



August 14, 2009

VIA e-mail: oliver.wuensch@finma.ch

Oliver Wunsch
Swiss Financial Market Supervisory Authority FINMA
Einsteinstrasse 2
CH – 3003 Bern

RE: Circular on Remuneration Systems

Dear Mr. Wunsch,

We welcome the opportunity to comment on the proposed regulations regarding remuneration systems of Swiss financial institutions. We believe that FINMA's efforts to reform remuneration disclosure and practices will assuage some investor concerns regarding Swiss companies' exposure to risk, especially in light of the significant loss of shareholder value at several Swiss companies during the global financial crisis. Furthermore, we believe that certain of the proposed Principles, as outlined in the Circular, could serve as a model for international best practice in corporate governance.

In particular, we believe that shareholders will benefit from increased transparency and the definition of a more explicit relationship between executive pay and a company's performance. Historically, the link between pay and performance at Swiss companies has proven difficult for shareholders to evaluate. In our view, strengthening the link between pay and performance at Swiss financial institutions will enhance their attractiveness to investors.

We commend FINMA for seeking to make financial institutions "structure their remuneration in a way that does not award incentives for taking inappropriate risks and which uses variable remuneration to promote, not impede, the institution's sustainable development" (section 3.1.3 of the *Circular on Remuneration Systems, Explanatory Report*). We believe this will encourage more effective development of performance metrics focused on long-term performance and prudent risk taking.

Glass Lewis is an independent proxy research advisor that provides proxy voting research, analysis and recommendations to institutional investors from around the world. Glass Lewis is submitting this comment as an interested industry advisor, not on behalf of any or all of its clients.

Importance of disclosure of remuneration policies

Glass Lewis believes that any attempt at reform of remuneration systems and structures should be complemented by the implementation of robust, standardized disclosure. Neither shareholders nor regulatory authorities can accurately assess the relationship between a company's risk exposure and its compensation practices without a clear understanding of the amount and structure of a company's remuneration. As such, we agree with Principle 9 of the draft Circular, which requires improved disclosure of remuneration systems. However, we believe Swiss companies could provide even more precise disclosure regarding executive remuneration without imposing an unreasonable reporting burden on companies or putting them at a competitive disadvantage relative to peers.

We believe that FINMA's intention not to require the publication of individual names along with remuneration figures may impede the ability of third parties to assess a company's compliance with some of the other Principles contained in the Circular. For example, Principle 7 establishes a proportional relationship between the quantum amount of an individual's compensation and the amount of deferred compensation received while Principle 4 also establishes a proportional relationship between an employee's level of responsibility and the risk elements of his or her remuneration.

If these relationships between risk management, an employee's overall responsibilities and pay are to be effectively monitored by third parties, there must be more specific disclosure requirements to allow for review of each component of each senior manager's compensation. Under current regulations, it may prove difficult to identify the effectiveness of remuneration policies on those individuals who are most responsible for managing a company's risk. Chief financial officers, chief accounting officers, and chief risk officers rarely qualify as the highest earner under the Swiss Code of Obligations, therefore generally allowing Swiss companies to avoid disclosing their individual remuneration figures. When figures for executives responsible for sales, marketing, development, and risk management are lumped together, it becomes immeasurably more difficult to evaluate whether individuals charged with significant risk oversight receive compensation structured in a way that reflects this responsibility.

In addition to the challenges posed by the lack of disclosure on an individual basis, shareholders have historically found it difficult to evaluate equity (and, more recently, derivative) awards in Switzerland as a result of disparate disclosure practices. We believe that if companies were to provide clear and consistent disclosure of the number of awards granted, recipients of those awards, grant dates and valuation assumptions in a standardized format, it would greatly facilitate third parties' ability to evaluate executives' total remuneration packages. In light of pending amendments to the Swiss

Code of Obligations that could give shareholders the opportunity to approve remuneration practices at listed companies, we believe the need for clear, precise, accurate and standardized disclosure is greater than ever. In order for shareholders to effectively monitor the relationship between risk exposure and remuneration, it is critical that companies disclose all necessary information in a concise and consistent format. We urge FINMA to consider the merits of requiring specific and standardized disclosure wherever possible.

Linking pay to performance

In our view, the Circular contains three crucial recommendations that could have a direct and substantial effect on risk management at financial institutions: (i) the addition of “clawback” or “malus” provisions to variable remuneration components; (ii) the establishment of a precedent for deferring remuneration subject to a performance period; and (iii) the requirement that variable compensation be restricted when a company does not perform well. In particular, we view the practice of deferring certain remuneration components and introducing clawback provisions as leading and innovative recommendations in best practices for corporate governance.

Despite our positive view of these developments, we have one substantial concern—the Circular does not require the clear disclosure of performance targets or a company’s performance relative to those targets. In our review of Swiss companies’ remuneration reports, we find that companies consistently fail to disclose pre-determined performance targets for variable compensation. Moreover, we find that companies regularly fail to evaluate their attainment of those targets, in quantum terms, when discussing remuneration granted to executives in their annual reports. When this information is not disclosed, it becomes impossible to evaluate whether a company’s executives will be or have been rewarded in accordance with reasonable, challenging performance targets.

We believe that both shareholders and FINMA would benefit from requiring companies to define targets used as benchmarks to measure company performance as well as vesting schedules. We recognize the challenge of providing specific information to third parties for them to evaluate the link between pay and performance with the need to limit the disclosure of sensitive information that could potentially negatively affect a company’s competitive position. However, we believe companies can disclose sufficient information in order for shareholders to make an independent determination regarding the challenge in meeting performance goals and if the goals were met. The unnecessary absence of such clearly defined targets and vesting schedules creates an opportunity for boards to adjust both targets and achieved results, potentially boosting undeserved compensation of



executives. In our view, requiring companies to provide better-defined relative performance targets would more effectively protect against manipulation of performance metrics.

Lastly, Glass Lewis strongly favors the inclusion of multiple relative performance targets in remuneration plans. We believe measuring a company's performance with multiple metrics serves to provide a more complete picture of the company's performance than a single metric. Further, a single metric is more easily adjusted or manipulated. Additionally, in our view, the use of an absolute (rather than relative) performance condition as the sole metric of long-term incentive plans is inappropriate, as it may primarily reflect market movements rather than executive and company performance. While we commend FINMA for recommending that economic profit be used as a benchmark for measuring company performance, we believe that stronger recommendations regarding multiple relative performance targets would mitigate excessive risk-taking by focusing executive attention more on sustainable long-term growth.

We would be happy to provide any additional information to FINMA regarding this matter. Thank you for the opportunity to comment on the proposed remuneration reform regulations.

Sincerely,

/s/

Robert McCormick, Chief Policy Officer
Carla Topino, Director, European Proxy Research
Andrew Gebelin, Senior Proxy Research Analyst