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Ten years of FINMA: a dynamic supervisor for a dynamic financial centre

Ladies and gentlemen

FINMA has now been overseeing the Swiss financial market as an integrated supervisory authority for a decade. The financial markets and financial centres have been changing fast during this time. We as an authority cannot and should not ignore this dynamism.

FINMA was born in the midst of the financial crisis. This was purely a coincidence as the decision to establish FINMA had already been taken some time before. Nevertheless, it inevitably shaped our first few years. FINMA was not blessed with a honeymoon period. We needed to take far-reaching decisions from the very beginning. A good example was the publication of the UBS client data after we had been in existence for less than two months, when FINMA had to take immediate steps to resolve the crisis. We were thrown in at the deep end and this undoubtedly accelerated the new authority's maturing process. In my view FINMA has established itself as a credible, internationally recognised and indeed dynamic authority since then. This enables it to play an important role in ensuring that the Swiss financial centre is functioning as it should.

So I firmly believe that the first ten years of our financial market supervision can be seen as a success. However, FINMA is always willing to look at itself in order to see whether and how it can optimise its work processes even further. Our strategy, our organisational setup and the ways in which we approach things are not set in stone, but must be open to continual review and refinement to take account of new developments. What has worked? What needs to be adapted? A dynamic industry such as finance needs a dynamic supervisory authority.

So as we take stock of where FINMA is today, allow me to analyse our progress briefly in terms of our three main activities: supervision, enforcement and regulation.

Continual development in supervision

FINMA's core task is supervision. And the guiding principle of supervision is risk orientation. FINMA has established the method of risk-based supervision in all of its supervisory areas – banks, insurance companies, fund management companies and markets. Risk orientation was and is the only logical approach to achieving maximum impact with finite supervisory resources. FINMA groups the institutions into six categories based on their size as well as a qualitative risk rating which takes into account factors such as the quality of their money laundering prevention. Thus we do not use our resources unnecessarily, but instead focus on the areas where we perceive the greatest risks based

on a structured assessment. In other words, the greater the risk or more problematic the conduct, the more intensive is our supervision.

A further important element of risk-oriented supervision is the well-established system in Switzerland of using audit firms to conduct regulatory audits on FINMA's behalf. This allows us to target resources to particular areas when needed. FINMA has steadily developed this regulatory audit system and is continuing to do so. In the past a blanket approach was often taken to auditing, but in many cases this did not produce relevant insights and was too slow in highlighting problems at the supervised entities. We have therefore made changes to this process, particularly in audit planning. We want the auditors to be even more targeted, risk-oriented and forward-looking when working on FINMA's behalf. The aim is to significantly cut costs in this area.

FINMA has also made its own supervisory activity more forward-looking in recent years, particularly with regard to business conduct and anti-money laundering at the financial institutions. We realised that if supervision is mostly reactive, it will not deliver satisfactory results in the long term. We want to intervene not just when the problems are self-evident, but rather identify problem areas ahead of time wherever possible and demand corrective action from the institutions. This is clearly of wider benefit, including to the supervised institutions, and increases the safety of the financial system. As you can see, FINMA has been continually developing its supervisory activity over the last ten years.

Enforcement: judicial oversight in action

Turning to FINMA's enforcement activities over its first decade, there have been quite a few major cases and developments in this area have been shaped both by FINMA and by the courts. Public milestones include the conclusion of proceedings against Credit Suisse concerning its US cross-border business and anti-money laundering systems and against UBS also concerning its US cross-border business and unauthorised trading activities by the trader Adoboli, LIBOR and manipulations in foreign exchange trading. Last but not least, there were cases in connection with governance at companies such as Raiffeisen, KPT, Supra, Assura and Groupe Mutuel. All of these proceedings have led to clear improvements in the internal organisation. There have also been some significant cases at smaller companies. We have conducted a number of proceedings over inadequate anti-money laundering controls – seven with a link to the Malaysian sovereign fund 1MDB and four on the Brazilian Petrobras scandal. The various market supervision cases also generally related to smaller institutions.

These examples demonstrate that we have used the enforcement powers given to us in a consistent manner over the last ten years. This applies in particular to industry bans and disgorgement of profits, which have only been available to FINMA as sanctions since 2009. The enforcement cases also show that we intervene both with large and small firms. The supervisory relevance of the individual case is and remains the primary criterion.

We have also made continuous improvements to our internal processes. Let me give you an example of how we have continued to develop our practice in enforcement. Since 2014 we have professionalised our internal processes and put more resources into proceedings against individuals. The aim is to strengthen the preventive effect of our enforcement measures. Our practice is monitored and controlled by the courts. Case law has also developed over time. 2018 was an exceptional year in this regard, as the courts adopted a different interpretation of the law in several similar cases decided at the same time and upheld appeals against our rulings. As a result of this, the statistics show a

higher success rate for appeals against FINMA's decisions. This can be largely explained by the fact that we established a stricter practice in issuing industry bans against individuals in 2014, which only reached the courts following a delay. The court decisions help us in our enforcement proceedings as the legislation is often formulated in general terms and needs to be interpreted. And the external perspective of independent courts is very important to us. We therefore follow their guidance and adapt our practice to the respective landmark rulings immediately.

