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

Circular 2009/…
Remuneration systems

Minimum standards for remuneration systems of financial institutions

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Addressees																					
BA			ISA			SESTA		CISA									MLA			Other	
Banks	Fin. groups & conglomerates	Other intermediaries	Insurers	Ins. groups & conglomerates	Intermediaries	Stock exchanges & participants	Securities dealers	Fund management company	SICAV	Limited partnerships for CIS	SICAF	Custodian banks	Managers domestic CIS	Distributors	Managers foreign CIS	Other intermediaries	SRO	DUFI	SRO supervised	Audit companies	Rating agencies
X	X		X	X			X	X	X	X	X	X	X	X	X						

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I. Purpose

This Circular defines minimum standards for the design, implementation and disclosure of remuneration systems in financial institutions. The financial institutions are responsible for ensuring that their remuneration systems comply with these minimum standards. 1

Remuneration systems establish incentives. Such incentives must not induce employees to take inappropriate risks, to infringe applicable law or regulations or to disregard rules and agreements applicable to them. Remuneration systems should rather motivate employees to contribute to the long-term success of the institution and its stability. The risks taken are to be considered in the employees' remuneration. 2

II. Relationship to corporate, stock exchange and labour law

For financial institutions this Circular supplements, but does not replace, the prevailing or newly planned provisions of the Code of Obligations and the stock exchange disclosure rules on remuneration. In contrast to those rules it governs not only the remuneration of the top decision makers (Board of Directors, Senior Management), but of all the employees of the financial institution. The Circular applies irrespective of the legal form and regardless of a stock exchange listing of the financial institution. 3

The obligations provided under labour law are not replaced by this Circular and must continue to be observed by the financial institutions. 4

III. Scope

The Circular applies to banks, securities dealers, financial groups and conglomerates, insurances, insurance groups and conglomerates that are subject to Swiss financial market supervision. It also applies to persons and firms authorized under Art. 13 Para. 2 and 4 of the Collective Investment Schemes Act. All of them are referred to below as “financial institutions”. 5

The Circular is applicable to the financial institutions' domestic and foreign affiliated companies and branches included in consolidations. If mandatory foreign regulations conflict with the application of the Circular or a financial institution is thereby seriously disadvantaged in the foreign employment market, it informs FINMA. The authority will analyse the situation and may consult foreign supervisory authorities. FINMA may exempt a financial institution entirely or in part from implementing the provisions in foreign employment markets. 6

Branches of foreign enterprises are exempt from implementing this Circular, provided they are subject to an equivalent foreign regulation. The branches inform FINMA how far this applies by 30 April 2011 at the latest. 7

A financial institution is exempt from implementing the provisions contained herein, if it fulfills at least two of the following conditions:

- no person may receive a total remuneration which consists of more than 20% of variable remuneration and special payments. 8
- no person may receive total remuneration exceeding CHF 800,000 or equivalent in a year. 9
- the financial institution employs not more than 100 people on annual average. 10

The financial institutions exempt from implementing these provisions disclose this fact and the reasons based on margin nos. 8 to 10 in their annual reporting. 11

FINMA may still require an institution that would be exempted from implemenation of the provisions of this Circular to implement some or all of the provisions. This may be appropriate, for example, because of the financial institution's risk profile, its business activities or its business relationships or if its remuneration system entails inappropriate risks. 12

IV. Definitions

Employees: all persons in an employment relationship with the financial institution, including the persons entrusted with the management of the company ("Senior Management"). The Circular also applies for the persons who are responsible for the strategic direction, supervision and control ("Board of Directors"), except the unlimited partners in private banks. 13

Total remuneration: all benefits which the financial institution pays directly or indirectly to a person with their employment relationship or membership in the Board of Directors of the institution (e.g. in the form of cash payments, benefits in kind, special payments, expenditures that constitute or increase claims to welfare benefits, pensions, grant of ownership rights and cancellation of debt, etc.). 14

Variable remuneration: part of the total remuneration of which the payment or amount is at the discretion of the financial institution or which depends on the fulfillment of predefined conditions. 15

Special payment: Non-recurring remuneration, which is agreed on conclusion or revision of an employment contract or on its termination (for example "sign on payment" and severance payment). 16

Deferred remuneration: Remuneration, over which the employee cannot dispose until after the expiry of a blocking period and the final value of which at the expiry of this blocking period is not known in advance. 17

Total pool: All the variable remuneration and special payments for a financial year, irrespective of their form, a contractual commitment, their grant and payment date and any conditions and obligations attached to them. All the remuneration and special payments are valued at the present value at the date of granting. Profit and loss charges and credits from remuneration which were granted for earlier financial years are not to be attributed to the total pool of the current financial year. 18

