



Cooperation and Open Financial Markets: Swiss – U.S. Topics

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1 Introduction

Ladies and Gentlemen

It is a great pleasure for me to address the Swiss-American Chamber of Commerce. Your Chamber has a challenging mandate given that Switzerland and the United States of America have considerable interest in transnational business, especially in financial services. During the next few minutes I would like to touch upon three aspects of Swiss – U.S. financial services:

- Firstly, I would like to remind you of the extent to which the Swiss and U.S. financial markets are already interrelated.
- Secondly, I will emphasize the importance of cooperation between financial regulators and comment on where we stand in terms of our collaboration with U.S. regulators, especially the U.S. SEC.
- Thirdly, I will make reference to the regulatory discussions going on in the U.S. right now. These discussions are of prime interest - as you will see - to all of us. It is the first time in many years that the U.S. has discussed conditions for the mutual recognition of foreign regulation. The aim is to give U.S. investors easier access to foreign markets. In Switzerland we have considerable experience in providing foreign entities with open access to Swiss investors. Our approach might be of interest to other jurisdictions.

This topic will be taken up by our honored guests from the U.S. Securities and Exchange Commission, Commissioner Kathleen Casey and Ethiopis Tafara, the Director of the SEC's Office of International affairs. We are delighted that they have agreed to



share their thoughts with us today. The topic is of major importance for Swiss firms interested in offering financial services to U.S. investors.

2 First aspect: What are the Links between the U.S. and Swiss Financial Markets?

We all are aware that the financial industry operates within a closely knit global web. The recent turmoil in financial markets showed how quickly negative developments can dent investor confidence world-wide. Newspaper headlines raised the alarm: "U.S. mortgage woes rise", "Subprime crisis hit credit markets", "UBS to report a big loss related to [U.S.] bond trading", or "Credit Suisse will eliminate jobs [in the U.S.]". The underlying facts reveal an undeniable truth: international financial markets today, including the Swiss and American markets, are highly interconnected and the services provided to other countries have reached impressive proportions. Let me give you some figures to illustrate this:

- In Switzerland, U.S. banks and broker dealers have 16 branch offices and 23 subsidiaries. They operate as regular banks, investment banks, asset managers, and broker dealers.
- In the U.S., Swiss financial intermediaries have 13 branch offices, 12 agencies and 28 subsidiaries. These entities also provide all kinds of banking services in the U.S., from regular banking to investment banking and securities brokerage. Nonetheless, there is a particular focus on private banking. Swiss financial firms play an important role in the U.S. The two major Swiss banks, UBS and Credit Suisse, employ a combined total of 35,000 people in the U.S., which accounts for more than a quarter of their combined workforce worldwide. Accordingly, they generate a significant proportion of their profits in the U.S. At the same time, the presence of Swiss financial intermediaries in the U.S. also points to the importance of the Swiss financial market for the U.S. Several of the Swiss entities with branch offices or subsidiaries in the U.S. are foreign banks that have set up sub-headquarters in Switzerland and manage U.S. branch offices and subsidiaries from here.
- Additionally, some Swiss financial intermediaries have set up special broker dealers that are incorporated in Switzerland and supervised by the SFBC, as well as being registered and supervised by the U.S. SEC. They offer their services exclusively to U.S. persons.
- Overall Swiss banks hold assets of 683 billion Swiss francs in the U.S., including 189 billion Swiss francs invested in securities. In return they have financial obligations of 396 billion Swiss francs towards U.S. entities.
- Switzerland is the sixth largest direct investor and the ninth largest investor in US Securities holding 3.5% of US equities and bonds. This stake would even be substantially bigger if investments of investment funds registered in places like Luxembourg or the Cayman Islands but operated by Swiss banks were included.



- Of the 267 companies currently listed on SWX Swiss Exchange's main share market, 42 are U.S. issuers. Some other U.S. companies' shares are traded in the sponsored segment. In addition, 359 bonds on the SWX Swiss Exchange are listed to originate in the U.S. Overall direct Swiss investment in the U.S. in 2006 amounted to 22 billion Swiss francs.
- Likewise, 11 Swiss companies are currently listed on the NYSE Euronext and 233 Swiss companies have filed documents with the SEC so far. U.S. direct investment in Switzerland totaled 2 billion Swiss francs in 2006.

