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Events

Stricter Limitations on Intra-Group Financing Arrangements Following Swiss Federal Supreme Court Ruling

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Pursuant to the Swiss Federal Supreme Court's ruling 4A_138/2014 of 16 October 2014 (BGE 140 III 533), up-stream and cross-stream loans which are not at arm's length block an intra-group lender's freely distributable equity and limit dividend distributions in the amount of any such up-stream or cross-stream loan. In the same ruling, the Swiss Federal Supreme Court ended a controversy in legal doctrine by deciding that additional paid-in capital (*Agio*) is to be treated like general reserves and, hence, can be distributed as dividends.

By Marc Hanslin / Roland Lüthy

1) Factual Background

Swisscargo Ltd ("Swisscargo"), an indirect subsidiary of SAirGroup, was part of the group's zero-balancing cash pool led by the Dutch cash pool leader, Finance BV. As per 31 December 2000, Swisscargo had a claim of CHF 7.2 million out of short term deposits against SAirGroup and of CHF 16.5 million against the cash pool leader under the cash pooling framework. Freely distributable equity, as confirmed by Swisscargo's auditors' report, stood at CHF 29.2 million as per 31 December 2000. In April 2001, S Air Logistics Ltd, Swisscargo's parent company approved the distribution of a dividend in the amount of CHF 28.5 million. In June 2001, the dividend was paid out via the cash pool. As the whole group found itself in financial distress by the end of 2001, the managing bank terminated the cash pool and Swisscargo went into composition proceedings whereas the cash pool leader was declared bankrupt. The liquidator of Swisscargo brought its claim against the pool leader in the cash pool leader's bankruptcy proceedings and obtained a dividend in bankruptcy. Dissatisfied with the payment, the liquidator sued Swisscargo's auditors (which were the auditors for the whole SAirGroup) for breach of their duties in signing off on the dividend proposal, arguing that the dividend payment in June 2001 violated Swiss law since Swisscargo's freely distributable equity, at that time, had been reduced by the pre-existing up-stream loans, which were not entered into at arm's length and, thus, in fact were to be treated like hidden dividend payments. As a consequence, the 2001 dividend should have not been paid out in such a high amount. The funds would then have remained in the cash pool and, hence, would have led to a higher dividend in bankruptcy.

In essence, the Swiss Federal Supreme Court confirmed the liquidator's view and held the auditors liable for damages.

2) Key Points of the Ruling

In general, Swiss law does not provide for special rules for groups of companies, and a Swiss subsidiary has, first and foremost, to promote its own interests and not those of the group. Hence, it is expected to treat other group companies like third parties. Legal scholars therefore have always argued that financial assistance within a group of companies is problematic if not granted at arm's length terms and considered the granting of up-stream or cross-stream loans which are not at arm's length terms a payment of a hidden dividend and, to the extent the relevant loan is not covered by freely distributable equity, even an illicit repayment of capital if future repayment is doubtful. Some details of this doctrine are controversial and a clear-cut test does not exist. In the case at hand, the Swiss Federal Supreme Court not only supported the established legal doctrine, but followed a small, very restrictive minority by applying a new, even stricter reading of the prohibition of the repayment of capital contributions to shareholders (*Verbot der Einlagenrückgewähr*) in Swiss corporate law.

Apart from a brief side note stating that it was questionable whether the participation in a cash pool could ever pass the arm's length test, the Swiss Federal Supreme Court did not analyze the cash pooling arrangement as such in detail. Rather it dissected Swisscargo's cash pooling into different two-party loan agreements and examined the up-stream and cross-stream loans in the light of said prohibition of the repayment of capital contributions without taking into account benefits stemming from the participation in a cash pool of a group of companies. It held that any up-stream or cross-stream loan which is not at arm's length blocks the freely distributable equity of a lender in the amount of any such loan for future dividend payments because, according to the Swiss Federal Supreme Courts' reasoning, the risk existed that the same amount of funds would be distributed to affiliated companies twice.

It has to be noted that, according to the court, the whole amount of any such loan has to be blocked and not only the difference between, for example, an interest rate agreed among the group companies which is not at arm's length and a market interest rate, even though the court did not consider the loans fictitious and, hence, a hidden dividend payment in the whole amount (in which case it would not make sense to book them on the balance sheet as intra-group loans).

Furthermore, the Swiss Federal Supreme Court failed to elaborate on the arm's length criteria. In particular, the court did not discuss the criteria proposed in scholarly writing nor did it decide whether the same criteria the court applied to assess arm's length conditions in tax matters in the past were also applicable from a corporate law perspective. This leaves some uncertainty on how to apply the arm's length test in other cases. The court simply considered the loans not at arm's length on the grounds that there was no collateralization and no evidence that the lender monitored the creditors' creditworthiness despite indications on financial distress on the horizon.

As to the relevant point in time to assess the arm's length conditions and the existence of freely distributable equity, the court held that the balance sheet date and not the date of the dividend distribution is decisive.

3) Distribution of Dividends out of Additional Paid-in Capital

In the ruling, the Swiss Federal Supreme Court also had to decide whether additional paid-in capital could be distributed as dividends. So far, a minority of Swiss legal scholars held the view that this is not admissible, arguing that the prohibition of the repayment of capital would also include additional paid-in capital. The Swiss Federal Supreme Court ended the controversy by following the majority view and stating that additional paid-in capital is by law, *i.e.*, without the need of reclassifying the reserves from additional paid-in capital (which have to be booked separately for tax reasons), part of the general reserves and can therefore be paid out as dividends, subject to the same limits as the other general reserves.

4) Reaction of Auditors

In scholarly writing and amongst legal practitioners and auditors, the ruling led to a vivid discussion as to the implications of the verdict on intra-group financing arrangements. Especially, to what extent and under which conditions cash pooling arrangements are still admissible. The lack of a thorough analysis of the cash pooling arrangement in the case at hand and the vague side note issued by the Swiss Federal Supreme Court created considerable uncertainty in that respect.

Auditing companies were especially alarmed by the decision for obvious reasons. EXPERTsuisse, which also represents Swiss audit companies, published a Q&A paper (*Selected Questions and Answers on the Assessment of Intragroup Receivables, Cash Pooling Structures and Dividends with regard to Article 680 Paragraph 2 of the Swiss Code of Obligations*) for its members discussing the consequences of the new ruling and suggesting stricter standards for auditors when assessing up-stream and cross-stream loans and when deciding on proposed dividend distributions when up-stream and cross-stream loans are in existence.

