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

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Prof. Anne Héritier Lachat
Chair of the FINMA Board of Directors

Supervision is an art and not a science

Ladies and gentlemen, our 2012 annual report highlights the transformation that has been taking place in the financial sector since the crisis began. The picture it paints is not a rosy one. On a number of occasions, it stresses the toughness of the overall economic environment and the need for all players to adapt, sometimes painfully, to the various developments. The challenges are considerable and there is no sign of improvement on the horizon, even if for a period some of the anxiety-ridden headlines had disappeared from the front pages and the news bulletins.

Naturally, this backdrop also represents an additional challenge for financial market supervision. As has been the case for financial intermediaries, FINMA has also been affected by the general economic situation. We are therefore seeking to adapt our activities to reflect the changes in the overall environment; and to do this we need to set ourselves appropriate objectives. With this in mind, FINMA last year revised its initial strategic goals, and the Board of Directors adopted a new version for the period 2013-2016. These goals have been published and are available on our website. They were approved by the Federal Council in November 2012. I would therefore like to examine briefly, and with a few examples, one of those five strategic goals: the goal covering “business conduct”.

Fair business conduct and integrity

The wording of the goal reads as follows: “In order to enhance the reputation of the financial centre and promote fair business conduct and integrity on the part of financial market participants, FINMA consistently implements licensing procedures, creates transparency regarding the varying degrees of supervisory intensity, and promotes internationally recognised regulations on client and investor protection.”

This differs from more conventional formulations that, essentially, are directly aimed at the individual protection of consumers of financial products. It has been deliberately chosen by FINMA to reflect its mandate to protect clients by exercising prudential supervision. In other words, we seek remedies among the instruments at our disposal, specifically by monitoring the solvency of supervised institutions and their risk management. Our focus is on both the integrity of the financial markets and protecting clients collectively by promoting adequate information across the board.

We are neither civil court judges, nor a banking or insurance ombudsman. We are a supervisory authority. Unlike judges, we do not rule on specific disputes or award financial compensation to clients who have incurred losses; and unlike an ombudsman, we do not examine individual requests or intervene to find mutually agreeable solutions to disputed transactions.

The example of retrocessions

A recent example may help to illustrate this important distinction: in October 2012, the Federal Supreme Court handed down an important judgement on retrocessions, stating that whatever their source – including the group to which a financial intermediary belongs – retrocessions received by that financial intermediary must be passed on to clients who have an asset management contract. This judgement was ruled on a specific case, but was clearly intended to apply to all intermediaries, including banks, that are active in the market.

The systematic application of civil law by supervised institutions is an essential element in the assurance of proper business conduct. The various laws that govern our area of activity now expressly require supervised institutions to respond to this requirement and organise themselves accordingly.

For that reason, in November last year FINMA sent a newsletter to all banks, instructing them to take the necessary measures in terms of organisation and client information to implement the Supreme Court's judgement systematically. That meant notifying clients of the judgement, providing them with a contact and, if they so requested, informing them about the amount of any retrocessions received.

I am well aware that those who received this newsletter were less than delighted. Nevertheless, this is how we interpret and exercise our statutory mandate to protect investors. When clients are affected collectively we act, as I have said, using the tools of prudential supervision. It is for that reason too that we sent banks a questionnaire on the measures they had taken in this area, so as to verify that they were indeed putting them into practice.

The FIDLEG: better protection for clients

What, then, do we want to enhance or improve in terms of business conduct? It is no secret that in Switzerland the protection of investors – one of FINMA's statutory tasks – is neither consistent nor sufficient. International standards are evolving, and this may render access to foreign markets more difficult or even impossible. Additionally, there is a risk of attracting unwelcome operators.

In February 2012, we published a position paper on this issue which focused on the distribution of financial products, in other words the time and place at which the potential client encounters the distributors of all kinds of products. The Federal Council took up this initiative and decided to include uniform protection for clients, policyholders and investors in a future financial services act (FIDLEG). This project is designed to improve transparency and reduce the fundamental asymmetry between clients and financial services providers.

FINMA can only welcome this move. We support the direction of the project, in particular the harmonisation of rules to give better protection to clients and create a level playing field for activities that are comparable. This should reduce the inequality between the various players, and strengthen competition.

The FIDLEG should also improve Switzerland's reputation in this area; it should reflect a discerning approach to the relevant international standards that avoids slavishly copying them. Improved market

access is one possible result. But FINMA is not in the “driving seat” of the FIDLEG. The final decision on how much protection is to be offered will be up to the Federal Council and then Parliament.

The role of supervision

Our expectations in terms of business conduct do not end there; as I mentioned earlier, our strategy is also embodied in our day-to-day supervision. Firstly – an obvious fact but one that is sometimes forgotten – it is in the interests of clients, creditors and policyholders that institutions should be stable, and in particular hold sufficient capital and manage their risks correctly while, if possible, combining this with lasting commercial success. These are the traditional areas of regulation and supervision.

Secondly, right from the start – at the moment of applying for a licence – the applicant and its intended activities should also be subjected to especially close scrutiny as regards the general issue of client protection. The assurance of proper business conduct, by both managers and the institution itself, is an essential element of this. Licences may therefore be refused, though naturally in strict compliance with the law. Indeed the granting of a licence is, in a way, a seal of approval, and care must be taken to ensure that it is not abused. Where certain supervised institutions (chiefly banks and insurers) are concerned, FINMA therefore verifies compliance with the licensing conditions on a regular basis; the seal of approval is not a one-time award but a long-term commitment.

Nevertheless, the difficulty remains that some licences are nothing more than a registration formality that entails no future supervision or, at most, supervision that is purely formal. We will therefore be making even greater efforts to ensure that the various degrees of statutory supervision are exercised as effectively and transparently as possible. Our credibility is at stake – as indeed, more generally, are the quality and reputation of the financial centre. A centre where quality is the crucial concern is in the interests of clients as well as supervised institutions.

Finally, it is vital that in the event of failure, an institution can be wound up with the least possible damage; and this is another of our objectives. We have made some progress in this area, and Mr Raaflaub will be talking to you about it later. Supervision is not an all-risks insurance policy.

Is supervision too lax or too strict?

Supervision is an art and not an exact science, one that we practise every day, both among our staff and among our management and Board of Directors.

We had no shortage of work in 2012, and we were accused simultaneously of being too lax and too strict, too intrusive or not intrusive enough; of regulating too much, or badly, or even too little. The fact that so many contradictory criticisms were levelled against us perhaps indicates that we are neither entirely wrong nor entirely on the right track. In any event, it encourages us to re-examine our own assessment of risks and our approach to supervision, and to learn lessons for the future.

Much remains to be done and difficult challenges lie ahead, but we will continue to confront them.

Thank you for your attention.