Schwanengasse 12
P.O.Box
CH-3001 Berne
Phone +41 31 322 69 11
Fax +41 31 322 69 26
info@ebk.admin.ch
www.sfbc.admin.ch

Eidgenössische Bankenkommission
Commission fédérale des banques
Commissione federale delle banche
Swiss Federal Banking Commission

Swiss Federal Banking Commission media conference, April 29, 2004

Dr. Kurt Hauri
Chairman of the Swiss Federal Banking Commission

Integrated financial market supervision: a major advantage Independent financial market supervision: an absolute necessity

I.

Genuine integration of financial market supervision will bring substantial benefits for Switzerland's financial sector and the country as a whole.

The Swiss Federal Banking Commission (SFBC) welcomes the planned law on financial market supervision. The proposal to merge supervision of banks, stock exchanges and investment funds with that of insurance companies under the auspices of a single authority is an entirely sensible move and one which will bring real benefits. There are many areas of overlap between the banking and insurance sectors, notably in the area of investment. The new arrangement will allow the expertise of those involved to be brought to bear in a more systematic and comprehensive manner.

The shift in thinking that has provided the impetus for this proposal is remarkable. A few years ago, all the talk was of creating a forward-looking regulatory framework for the bancassurance industry, which at the time appeared very much the trend of the future. Yet attempts to combine banking and insurance activities under a single umbrella never really got off the ground. The rationale behind the financial market supervision law that is now being proposed is entirely different: it is an appropriate response to recent experience concerning the insurance market and the instruments used to regulate it. The new law seeks to establish a unified regulatory culture and methodology.

A welcome difference between the draft law and recent changes to the legislative framework in countries outside Switzerland is that the Swiss proposal does not seek merely to gather the individual areas of supervision together under one roof, with the increase in bureaucracy which this would surely entail. Rather than concentrating purely on organizational aspects, the draft law seeks to standardize the instruments of supervision and the auditing apparatus. In so doing, it achieves genuine integra-

tion rather than merely paying lip service to the idea. A balanced interplay of necessary standardization, appropriate harmonization and substantive supervisory law that preserves local independence will result in a viable and effective system.

II.

Only a largely independent supervisory authority can be efficient.

It goes without saying that the new body too must be subject to parliamentary oversight. It must also avoid becoming embroiled in issues of economic and social policy and the associated constraints. Minimum interest rates and conversion rates are not matters for a supervisory authority in this mould.

Yet independence also requires the highest possible degree of organizational freedom. The law should limit itself to providing a legal framework that covers no more than the essential elements.

The authority's independence must be further secured by an incompatibility rule which the Federal Council must be obliged to respect when electing members of the Supervisory Board. Even if they possess outstanding expertise in their field, individuals who represent partisan interests can only damage the authority's indispensable reputation for absolute integrity.

Finally, the authority must be given the power to issue its own staff guidelines. The (old and new) National Bank Act provides a model in this area. Two years ago, when conducting a thorough-going analysis of the Swiss financial industry as part of its Financial Sector Assessment Program, the international commission of experts overseen by the International Monetary Fund delivered the same recommendation. The current arrangement, whereby the SFBC is given responsibility for revoking the licences of institutions under its supervision but is compelled to obtain prior approval from a battery of committees and offices before its own senior staff can be promoted, is all but impossible to justify.

The proposed legal form of the planned "Federal Financial Market Supervisory Authority", as an institute under public law with its own legal personality, gives grounds for optimism; but due care should be taken to ensure that the details of its organization consistently reflect this.

The administrative – and, by extension, financial – independence of the supervisory authority is an essential counterpoint to its *de facto* autonomy, but one that is sadly lacking under the current arrangements. As the SFBC has repeatedly experienced, such independence is impaired by the lack of autonomy in terms of resources. Putting aside the issue of integrated supervision of banks and insurance companies, an appropriate balance needs to be struck between the authority's remit and the means at its disposal to fulfil it. This is the only way in which it can exercise its responsibilities to the fullest extent.

III.

The future law must serve the interests of the individual and those subject to supervision.

The draft law gives the future financial market supervisory authority the task of promoting the image of the Swiss financial sector and the stability of the Swiss financial system. This is undoubtedly correct, but on its own it is not enough. Each and every client of a company rightly expects the authority which supervises that company to provide an immediate and tangible benefit. In the interest of both savers and investors, it is equally important for the supervisory authority to take as its direct aim to preserve the integrity and credibility of Switzerland's financial institutions.

IV.

An overburdened authority would collapse under its own weight.

The SFBC – rightly, I would suggest – enjoys widespread support, and both it and the proposed financial market supervisory body therefore run some risk of becoming the victims of this good reputation. There is a widespread yet ill-considered belief that it will be easier to resolve certain actual or purported difficulties in the process of supervision by entrusting them to the new authority. This has led to suggestions that, for example, the new body should assume responsibility for overseeing independent asset managers (several thousand in number) and financial intermediaries that fall under the Money Laundering Act (some 2,000), as well as auditors of listed companies, more than 10,000 independent pension funds and foundations covered by the Occupational Pensions Act and even casinos.

The responsibilities in connection with supervision of financial markets which the draft law in its current version imposes upon the new authority are themselves extremely challenging and complex. It is in severe danger of being overburdened, not to say crippled, if it is tasked with overseeing the activities of too many different parties. There is also a long-established tradition within Switzerland that views with suspicion the idea of creating a super-authority with excessively wide-ranging powers. It is a tradition we would do well to preserve in this instance.

V.

The interplay of overall leadership and practical management entrenched within the SFBC must be maintained.

The current Banking Act strikes a careful balance between two entities: the commission in its narrowest sense, as a body that takes decisions and issues directions; and a secretariat which files applications and implements measures. This counterbalanced system enjoys broad acceptance. Powers within the decision-making process are divided up appropriately between two different entities.

The draft law, on the other hand, restricts the Supervisory Board's remit to the duties of laying down an overall strategy, providing advice on issues of fundamental importance, and regulating and overseeing a Management Board which is the sole body empowered to issue directions. This would upset the existing framework of checks and balances, create the risk of unilateral or hasty decisions, and fail to make proper use of the expertise possessed by a commission which is able to maintain the requisite degree of detachment when forming its judgments.

VI.

Balanced information creates trust and has benefits for all sides.

When it comes to providing information, the supervisory body has an extremely delicate task on its hands. It must achieve the near-impossible goal of simultaneously satisfying a desire for transparency, preserving personal rights and maintaining official confidentiality. The necessary legislative framework for this does not currently exist.

The draft law on financial market supervision contains rules on information. These are, however, formulated in very general terms and imbued with a spirit which is if anything hostile to openness. They fail to acknowledge that information demonstrably serves to protect market participants, correct misleading information from other sources and exonerate supervised institutions which have been the object of false accusations.

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The overall picture looks something like this: the draft law is a positive move which holds out the prospect of considerable benefits for the Swiss financial sector and those who participate in its markets. The risk that the new supervisory authority will be overburdened with responsibilities continues to provide cause for concern, and this issue will have to be resolved. The Supervisory Board and Management Board must be structured in such a way that they are mutually compatible. The rules on information should not be permitted to muddy the waters.

And whether it is the proposed Federal Financial Market Supervisory Authority or the existing SFBC, it is essential that the body entrusted with overseeing the financial sector is allowed to operate within a solid framework which gives it both material independence and a large measure of administrative autonomy.