As regards the arm's length test for up-stream and cross-stream loans in general, EXPERTsuisse lists the criteria based on which an overall assessment should be made. These criteria mostly correspond to the criteria proposed in legal writing and applied by the Swiss Federal Supreme Court in tax matters and are essentially the following:

- documentation of loan agreement and arm's length test in writing;
- use of market interest rates (taking into consideration the currency of the loan, the lender's creditworthiness, etc.) and terms (term of loan and termination provisions);

- regular payment of interest and amortization (willingness of debtor to repay the loan);
- existence of collateralization (or adequate compensation in case of missing collateralization) and quality of collateral (*e.g.*, guarantees by other participants of the cash pool should not be considered recoverable collateral);
- relative size of the loan on the balance sheet (no concentration risk); and
- assessment of the debtor's solvency and creditworthiness when entering into the agreement and ongoing monitoring thereafter (ability of debtor to repay the loan).

For cash pools, in particular, EXPERTsuisse also suggests to take into consideration whether a company's role within the cash pool is static (*i.e.*, it only provides funds into the cash pool) or whether it changes (*i.e.*, the same company at times acts as a lender and at times draws upon funds in the cash pool) and whether the cash pool is a company's only access to cash or whether it has other liquid assets.

According to EXPERTsuisse, it is the responsibility of the board of directors to assess and document the lawfulness of any intra-group financing activities vis-à-vis the auditors, including to provide evidence for an arm's length test in case of up-stream and cross-stream loans. In the opinion of EXPERTsuisse, a mere confirmation of the lawfulness of such intra-group financing in the board's representation letter to auditors (*Vollständigskeitserklärung*) should not be considered sufficient.

In the absence of enough freely distributable equity and evidence for the passing of the arm's length test, EXPERTsuisse recommends to its members to refuse to sign off (*Versagung des Prüfungsurteils*) on any proposed dividend distribution and to issue an adverse opinion regarding the proposed dividend in its report to shareholders.

EXPERTsuisse furthermore recommends its members to also take into consideration any negative developments after the balance sheet date when conducting an audit of up-stream or cross-stream loans.

5) Conclusion and Outlook

Even though the Swiss Federal Supreme Court ruling was rendered in the very specific context of the cash pooling arrangement in the collapse of the SAirGroup, its legal consequences apply broadly. This has led to some uneasiness and uncertainty amongst legal practitioners. Until the Swiss Federal Supreme Court addresses a similar matter and gets the opportunity to state or restate more precisely its newest doctrine, this uncertainty will remain and intra-group financing arrangements will come under much greater scrutiny by auditors. The ruling has also strengthened the position of

auditors in the discussion on the admissibility of intra-group financing and the assessment of dividend proposals.

Given the auditor's liability established in the Swiss Federal Supreme Court Ruling, we expect auditing companies to largely follow EXPERTsuisse's recommendations going forward. Therefore, a prudent approach would imply that up-stream and cross-stream loans be granted at arm's length conditions and that this be properly documented for the auditors. Otherwise, the freely distributable reserves will have to be blocked in the amount of any existing up-stream or cross-stream loan, thereby limiting future dividend payments.

As regards cash pooling, in our opinion, it serves a legitimate purpose in a group of companies and the latest Swiss Federal Supreme Court ruling, despite its general applicability and in spite of the negative side note on cash pooling arrangements in general, should not be read as to render cash pooling impossible altogether. However, it is clear that existing and future cash pooling arrangements should be critically analyzed and, to the extent necessary, adapted in the light of the new Swiss Federal Supreme Court ruling and existing legal practice (as, for example, set out by EXPERTsuisse and discussed above) with regard to arm's length conditions.

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Anti-Money-Laundering – Implementation of the Revised FATF Recommendations

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On December 12, 2014, the Swiss Parliament adopted the Federal Act for Implementing the Revised Financial Action Task Force (FATF) Recommendations. The Federal Act provides new and revised provisions in the field of anti-money laundering, criminal and corporate law. The revisions mainly focus on enhanced transparency on the ownership of legal persons, the clarification and extension of the definition of Politically Exposed Persons (PEP) and, most importantly, the extension of the scope of predicate offences for money laundering to include qualified tax offences.

By Alexander Greter / Nicolas Bonassi

1) Introduction

In February 2012, the Financial Action Task Force (FATF) issued a revised version of its recommendations. These recommendations are recognized as international standards for combating money laundering and terrorist financing. With the adoption of the

Federal Act for Implementing the Revised Financial Action Task Force (FATF) Recommendations on December 12, 2014, the Swiss Parliament made important changes to existing regulations. The key changes concern the Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector (AMLA), the Swiss Criminal Code (SCC) and the Code of Obligations (CO). The provisions regarding bearer shares and the transparency of ownership of legal entities will enter into force on July 1, 2015 and the remaining provisions will be applicable as of January 1, 2016.

2) Qualified tax fraud as predicate offence for money laundering

Under the current regime, only actions with regard to assets that resulted from a crime (crimes are criminal offences that are punishable with an imprisonment of more than three years) or with regard to assets that were under the control of a criminal organization are considered predicate offences for money laundering pursuant to the SCC. This does not include tax fraud with respect to the Swiss Federal and Cantonal direct taxes. Certain qualified offences with respect to VAT, customs duties and certain other levies are, however, already within the scope of predicate offences for money laundering. As of January 1, 2016 the scope of art. 305bis SCC will be extended to qualified tax offences. Tax offence means tax fraud pursuant to the Federal Act on Direct Federal Taxes (FDTA) and the Federal Act on the Harmonization of Taxes (FAHT). Tax fraud as per the FDTA and the FAHT is committed by tax evasion in the context of which false or falsified documents or documents with untrue content are used. Tax fraud is a qualified tax offence as per the revised SCC if the amount of evaded taxes in a particular tax period exceeds CHF 300,000.

The extension of the scope of predicate offences for money laundering has led to a consequential amendment to the scope of art. 350ter para. 2 SCC to enable financial intermediaries to file a suspicion report with the Money Laundering Reporting Office Switzerland (MROS) in case of observations indicating that assets originate from a crime in case the duty to report pursuant to the AMLA is not triggered. As of January 1, 2016, suspicion reports may also be filed in case of indications of a qualified tax offence.

Qualified tax offences as predicate offences for money laundering can also be committed with respect to taxes payable outside Switzerland; provided that the relevant conduct constitutes an offence in the relevant country, amounts to a tax fraud from a Swiss perspective and the evaded tax amount exceeds the equivalent of CHF 300,000. The amount of evaded taxes is calculated in accordance with the laws of the country where the tax fraud occurred.

