EXPERTENGRUPPE FINANZMARKTAUFSICHT

GROUPE D'EXPERTS SURVEILLANCE DES MARCHES FINANCIERS

FINANZMARKTREGULIERUNG UND -AUFSICHT IN DER SCHWEIZ
(Banken, Versicherungen, Allfinanz und Finanzkonglomerate, andere Finanzdienstleistungen)

LA REGLEMENTATION ET LA SURVEILLANCE DES MARCHES FINANCIERS EN SUISSE
(Banques, assurances, allfinance et conglomérats financiers, autres services financiers)

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RECOMMENDATIONS

1. General

1. The fundamental necessity, and economic rationale respectively, for the regulation of financial services companies is not disputed. It provides protection for the creditors and the financial system (paragraph 11).

2. The objectives pursued by means of financial market legislation should expressly be embodied in law (paragraph 114).

3. In determining the extent of regulatory intervention the legislator must be careful that the competitiveness of the firms concerned is not impaired. In this respect, particular consideration must be taken to ensure fair competition is maintained (paragraph 12).

4. Further differentiation of financial market regulation is unavoidable in order to take appropriate account of the special features of individual banks, bank groups and other financial service providers. In this context, a simplification of bank and financial market regulation, primarily in terms of risk capital provision should be considered in the process (paragraphs 21 and 22).

5. In terms of regulation and supervision Switzerland must take a pro-active and enhanced role in the international arena (paragraph 123).

6. Before undertaking important regulatory changes, the scale of the cost implications at all levels (supervised institutions, supervisory authority and possibly third parties) should be established and set against the desired benefits (“cost-benefit analysis”, principle of proportionality, paragraph 124).

7. Aspects of integrity and business ethics should be considered in the planning of financial market regulation and supervision and should be stated explicitly at the beginning of such legislation (paragraph 13).

2. Banks

8. In the framework of capital adequacy rules and in accordance with the conditions of the review recommendations of the Basel Capital Accord, the creation of incentives is merited for banks to continually improve their risk management. By applying effective risk management models the banks should be granted relief in terms of risk capital requirements (paragraph 21).

9. Accruing importance is to be accorded to the regulation of bank liquidity provisions. Comprehensive liquidity management renders banks far less prone to crises and thereby contributes, as does risk capital, to safety of the creditors (paragraph 216).

10. From the perspective of systemic risk it must be underlined that the solidity of an individual institution is not sufficient to guarantee the security of the banking and

financial system as a whole. The task of bank regulation in future, above all due to the connections and dependencies of various risk types, should also increasingly be the direct protection of the system (paragraph 21).

11. While it may be the case that special supervisory structures are necessary for the supervision of the large banks, the creation of a separate national supervisory authority is not. The establishment of supranational supervisory bodies seems unrealistic at the present time. However, the active participation of the Swiss banking authority in increased international co-operation of supervisory authorities in order to safeguard the stability of the global financial system is to be recommended (paragraph 23).

12. A weighing-up of the corresponding advantages and disadvantages of the existing dualistic (or indirect) supervision system speaks in favour of its preservation where recognised auditors are entrusted with the task of assessment (paragraph 24).

13. Until now, the self-regulation of the Swiss banking sector has proved to be a flexible and market-oriented form of regulation. The self-regulatory system as a supplementary element to public regulation should be maintained (paragraph 25).

14. In regard to the question of an implicit government guarantee for privately-owned banks, strict information of clients and creditors about the facts and risks is to be recommended. However, the introduction of an institutionalised co-ordination mechanism between government, supervisory authorities and central bank is not necessary (paragraph 26).$

3. Insurance firms

15. The fundamental necessity and economic rationale for the regulation of insurance firms is not disputed. It should primarily serve to protect the insured, but also be effective in the area of collective protection (paragraph 311).

16. The regulation of insurance firms should be aimed towards the specific risks of the insurance sector. Accordingly, appropriate consideration should be taken of the differences to the banking sector (paragraph 312).

17. Protection of the insured should in particular be provided in the form of solvency controls and not in the form of preventative product controls (paragraphs 321 and 322).

18. In view of existing regulation it is not necessary to introduce differentiation within the insurance sector according to the size of company; subject to a certain easing of reporting requirements (paragraph 323).

19. Supervision of insurance groups should be strengthened in view of existing European Union directives (paragraph 324).

20. The stance of legislators towards development possibilities for banks and insurance firms should be guided by fair competition. In particular, insurance firms

should not be prevented from conducting activities outside the field of insurance, although in accordance with the current Agreement between Switzerland and the European Union (paragraph 33).

21. A system of dual supervision by external auditors does not appear to be necessary at this time, although it may become necessary to re-examine the situation in future if insurance firms develop their range of financial services (paragraph 34). It is also not necessary to extend the field of application of self-regulation (paragraph 35).

4. Global Finance and Financial Conglomerates

22. When considering one-stop finance and financial conglomerates, one first has to take into account their many forms. One can observe in particular that alongside the distribution of one-stop financial services the formation of conglomerates is progressing, although in general conglomerates are firmly rooted in either the banking or insurance sector (paragraph 41).