Economic profit: Profit after deducting all costs of capital, including cost of equity. The costs of capital reflect the risk profile of the institute or unit of the institute. 19

V. Principles of sound remuneration

Principle 1: The Board of Directors is responsible fo the design and implementation of the financial institution's remuneration policy and issues remuneration regulations. 20

The Board of Directors issues remuneration regulations that cover all employees of the financial institution and that comply with the principles and provisions herein. It reviews them regularly. 21

The Board of Directors approves the remuneration of the Senior Management and the annual total pool. 22

The Board of Directors may set up committees or delegate tasks to individual members for their support. The responsibility for the tasks delegated remains in any event with the entire Board of Directors. 23

The Senior Management reports to the Board of Directors at least once a year on the implementation of the remuneration regulations and the development of the compensation. 24

Principle 2: The remuneration system is simple, transparent, and enforceable as well as oriented towards the long term. 25

The remuneration system should be comprehensible and understandable. The elements of a remuneration system are communicated clearly to the employees concerned. Overlapping or constantly changing systems for individual groups of employees should be avoided. 26

The remuneration system is to be designed in such a manner that it is reasonable and acceptable without changes irrespecitve of the financial institution's performance. 27

The financial institutions ensure that the contractual agreements with their employees conform with the requirements of this Circular and of the remuneration regulations and that they can be enforced. 28

Principle 3: In designing and applying the remuneration system human resources and control functions are involved. 29

The departments for human resources, risk control, and compliance at the overall institution level are involved in designing and applying the remuneration system. 30

At regular intervals internal audit reviews the design and application of the remuneration system and reports their findings to the Board of Directors. 31

Principle 4: The structure and level of total remuneration are aligned with the finanical institution's risk policy and enhance risk awareness. 32

In the context of this Circular, risk is defined as any risk that the financial institutions enters into in the course of its business. These risks in particular include market, credit and liquidity risks, underwriting risks, operational risks, including legal and compliance risks as well as reputation risks. 33

The more strategic or operational responsibility an employee bears, the more his remuneration also needs to consider the risks for which he is responsible. 34

All significant risks which come within an employee's sphere of influence are to be considered. This also covers risks which arise in the organizational units that report to him. 35

Risks whose size and likelihood of occurrence are difficult to estimate in advance must also be included appropriately. 36

The relevant risk assessement is to be undertaken and monitored by the units responsible for the financial institution's risk control. 37

Remuneration and the criteria applicable for its allocation must not establish any incentives to enter into inappropriate risks or to infringe prevailing law or internal regulations. 38

Risks are inappropriate in particular if they 39

- are not consistent with the strategic or operational objectives and risk tolerance of the financial institution;
- cannot be properly managed with the available organization, procedures and employees;
- may unfairly disadvantage the financial institution's stakeholders, including its costumers.

The remuneration instruments, the proportion of variable remuneration to the total remuneration and the relationship between immediate and deferred remuneration are to be designed in line with the requirements of this principle. 40

Principle 5: Variable remuneration depends on the long-term economic success of the financial institution. 41

The amount of the total pool depends on the long-term development of the economic profit of the financial institution. If the business results are poor, the allocation to the total pool is reduced or omitted completely. 42

Variable remuneration must not exceed economic profit on a long-term basis. 43

Principle 6: Variable remuneration is granted according to sustainable criteria. 44

All the variable remuneration and special payments are to be drawn from the total pool. 45

The allocation of the variable remuneration to individual units and employees depends on sustainable and comprehensible criteria that reflect the financial institution's business and risk policy. 46

The grant of variable remuneration may not be based predominantly on short-term metrics, such as volumes, revenues, net new assets or accounting metrics. Furthermore, reference to such criteria must not provide grounds for directly derivable claims for remuneration against the institution. 47

Infringement of internal or external regulations results in a reduction or forfeiture of the variable remuneration. 48

Special payments are to be made only in appropriate and justified exceptional circumstances. They are to be drawn from the total pool and they need to be approved by the Board of Directors when they exceed an amount specified in the remuneration regulations. Special payments are to be disclosed separately (margin nos. 69 and 70). 49

Principle 7: Deferred remuneration gives the employees a symmetric participation in the financial institution's future development and its risks. 50

The higher an employee's total remuneration, the more is to be awarded as deferred remuneration. In any case at least a part of the remuneration of the Senior Management and of all those employees below Senior Management level who can take significant risks is to be paid as deferred remuneration. 51