Only qualified tax offences committed as of January 1, 2016 are considered predicate offences for money laundering. Qualified tax offenses with respect to assets that came under the control of a financial intermediary prior to that date may be relevant for anti-

money laundering purposes if committed after January 1, 2016, e.g. because tax returns are filed in 2016 only or a tax assessment by the foreign tax authority with respect to a prior tax year is issued on or after January 1, 2016.

3) Transparency on the ownership of legal entities

The revised AMLA provides for a duty of financial intermediaries to identify the beneficial owner of a legal entity in all cases with effect as of January 1, 2016. The concept that an operating company is considered the beneficial owner of its assets is dropped and only individuals can be the beneficial owners of assets under control of a financial intermediary. Financial intermediaries are therefore obliged to implement appropriate measures to identify the individuals that ultimately control a legal entity. No formal identification of beneficial owners is required with respect to contracting parties that are listed on a stock exchange or that are subsidiaries of listed companies. This includes entities listed on a foreign stock exchange; provided that the financial intermediary is satisfied that adequate transparency rules are applicable.

The extension of the duty to identify beneficial owners of operating companies requires that the legal entities themselves know who their beneficial owners are. To that end, the revised CO introduces an obligation to report the acquisition of bearer shares of companies limited by shares as of July 1, 2015 in order to achieve transparency on the ownership of legal entities, as required by the FATF Recommendations. Acquirers of bearer shares will have to disclose their identity to the company or to a financial intermediary designated by the company. Acquisitions of listed bearer shares are exempt from the reporting obligation. This exemption is not limited to Swiss stock exchanges and applies to bearer shares listed on a foreign stock exchange, at least if the applicable reporting obligations are comparable to the respective obligations pursuant to the Federal Act on Stock Exchanges and Securities Trading. Similarly, bearer shares that were issued as book-entry securities according to the Book Entry Securities Act are not subject to the reporting obligation. For purposes of transparency, the revised CO also requires cooperatives to introduce a register of members.

In addition to the reporting obligations of acquirers of bearer shares, the CO requires the disclosure of persons acquiring 25 percent or more of the capital or the votes of a legal entity, regardless of whether the acquisition has been made alone or in concert with others and regardless of whether the shares are issued as bearer shares or registered shares. The notification of the entity or, in the case of bearer shares, designated financial intermediary is made by the acquiring shareholder and must contain the name and the address of the person for whom the shares are ultimately acquired. Again, no reporting duties arise if the shares of the company are listed on a stock exchange or if the shares of the company have been issued as book-entry securities according to the Book Entry Securities Act. The duty to report a beneficial ownership will also apply to limited liability companies.

The companies limited by shares as well as the limited liability companies are required to maintain a register of shareholders for bearer shares and for the beneficial owners of their shares. The company or, in the case of bearer shares, the financial intermediary maintaining the register has to be notified of any changes regarding the holders of bearer shares or the beneficial owners of shares. Failure to comply with the reporting obligations leads to the suspension of all membership rights and, after one month, the financial rights are forfeited. Pursuant to the transitional provision regarding the amendments to the CO the membership rights of existing holders of bearer shares will be suspended if they do not, within one month from the entry into force of the new provisions, report the required information to the company. The suspension will be lifted once the required information is filed. If existing holders of bearer shares do not file the required information with the company within six months, then, in addition to the suspension of the membership rights, their financial rights will be forfeited. The transitional provisions only refer to existing holders of bearer shares. Therefore, it must be assumed that existing holders of registered shares are not required to report the person for whom the shares are ultimately held (if different from the registered shareholder) to the company until there are any changes with respect to the identity of that person.

4) Further key points of the reform

At present, the AMLA does not contain any special provisions relating to Politically Exposed Persons (PEP). The term was defined inconsistently in the different ordinances and regulations of self-regulatory organizations applicable to financial intermediaries, but generally only included foreign politicians and officials. A uniform definition of PEP will be included in the AMLA as of January 1, 2016. This new definition will extend to persons who are or have been entrusted with leading public functions in politics, administration, military and justice abroad or on a national level in Switzerland, members of the board of directors or of the management of state-owned enterprises with national importance as well as persons who are or have been entrusted with a leading function in intergovernmental organizations or international sport associations. In the case of Swiss PEP, the status as PEP ends 18 months after the retirement from the relevant function. For foreign PEP and PEP from international organizations, no such predefined period is applicable. For these persons, a risk-based approach shall be used to define whether the PEP status must be maintained.

As of January 1, 2016 the AMLA will also apply to traders, i.e. individuals and legal entities that commercially trade in movable goods and in this context accept payment of cash. The original proposal of the Federal Council to introduce a general limit of cash payments of CHF 100,000 for transactions of movable goods and real property was not adopted. However, pursuant to the revised AMLA, a trader of movable goods accepting cash in excess of CHF 100,000 in the context of a commercial transaction is to a large extent subject to the due diligence obligations and the duty to document ap-

plicable to financial intermediaries and has to identify the contracting party as well as the beneficial owner. If a transaction appears to be unusual or if there are indications that the assets could originate from a crime or a qualified tax offence or are under control of a criminal organization, the background and the purpose of the transaction have to be clarified and, where required, a report has to be filed with MROS. Traders who have to comply with the aforementioned due diligence obligations because they have accepted cash payments in excess of CHF 100,000 in one or several payments in the context of a commercial transaction will have to appoint an auditor to audit the trader's compliance with the relevant obligations and produce a report to the relevant corporate body of the trader.

The reform also changes the provisions of the AMLA regarding the freezing of assets and the prohibition of information. Until now, a report to the MROS led to an immediate freezing of assets. Pursuant to the revised AMLA, the financial intermediary will, however, continue to execute client orders, despite having filed a report with MROS, provided that a paper trail is maintained. The assets should only be frozen upon a notification by MROS to the financial intermediary stating that the report has been forwarded to a criminal investigation authority. An immediate freezing of assets is, however, still required with respect to assets of persons who were included in a list forwarded to the relevant financial intermediary by the Swiss Financial Market Supervisory Authority (FINMA), the Federal Gaming Board (ESBK) or the financial intermediary's Self-Regulation Organization (SRO). These lists are prepared by the Federal Department of Finance based on data received from other countries on persons under suspicion of being involved with or supporting terroristic activities. Finally, the prohibition to inform third parties about a report to the MROS is decoupled from the freezing of assets. The prohibition to report will be applicable for an unlimited period of time with respect to any filing of a report to the MROS, including the filing of a suspicion report pursuant to art. 350ter para. 2 SCC. The revised provisions of the AMLA, however, clarify that a notification of FINMA, ESBK or the financial intermediary's SRO by the financial intermediary is permitted. The possibility to notify certain other financial intermediaries of the fact a report to the MROS has been filed remains unchanged.

