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Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
Swiss Financial Market Supervisory Authority FINMA

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Fines, Senior Manager Regime and Enforcement Transparency

(The spoken text will prevail in the event of differences)

Ladies and Gentlemen

Welcome to FINMA. At today's media event, the focus is on a topic currently of concern to us, you and the whole of Switzerland: the events surrounding Credit Suisse.

I would like to provide you with background information on three topics in the next few minutes:

- First I will talk about the history of Credit Suisse, from FINMA's point of view. I will look back at the last few years in three phases leading up to mid-March 2023.
- In the second part, I will comment on our experiences with the "too big to fail" legislation.
- Finally, I will look at the instruments FINMA has at its disposal today to enforce supervisory law.

Afterwards, our CEO Urban Angehrn will present the measures that came into play in the case of Credit Suisse.

History

The recent history of Credit Suisse can be divided into three phases. Several years before October 2022, then since October and finally the worsening situation this March.

FINMA generally takes a risk-based approach. This means that greater risks are addressed more frequently and in greater depth. We therefore placed a strong focus on Credit Suisse in our supervisory activities. This becomes visible to the public within the framework of our enforcement proceedings.

FINMA has made public six proceedings against Credit Suisse. The problems behind these proceedings were manifold, affecting different business entities and issues. However, the six proceedings were not all of the enforcement measures that we conducted against Credit Suisse – I will comment on this later.

Credit Suisse has repeatedly made negative headlines in recent years. This accumulation of incidents and scandals severely damaged Credit Suisse's reputation. Last summer, the bank launched a comprehensive strategic reorientation of its investment bank. FINMA welcomed this step. Because it was a step in the right direction – towards risk reduction.

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Then, at the beginning of October 2022, even before the announcement of the new strategy, the second phase began – that of a further massive loss of confidence. Credit Suisse experienced a “bank run”. The bank recorded outflows of client funds on a globally and historically unprecedented scale. Customer deposits declined by CHF 138 billion in the fourth quarter of 2022.

The markets’ assessment of the business model and the future faltered. The share price fell by around 20% from mid-September to early October. And CDS spreads exploded. Even though all regulatory ratios were fulfilled, we entered into an even closer, daily exchange with the bank from this point on, and in particular closely monitored the liquidity situation. At the same time, the Steering Committee was convened under the leadership of the Federal Department of Finance FDF. The Committee on Financial Crises, chaired by FINMA, increased the frequency of its meetings. From then on, both committees met regularly, in each case together with the Swiss National Bank (SNB).

As usual in a crisis situation at an institution, FINMA insisted that Credit Suisse demonstrate contingency measures that could be implemented within a few weeks. Such measures include reducing risks and strengthening capital and liquidity. It is also customary to ask an institution to do everything possible to prepare for a potential sale. It is up to the bank itself to evaluate possible buyers. It is part of the usual supervisory work that banks have to demonstrate such measures and that the time horizon for this is shortened if a bank runs into problems.

FINMA has the authority to impose higher liquidity buffers on an institution than those required by law. We already did that in the case of Credit Suisse in the summer of 2020. The bank itself also held additional liquidity. It was only thanks to these precautionary, additional liquidity cushions that Credit Suisse was able to survive the “bank run” in October 2022.

There was turmoil in the US banking sector in mid-March 2023. This rapidly exacerbated the already existing crisis of confidence in Credit Suisse. The third phase with strong outflows of client funds began in the days leading up to 19 March – this time also affecting the Swiss entity. At the same time, counterparty limits were reduced and security requirements greatly increased. During this period, regulatory capital and liquidity requirements remained met. However, it became increasingly clear that Credit Suisse had serious liquidity problems and that a solution had to be found for all eventualities.

The authorities worked under high pressure with the two large banks to find a solution. From the outset, FINMA pursued the goal of keeping as many options open as possible. Four options were prepared and pursued until the decision was made: resolution, the emergency plan with bankruptcy of the group, “temporary public ownership (TPO)” and a takeover. Specifically, this meant that on 19 March, a draft resolution decree and a bankruptcy decree with the respective plans of action were also ready for signature.

So much for the history. Let me state here: As a rule, FINMA cannot report on its supervisory actions, as I have just done. A large number of our measures – often the most stringent ones – cannot be made public. Being active, exhausting all available means, but not being allowed to speak about it publicly is part of the essence of supervision. In this case, however, there is a particular supervisory need to set out the most important facts and to set rumours and assumptions straight. That is why we are here today.

“Too big to fail” legislation

There has been much discussion in recent days about the effectiveness of the “too big to fail” legislation. This international standard was developed after the financial crisis. The legislation comprises two parts: One part concerns the bank that is a “going concern” and the second part concerns a bank that is a “gone concern”.

- The going concern requirements are about ensuring that systemically important banks have sufficient capital to cover losses from current business.
- The gone concern requirements relate to the need for systemically important banks to have sufficient capital so that they can be restructured or liquidated in the event of serious financial difficulties. Regardless of the specific scenario, the systemically important functions of an institution must be maintained at all times. The emergency plan ensures this.

Switzerland is the first country to have to deal with the practical application of the second part of the TBTF legislation. I am strongly committed to learning the lessons of the past weeks. There is great interest in these experiences among politicians, the public and our colleagues at foreign supervisory authorities.

