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FINMA: An independent supervisory authority

After my first year as Chair of the FINMA Board of Directors and with the global situation showing no sign of improvement, the challenges are mounting up. Our CEO will discuss these later. I would like to talk to you briefly about FINMA's independence. Why have I decided to do this?

Not because it is under threat or being questioned, but because it constitutes an essential prerequisite for effective supervisory activity and for fulfilling the protection remit imposed on us by the law. Independence is not a purely moral or philosophical value. Put simply, independence is the ability to determine your own actions, an absence of ties, autonomy. However, independence manifests itself on a number of levels. The 2011 Annual Report does not address this point directly, but it in fact is an integral part of everything we do and defines FINMA's organisation. I will attempt to deal with this crucial topic by answering four questions.

Question 1: Independence from whom?

Firstly, FINMA has its own legal personality and is independent from the political powers of parliament and government. It is also independent from the other authorities, with which it collaborates on equal terms. Lastly and most importantly, it is independent from those subject to its supervision, namely the various financial intermediaries it supervises in the interests of creditors, policy holders, investors and the proper functioning of the financial markets. Not one of these entities or individuals possesses any form of hierarchical or other power over FINMA, a fact clearly set down in the law: "FINMA carries out its supervisory activity autonomously and independently" (Art. 21 FINMASA). The law thus transparently and unequivocally confers independence on FINMA; but this is not enough on its own, since FINMA has to prove itself deserving of this status every single day. The Board of Directors, the Executive Board and our specialist supervisory staff must all exemplify this independence through their actions. If they do not, the law is meaningless.

Question 2: How can this independence be guaranteed in practice?

There are three aspects to FINMA's independence: functional, institutional and financial. What do these mean exactly?

To begin with, nobody is authorised to issue instructions to FINMA. We make our decisions independently of the Federal Council and parliament, working within the legal framework set by the latter.

Equally, FINMA is in no way dependent on changing trends or day-to-day politics. While this functional independence was not a feature of all of our predecessor institutions, not being subject to outside instructions is fundamental to the credibility of our supervisory activity.

Secondly, it is essential that the authority's internal organisation and governance allow it to work effectively and make decisions dispassionately as well as ensuring the suitable division of labour and above all adequate oversight of the various functions. FINMA's Board of Directors thus plays a crucial role. It essentially works in the background, away from the public eye, but it is a pillar of good governance.

The Board of Directors sets the strategy, passes the regulations, makes important decisions, signs off the budget and oversees the Executive Board. The responsibility attached to these core tasks requires a balanced mix of directors comprising financial market professionals and people with non-financial backgrounds. This only works if a culture of open dialogue and constructive criticism can be established and if the Board receives high-quality input for its deliberations and decision-making. Forming committees within the Board also enables us to make more targeted use of the skills available and helps in preparing for plenary sessions. A great deal of time and energy must be invested, but this is the price to pay if we want to provide a counterweight to the intentionally strong Executive Board. In fact, given that all tasks apart from decisions with truly far-reaching scope fall to the Executive Board, effective checks and balances are of central importance.

Being a Board member can sometimes be frustrating, especially in view of the need for absolute confidentiality and collegiality. The fact that we communicate externally with one voice does not mean that all our decisions are unanimous. Intensive and occasionally passionate debate is the very *raison d'être* of FINMA's Board of Directors. The job also comes with various restrictions, and rightly so (in particular regarding financial matters such as shareholdings as well as professional ones), but it is never boring. Passion is indispensable. I would like to take this opportunity to thank my colleagues publicly for their hard work, dedication and support. Without them, the never-ending struggle to maintain the right balance on so many fronts would surely be more difficult.

Thirdly, FINMA has financial resources of its own to fund its activity thanks to the fees and supervisory charges paid by those it supervises. This financing model serves to safeguard our independence. State financing would place us under all manner of budgetary restrictions and would open the door to political lobbying. Meanwhile, the costs to be covered by those we supervise are stipulated in the law and ordinance, meaning that we are not at their mercy either. This allows us to show in detail what any new tasks the legislature assigns to us will cost.

However, the fact that its independence is guaranteed on a number of levels does not make FINMA a loose cannon, which brings us to...

Question 3: Who will guard the guardians?

We do not operate in an environment without rules. On the contrary, we are constrained by the legal framework parliament sets for us. The National Council and the Council of States thus have supreme authority over our supervisory authority. We discuss our Annual Report once a year with the parlia-

mentary Control Committees, which also have the power to investigate our intervention in specific cases (as with UBS in 2009) as well as extensive powers to request information.

The Federal Council may not be authorised to give us instructions, but it does approve our strategic goals and our Annual Report, and it also nominates and dismisses the Chair and the other members of the Board of Directors.

As a public authority, we are also accountable to the general public, which is why we have a general policy whereby information is made public via our website, in the press or through more targeted contact with specific stakeholders. That said, the requirement for secrecy is integral to our remit, so we must always refrain from commenting on individual cases.

Finally, the courts have power over our decisions because those concerned have the right of appeal. As a result, we must take care to ensure that our decisions comply with the law.

I now come to the fourth and final question that you may quite legitimately ask:

Why do we need to be independent?

In short, the accomplishment of our supervisory mission hinges on our ability to decide and act with full independence and the greatest possible autonomy.

It is of course true that any form of supervision, however sophisticated and independent it may be, can never guarantee total security as the supervisor is bound to be reactive rather than proactive and thus remain, if you will forgive the jargon, “behind the curve”. That said, allowing the supervisory authority to be swayed by outside influences is out of the question.

It is nevertheless important to remember that independence is neither given, nor a privilege; it is instead a responsibility requiring constant effort to uphold its purpose.

I trust that our CEO will shed some light on how our independence is brought to bear in practice.