5) Practical relevance for the financial intermediaries

The extension of the predicate offences for anti-money laundering requires financial intermediaries to clarify the background of transactions and client relationships based on the revised art. 6 para. 2 AMLA if the financial intermediary has indications that assets under its control originate from a qualified tax offence. Accordingly, financial intermediaries will have to adapt their internal control systems and, in particular, to define suitable criteria which trigger the background clarification by the financial intermediary. The current non-conclusive list of criteria indicating money-laundering set out in the annex to the FINMA Anti-Money Laundering Ordinance relates to the identifica-

tion of funds originating from a crime and does not adequately cover qualified tax offences. In light of the diversity of tax systems and the fact that certain elements which may, in practice, frequently be seen in the context of tax offences (e.g. retained mail agreements or structures including trusts and/or private investment companies) are widely used for valid purposes and may, therefore, not be suitable indicators of tax offences. Moreover, the fact that a tax offence will only trigger a reporting obligation if the evaded tax amount exceeds CHF 300,000 in a particular tax year allows financial intermediaries to define quantitative criteria. In case a financial intermediary knows or has strong indications that a tax offence was committed, it has to determine whether the tax offence is qualified, i.e. exceeds the threshold. This requires financial intermediaries to calculate or estimate the evaded tax amount which implies that the financial intermediary has or obtains adequate information about the applicable tax laws.

Although the revised AMLA does not provide for a general obligation to check tax compliance before establishing a new business relationship, it is likely that in the future, a risk-based approach will be applied to assess tax compliance at inception. The commitment of Switzerland to participate in the automatic exchange of information within the OECD as of 2018 as well as the international exchange of information with the U.S. based on FATCA and with the UK and Austria based on the respective Withholding Tax Agreements will be of relevance in this context. Financial information about clients with residence in the U.S., the UK and Austria and, as of 2018, the EU or other countries having entered into an agreement with Switzerland regarding the automatic exchange of information will be automatically transmitted to the relevant foreign tax authority. Alternatively, a withholding tax is deducted by the Swiss financial intermediary in the case of the UK and Austria. Therefore clients who are tax resident in one of these countries will likely cease depositing untaxed assets in Switzerland. This can be taken into account in the context of the risk-based approach to the review of tax compliance of clients. It should be noted, however, that on June 5, 2015, the Swiss Federal Council submitted a dispatch to Parliament proposing the introduction of a general obligation of financial intermediaries to check tax compliance of their foreign customers with respect to the assets held by or transferred to the financial intermediary.

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FINMA Enforcement Report 2014

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Over the past years, enforcement has become an increasingly important means for the Swiss Financial Market Supervisory Authority FINMA to achieve its supervisory goals. In line with its stipulation to make enforcement activities more visible, FINMA, in spring 2015, for the first time published a specific report summarising its enforcement activities in 2014. In the future, FINMA intends to publish an enforcement report once a year. This article provides an overview of the enforcement report.

By Philipp Candreia

1) FINMA's Increased Focus on Enforcement

Enforcing compliance with financial market legislation is one of the three core supervisory tasks of FINMA, besides the issuance of licences and the prudential supervision of market participants.

Over the past years, FINMA has become more proactive and has strengthened its enforcement department, shifting internal resources and increasing the amount of employees in the enforcement department by approximately 50%. In autumn 2014, FINMA also adopted a new enforcement policy, setting out the key principles of its approach to sanctioning violations of supervisory law (available under https://www.finma.ch/en/enforcement/all-about-enforcement/). The number of FINMA initiated investigations has tripled since 2009, and in 2014, FINMA issued 115 formal enforcement decisions, more than ever before.

2) Enforcement Report 2014

On February 24, 2015, FINMA for the first time published a specific report on its enforcement activities for the past year (https://www.finma.ch/en/~/media/finma/dokumente/dokumentencenter/myfinma/3durchsetzung/enforcementbericht-2014-20150224.pdf). The enforcement report 2014 punctuates FINMA's increased focus on enforcement and its aim to use enforcement action as a visible means to achieve its supervisory activities. In the future, FINMA intends to publish an enforcement report once a year.

The enforcement report comprises four parts. After a summary of the main focus and trends of FINMA's enforcement activities 2014, the report contains 66 anonymised summaries of individual FINMA decisions that have been concluded in 2014. This is followed by a list of decisions of the Federal Administrative Court and the Federal Supreme Court on FINMA enforcement decisions that have been appealed against. Finally, the report contains detailed statistics about FINMA's enforcement activities in 2014.

The main focus and trends, as well as the individual case reports are divided into the following six topic categories in the enforcement report, reflecting FINMA's areas of competence:

- license holders (decisions against license holders, and their key individuals that are subject to proper business conduct requirements);
- market supervisions (decisions on market abuse, not limited to license holders);
- unauthorized financial services providers;
- insolvency decisions;
- takeovers and disclosure (all decisions by FINMA in its role as appeal body against decisions of the Swiss Takeover Board or relating to shareholder disclosure requirements under the Federal Act on Stock Exchanges and Securities Trading, SESTA; and
- international cooperation (cooperation with foreign supervisory authorities).

Below, FINMA's key activity and decisions in these topic categories are summarised in further detail. While the enforcement report only comprises anonymised information, in this article, the respective parties are mentioned by name where the relevant information had been published by FINMA at the time the cases were concluded.

As a preliminary remark, with respect to measures taken by FINMA, it is important to note that in contrast to other jurisdictions, FINMA may not issue fines. The measures available to FINMA range from a reprimand (declaratory ruling) to specific orders to restore compliance with the law (including request that certain individuals resign), as well as to prohibition against individuals from practising their profession and to revocation of licences (including liquidation). FINMA may also confiscate any illegal gains or avoided losses or order publication of a final and binding ruling.

a) License Holders

With respect to license holders, FINMA concluded 128 preliminary investigations during 2014 and issued 35 rulings. The main focus was on

- ***suspected embargo violations***, in particular, the BNP Parisbas (Suisse) case, where FINMA concluded that the bank persistently and seriously violated its duty to identify, limit and monitor the inherent risks and ordered a reprimand as well as specific orders to restore compliance with law, additional capital requirement and mandated an independent third party auditor. The BNP Parisbas (Suisse) case relates to the US proceedings against the BNP Paribas group concerning the circumvention

of US sanctions, where the bank pleaded guilty and paid a fine of total of USD 8.97 billion to the US authorities; and

– ***cross border client business***, in particular several cases against banks and individuals regarding their cross-border U.S. business strategy after 2008.

