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NEW INSTRUMENTS FOR FINMA?

Friday comments on the planned new powers of the Swiss Financial Market Supervisory Authority FINMA in Switzerland – summary

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This text contains summaries of the comments published weekly on Fridays between March and July 2025 on urszulauf.ch regarding FINMA's planned new instruments.

Summary

*The CS emergency merger has triggered a wave of reports. A **wave of regulations** will follow. The Federal Council and the administration in particular are setting the agenda. One key issue are new instruments for FINMA. Proposals range from a "senior managers regime" and bonus rules to administrative fines and more "naming and shaming". It can't hurt to get an overview, even if the new laws won't come into force until 2028 or even later. In fact, two years after the emergency merger, the new rules are only being considered, not drafted and decided, let alone implemented. Part 1 of the planned commentary series: an overview of the new instruments being considered by the Federal Council in the FINMA box and the TBTF regulation being considered in general. ([Commentary 1])*

*The wave of regulation triggered by the CS emergency merger will reach **every corner of the Swiss financial centre**. Hardly any player will remain completely untouched. But not all in the same way. Legally, there should probably be no rules that apply exclusively to UBS. De facto, however, there will. Some rules will affect only UBS and the three other SIBs (Raiffeisen, ZKB and PostFinance). Other measures will impact all banks. In particular, the new tools envisaged for FINMA are, according to the Federal Council's (not the Parliamentary Investigations Commission's) current thinking, to apply to all supervised institutions and supervised parties. These instruments include, in particular, administrative fines, public information on enforcement proceedings, protection for whistleblowers and whistleblower programmes, as well as industry bans ban and disgorgement of purely internal company regulations. ([Commentary 2])*

*Poor **governance** and risk culture are said to have contributed to the decline of CS. This should not be repeated. At least not at SIBs. New rules could help to ensure this. In April 2024, the Federal Council considered various measures to be "conceivable". Much would already be possible based on the applicable organizational provisions of the Banking Act. Nevertheless, a few simple principles in the law could make sense. Applicable to SIBs, but also to all banks in a differentiated way. Such an assignment to the board of directors and management to ensure and live a good governance and corporate and risk culture. And a specification of the requirements for the members of the board of directors and its control tasks. Governance and corporate culture should be anchored in the law as a supervisory topic in line with current practice. In special cases, FINMA should also be able to attend meetings of the board of directors and the executive board as an observer. A legislative proposal. ([Commentary 3])*

*In the view of the federal authorities, CS has been pursuing a failed **remuneration** policy for years. This has contributed to the loss of trust and the decline of the bank. New bonus regulations are intended to prevent this from happening in the future, at least for SIBs. After analysing the Federal Council's proposals, the objectives of variable compensation, UBS's current compensation system and the challenges of bonus rules, especially for global banks, seven simple legislative measures are proposed here. These include a ban on bonuses for the members of the bank's management bodies and the management bodies of the business unit responsible for the loss in years with an overall loss. Instead of forcing the bank to take clawback measures, it is proposed that FINMA be empowered as part of its normal and tested enforcement process to withdraw bonuses paid to key risk takers if they are responsible for serious breaches of supervisory law. ([Commentary 4])*

*Since the financial crisis, there have been public calls for more proceedings against **senior bank managers**. Such proceedings are difficult: bitter legal resistance from those concerned, increased demands from the courts, and responsibilities in the banks not always clearly defined. Various jurisdictions responded to these challenges with different approaches. Some introduced a special accountability regime for bank managers. In Switzerland, FINMA has responded quite successfully by conducting more in-depth investigations, bringing more proceedings against individuals and imposing a liability regime against individual banks. However, a liability regime at the legislative level is to be expected. It should be as simple and proportionate as possible, with the identification of key risk functions and key risk takers as well as a few conduct rules as core elements. ([Commentary 5])*

*In its report of April 2024, the Federal Council is considering explicitly authorizing employees of, for example, banks to report misconduct and abuses directly to FINMA. The Federal Council would consider this to be justified, but in view of the repeated failure of proposals for **whistleblower protection**, it is refraining*

from recommending implementation in financial market law alone. This is despite the fact that a regulation for pharmaceutical companies and hospitals has been in place in the Therapeutic Products Act since 2019. Nevertheless, a regulation is proposed here. However, it would respect the cascade principle. This would create an incentive for financial institutions to set up functioning reporting systems. It would also raise the hurdle for indiscretions to the media. (Commentary 6)