3 Now: what about the Co-operation between the SEC and the SFBC

Cross-border activities call for cross-border supervision. However, whereas the activities of markets and global players defy borders, they are generally regulated and supervised by their respective national authorities.

Increasingly globalized financial services require greater collaboration among national regulators. This applies in particular to regulators such as the SFBC which is both the home regulator of global firms and host regulator of more than a hundred affiliates of foreign firms domiciled in Switzerland. Therefore international cooperation is crucial for the SFBC and our cooperation with U.S. regulators is extremely important. Today the U.S. – Swiss regulatory dialogue is taking place, as far as the SFBC is involved, on four levels:

The first level involves international standard setting in multilateral regulatory dialogue, such as IOSCO (International Organization of Securities Commissions) with its various committees, working groups and task forces or the well known Basel Committee in Banking Supervision. Past experience has shown that the SFBC's position is often allied to approaches proposed by UK or U.S. regulators, which tend to focus on principles, risks and markets.

The second level is a continuous high-level dialogue with representatives of U.S. regulatory agencies on various issues. Today we just had such a meeting with the SEC. These meetings allow us to analyze financial market topics such as the regulation of hedge funds or the acceptance of IFRS and discuss issues of particular interest to one or both parties within the framework of bilateral cooperation.

The third level is operational but of utmost importance. The SFBC, the UK FSA and the U.S. Fed have developed a concept of trilateral supervision for the two large Swiss banks. The SEC is involved on an ad hoc basis. Its involvement would have to be extended if either or both of the large Swiss banks chose to become regulated under the "consolidated supervised entity" regime offered by the SEC to large brokerage firms. Today the three supervisors co-ordinate their activities, they avoid supervisory overlaps, they have common meetings with the firms' executive management and they share their views and assessments. To this end, the supervisors stay in constant contact with each other, hold regular meetings with each other and with the banks, and even participate in



each other's reviews. Thanks to this co-operation all three supervisors constantly obtain a current and full overview of the risks deriving from the banks. In addition, the supervisors have become accustomed to working together, which means that they can react more readily in times of crises. As a result, the concept of trilateral supervision has become a role model in international banking supervision.

The fourth level of cooperation concerns the exchange of information in the enforcement of securities regulation, for instance in investigations into insider trading or securities fraud. Here the SEC is not the only U.S. client of the SFBC (we cooperate with other U.S. supervisors such as the Fed, the CFTC, the OCC and state supervisors as well) but the (one of our) most important clients.

In today's global financial markets, such an exchange of information is a pure necessity. Any investor can trade securities basically anywhere in the world. We all know that different regulators and jurisdictions have different views about the scope of their laws and powers. This is particularly true for the U.S. which has traditionally had a rather hands-on approach in applying U.S. law to cross-border issues. Complaints about the "extra-territorial" application of U.S. law by U.S. agencies and U.S. courts are common in Swiss legal circles. But there is a bottom line which has to be accepted in my view by firms and investors wishing to invest in foreign markets: It is not unfair for regulators say to foreign investors, "You are welcome in our market but you have to respect the rules of this market." One basic rule on any regulated market is that if the regulator asks for information on particular transactions, brokers have to provide this information, regardless of whether they are foreign or domestic. This is the rule in the U.S. and don't forget this, this is also the rule in Switzerland. No market regulator will allow investors to ignore reporting requirements just because they act through foreign brokers. I would like to make this message clear to investors acting through Swiss firms on foreign markets, such as the U.S. market, and to foreign investors acting on Swiss markets, for example by building up positions in Swiss listed companies without respecting the disclosure rules set up by the Swiss Federal Act on Securities Exchanges and Securities Trading. Let me repeat: Fundamentally Switzerland and the U.S. have the same approach regarding disclosure of information relating to transactions in their markets. However, as I will explain later, we take a fundamentally different approach to the supervision of firms offering cross-border investments to domestic clients.