The enforcement report also shows FINMA's increased efforts against ***individuals*** who have seriously violated supervisory law, besides action taken against the licensed institutions. In a speech held on 30 October 2014, FINMA's director Mark Branson explained FINMA's increasing focus on individuals, referring, in particular, to (i) the fact that individuals drive misconduct, not institutions, and (ii) the fact that deterrence by sanctioning institutions did not seem to have been having the desired effect, as FINMA has seen a massive inflation in financial penalties against financial institutions around the world without, however, seeing a corresponding improvement in conduct (https://www.finma.ch/en/~/media/finma/dokumente/dokumentencenter/myfinma/finma-publikationen/referate-und-artikel/rede-bnm-20141030-e.pdf?la=en). In the relevant cases against individuals published in the enforcement report, FINMA ordered prohibitions against individuals from practising their profession for periods between two and five years.

In a number of decisions in 2014, FINMA also confiscated illegal gains, for example in a case where it ordered a bank to disgorge the profits generated from a politically exposed person (PEP) with whom the bank maintained a business relationship that it inadequately monitored.

b) Market Supervision

In 2014, FINMA conducted 109 preliminary investigations into suspected market manipulation and concluded six respective enforcement proceedings.

The most publicly prominent case was against Coop Bank. By decision of October 29, 2014, FINMA reprimanded Coop Bank for manipulating the market price of its own bearer shares. The bank bought its own securities in order to counteract a fall in price, in particular before and during the publication of business results as well as at months and year-end. During the proceedings, the bank itself had already largely implemented wide-ranging measures that FINMA regarded as appropriate for rectifying the organisational deficiencies identified.

Besides the bank itself, FINMA issued Coop Bank's then CEO with an order prohibiting him from acting in a management capacity at any supervised institution for a period of three years. FINMA imposed a similar ban on an individual in another case involving manipulation of a bank's own securities.

In another prominent and public case, FINMA carried out a large-scale investigation into foreign exchange trading against UBS, in close cooperation with foreign authorities. FINMA imposed a number of corrective measures on UBS, including a disgorgement of profits and avoided costs (CHF 134m), measures on variable compensation, automating foreign exchange trading, separation of client and proprietary trading and a strengthening and monitoring of compliance.

c) Unauthorized Financial Services Providers

FINMA is also responsible for acting against companies or individuals engaging in regulated activities without the requisite licence. In 2014, FINMA concluded a total of 22 unauthorized activity proceedings. Almost without exception, they involved the unauthorized acceptance of deposits from the public and unauthorized issuance activity.

FINMA specifically highlights bitcoin trading that is subject to the Anti-Money Laundering Act or even the Banking Act. However, FINMA has, pursuant to the enforcement report, not yet opened any enforcement proceedings for bitcoin trading. FINMA issued a factsheet on bitcoins on 25 June 2014 (https://www.finma.ch/en/~/media/finma/dokumente/dokumentencenter/4dokumentation/faktenblaetter/faktenblatt-bitcoins.pdf?la=en). It also issued a similar factsheet on crowdfunding (https://prod01.finma.ch/en/~/media/finma/dokumente/dokumentencenter/4dokumentation/faktenblaetter/faktenblatt-crowdfunding.pdf?la=en).

d) Insolvencies

FINMA is competent to impose protective measures or order resolution or bankruptcy of institutions and individuals that have a licence under financial market law or operate without a requisite license. In 2014, much of FINMA's insolvency activities involved bankruptcy proceedings, with a prominent case being the opening of bankruptcy proceedings in September 2014 against Banque Privée Espírito Santo SA, the Swiss bank subsidiary of the Esprito Santo group.

e) Takeover and Shareholding Disclosure

In takeover matters, FINMA decides on appeals against rulings issued by the Swiss Takeover Board. FINMA dealt with two respective appeal proceedings in 2014.

FINMA also investigates suspected violations of shareholder disclosure obligations under the SESTA (article 20 SESTA). In this respect, a total of 102 cases were concluded in 2014, of which 56 were discontinued without further action and 46 led to criminal complaints by FINMA to the competent Federal Department of Finance that is responsible for sanctioning criminal violations of disclosure obligations. FINMA itself conducts enforcement proceedings in disclosure matters only if a violation of disclosure obligations (i) has a lasting adverse impact on market transparency, (ii) there are aggravating

circumstances (such as secret stake building), or (iii) where prudentially supervised institutions are heavily involved. In 2014, none of the preliminary investigations led to respective enforcement proceedings by FINMA.

f) International Cooperation

With respect to international cooperation among financial market supervisory authorities, FINMA in 2014 received the third-largest number of requests for international assistance of any authority worldwide, many of them relating to market supervision (insider trading, price manipulation, violation of disclosure obligations, etc.). FINMA responded to a total of 479 requests in 2014.

g) Court Decisions

FINMA rulings can be appealed before the Federal Administrative Court, whose decisions, with certain exceptions, can be further appealed to the Federal Supreme Court. The enforcement report comprises a brief description of decisions of the Federal Administrative Court and the Federal Supreme Court during 2014 which fall into FINMA's remit.

In most cases, appeals against a decision of FINMA were not successful. In general, while having full cognition, the Federal Administrative Court tends to grant FINMA significant discretion.

A particularly notable exception was a case regarding FINMA's supervisory privilege (BVGer B-5579/2013 of 14 October 2014) where the Federal Administrative Court upheld the appeal of a bank against the order of FINMA providing that the FINMA administrative proceedings against the bank may only be disclosed to third parties with the approval of FINMA. The Federal Administrative Court held that such approval requirement lacked a sufficient formal legal basis under Swiss law. The decision has been appealed by FINMA. If the decision of the Federal Administrative Court is upheld by the Federal Supreme Court, this case has potential broad ranging implications for banks who may, for example, no longer reject disclosure of FINMA proceedings to foreign authorities on the basis of the argument that a disclosure would breach FINMA's supervisory privilege and be illegal under Swiss law, as FINMA prohibited the bank from disclosure without FINMA's consent.

h) Statistics

The enforcement report concludes with statistical information on FINMA's enforcement activity in 2014.

3) Conclusion and Outlook

The enforcement report 2014 reflects FINMA's aim to use enforcement action as a visible means to promote compliance with requlatory requirements. As FINMA believes deterrence by sanctioning institutions has not had the desired effect in the past, it has in particular stepped up its efforts against individuals and it will continue to do so. FINMA may in the future also be further enforcement tools with the enactment of a new Federal Financial Institutions Act (FINIG) (currently planned for 2017 at the earliest). Pursuant to the current draft bill, FINMA will, among other instruments, be granted the right to issue measures also against certain ***lower*** level employees, such as securities dealers and client advisors, in addition to measures against high level individuals currently subject to proper business conduct requirements. However, it is also for the future ***not*** foreseen that FINMA may issue fines against institutions or individuals.