Regulation: reducing complexity where possible

I would now like to say a few words about the third area, financial market regulation. "Regulation" has become something of a taboo word recently. Regulation is presented as impeding market forces and even limiting profitability. Criticism of regulation is on the rise again. What we have here is a cyclical phenomenon. The more time has passed since the last crisis, the louder criticism of alleged overregulation and the authorities' supposed determination to tie everyone up in red tape typically becomes. Academic studies have shown that historically this criticism of regulation is something that occurs on a regular basis. In particular, why regulation was introduced in the first place and what risks it is supposed to guard against gradually gets forgotten. As an authority we must not be allowed to forget but must instead remember.

It is important to make one point at the outset: the primary regulatory authorities are the Swiss parliament and the Federal Council. FINMA can only regulate if this is explicitly provided for by statute. This is the case for a number of clearly defined topics. Here, we have the task of issuing ordinances. However, FINMA also publishes circulars. These circulars set out how we will apply the law. Thus they are not really regulation, but instead interpretation. By publishing circulars we disclose how we will interpret the law and ensure transparency, even-handedness and predictability. This sets FINMA apart from other authorities or from the courts, which develop their practice through a number of individual cases. In addition, the circulars are presented to the parties concerned for comment as part of a robust consultation process, which is much appreciated. And so circulars should be regarded as a service and not as a noose. FINMA must remain independent of political influence in its supervision – and particularly its interpretation of the law. This is essential for FINMA's supervision to remain credible. And credible supervision is in the fundamental interests of the financial centre.

After the financial crisis of 2007/2008, banking regulation was tightened up, and rightly so, because there were significant weaknesses present at all banks, and not just at the large banks where the root causes of the crisis were identified. It was essential to buttress the stability of the financial institutions in order to protect the economy. This was achieved primarily by increasing the banks' capital. This measure was accompanied by important improvements to liquidity and risk management, transparency and supervision.

Not only Switzerland, but all major financial centres have taken steps towards improving systemic stability and client protection by developing joint standards such as those encompassed in the Basel III programme. The introduction of joint standards allows financial centres to compete on an equal basis and prevents distortions of competition. Switzerland has also participated in this programme. In very few areas, such as capital requirements for systemically important banks, the Swiss parliament has gone further than the new international standards. It has therefore clearly positioned the financial centre in the top half of the important countries. We should be wary of demonising these additional achievements as the "Swiss finish" or challenging them for being "anti-competitive". The wheel of history should not be turned back.

However, the growth in regulation worldwide has also led to increased complexity. Here we believe there is scope to further enhance the regulatory landscape. We have reflected on the matter and also analysed constructive, objective criticism. As a dynamic authority we must always be open to improvements. We have therefore resolved to clear away unnecessary complexity in our regulatory system. This is something FINMA is committed to. An example I would like to mention is our regulatory regime for small banks. We are currently conducting a pilot with 68 small banks. These institutions must be well capitalised and well managed. In return they enjoy lower regulatory requirements in certain areas, without this jeopardising overall safety and stability. There are relaxations on calculating some regulatory ratios and disclosure requirements.

Apart from the small banks regime FINMA is constantly checking to see where relaxations are possible without compromising its supervisory goals, such as in online onboarding, the increased risk orientation in auditing and in the new technologies. Examples here are the sandbox and the FinTech licence. Naturally, however, there cannot be any relaxations in the areas of good business conduct and money laundering prevention.

Looking back over the last ten years of FINMA regulation, I would conclude that FINMA took up its work at a very difficult time and that it has fulfilled its mandate well and in line with the requirements of the Swiss parliament. It has struck the right balance between constancy and dynamism and established a constructive dialogue with the financial industry and politicians. Its credibility and its independence are an important factor for the seal of quality of our financial centre. And to ensure that this remains the case, we will continue to put all our energies into this in the years ahead.

FINMA: a lean organisation

To conclude I would like to say a few words about us as a supervisor. The merger of the three predecessor institutions – private insurance supervision, banking supervision and the anti-money laundering control authority – into one, integrated authority has been a success. The setup of FINMA's supervision and the size of the authority are coherent. FINMA's Board of Directors determines, among other things, the size of the authority. FINMA has stayed the same size in the last five years and is a lean organisation with efficient processes by international standards. We are doing everything we can to ensure that this remains the case. Under the new Swiss Financial Institutions Act we will be given some new responsibilities for independent asset managers. So that we can fulfil these additional responsibilities we are planning a moderate increase in our headcount from 2019.

FINMA has also made some important steps towards digitalisation. For instance, we introduced the survey and application platform in 2018. This allows over 850 supervised institutions and their auditors to send us data digitally. They can use the platform to submit paper-free applications or their supervisory data purely electronically. This helps to make the exchange of data between FINMA and the supervised institutions and auditors more efficient.

In conclusion I would like to emphasise again that FINMA has always continued to develop after starting out on a steep learning curve ten years ago. This steady development has enabled us to meet the demands placed on a credible, rigorous supervisory authority. But we will not rest on our laurels, however, and will remain focused on our mandate as an independent, dynamic organisation in regular dialogue with the financial industry and politicians.