

Effective: 11 April 2016

## **Guidelines by the FSA Board of Directors**

### **1. Guideline of the FSA Board of Directors pursuant to § 4a in conjunction with § 20 (4a) of the FSA Rules of Procedure on the interpretation of the term "inconsequential breach that in terms of its nature and scope".**

1.1. Pursuant to §20 (4a) of the FSA Rules of Procedure, the abbreviated procedure described therein shall apply in the event of an „inconsequential breach of the FSA Transparency Code in terms of its nature and scope“.

1.2. „Inconsequential breaches of the FSA Transparency Code significant in terms of their nature and scope" are deemed to have occurred, for example, if it is merely a case of negligent non-disclosure or incorrect disclosure of individual data records. The same applies if certain data records have been negligently not published or incorrectly published. In cases of doubt, an "inconsequential breach in terms of its nature and scope" is to be assumed if the member company can also prove the general suitability of its corporate organisation for the implementation of the FSA Transparency Code.

1.3. An "inconsequential breach in nature and scope" cannot be assumed, for example, if it involves the intentional non-recording or incorrect recording of data records or their intentional non-disclosure or incorrect disclosure. An "inconsequential breach in terms of its nature and scope" can also not be assumed if similar breaches occur repeatedly and the member company affected cannot prove any organisational measures to prevent these repeated breaches.

### **2. Guideline of the FSA Board of Directors pursuant to § 4a in conjunction with § 20 para. 4b FSA Rules of Procedure on the scope of application of the "reprimand".**

2.1. According to § 20 para. 4b FSA Rules of Procedure, a procedure can end in case of justified breaches by the declaration of a "reprimand", provided that this is accepted by the member effected within 2 weeks.

2.2. The "reprimand" is part of the general sanction regime of the FSA Rules of Procedure. It should only be used in exceptional cases and with

appropriate justification by the Chamber of First Instance. The application is at the discretion of the judge.

- 2.3. Corresponding exceptional cases exist, in particular, if the identified breach of the Code is a one-time, slightly negligent non-compliance or misinterpretation of the Code and the violation is minor in nature and scope. If a similar breach has already been the subject of proceedings before the Arbitration Board in the past, it must be assumed that the affected member company has not taken sufficient organisational measures to prevent repeated similar breaches in the long term. If the company does not refute this assumption, the standard procedure shall be applied in these cases.
- 2.4. Code breaches based on an incorrect interpretation of new or amended Code provisions do not automatically result in a "reprimand".