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Revisions to the Draft Financial Services Act and Draft Financial Institutions Act by the Swiss Federal Council

Reference: CapLaw-2015-33

Following a review of the consultation results on the draft Financial Services Act (FinSA) and the draft Financial Institutions Act (FinIA), the Swiss Federal Council decided that certain elements needed to be revised and the dispatch for submission to the Swiss Parliament be postponed until the end of 2015.

By René Bösch / Benjamin Leisinger

On 25 June 2014, the Swiss Federal Council launched the consultation on the FinSA and the FinIA.

– The FinSA shall introduce for the first time a comprehensive framework for the issuance and sale of securities. The draft FinSA (see CapLaw-2014-5 for an overview) provides for a prospectus requirement for all securities (see CapLaw-2015-3 describing the prospectus regime originally proposed), the need for a Key Investor Information Document (KIID) for all complex financial products, stricter duties at the point of sale, client segmentation, licensing requirements for individual client advisors and the regulation of cross-border activities into Switzerland. Moreover, the draft FinSA includes provisions aimed at facilitating the enforcement of customers' claims against financial service providers (namely, group settlement proceedings and representative action).

– The FinIA intends to introduce a differentiated supervisory and regulatory regime for financial institutions providing asset management services to third parties. It is envisaged to serve as the legal framework that will govern the licensing requirements and further organizational conditions for financial institutions. The stated goal of the FinIA is to (i) enhance the protection of investors and clients of financial institutions, (ii) increase the functionality of the financial market, and (iii) increase the stability of the financial system as a whole.

The consultation period in respect of both drafts ended on 17 October 2014.

On 13 March 2015, the Swiss Federal Council stated that, according to its review of the results of the consultation, both of the preliminary legislative drafts were positively received by the majority of the consultation participants, but serious reservations were expressed about individual areas contained therein.

– For example, the proposed reversal of the burden of proof with respect to enforcing civil claims against financial service providers was among the most criticized provisions. The draft FinSA proposed that the burden of proof for the fulfilment of information and disclosure duties stipulated by the FinSA be shifted to the financial services provider (article 74(1) FinSA) and that if the financial services provider has not fulfilled his legal information and disclosure duties (or could not prove that it did), it will be presumed that the client would not have executed the concerned trade.

– Moreover, the procedural costs fund (a proposed fund to be sponsored by financial services providers to bear an appropriate part of client litigation costs) and the arbitration court (a proposed alternative venue for civil claims) were clearly rejected together with the instruments of collective legal protection limited to financial services.

– Other disputed and criticized topics included the client advisor register, disclosure of the compensation of financial service providers (*e.g.*, retrocessions), and enhanced due diligence requirements relating to clients' tax compliance.

When presenting their review of the consultation results, the Swiss Federal Council also announced their decision on the controversial topics in the consultation procedure:

– In addition to the proposed reversal of the burden of proof, the procedural costs fund and the arbitration court will also be eliminated. Rather, access to a court of law should be facilitated with a new cost settlement rule without cross-financing amongst financial service providers, whereby the financial service providers, subject to certain conditions, will pay the plaintiff costs regardless of the outcome of proceedings. The regulations on the instruments of collective legal protection (*i.e.*,

group settlement proceedings and representative action) will be integrated in the Civil Procedure Code in the coming years and will no longer be regulated in the FinSA.

- Moreover, according to the Swiss Federal Council's decisions, the client advisor register will be completely revised in the new draft legislation to be submitted to the Swiss Parliament and will be merged with the general register for foreign financial service providers also provided for by the FinSA.

- According to the Swiss Federal Council, the rule on disclosure of retrocessions will be retained in the form contained in the preliminary draft submitted for consultation. This means that there will neither be a ban on retrocessions nor any restrictions on transparency.

- The enhanced due diligence requirements in connection with client's tax compliance will be regulated within the scope of the dispatch on the implementing act on the automatic exchange of information (AEOI). In the case of institutional oversight (contained in the FinIA), a general legislative basis is envisaged explicitly mentioning legal risks.

- In contrast to previous expectations, the Banking Act will not be repealed in its entirety, but the FinIA and the Banking Act will be reconciled.

The Swiss Federal Council conducted a separate discussion on the specific design for the supervision of asset managers, the requirement of training and continuing education and the problem of costs associated with enforcement of civil claims against financial service providers. On 24 June 2015, the Swiss Federal Council announced that it has decided to propose a separate new supervisory organization (authorized and supervised by FINMA) for asset managers performing a risk-based supervisory activity. Further, the rules on training and continuing professional development will be expanded compared to the consultation draft to include the responsibility of financial service providers that their client advisors meet the requirements. Finally, the Federal Council decided to propose an exemption from the advances on proceedings costs and that financial service providers must cover their litigation costs even if they win, provided in each case that the amount in dispute is below CHF 250,000 and that there was an ombudsman proceeding beforehand.

According to the website of the State Secretariat for International Financial Matters, the dispatch to the Swiss Parliament which will contain the draft legislation reflecting these changes is expected to come in the third quarter of 2015.

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The Opinion of the Advocate General on the Announced Bond-Buying Program of the ECB

Reference: CapLaw-2015-34

Never before has an opinion of a European Advocate General had such a severe impact on Switzerland as the one published on the request for preliminary ruling in the so-called OMT case, a government bond-buying program announced by the ECB in 2012. Only one day after the Advocate General basically rejected the legal concerns of the German Constitutional Court that had asked for preliminary ruling, the Swiss National Bank withdrew its previously made promise concerning the maximum exchange rate of the Swiss Franc *vis-à-vis* the Euro. The European Court of Justice has now ruled in the same direction as the Advocate General had recommended in its opinion.

By Peter Sester

An interim judicial act has rarely ever had such a severe impact on international financial markets as the opinion of the Advocate General (AG) published on 14 January 2015. One of the most acute reactions was the paradigm shift by the Swiss National Bank (SNB) only the day after the legal opinion of the AG Cruz Villalón was released. This opinion concerned the request for the preliminary ruling from the German Constitutional Court (*Bundesverfassungsgericht* (BVG)) (Case C 62/14). The SNB abandoned the currency ceiling; and subsequently the Swiss Franc appreciated substantially.

Certainly, the SNB had a number of reasons for taking this decision to stop interfering with currency markets. One of these reasons was to fulfill its previous promise not to allow the Swiss Franc to further appreciate *vis-à-vis* the Euro to a ratio higher than 1.20 CHF to 1 EUR. However, it was clear from the outset that the an unlimited government bond buying program such as the European Central Bank's (ECB) Outright Monetary Transactions (OMTs) program would force the SNB to buy Euros to an unlimited extent. For the SNB, these forced purchases entailed all inherent risks for the Swiss monetary and economic policy in general. Obviously, the governing body of the SNB was not willing to take this risk, and decided to withdraw the described promise to save its credibility and to create room for maneuver.