23. Research has thusfar been conducted into the inter-dependencies of risks in financial conglomerates and more extensive studies should be conducted (paragraph 42).

24. In view of the level of knowledge and the differing supervisory instruments and the fact that inter-dependencies of banking and insurance risks in conglomerates have not yet been extensively researched, it seems justified in the coming years to assess, for every conglomerate and on the basis of individual models, if and to what extent an aggregation or consolidation of risk assessment can be undertaken. The presentation of accounts should however follow in consolidated form (paragraph 43).

25. At a later stage general rules could be formulated when the experiences made on the basis of individual models have been analysed. It would be a case of examining whether similar activities with similar conditions and similar risks can be treated in the same manner or whether they consciously need to be treated differently (paragraph 44).

5. Non-regulated financial services providers

26. The preceding general recommendations are also applicable to those service providers, who up until now have not been regulated. The recommendations regarding competition (functional approach, paragraph 3) and differentiation (paragraph 4) are of particular importance. The legislators will develop a specific legal regime for each type of service that it decides to regulate and supervise. This principle particularly applies to independent asset managers; it equally applies to securities brokers who are already regulated (paragraph 51).

27. All new regulation must be federal and not cantonal in nature.

28. The regulation of securities brokers has already provided positive results. It will nevertheless be necessary to strengthen the measures that the authorities have at their disposal to combat unlawful and damaging behaviour (paragraph 532).

29. The regulation of Introducing Brokers is absent at present. Legislators should close this gap (paragraph 533).

30. Since the stock market law came into force, cases of unlawful and damaging behaviour have to some extent become concentrated in foreign exchange trading (spot). Foreign exchange dealers should be placed under regulation (with licensing) and supervision (paragraph 534).

31. According to the opinion of a majority of expert group members, the regulation and supervision of independent fund managers can be justified as follows: the current regime no longer meets international standards; there is a precautionary need to protect the client, although they may enjoy a specific relationship to their fund manager and their assets are deposited with banks; in Switzerland's interests as a financial centre, it has become necessary to guarantee the quality of services provided by independent fund managers; the principle of fair competition requires that all firms engaged in fund management activities in Switzerland are henceforth bound by the same rules (paragraph 54).

32. The regulation and supervision of other financial services providers is not required as it has not been possible to establish a need for protective measures for the client or a need for Switzerland as a financial centre with regard to a particular type of service. However, the regulation (existing or planned) of the various institutions should be brought under one category in the long-term and be subject to the same substantive regime (paragraph 55).

33. The regulation of introducing brokers, foreign exchange dealers as well as independent asset managers can be carried out under the framework of the Federal Law on Stock Exchanges and Trading in Securities (following adjustment of the title); a new general law with regard to financial services is not necessary (paragraph 56).

34. The supervision of these three types of provider should be entrusted to the same authoritythat is responsible for banks and securities brokers. This authority should not only ensure safety and soundness, but also supervision in relation to the combating of money laundering (paragraphs 562 and 623 et seq.).

35. The legislators should reinforce the means of intervention that the supervisory bodies have at their disposal in cases of unlawful and damaging behaviour as well as strengthen the opportunities for co-operation in such matters with the cantonal prosecuting authorities. Administrative sanctions should equally be developed (paragraph 564).

6. Organisation of overall supervision

36. It is necessary to create an integrated financial market supervisory authority that will take over the supervisory functions of the Federal Banking Commission and the Federal Office of Private Insurance (paragraph 62).

37. The new supervisory authority will also be responsible for the prudential supervision of these financial service providers, whose compulsory regulation is being proposed (see recommendation 34) (paragraph 623).

38. The new supervisory authority will ensure that the Money Laundering Act is observed by the financial intermediaries that it supervises. The self-regulation bodies that exist for this purpose today will be involved in the formulation of the corresponding regulation, but will play no further supervisory role (paragraph 625).

39. As an institution the newly integrated financial market supervisory authority is to be structured so that it may operate free from the influence of politics and those it is there to supervise. It should be granted authority over how it implements its resources. It is to be professionally equipped and internationally oriented. The new, integrated financial market supervisory authority that is to be created should possess sovereign functions yet maintain administrative independence (paragraph 63).

40. It is foreseen that there should be clear control mechanisms and (subsequent, not simultaneous) accountability to parliament, as well as adequate legal safeguards against the decisions of the authority (paragraph 63).

41. It is recommended that the creation of an integrated supervisory body be striven for immediately following the decision in principle of the Federal Council to create a new authority and that the integration of existing supervisory authorities, according to the competences of the Federal Council (administration, personnel, premises), be pursued as far as existing legislation allows (paragraph 64).

42. A Federal Law should be drafted in which the organisation, position, control, financing, authority and responsibilities of the new supervisory authority are clearly defined but which does not fundamentally alter the substantive rules governing the supervision of the various sectors (paragraph 64).