

Frequently Asked Questions (FAQs)

Board of directors of banks and securities dealers

(28 August 2012)

Bearing responsibility for the overall direction, oversight and control of a bank or a securities dealer, the board of directors (or similar organ, referred to hereafter as the “supreme governing body”) plays a key role in providing assurance of proper business conduct (“Gewähr”). FINMA has high expectations of this body and its members. Below are some questions that arise frequently in FINMA’s supervisory practice in connection with the composition and functioning of the supreme governing body.

This list of FAQs is intended for banks, securities dealers, financial groups and financial conglomerates dominated by banks or securities dealers in accordance with Article 3c of the Banking Act (BA; SR 952.0). It is primarily aimed at stock corporations, but it also applies *mutatis mutandis* to other legal forms.

A. COMPOSITION

1. How large should the supreme governing body be?

The supreme governing body must comprise at least three members (Art. 8 para. 1 of the Banking Ordinance [BO; SR 952.02]). Beyond this requirement, the actual number of members depends on the size, complexity and risk profile of the institution.

2. What qualifications should the members have?

The members of the supreme governing body should enjoy a good reputation and have sufficient leadership skills, both individually and as a group, as well as the necessary specialist knowledge and experience in banking and finance. The body as a whole should have a sufficiently broad background mainly to ensure that - in addition to the main business operations - all other important areas such as finance and accounting, risk management, controlling and compliance are adequately represented.

3. How much of a relationship to Switzerland is required?

The supreme governing body should in general be sufficiently familiar with the Swiss market and Switzerland’s regulatory framework. A substantial number of its members should have a close relationship to Switzerland in terms of their main place of residence, their career or their education.

At the very least, the chair or vice-chair of the body must be resident in Switzerland.

4. How independent does the supreme governing body have to be?

Its members must not be employed in another function within the institution. They may not be simultaneously members of the executive management of the institution and must maintain a suitable distance from the day-to-day business. In addition, they may not be employed at any entity providing significant services to the bank. The same applies to securities dealers above a certain size or with a special risk profile.

A substantial proportion of the supreme governing body – at least a third – should be independent. Anyone who is employed in another function at the institution or a related entity or has been so during the past two years does not qualify as independent. Neither the chair nor the vice-chair of the audit or risk committees should have been a member of the institution's executive management during the two years prior to taking up office as a member of the supreme governing body. FINMA must be notified in advance of any deviation from this rule, and reasons for the deviation must be disclosed in the annual report.

A substantial proportion of the supreme governing body should not own a qualified participation in the institution or represent a qualified participant. In the case of any conflict, the supervisory interests of the individual institution must take precedence over the interests of the owners or the group to which the individual institution belongs.

B. TASKS

5. What are the core tasks of the supreme governing body?

The supreme governing body determines the corporate strategy and the main corporate goals. It selects and monitors the management and puts the necessary means in place to achieve the corporate goals. Its core tasks include the following in particular:

Business strategy and risk policy – Taking into account the business strategy, the supreme governing body formulates a suitable risk policy and documents this in writing. It also defines the risk appetite and monitors adherence to it. It takes responsibility for regulating, organising and monitoring an effective risk management system and for controlling overall risks. It regularly reviews the suitability of the risk policy and risk appetite and adapts these as needed. It understands the corporate structures and risks of the institution's individual business areas and those of the company or group as a whole.

Organisation – The supreme governing body is responsible for ensuring there is an appropriate corporate organisation and robust governance with the right checks and balances. It issues the policies and directives needed for business operations, for the assignment of powers and responsibilities and for monitoring.

Finances – The supreme governing body takes overall responsibility for finances. It ensures the appropriate organisation of the accounting and financial controlling functions and periodically approves

the capital and liquidity planning drawn up by the executive management. It is responsible for compiling the annual report and for signing off on the annual budget and the annual financial targets.

Staff and other resources – The supreme governing body is responsible for ensuring that the institution possesses adequate staff and other resources (e.g. IT). It sets the staffing and remuneration policy¹ and decides on the election and dismissal of its committee members, the members of the executive management, the CEO and the heads of key control functions.

Monitoring and controlling – The supreme governing body supervises the executive management and ensures compliance with applicable laws, regulations, norms and internal policies. It creates a suitable risk and controlling environment within the institution. It sets up an effective internal controls system, appoints and monitors internal auditors, selects the external auditors and approves the latter's reports.

Structural changes and capital investments – The supreme governing body decides on changes to the corporate structure, the formation and closure of significant subsidiaries and branches, major acquisitions and disposals, mergers, outsourcing of functions, material changes to significant subsidiaries and other projects of strategic importance.

C. CARRYING OUT THE MANDATE

6. How much personal commitment is expected?

Every member of the supreme governing body should devote a sufficient amount of time to his or her mandate and play an active role in the strategic management and oversight of the company. He or she must perform the mandate in person and be available at all times, even outside the normal meeting schedule, in the event of crises or emergencies. The number and nature of other mandates and activities must be compatible with the specific requirements of the supreme governing body mandate such that the latter can be performed with due care without creating an unreasonable workload burden.

