit in a proportionate manner. In those calendar years in which an inspection is carried out, therefore, no Supervisory Report is needed to be submitted.
- 12 The Supervisory Report is deemed to meet the requirements of the Oversight Authority if it provides the Authority with a comprehensive insight into the activities of the audit firm under state oversight and enables it to verify the firm's compliance with the licensing conditions and standards of independence and with ensuring the audit services it provides are of a high quality.
- 13 Circumstances and documents that continue to remain valid since the last inspection or the last inspection report, as the case may be, do not need to be rewritten or resubmitted. A full reference to the documents that have been left unaltered is sufficient. The report should contain the information as per margin no. 14 to 20.
- 14 Information relating to the firm's online entry
Confirmation that the information in the online entry is correct.
- 15 Information relating to compliance with licensing requirements
- a. Declaration that all lead auditors have the requisite licences to practise;
 - a^{bis}. Declaration that all lead auditors for regulatory audits meet the requirements regarding audit hours (Art. 11d to 11g para. 2 let. a AOO) for the oversight areas for which they are licensed;
 - a^{ter}. Declaration that the audit firm has at least two lead auditors for regulatory audits for the oversight areas for which it is licensed (Art. 9a para. 1 let. b AOA and Art. 11 let. a AOO);

- a^{quater}. Declaration that the audit firm for regulatory audits does not perform an activity which requires permission by the financial market acts (Art. 9a para. 1 let. c AOA and Art. 11c AOO);
- b. Number of persons involved in the provision of audit services, broken down into:
1. Persons with the requisite licences;
 2. Persons without relevant licences;
- c. If applicable, list of the public interest entities whose annual or consolidated financial statements are audited or for which a regulatory audit was conducted with an indication of the following information:
1. corporate name or name, registered office and Commercial Register number of the public interest entity;
 2. type of the public interest entity (Art. 2 let. c AOA);
 3. if applicable, name and registered office of the stock exchange on which the public company's equity securities or bond are listed;
 4. Accounting standard in accordance with which the public company prepares its annual and, if applicable, its consolidated financial statements;
 5. Surname, first name and registration number of the lead auditor in charge;
 6. date on which the lead auditor assumed this role;
 7. Date on which the accounts were closed;
- d. If applicable, an overview of final decisions, judgments and settlements in civil, criminal or administrative law proceedings in connection with legally prescribed audit services and proceedings before authorities under special laws or professional disciplinary bodies, (in each case stating details of the case, amount of the claim asserted, legal appraisal, risk of litigation and any settlement sums);
- e. Current extract from the Debt Collection and Bankruptcy Register (not more than 3 months old at the time of submitting the documents);
- f. Current articles of association or current partnership agreement, as well as organisational and operational regulations or equivalent documents;
- g. Written description and graphical depiction of the ownership structure, including agreements among the owners and other arrangements making it possible to exercise control or other significant influence;
- h. List of members of the highest management or governing body and of the executive body, stating surname, first name, place of residence, place of origin, date of birth, occupation and, if applicable, registration number, and enclosing current extracts from the Central Criminal Register and the Debt Collection and Bankruptcy Register (in each case not more than 3 months old at the time of submitting the documents) for those members who do not hold a licence as an audit expert;
- i. Written description and graphical depiction of the external company structure (group and investment structure), including Swiss and foreign subsidiaries, branch offices and all direct and significant indirect shareholdings, an indication of the activities carried out and the relevant annual financial statements;
- j. Written description and graphical depiction (organisational chart) of the internal company and management structure, stating the names of the persons in charge of individual departments;

- k. If available, annual reports for the last two financial years, including any consolidated financial statements and corresponding audit reports (otherwise, audited annual accounts);
 - l. Insurance contract or documentation and confirmations of equivalent financial security (Art. 9 para. 1 let. c AOA and Art. 11 AOO), for example captive solutions, and confirmation by third parties (insurance brokers) of their maximum liability amount;
 - m. Lists showing persons at Partner level who have joined or left since the last inspection, giving the following details for persons with a decision-making function: role, business unit, name of previous or new employer.
- 16 Information relating to compliance with independence requirements
- a. Description of the measures taken to ensure the independence of the audit firm, in particular description of the internal controls carried out (in-house, within any network, etc.), indicating the outcomes and the steps taken in response to these outcomes;
 - b. List of the 10 biggest companies audited, broken down by fee for audit and other services, indicating percentage share in the overall fee total (Art. 11 para. 1 let. a AOA);
 - c. Overview showing the audit fee (separated by financial audit and regulatory audit) and other fees earned per public interest entities for the financial years since the last inspection by the Oversight Authority.
- 17 Information relating to ensuring the quality of the audit services provided
- a. Description of the company-specific and assignment-specific processes in place to safeguard the quality of the audit services provided (Art. 12 AOA), with indication of the checks on corporate culture at senior management level ('tone at the top'), the acceptance and continuance of client relationships and specific engagements, human resources management and engagement performance;
 - b. Description of measures taken to ensure compliance with the requirements relating to documentation and retention of records, in particular checks relating to archiving (Art. 730c CO; Art. 10 OAFO-FAOA);
 - c. Confirmation of compliance with the guidelines on training and professional development issued by the Institute of Certified Accountants and Tax Consultants.
- 18 Information relating to internal follow-up procedures (monitoring / quality review)
- a. Description of the scope and outcomes of the most recently performed internal monitoring procedures, and any measures taken as a result;
 - b. Names of the external or internal persons who carried out the internal monitoring procedures, indicating their qualifications;
 - c. Notification of the current status of yet to be implemented measures resulting from the internal monitoring procedure.
- 19 Information relating to measures agreed with the Oversight Authority
Notification of the implementation status of measures agreed with the Oversight Authority.
- 20 The Supervisory Report must be submitted to the Oversight Authority dated and with a legally valid signature.