Case C 62/14 is peculiar in many ways. First of all, the published opinion of the AG is not a legally binding act or a decision by an authority. It is only a press release setting out the basic features of the program for purchasing government bonds. The formal adoption of the legal instruments regulating the program was postponed and those instruments have still not been adopted until today. For the first time in history, the German BVG requested the European Court of Justice (ECJ) for a preliminary ruling. However, the BVG did not signal that it would question the constitutionality of the participation of Germany in the OMTs, if the ECJ would come to the conclusion that the

announced OMTs can be carried out as intended by the ECB without any legal boundaries and/or conditions. Consequently this case is, among others, another battlefield in the framework of a *war* for the ultimate judiciary power in Europe between three courts: national constitutional courts (such as the BVG), the ECJ in Luxembourg, and the European Court of Human Rights in Strasbourg. Last but not least, the case in question is a superb example for the never-ending task to draw an appropriate line between adequate judiciary control and the necessity to grant governments or monetary authorities (here the ECB with regard to monetary policy) room for non-controllable discretionary decisions. And the key difference between the position of the AG and of the BVG lays exactly therein. They have drawn different lines. The AG tends to favor discretionary powers when it comes to highly technical tasks such as defining the proper monetary policy, which is necessarily based on a forecast of the overall economic future panorama. On the other hand, the BVG sticks to its rather dogmatic approach and ever growing tendency to intervene in political decisions.

The content of the announced bond buying program, as outlined in the ECB press release of 6 September 2012, was summarized by the AG as follows: "The ECB gave notice of its intention to purchase on secondary markets, subject to certain conditions, government bonds issued by States in the euro area. In brief, the ECB made application of the program conditional upon the States concerned being subject to a financial support program of the European Financial Stability Facility or the European Stability Mechanism, provided that such a program included the possibility of primary market purchases. It was also announced that transactions under the OMT program were to be focused on the shorter part of the yield curve, with no *ex ante* quantitative limits being set, and that the Eurosystem accepted the same (*pari passu*) treatment as private creditors, whilst an undertaking was given that liquidity created would be fully sterilized."

The argument of the ECB for its competence to launch OMTs is that this program is the proper instrument to deal with exceptional circumstances. This is because this program aims at doing what has to be done in order to restore ECB's ability to make efficient use of its monetary policy instruments. The program prioritizes this objective regardless of its *unconventional* nature and the risks it entails. Indeed the ECB refers to a number of articles in the Treaty on the Functioning of the European Union (TFEU). However, the most precise rule is article 18 of the Statute of the European System of Central Banks (ESCB), as laid out in Protocol No 4 of the TFEU. Article 18 states that the ECB and the national central banks may operate in the financial markets by buying and selling outright (spot and forward) marketable instruments in order to achieve the objective of the ESCB and to carry out its tasks.

An important question is whether or not a communication strategy (as the AG calls it) in a press release of 6 September 2012 can be subject of a preliminary ruling by the

ECJ. The AG takes the view that "in the specific case of actions of this kind by the ECB, in which acts of public communication assume special significance for the effectiveness of monetary policy, an act such as the one called in question by the *Bundesverfassungsgericht* constitutes – having regard not only to its content and the actual effects that it may produce but also to the circumstances in which the measure was adopted – an act which falls within the scope of article 267 TFEU." To underline his position, the AG points to the announcement effects of statements made by a (creditable and powerful) Central Bank.

The centerpiece of the AG's ECB-friendly position is his definition of the ECB's status and mandate, combined with the AG's practical and economical approach to the ultimate question on whether or not to save the common currency. The end goal of saving the common currency sustains, even if this requires an extensive and unconventional interpretation of the treaties. According to the AG, "the Treaties confer on the ECB sole responsibility for framing and implementing monetary policy, for which purpose it is given substantial resources with which to undertake its functions. On account of those resources the ECB also has access to knowledge and particularly valuable information, which permits it to perform its tasks more effectively whilst also, over time, bolstering its technical expertise and reputation. Those features are essential for ensuring that monetary policy signals actually reach the economy since, as has previously been stated, one of the functions of central banks today is the management of expectations, and technical expertise, reputation and public communication are basic tools for carrying out that function. ***The ECB must accordingly be afforded a broad discretion*** for the purpose of framing and implementing the Union's monetary policy. The Courts, when reviewing the ECB's activity, must therefore avoid the risk of supplanting the Bank, by venturing into a highly technical terrain in which it is necessary to have an expertise and experience which, according to the Treaties, devolves solely upon the ECB. Therefore, the intensity of judicial review of the ECB's activity, its mandatory nature aside, must be characterized by a considerable degree of caution."

The AG qualifies the OMT in two ways: *formally*, as operations provided for in article 18.1 of the Status of the ESCB; and *materially*, as an unconventional monetary policy measure. By doing so, he basically adopts the argumentation line of the ECB. The AG explicitly states: "it is important to point out that the ECB's monetary policy is implemented, as has been noted, through various 'transmission channels or mechanisms', by means of which the Bank intervenes in the market and fulfills its mandate of ensuring price stability. In order to carry out its monetary policy, the ECB controls the monetary base of the euro area economy, which it does by transmitting the appropriate 'impulses' or signals, chiefly through the setting of interest rates, which will subsequently pass from the financial sector to firms and households. In this respect, to ensure the proper functioning of these transmission channels, the Statute of the ESCB

and of the ECB confers on the ESCB an express competence to adopt a set of 'monetary functions and operations'. The ECB defends the lawfulness of the OMT program on the basis that it is a measure intended to 'unblock' the Union's monetary policy transmission channels (and not a hidden measure of general economic policy or forbidden monetary finance of tumbling Member States). As has been explained above, those monetary policy transmission channels do not function as mechanisms producing immediate effect but as a framework through which the ECB sends out a series of 'impulses' or signals with a view to them reaching the real economy. According to the ECB, monetary policy may be affected by factors external to the transmission channels, factors which are liable to disrupt the proper functioning of the signals sent out by the ECB: an international political or economic crisis, or a significant change in oil prices, amongst other factors, may severely interfere with the 'impulses' that the ECB sends out via the monetary policy transmission channels. When a situation of that kind occurs, the ECB considers it has competence to intervene using its own instruments with the aim of 'unblocking' those channels. In such a case the actions it takes are different from those which are part of the ECB's normal practice, since they can be said not to involve so much a 'standard' operation but rather an operation to 'unblock' and subsequently restore monetary policy instruments properly so-called (…). Accordingly I take the view that the objectives of the OMT program as they are explained by the ECB may be accepted, starting from the acknowledgement that, in announcing the OMT program, it was the ECB's intention to pursue a monetary policy objective".