Deferred remuneration cannot be freely disposed over until after the expiry of a blocking period. The blocking period considers the time horizon of the risks and is at least 3 years. 52

The termination of an employment relationship may not result in premature expiry of the blocking period, except in the event of death or disability of the employee. 53

During the blocking period the value of the deferred remuneration depends on the future economic results or the value of the financial institution. Both positive and negative developments result in a corresponding value adjustment of deferred remuneration in the future (symmetry). In addition, the institutions should reserve the possibility to withdraw in whole or in part deferred remuneration (“clawback”, “malus”), if risks occur which were not considered at the time of the original grant. 54

The relationship between performance or the institute’s value and the development of the value of the deferred remuneration must be appropriate. There must not be a disproportionate participation in positive developments, nor may negative performance be disregarded. 55

If business results are poor, in particular if a loss is reported in the annual accounts, variable remuneration must be paid predominantly as deferred remuneration. The grant of non-deferred remuneration is to be reduced to a minimum. 56

The financial institution considers the future deferred remuneration charges in its capital and liquidity planning. 57

Principle 8: The remuneration of the control functions does not give rise to conflicts of interest. 58

Control functions in the sense of this principle are all departments and their employees that are responsible for quantitative and qualitative risk management and risk control, legal, compliance, actuarial, internal audit or internal control systems. 59

The total remuneration of the control functions must be adequate to attract qualified and experienced staff. 60

The remuneration system for employees in these units may not establish incentives that lead to conflicts of interest with the tasks of these units. The calculation of variable remuneration of these units must be in line with the performance of the institution as a whole and must not directly depend on the performance of the business units, specific products, and transactions being monitored. 61

Principle 9: The Board of Directors reports annually on the implementation of the remuneration policy. 62

As part of the annual reporting, the Board of Directors publishes a remuneration report. In it, the board explains the implementation of the remuneration regulations and its remuneration policy. 63

The remuneration report addresses the following matters and discloses the following information:

- the most important design characteristics and functioning of the remuneration system; 64
- design, valuation principles and valuation at the time of grant of the remuneration instruments used; 65
- broken down by current and former members of the Board of Directors and of the Senior Management and other employees, detailing the form of the relevant remuneration (cash payment, benefits in kind, shares, options, etc): 66

- total amount of remuneration for a financial year; 67
- amount of the total pool and number of beneficiaries; 68
- total amount of the special payments and highest special payment to a single person for the financial year, number of beneficiaries and justification; 69
- total of new special payments committed in the financial year, number of beneficiaries and justification. Severance payments are to be disclosed separately; 70
- charges and credits affecting net income that derive from remuneration from previous financial years. 71

If the institution reports by segment, the Board of Directors discloses separately for each segment and at the level of the institution as a whole the information required by margin nos. 66 – 71. 72

The remuneration report is disclosed to FINMA and the recipients of the annual report. Private bankers, who do not publicly promote for the acceptance of customer deposits, issue the remuneration report to FINMA only. 73

Principle 10: Deviations from these principles are possible only in well-founded exceptional circumstances and must be disclosed. 74

The financial institution must justify the facts in detail supplementing the information according to the requirements of Principle 9. To be disclosed in addition to the justification are in particular the structure, form and amount of the remuneration, which is paid in deviation from these provisions, as well as the financial institution's business areas and functions who benefit from these deviations. 75

The reporting and disclosure rules (margin nos. 62 to 73) must be observed in any case. 76

FINMA reserves the right to impose measures, in particular increased regulatory capital requirements, on a financial institutions that deviates from the regulations contained in this Circular. 77

VI. Implementation

The financial institutions assess the implementation of this Circular and compliance with the provisions and report to FINMA by 30 April 2011 at the latest according to the specifications of FINMA. The audit companies have to certify this report. 78

FINMA reserves the right to inspect compliance with the provisions of this Circular by the financial institutions, either itself or with the assistance of third parties. 79

These measures take the place of a regular audit by the auditing companies. 80

FINMA evaluates the effectiveness of this Circular, for example on the basis of self-assessments by the financial institutions, additional investigation, and comparative benchmarks. 81

VII. Transitional provisions

The provisions of this Circular are to be fully observed from 1 January 2011. 82

The disclosure requirements contained in margin nos. 1 and 66 to 71 apply for the first time to reporting on the financial year 2010. 83

If an institution has to implement for the first time the provisions of this Circular as a result of the non-applicability of the conditions in margin nos. 8 to 10, these transitional provision apply analogously. 84