20^{bis}. Audit firms under state oversight exclusively carrying out audits with financial intermediaries directly subordinate to FINMA (Art. 11a para. 1 let. d AOO) may submit an abbreviated report with the information according to the margins no. 14, 15 let. a, a^{bis}, a^{ter}, a^{quater}, b, d, e, g, h and l 16 let. a and b, 19 and 20 of this circular.

IV. Ad hoc reporting obligation

21 Audit firms under state oversight inform the Oversight Authority immediately in writing of any circumstances that may be of relevance for the oversight. This event-contingent reporting obligation will remain unaffected by the provisions in sections II and III.

22 In addition to the events explicitly mentioned in the Audit Oversight Act (Art. 14 para. 2 AOA), the following in particular must be reported to the Oversight Authority:

a. Proceedings against the audit firm, its licensed audit experts, auditors, members of the highest management and governing body and of the executive body, other persons with decision-making functions, and other employees involved in audit services (financial or regulatory audit).

1. Filing of charges, judgments of first and higher instance, and settlements in a civil suit associated with the audit activity;

2. Opening, judgments of first and higher instance, and settlements in an administrative procedure associated with the audit activity;

3. Opening, referral, judgments of first and higher instance, and settlements in a case relating to a criminal or administrative criminal offence;

4. Opening of proceedings, judgments of first and higher instance, and settlements in a professional conduct case before a professional association;

b. Audit engagements, if, according to the annual report of the public interest entities audited, the relationship between the audit fee (financial or regulatory audit) and other fees exceeds a factor of 1 to 1 in one consecutive financial year, indicating the additional services and any protective measures against a possible impairment of the firm's independence;

c. Events of international relevance that are of interest to the FAOA, in particular:

1. The audit firm's registration with a foreign oversight authority;

2. Request by a foreign oversight authority or a foreign official, a foreign audit firm or another foreign person or organisation to send to a foreign country information or documents that are not publicly accessible, if the sending of such information or documents affects the Oversight Authority or if provisions relating to administrative and criminal assistance will be otherwise violated.

d. Audit mandates of public interest entities, as soon as the audit firm has been elected as audit firm for financial audits or audit firm for regulatory audits by the responsible body, with indication of the expected audit fee.

23 The duty to notify is deemed to be discharged if the required information and documents are communicated to the Oversight Authority within 10 working days of cognisance of the event, by post or by email to info@rab-asr.ch. The notification according to margin no. 22 let. b occurs biannually as per 30 June and 31 December within ten working days and applies to those public interest entities whose annual report has been published since the last notification.

V. Cooperation with oversight authorities under special laws

- 24 To avoid duplication of work, the Oversight Authority coordinates its oversight activities with oversight authorities under special laws (Art. 22 AOA). The Oversight Authority and the oversight authorities under special laws may grant each other electronic access to licence applications, the associated documents and the other records (Art. 26 para. 1 AOO)⁴. As far as possible, they collect the necessary data jointly. In the performance of their statutory duties, however, these public authorities will obtain additional information from the audit firms under state oversight as necessary.

VI. Transitional provisions

- 25 Provisionally licensed audit firms must submit the documents specified in margin no. 15 ('Compliance with licensing requirements'). The Oversight Authority will decide on a case-by-case basis on the submission of additional documents.

VII. Enactment

- 26 This Circular shall come into force on 1 April 2010.⁵

⁴ Cf. Ordinance of the Swiss Federal Audit Oversight Authority of 14 November 2008 on Electronic Access to Non-Public Data DO-FAOA; SR 221.302.32)

⁵ This circular was amended as follows:
- Amendment of 10 December 2013 (in force since 1 January 2014)
- Amendment of 10 November 2014 (in force since 1 January 2015)