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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

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Key points:

Modification of the Capital Adequacy Ordinance for cantonal and cooperative banks

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A planned project

The present amendment to supervisory law has been envisaged for a number of years, but this proposal was deliberately postponed following the entry into force of the Capital Adequacy Ordinance (CAO) on 1 January 2007 due to a degree of uncertainty regarding the definitive impact of the Basel II regulations on the calculation of required capital. All banks now apply these new regulations without any particular difficulties, so the time has now come to finally implement the amendment.

Cantonal banks

The rules concerning the 12.5% reduction in required capital granted to cantonal banks are outdated in several respects. Like all other banks, the cantonal banks must possess financial capacity and capital commensurate with the risks they take on. Government guarantees are no substitute for the capital deemed necessary by law to cover the risks of banking activity, and the resulting reduction can no longer be justified. The current situation worsens the position of the cantons when they are called on to provide even greater support for their banks in the event of an acute crisis. Furthermore, it distorts competition to a certain extent in favour of cantonal banks. The reduction therefore has no justification today with regard to either banking supervision or the principles of business management or a functioning market. In addition, these rules do not meet international standards and the International Monetary Fund (IMF) has been recommending that Switzerland abrogate them for several years. The proposed amendment will enable Switzerland to implement this recommendation. It must be pointed out that this only relates to the calculation of regulatory capital and has no bearing whatsoever on the legal status of cantonal banks in federal and cantonal law or on the government guarantees granted to these institutions. As in the past, FINMA still believes that the government guarantees represent a stabilising element in the financial system, and that they therefore have every reason to exist and are justifiable from the point of view of competition.

Additional funding obligation within cooperative banks

The liabilities of a cooperative are in principle covered by its cooperative assets. However, cooperative members can be required to cover balance sheet losses through an additional funding obligation. This additional funding obligation may be unlimited, but can also be restricted to specific amounts or a proportion of member contributions or cooperative shares. In addition, additional funding can be called in at any time.

Current situation

The Capital Adequacy Ordinance of 29 September 2006, like the Banking Ordinance before it, allows banks with the legal status of a cooperative to include 50% of the total per capita additional funding obligation, where this is a specific amount, as lower tier 2 capital as long as cooperative members have provided an irrevocable, written undertaking pursuant to Article 840 section 2 of the Swiss Code of Obligations.

Qualitative improvement of capital base

The ability to include part of cooperative members' additional funding obligation as regulatory capital is one of the last major special rules on capital adequacy applicable to institutions with a specific legal status. The main objective behind the envisaged abolition of this special rule is to bring about a qualitative improvement in banks' capital bases, which will be based exclusively on paid-in capital and not on capital that is still to be called in from individual cooperative members.

Common outlook

The removal of the reduction for cantonal banks and of the ability for banks with the legal status of a cooperative to include the additional funding obligations of their members in their capital makes it possible to proceed with the long-planned update of the regulations. These two provisions are isolated and are no longer in line with the stated objectives of banking supervisory law. Both for practical reasons and to ensure equal treatment it is vital that the two provisions are removed simultaneously. This measure promotes reinforcement of the capital of cantonal banks and banks with the legal status of a cooperative, both in their own interests and in the interests of creditors and the financial system. It encourages these institutions to maintain their own capital at a level commensurate with the risks undertaken rather than relying on financial support from third parties. It clarifies the situation as regards their risk capacity, relations with owners and the responsibility to bear these risks. In terms of regulatory capital, it removes an inequality between banks with regard to competition. These legal amendments pose no threat to the banks concerned, which are all well capitalised and will also have a transitional period of two years in which to adapt to the new requirements before the privileges disappear completely from 1 January 2012. Given the high capitalisation of these institutions, they will not trigger an automatic reduction in lending to small and medium-sized enterprises (SMEs), even if the effects of the current economic slowdown were to be felt even more strongly over the course of the next few years.