Against this background, the AG concludes that the ECJ should answer the question referred for a preliminary ruling by the BVG so that the OMT program may be implemented as announced by the ECB. However, he establishes three restrictions, which are, however, either self-evident or already conferred by the ECB:

1) Subject to the conditions established by the ECB, the OMT can only be activated with regard to sovereign bonds issued by Member States of the Eurozone that are subject to a financial support program of the European Financial Stability Facility (EFSF) or the European Stability Mechanism (ESM). Due to this fact, the ECB must – as the AG emphasizes –refrain from any direct involvement in the financial assistance program to which the OMT is linked. Otherwise the line between monetary policy on the one side and general economic policy as well as state finance on the other side would become unclear. Moreover, the OMT could no longer be clearly qualified as a measure of monetary policy only.

2) Also, the AG insists on the ECB strictly complying with the obligation to state reasons and with the requirements deriving from the principle of proportionality. Both obligations "to state reasons" and "to act in a proportional way" are fundamental principles of EU law. The first obligation is explicitly addressed in article 296 TFEU and a fundamental precondition for transparency and effective judicial control. The

second obligation is a product of case law developed by the ECJ (inspired by the BVG, among others).

3) Finally, the AG states that the OMT is compatible with article 123 TFEU (ECB's obligation not to engage in monetary finance). This is acceptable provided that the timing of the program's implementation permits the actual formation of a market price in respect of the government bonds. Again, this is a self-evident "restriction", because otherwise the argumentation chain would break down. Article 18 of the Statute of the European Central Bank only allows interference with secondary securities markets.

None of the three "restrictions" established by the AG poses a severe obstacle to the implementation of the OMT. Or to say it quite frankly, they can be considered a tribute to the BVG. This becomes particularly clear in one short sentence of the AG's opinion: "I consider that the ECB, in announcing the OMT program, weighted up the benefits and costs appropriately." As a matter of fact, the AG switched the signal to green. Consequently, at least in this respect, the SNB's paradigm shift was based on the right conclusion. This is particularly true considering that there is little chance that the ECJ will substantially deviate from the AG's proposal.

On 16 June 2015, the ECJ published its preliminary ruling in the OMT case. The judgement is, as it was to be expected, fully in line with the AG's opinion outlined above; however, much shorter and even more favorable for the ECB's position.

The ECJ points out that "the draft decision and draft guideline (on the OTM) produced by the ECB in these proceedings indicate that the Governing Council (of the ECB) is to be responsible for deciding on the scope, the start, the continuation and the suspension of the intervention on the secondary market envisaged by such a program. The ECB has also made clear before the Court that the ESCB intends, first, to ensure that a minimum period is observed between the issue of a security on the primary market and its purchase on the secondary market and, secondly, to refrain from making any prior announcement concerning either its decision to carry out such purchases or the volume of purchases envisaged. Inasmuch as those safeguards prevent the conditions of issue of government bonds from being distorted by the certainty that those bonds will be purchased by the ESCB after their issue, they ensure that implementation of a program such as that announced in the press release will not, in practice, have an effect equivalent to that of a direct purchase of government bonds from public authorities and bodies of the Member States." Hence, the announced OMT program cannot be considered as circumvention of the objective of article 123 (1) TFEU, since it is designed in such way that it will not weaken the impetus of the Member States concerned to follow a sound budgetary policy.

Last but not least the ECJ states that "it should also be borne in mind that a central bank, such as the ECB, is obliged to take decisions which, like open market operations, inevitably expose it to a risk of losses and that article 33 of the Protocol on the ESCB and the ECB duly provides for the way in which the losses of the ECB must be allocated, without specifically delimiting the risks which the Bank may take in order to achieve the objectives of monetary policy."

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Kaba Holding AG Plans to Merge with Dorma Group

Reference: CapLaw-2015-35

SIX-listed Kaba Holding AG (**Kaba**) and family-owned Dorma Group (Germany) plan to merge and become the dorma+kaba group. A corresponding transaction agreement was signed on 29 April 2015 and was fully supported by the family shareholders of both companies. Upon completion of the merger, Kaba will contribute its operational business into Dorma Holding GmbH + Co. KGaA and will receive a 52.5% controlling stake thereof. Kaba will then be renamed dorma+kaba Holding AG. As the SIX-listed holding company and domicile of the new group, it will be responsible for the company's strategic, operational and financial leadership and will fully consolidate the combined business.

Once the transaction is complete, the combined companies would create a global top 3 group in the security and access solutions market with pro-forma sales of over CHF 2 billion, around 16,000 staff and locations in 53 countries. The transaction has been approved in an extraordinary general meeting on 22 May 2015 by the shareholders of Kaba. However, the merger remains subject to approval from relevant antitrust authorities.

Swiss Prime Site AG Completes Rights Offering

Reference: CapLaw-2015-36

Swiss Prime Site AG's recent rights offering generated gross proceeds of approximately CHF 424 million and closed on 1 June 2015. Existing shareholders were offered up to 5,970,129 new shares with a nominal value of CHF 15.30 each at a subscription price of CHF 71.00 per new registered share. At the end of the rights exercise period, 98.8% of the offered shares were subscribed for. The remaining 71,109 new shares were sold in the market.

Seminar: Quo Vadis - Switzerland's financial center? International standards in the Finance Law (Quo Vadis - Finanzplatz Schweiz? Internationale Standards im Finanzmarktrecht)

Thursday, 27 August 2015, Universität Zürich-Zentrum

http://www.eiz.uzh.ch/weiterbildung/seminare/

Zurich Conference on Mergers & Acquisitions (Zürcher Konferenz Mergers & Acquisitions)

Tuesday, 1 September 2015, Lake Side Casino Zürichhorn

http://www.eiz.uzh.ch/weiterbildung/seminare/

Seminar: Zurich Conference on Accountability in Corporate Law (Zürcher Tagung zur Verantwortlichkeit im Unternehmensrecht)

Thursday, 3 September 2015, Universität Zürich-Zentrum

http://www.eiz.uzh.ch/weiterbildung/seminare

Seminar: Capital Markets and Transactions XI (Kapitalmarkt – Recht und Transaktionen XI)

Thursday, 26 November 2015, Kongresshaus Zürich

http://www.eiz.uzh.ch/weiterbildung/seminare/