7. How does the supreme governing body ensure consistent quality and continuity?

The supreme governing body determines the required qualifications profile for its members, chair and committees as well as for the CEO. It periodically approves and evaluates such profile for the other members of the executive management and for the heads of key control functions. It ensures continual succession planning.

At least once a year, the supreme governing body critically assesses its own performance (including achievement of objectives and working methods), with the aid of a third party if necessary, and keeps a written record of the results. Its members seek further training in a targeted manner and keep up with the latest developments in the relevant fields, including the regulatory environment. New mandate holders are given a thorough induction into their duties.

¹ See FINMA-Circ. 10/1 "Remuneration schemes".

8. How are conflicts of interest to be dealt with, and which other rules of conduct must be observed?

The supreme governing body regulates how conflicts of interest are dealt with and sets out when members are obliged to withdraw from deliberations on certain matters. Existing and prior interests must be disclosed, and conflicts of interest must be effectively resolved. Mandates and business relationships that may potentially lead to conflicts of interest or damage the institution's reputation must be avoided.

The members of the supreme governing body are required to perform their mandate with due care. They ensure the necessary confidentiality, integrity and fairness within the company and focus their activities on the company's long-term interests. Any member who no longer meets the requirements or is subject to a conflict of interest that cannot be resolved must vacate his or her position. The body as a whole may decide if necessary.

The supreme governing body documents its powers, responsibilities and working practices. In particular, it draws up rules and charters concerning its constitution, meeting and decision-making arrangements, minute-taking and committees.

The body ensures and regulates the flow of information between its members and the operative business. It puts in place an effective internal information and reporting system that enables the relevant information to be communicated quickly to the correct levels in an unfiltered and readily understandable form. This includes the regular, independent provision of information by persons in key control functions (internal audit, risk management and compliance).

D. COMMITTEES

9. What are the requirements for standing committees?

In the interests of an appropriate division of labour, a supreme governing body that has at least five members may form standing committees that each comprise at least two of its members. Mixed committees comprising members of the supreme governing body and the executive management are not permitted.

Depending on their risk profile and complexity, institutions above a certain size must create an audit committee and a risk committee. Larger institutions with complex remuneration systems must appoint a remuneration committee. The majority of the members of these committees should be independent (see Question 4 above on independence), and all should have proven knowledge and experience in the committee's area of responsibility. The chair of the supreme governing body should not be a member of the audit or risk committee and should not be the chair of the remuneration committee.

The supreme governing body must draw up rules for the composition, organisation, functioning, reporting and tasks of all its committees. Simultaneous membership in more than one committee is possible, provided that it does not cause an imbalance, obvious conflicts of interest or control deficits.

10. Are executive committees (“Präsidialausschüsse”) permissible?

Executive committees are to be avoided wherever possible. Where the existence of such a committee is deemed necessary, such committees must still observe the principle of separation of oversight and executive responsibilities. They may not be actively involved in business operations or take over tasks that are the fundamental responsibility of the supreme governing body or other committees. Their scope should be restricted to preparatory, advisory and monitoring functions. FINMA must be notified of the proposed formation of an executive committee, and reasons for such use must be disclosed in the annual report.

E. CHAIR

11. What is the role of the Chair?

The Chair is a person with proven integrity, strong leadership skills and sound judgment. He or she has special strategic and communication abilities and plays a decisive role in shaping the corporate culture.

He or she presides over the supreme governing body as a whole, takes responsibility for its proper functioning and represents it internally and externally. He or she engages in critical dialogue on a regular basis with the CEO, other members of the executive management, senior persons in key control functions and the external auditors. The Chair is also responsible for the timely and expedient provision of information to the other members of the supreme governing body.

F. CHANGES IN GOVERNING BODIES

12. What procedure must be followed for changes in the supreme governing body or other bodies?

FINMA must be notified - wherever possible in advance and with a signed CV of the person in question - of any changes in the supreme governing body or the executive management, or of the heads of key control functions among other persons in senior control functions. FINMA may assert its right to inspect the due diligence check and assessment or request reasons at any time when members of governing bodies or heads of key control functions vacate their position.

13. Are transfers between a company’s governing bodies permissible?

In principle, transfers from a company’s executive management to its supreme governing body are to be avoided. If such a transfer should nevertheless take place in a justified case, it must not weaken the checks and balances of the company. Any shift that places undue power or influence in any one person is to be avoided. Transfers of members of the supreme governing body into the executive management should be restricted to justified exceptional cases and only for a limited period of time. The member transferring must immediately give up his or her previous position (see Question 4 above on independence).

G. QUESTIONS

14. Who can I contact if I have any further questions on the above?

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