Let me contribute three points to this discussion:

- Firstly, many elements of the “too big to fail” legislation were applied in the Credit Suisse case. The capital and liquidity buffers stabilised the bank for a long time. Without this cushion, Credit Suisse might have become illiquid as early as autumn 2022. For the first time, AT1 buffers were used at a global systemically important bank – they are an essential element in the TBTF legislation.
- Secondly, the TBTF instrument in the case of a resolution or bankruptcy is an extremely drastic instrument and therefore often referred to as the “measure of last resort”. The instrument was created after the financial crisis to stop the falling dominoes in a crisis. On 19 March, however, we were in a different situation. The authorities would have risked not stopping a looming financial crisis by using the tool of resolution, but rather triggering such a financial crisis. This would have had extremely damaging effects on Switzerland and its financial system. We would have risked hitting the first domino.

Thirdly, “too big to fail” is intended to provide a range of options: recovery, resolution or bankruptcy with emergency plan. The fact that the “too big to fail” element of resolution was not chosen means one thing above all: based on a careful consideration of risks and opportunities, a better option was available in this case.

FINMA’s instruments

Let me return to FINMA’s instruments. As mentioned earlier, we have made six enforcements public concerning Credit Suisse in recent years. However, the demise of Credit Suisse raises fundamental questions about the “toolbox” available to us as FINMA. So let me now comment on the possibilities and limitations of our instruments in general, independently of Credit Suisse.

Enforcement is now FINMA’s most powerful weapon – it is the enforcement of supervisory law by way of court procedures.

You – the general public and media professionals – hear on average five times a year from FINMA about a concluded enforcement proceeding. There are several stages before a proceeding is concluded. Therefore, the conclusion can sometimes take place years *after* the actual incident. This is especially the case when securing evidence is complicated, which is often the case with large and globally active financial institutions.

However, the five press releases per year mentioned above are only the “publicly” visible tip of the iceberg. FINMA conducts an average of 40 enforcement proceedings a year, the majority of which are not made public.

But even the 40 enforcement proceedings per year do not give a complete picture of our activities. This is because enforcement proceedings are only initiated in very serious cases or if an institution resists our imposed measures. That is rarely the case.

On average, FINMA carries out around 600 enforcement *investigations* per year. Last year alone, this number was 743 – about 20 per cent more than the average for previous years. That means: FINMA employees approach institutions 2 to 3 times a day to clarify possible violations of supervisory law. These investigations have an effect on the vast majority of institutions. Based on FINMA’s investigations and expectations, in over 90% of cases full compliance with the law is restored within three months on average – including criminal charges.

In addition to enforcement actions against institutions, FINMA may impose industry bans on individuals. Since 2009, around 60 people have been banned from the profession. About two-thirds of them came from the top echelons of management.

FINMA thus has sharp instruments at its disposal and uses them to enforce supervisory law consistently and swiftly. Having to seek compliance with supervisory law by means of rulings is the clear exception. It is even rarer for FINMA to have to issue multiple rulings for a single institution – as was the case with Credit Suisse.

All these tools are not there to impose a strategy on a bank or to restore the trust of clients. This is the task of the management, the boards of directors and ultimately the owners.

FINMA may not, in principle, report publicly on individual enforcement proceedings. The only exceptions are cases where there is a particular supervisory interest in doing so. To avoid destabilisation, this often makes sense. We publish figures on an anonymous basis and have consistently expanded the corresponding statistics in recent years. FINMA is keen to ensure that we can make our work more visible to the public in future – as our supervisory colleagues in other countries are often allowed to do.

As the events surrounding Credit Suisse show, our instruments reach their limits in extreme cases. It is therefore worth considering an extension. However, we cannot give ourselves the instruments. The legislator decides which means we can use to enforce supervisory law. We do not normally comment on this issue, but the current situation requires it.

Two additional instruments are under discussion: the power to impose fines and the senior manager regime.

FINMA does not have the power to impose fines, which makes it an exception compared to other major financial centres. The administrative fine is not a panacea, but it can send an important signal and act as a deterrent. Especially when combined with other instruments. We would welcome this instrument – in technical jargon called “pecuniary administrative sanction against supervised financial institutions”.

For about a year now, FINMA has also been working on an appropriate proposal for a Senior Manager Regime (SMR) for the legislator. Currently, proof of direct causal responsibility is required if we want to take action against individual managers. This is a major hurdle. A senior manager regime can help to clearly allocate the individual responsibilities of the management bodies. This can also strengthen the corporate culture of an institution because this is closely linked to the clear allocation of responsibility and a healthy tolerance for risk.

In both cases, FINMA is not a criminal authority and does not wish to become one.

In FINMA’s view, the two instruments of fines and an SMR, as well as the possibility of communicating completed enforcement proceedings more actively, would complement and supplement its generally functioning toolbox.

Conclusion

Let me conclude my remarks by stating:

- Strategic misjudgements on the part of the bank, the failure of the management or losing the trust of clients and investors are not supervisory offences. Supervision sets the rules. Responsibility for action rests with the institutions. Supervision cannot and should not replace the owners (shareholders) or the board of directors.
- Secondly, many elements of the “too big to fail” provisions were applied in the Credit Suisse case. This stabilised the bank’s capital and liquidity buffers. Without this cushion, Credit Suisse would have run into considerable problems as early as autumn 2022. FINMA is strongly committed to ensuring that lessons are learned from the past few weeks for the “too big to fail” legislation.
- Thirdly, FINMA can use its existing instruments to enforce supervisory law consistently and swiftly in the majority of cases. FINMA is nevertheless in favour of expanding and complementing its range of instruments: the possibility of communicating more actively to the public about supervisory activities, the power to impose fines and the senior manager regime.

I would now like to ask FINMA’s CEO Urban Angehrn to explain the elements of the solution package in more detail.