

## Audition: draft FINMA Circulars Liquidity and Risk

The Association of Foreign Banks in Switzerland AFBS would like to take advantage of the audition on the draft FINMA Ordinances Liquidity and Risk Diversification respectively to express its view on the proposed regulation. The present AFBS Comments has been drafted upon input from a group of AFBS representatives. They wish to share experience and input from the international perspective they can contribute.

### General Remarks

The reasons for transposing the Circulars into Ordinances is difficult to understand for AFBS. The Circulars well met their goals and were sufficiently clear to be correctly applied by supervised entities and by supervisors.

AFBS underlines that the crisis triggering the present regulatory review only involved one international systemically important bank, Credit Suisse. No other bank was either at the origin of the turmoil nor severely impacted. The parliamentary investigation commission's report confirms this by proposing measures which primarily target SIBs and, in some instances, suggesting valuation of expanding scope to other banks. There is no reason for expanding scope of certain measures to banks of categories 3-5 which were not applicable to them under the existing Circular. In particular there is no reason for doing so prior to having conducted the valuation as suggested by Parliament.

This is even more difficult to understand as it is well known that regulatory burden is incommensurately heavier for small banks of categories 3-5 for which regulatory complexity poses a serious challenge without offering relative upsides. Also, proportionality needs to be maintained because banks of categories 4 and 5 pose minor risk but face considerably higher cost of implementation without commensurate benefit for themselves and for the market.

In addition, and particularly with regards to foreign banks it must be noted that the present regulatory projects will weaken attractiveness of the Swiss financial centre. Upkeeping an attractive financial centre is part of the FINMA mandate. An attractive environment contributes to upholding diversity and competition after the UBS-CS case. In this regard, foreign banks are especially important as referenced by statements from politicians as well as the Competition Commission. Excessive regulatory burden makes foreign banks' presence in Switzerland more expensive and less attractive. Switzerland as an international financial centre upheld open markets and free access and must continue maintaining favourable frame conditions. It must not adopt restrictive and protectionist attitudes as do other economies.

Therefore, AFBS expects the principle of proportionality being applied in the same way by the new Ordinance as by the existing Circulars. Should this not be possible, AFBS suggests adoption of a trigger-based approach, triggers to be defined carefully and such as to avoid excessive burden upon small and systemically non-important banks.

Furthermore, it is of utmost importance that regulation uses clear, easy to understand, terminology and uses it in consistent manner throughout the different language versions and throughout the entire text. Also, it must avoid using terms which are equivocal in their meaning such as "reliable", .... They must be replaced by unequivocal and clearly measurable terms. Otherwise, the regulation opens margin for interpretation and leads to controversy in the supervisory process and during audit. This must be avoided as it merely leads to unnecessary complexity and cost.

Last but not least there are several linguistic inconsistencies which lead to confusion both for implementation by banks as for control and auditing. There are errors in translation in various articles that need to be aligned.

# Ordinance on Liquidity

## Remarks Regarding Terminology / Alignment with FINMA Circular

The AFBS would like to highlight the following apparent terminological/conceptual discrepancies between the previous Circular and the present draft Ordinance. It estimates that alignment in these points is necessary to preserve the spirit of regulation; in case of modification, the explanatory report should provide reasons.

## Comments

### Art 3 I

To better reflect different types of setup, the article should allow strategies to be defined by either management board or board of directors. Liability should lie where competence is set and board of directors can have strong role.

It would therefore be preferable to replicate attribution of responsibility as outlined in the Circular, which makes distinction between "supreme organ" in charge of definition and "management board" in charge of implementation.

### Art 5 and Art 6

Obligation to establish liquidity planning and stress scenarios is excessively complex, especially for small banks, and does not reliably prepare on future situations which are in any case unpredictable. Article 6 is listing some instances that can lead to crisis situation, but the listing is not exhaustive as it cannot be. Therefore, rather than providing a listing, the Ordinance should establish principles upon which the bank's liquidity situation can be monitored and assessed. The Ordinance should not create false security by offering guidance which cannot be all-encompassing, it should rather describe expectations regarding (the usage of tools and processes for) the ongoing measurement of the actual situation.