The exchange of information between the SFBC and the SEC was blocked for a long time after the Swiss Federal Supreme Court's decision in the Elsag Bailey case in the year 2000. However, the amendments of article 38 of the Swiss Securities Act removed this obstacle to information exchange. The amendments came into force on February 1, 2006. Since then the SFBC has provided information to the SEC again. Recently, in a decision of September 3, 2007 (2A.13/2007) the Swiss Federal Supreme Court confirmed that the SEC fulfils all prerequisites to receive non-public information from the SFBC. To enhance and formalize the details of this co-operation the SFBC and the SEC have been working together on Standard Operating Procedures.

The SFBC works very hard to ensure that the amendments to the legal provisions on information exchange deliver in practice what was promised by the Swiss legislator: a well balanced framework offering an effective information exchange and reasonable



legal means to protect the privacy of Swiss bank clients. The SFBC hopes and, to a certain extent, expects that its fellow regulators will recognize its efforts. One way in which they could do so is by accepting Switzerland for full membership under annex A of the IOSCO Multilateral Memorandum of Understanding. The SFBC will submit its request in the next few days.

4 Removing the Barriers to Cross-Border Financial Services

That brings me to my last issue. As I said earlier, there is one area in which U.S. and Swiss regulations take a completely different approach: it is the regulatory regime for direct cross-border securities business, namely the requirements for foreign firms dealing with clients in a host country. But first what is in common: Switzerland tries to offer a well regulated market with a reasonable level of protection to all investors regardless of whether they are domestic or foreign. It also treats foreign and domestic investors in exactly the same way. For example, it initiates proceedings against anyone trying to offer in or out of Switzerland unregulated services that require a license in accordance with the Banking, Securities and Collective Investment Schemes Act irrespective of the home country of the investors.

On the other hand, and here comes the main difference to the U.S. approach, Swiss financial market legislation offers little or no protection to people based in Switzerland who wish to make cross-border investments in foreign markets. There are no barriers against this kind of investment. Foreign intermediaries are allowed to offer shares and bonds directly to Swiss investors. As long as the provider of these products has no permanent Swiss base, he does not need a Swiss License; he does not have to act through a locally regulated branch or subsidiary. Yes, there are some marketing restrictions on retail investors wishing to invest in certain products such as collective investment schemes or structured products. Brokers may not market such products, but Swiss retail investors are free to purchase them of their own accord. To facilitate direct access foreign exchanges can even place screens in Switzerland. In such cases, they have to be supervised by an equivalent home authority.

Two fundamental ideas must be kept in mind. Firstly, all Swiss (or foreign) investors should be able to invest in well regulated Swiss products, in a well regulated Swiss market made up of well regulated Swiss firms. And secondly, there is no discrimination against foreign markets; all Swiss investors are free to invest in foreign products distributed by foreign providers that are not regulated by the Swiss authorities. It is assumed that all investors, including retail investors, receive good advice from their banks or brokers and are capable of making their own investment decisions. There are naturally some risks involved in this system but also some huge advantages: it is highly competitive, it forces Swiss firms to offer optimum services to their clients and it allows Swiss investors to choose which investment risks they wish to take.

As far as I understand, the U.S. system (and to be fair the system in most other countries) is different. Up to now the SEC has taken the position that U.S. federal securities laws are equally applicable to U.S. entities and to all foreign entities that offer services



to the U.S. markets irrespective of whether they are physically present in the U.S. So the message to foreign firms is: "Serve the U.S. market but get registered and supervised by us and comply with all our rules. The message to the U.S. retail investor is: you are not allowed to make a foreign investment not regulated by U.S. laws even if you think it might be a good investment. You may only make a foreign investment when you hire help from U.S. registered broker, even if you are familiar with the investment.

This is the background of a discussion going on right now in the U.S. At least conforming to some unofficial blueprints the SEC would exempt foreign exchanges or brokers from registration and supervision provided that the SEC is satisfied that the exchanges or firms home supervision offers similar protection and supervision to the U.S. This may sound familiar to people close to Swiss regulation but it is an entirely new transatlantic gospel. I am very happy that we have some of the lead singers today among us. We are very interested to hear their view, even if they may tell us that one bird does not make a summer and one blueprint does not change a whole regulation. Commissioner Casey finds herself at the centre of discussion as she will be called on to take part in the final judgment on the discussion. Ethiopis Tafara is not only involved as a staff member of the SEC. He has also taken a personal stand by publishing an article in the Harvard International Law Journal earlier this year. We are very interested to hear their views.