



# Financial Market Audit Ordinance

(FINMA-AO)

**956.161**

dated 5 November 2014 (status as at 1 January 2015)



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*The Swiss Federal Council,*based on Articles 24(4) and 55 of the Financial Market Supervision Act of 22 June 2007<sup>1</sup> (FINMASA)*decrees:*

## Section 1: Subject

### ARTICLE 1

This Ordinance shall govern the audit of supervised institutions in accordance with Article 24(1)(a) FINMASA, in particular the content and execution of the audit, the types of audit reportings as well as the duties of the supervised institutions and the audit firms in the context of the audit.

## Section 2: Audit content

### ARTICLE 2 Principle

- 1 An audit firm shall audit whether the institution has adhered to all of the relevant regulatory provisions and whether the conditions are given that these will be adhered to in the foreseeable future.
- 2 The audit may be performed in the context of a licensing procedure or also during the on-going supervision.

### ARTICLE 3 Basic audit

- 1 The Swiss Financial Market Supervisory Authority (FINMA) shall regulate the audit area, the audit periodicity and audit depth for each supervisory area.
- 2 In an audit during the on-going supervision, the audit period in principle shall correspond to the period used in the financial audit in accordance with the principles of the ordinary audit as per the Code of Obligations <sup>2</sup> (CO).

AS **2014** 4295

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<sup>1</sup> SR **256.1**

<sup>2</sup> SR **220**

## ARTICLE 4 Additional audits

If a supervised institution's risks or business model require the audit of additional audit areas, the FINMA stipulates these on a case-by-case basis.

## Section 3: Performing the audit

### ARTICLE 5 Auditing standards

- 1 An audit shall be conducted with the due diligence and expertise required of a duly qualified expert.
- 2 The audit firm shall be responsible for the audit. It shall prepare the audit opinion based on its own assessments.
- 3 During its audit, it may rely on data identified by the supervised institution's internal audit function, provided the audits performed by the internal audit function meet the requirements in respect of content, scope and quality of the basic audit and the applicable auditing standards.
- 4 The audit shall be performed separately from the financial audit, applying the principles of an ordinary audit under the Swiss Code of Obligation<sup>3</sup> (financial audit). Where it is expedient, the audit firm may use the results from the financial audit for the regulatory audit.
- 5 Beyond that, the FINMA shall regulate the details on the auditing standards to be applied.

### ARTICLE 6 Leading the audit

- 1 Only lead auditors that have been authorized in accordance with Article 9a of the Audit Oversight Act dated 16 December 2005<sup>4</sup> (AOA) may lead audits.
- 2 It is prohibited to delegate the lead of an audit.

### ARTICLE 7 Incompatibility with an audit mandate

- 1 Activities are incompatible with the audit mandate at a supervised institution if they potentially impair the objective performance of the audit, in particular:
  - a. provide regulatory advice;
  - b. provide advisory services, audits and assessments of transactions which must be authorized or approved by the FINMA;
  - c. develop and implement systems to support compliance, legal services, risk control, risk management or investment control departments' functions;

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<sup>3</sup> SR 220

<sup>4</sup> SR 221.302

- d. provide assistance and advisory services to hire, promote or let go of persons required to maintain assurance of proper business conduct or others entrusted with key functions relevant to regulatory aspects, i.e. in the finance, compliance, risk control or internal audit departments;
  - e. act as actuary responsible;
  - f. perform internal audits.
- 2 An audit firm mandated by the supervised institution to perform a licensing audit may not perform the audits during the on-going supervision for the supervised institution in question for three years after the license has been granted to that supervised institution.

## **ARTICLE 8** Duration of the engagement and remuneration

- 1 Article 730a (2) CO<sup>5</sup> shall apply correspondingly to the duration of the engagement of lead auditors. After an audit engagement has been completed, the lead auditor may only become involved in these same engagements again after an interruption of three years.
- 2 Audit engagements may not be compensated at a fixed rate. Defining the amount of time to be spent on an audit in advance is not permitted.

## **Section 4: Reports**

### **ARTICLE 9** Audit report

- 1 The audit report shall present the audit results in a comprehensive, unambiguous and objective manner. The lead auditor together with another auditor with signatory powers shall confirm this with their signatures.
- 2 The report shall be in one of Switzerland's official languages. Exceptions must be approved by the FINMA.

### **ARTICLE 10** Structure of the audit report

- 1 FINMA shall regulate the structure of the audit report and designate the documents to be filed.
- 2 The comprehensive audit report as defined in Article 728b(1) CO<sup>6</sup> shall be filed with the FINMA together with the audit report. FINMA may ask for additional information.

### **ARTICLE 11** Notices of reservation and recommendations

- 1 Should the audit firm determine any violations of regulatory provisions or the company's articles of incorporation, regulations or directives, which are of regulatory significance, this must result in

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<sup>5</sup> SR 220

<sup>6</sup> SR 220

a notice of reservation. Moreover, the audit firm shall state whether or not the breach has already been remedied.

- 2 Should the audit firm identify any weaknesses or indications that regulatory provisions may not be adhered to in the foreseeable future, it shall make a recommendation.

## **ARTICLE 12** Deadlines

FINMA shall define the deadlines for the reportings.

# **Section 5: Duties of supervised institutions and audit firms**

## **ARTICLE 13** Duties of the supervised institution

- 1 The appointment and change of audit firm shall be reported to FINMA immediately.
- 2 All supervised institutions belonging to the same group or the same conglomerate must appoint either the same audit firm or one that belongs to the same network for the audit. In justified cases, FINMA may grant exceptions to this rule.
- 3 Supervised institutions shall submit internal audit reports to their audit firms in a timely fashion.

## **ARTICLE 14** Duties of the audit firms

- 1 The audit firms shall notify the FINMA of the mandates of their leading auditors once a year, broken down by supervised institutions.
- 2 Once a year, they report to the FINMA the expenses and the fees charged to the supervised institutions for audit services as per Article 2(a) AOA<sup>7</sup> as well as for non-audit services.
- 3 In case of a change of audit firm, the previous audit firm shall grant its successor access to its audit documentation.
- 4 If several audit firms provide audit services as per Article 2(a) AOA to a supervised institution as per Article 3 FINMASA simultaneously, then the firms must inform each other about the results of their audit services.

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<sup>7</sup> SR 221.302

## 2. Section: Final provisions

### ARTICLE 15 Repeal of another enactment

The Financial Market Audit Ordinance of 15 October 2008<sup>8</sup> shall be repealed.

### ARTICLE 16 Amendments of other enactments

Any amendments to other enactments are set out in the Annex.

### ARTICLE 17 Entry into force

This Ordinance shall enter into force on 1 January 2015.

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<sup>8</sup> [AS 2008 5363, 2013 607 Anhang Ziff. 2]

## Annex

(Article 16)

### **Amendments of other enactments**

The enactments below shall be amended as follows:

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<sup>9</sup> Amendments may be seen in AS **2014** 4295.



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