*The Federal Council wants to refine the **industry ban and disgorgement rules**. This would apply to all supervised financial institutions, banks, and insurance companies. In future, serious violations of internal company regulations would be sufficient grounds for an industry ban. In addition, FINMA would also be able to confiscate profits made by traders and client advisors through serious violations of supervisory law or internal company regulations. These legislative changes do not appear to be absolutely necessary or useful, but they are not harmful either. They are therefore supported here without enthusiasm. (Commentary 7)*

*FINMA does not only review **the suitability of bank executives** retrospectively if there are indications of misconduct. It also carries out preventive checks before granting a banking license and on an ongoing basis when there are changes in executive bodies or functions. Unlike financial institutions under the Financial Institutions Act, banks are currently not required by law to notify FINMA in advance of changes in their governing bodies and obtain its approval. The Federal Council wants to change this, adapt the legal situation for banks, and adopt the rules for financial institutions. In terms of content, however, there will apparently be no change to the prior or ongoing assurance reviews. The proposed amendment is not earth-shattering, but it is acceptable. However, it should also require FINMA to respond quickly to reported changes in management. (Commentary 8)*

*FINMA relies heavily on information provided by supervised entities for its supervisory activities. These entities are therefore subject to **disclosure, reporting, and cooperation obligations** vis-à-vis FINMA. These obligations primarily apply to supervised institutions and their governing bodies. No such obligations currently exist for the governing bodies themselves or their employees, at least outside of proceedings. The Federal Council wants to change this, similar to the current situation under the Audit Oversight Act. This change is not dramatic, but it is justified for various reasons. It should therefore be introduced into the FINMAG and apply to all supervised entities. In addition, FINMA's current practice regarding the right of individuals to refuse to provide information and the consequences of such refusal in the free assessment of evidence should be enshrined in the law in an appropriate form. (Commentary 9)*

*FINMA, the Federal Council, and CS PUK would like to see **more public information about enforcement proceedings** by FINMA. At least in cases against SIBs. This should include the names of the companies concerned and, possibly, the individuals involved. Not just in exceptional cases, as is current practice. This impression is incorrect: FINMA has already provided relatively frequent information about proceedings against banks in media releases. However, the increasing delay in providing information with the help of the courts is unsatisfactory. Even if regulation is unlikely to have a dramatic effect, it therefore seems appropriate. Applicable to all areas of supervision, not just SIBs. FINMA should continue to summarize all its enforcement decisions publicly but should now name the institutions in all cases. However, the names of individuals should not be disclosed. In addition, FINMA should continue its current practice of issuing press releases on cases of significant public interest. The only remedy available would then be a subsequent appeal. (Commentary 10)*

*FINMA and the Federal Council are in favor of **FINMA getting the power to fine**. Parliament is also thinking about letting FINMA fine individual managers. At least for SIBs. However, the reasons given by the Federal Council for this are not convincing. Furthermore, the deterrent effect of such fines on companies is uncertain. Moreover, FINMA is already authorized to impose financial sanctions in the form of profit confiscation. It does so regularly and consistently. FINMA's power to impose fines is therefore unnecessary and would have more negative than positive effects. This is particularly true with regard to FINMA's procedures. Nevertheless, Parliament is likely to approve them, but hopefully only for systemically important banks. (Commentary 11)*

*The Federal Council, presumably under the influence of FINMA, is considering proposing to parliament that the **court procedure for appeals against FINMA***

***decisions be streamlined**. This would exclude appeals to the Federal Supreme Court. Short deadlines would be introduced for appeals to the Federal Administrative Court. The Federal Administrative Court would have to decide more quickly and would no longer be entitled to review the appropriateness of FINMA's decision. In principle, appeals would no longer have a suspensive effect. The unease about judicial review of FINMA's supervisory decisions was triggered in particular by the PostFinance case. However, an analysis of this case does not reveal any fundamental problem with the judicial process. The Federal Council should therefore not pursue these ideas any further. Neither for systemically important banks nor for all banks and financial institutions. (Commentary 12)*

*FINMA already has extensive tools to enforce its supervisory requirements. The Federal Council and Parliament want to expand these powers to include **more explicit provisions for early intervention**. An analysis of FINMA's actions regarding Credit Suisse in the fourth quarter of 2022 shows that, although more drastic measures would have been possible under existing law, they would have been impractical. Nevertheless, clarifying the legal instruments for early intervention in the event of a crisis seems sensible. However, this should apply only to systemically important banks, not to all banks. FINMA should be authorized, in agreement with the Swiss National Bank, to require systemically important banks (SIBs) in crisis situations to implement all or individual measures from the stabilization plan in a ruling. An appeal would be possible but would not have a suspensive effect. The Federal Administrative Court could reinstate the ruling only if the ordered measures were manifestly ineffective, inappropriate, or disproportionate. However, even with careful application, no miracles should be expected from such a provision. (Commentary 13)*

*The Federal Council expects FINMA to "equip itself with the necessary number and quality of resources, taking into account its new tasks." Parliament supports this and asks the Federal Council to look into measures "so that FINMA can meet the big banks on an equal footing." In plain language: **FINMA should hire more staff and pay them better**. An analysis shows that FINMA's staff growth since 2009 has been much higher than in the federal administration and that its staff are better paid, roughly on a par with the Bankers Association. FINMA can certainly do more. It has already increased its staff numbers more sharply in the last two years than before. Nevertheless, a sense of moderation is advisable: the supervisory authority should not be the only thing growing strongly in the financial centre. (Commentary 14)*

*The Federal Council does not intend to change FINMA's governance structure. As before, the Board of Directors, and not the Executive Board, will decide on "**matters of major importance**." According to FINMA's current organization regulations, this includes "individual cases... with potentially far-reaching consequences for all creditors... which significantly affect the functioning of the financial markets." In the case of the four systemically important banks, this «specifically» means approvals for «major restructurings», «protective measures, restructuring and bankruptcy», «withdrawal of authorisation», «initial approval of statutory contingency plans" and "capital and liquidity surcharges or restrictions". The Federal Council does not intend to change this. However, it would like to enshrine the current rule in the law. This seems unnecessary. Otherwise, the Federal Council's position deserves support. (Commentary 15)*

*Unlike in other countries, audit firms do not only audit the annual financial statements of companies supervised under financial market legislation ("financial audit"), but also check compliance with supervisory law ("**supervisory audit**"). These audit firms are selected and paid by the supervised entities. In the banking sector in particular, this supervisory audit sometimes replaces direct audits by FINMA or auditors directly commissioned by it. This "dual supervisory system" with audit firms acting as an "extension of FINMA" is repeatedly criticized, especially by auditors from international organizations such as the IMF. In their view, direct audits by the authorities are more independent and effective. The Federal Council does not accuse the CS audit firms of any failure. However, it still wants to strengthen the audit system for all supervised entities. The law should confirm that FINMA can also carry out its own audits of banks at any time without any doubt. Supervised entities would have to change their audit firm after a maximum period of 10 years. In addition to auditing, audit firms should only be allowed to offer "audit-related services" to the companies they audit. Auditors should not be allowed to accept board mandates in the supervised sector. These proposals appear unnecessary and unlikely to be effective. On the other hand, it would be worth considering whether FINMA could take over the supervisory audits at UBS* *on a pilot basis or, in individual cases, directly commission an audit firm for specific areas. (Commentary 16)*

*In June 2025, the Federal Council outlined in "**key points**" how it envisages regulation following the collapse. This is to be implemented in five stages, three at the legislative level and two at the ordinance level. According to the Federal Council, these rules should come into force between 2027 and 2029. However, 2030 seems more realistic for the bulk of the rules. The Federal Council does not plan to hold public hearings on the key points, but intends to hold informal talks with the industry. In the key points, the Federal Council is essentially sticking to the measures it presented in 2024, without adding anything fundamentally new. The most important change is probably the extension of FINMA's early intervention powers. Two-thirds of the measures analyzed are to apply not only to SIBs but to all banks and other supervised institutions. Hopefully, the regulatory process will focus primarily on measures that address the issue of systemically important banks that are too big to fail. (Commentary 17)*