The articles as drafted should therefore be withdrawn.

In any case, approximate and difficult to measure terminology such as "reliably" must not be used.

Principles-based approach is even more justified in this context as different banking groups obtain liquidity from different sources. While for example local retail banks have access to a large pool of client deposits, foreign banks can obtain additional liquidity from the parent company. Thus, liquidity planning follows different principles for each single bank and certainly varies between banking groups. In some instances, such as when liquidity is mainly made available through funding from parent company, planning does not make sense nor bring the desired regulatory effect. For banks with this business model it should be possible to be exempt from that duty, upon demand.

### Art 9

Exempt banks of categories 4 and 5 altogether, without restriction.

Art 9 I: erase the term "reliably" as estimates are by definition approximative and not definitive.

### Art 11 II a

Exempt banks of categories 4 and 5 altogether, without restriction.

### Art 15

Exempt banks of categories 4 and 5 altogether from Articles 13 and 14.

Such stress testing is excessively burdensome for small banks without producing adequate results.

### Art 17

Exempt banks of categories 4 and 5 altogether, without restriction.

Offer exemptions for banks of category 3, such as for the establishment of stress scenarios.

### Art 22

Wording of the existing regulation (Circular recitals 121-124, Circular 2015/2) should be replicated.

### Art 28 I j

It is understood that requirements a to i are compulsory and cumulative. Requirement j does not make sense in that context but bears the risk of contradiction with preceding regulation. If ever, it should be set separately.

## **Art 47**

The draft no longer specifies the criterion "insured" of stable deposits as Rec 178 of the Circular used to do. AFBS suggests copying wording of the Circular in Art 47 I:

<sup>1</sup> Stabile Einlagen ... sind Einlagen, die vollständig durch die schweizerische Einlagensicherung oder durch eine ausländische Einlagensicherung oder die gleichwertige Garantie eines Zentralstaates gesichert sind ...

<sup>1</sup> Les dépôts stables ... sont des dépôts qui sont entièrement couverts par la garantie des dépôts suisse ou par une garantie des dépôts étrangère ou par une garantie comparable d'un Etat central ...

## **Art 51 b**

There is inconsistency between DE and FR text of the Ordinance. In DE it states 1.4 Mio and in FR 4 Mio.

## **Art 65 II b**

The Circular uses the term "in the money" which the Ordinance replaces with "positive replacement value". This does not replicate the terminology of the Basel Framework LCR 40.49 which refers to "in the money" status.

## **Art 88 with reference to Art 1 b**

Art 88 needs to make reference to Art 1 b not 1 d as erroneously stated in the FR version of the draft Ordinance.

# **Ordinance on Risk Diversification**

## **Art 4**

The proposal is an excessive and unfounded restriction with regards to the presently applicable regulation. There is no reason for this restriction as there has been no incident among targeted institutions. Furthermore, there is not sufficient market depth to satisfy the new draft regulatory requirements regarding diversification of liquidity holdings while at the same time assuring sufficient safety. A small number of counterparties would be overwhelmed with demands that they can, most probably, not handle in satisfactory and safe manner. There is no reason, why liquidity holdings with parent company should be less safe than holdings diversified among several local banks. The measure therefore merely restricts open market and freedom of business.

AFBS furthermore opposes commentary to Art 4 stating the procedure for identification of adequate supervision and equivalent regulation should be assumed by the interested bank. Such assessment of sovereign power cannot be delegated to private law entities as it imposes excessive administrative burden. It furthermore introduces legal uncertainty as differences in assessment must be expected. The new regulation merely increases administrative burden without offering added value.

It must therefore be withdrawn and the regulation from Circ 2013/7 rec 13 be re-instated.

## **Art 6**

As Art 4, this proposal also is an excessive and unfounded restriction of the present practice.

It must therefore be withdrawn and the regulation from Circ 2013/7 rec 17 be reinstated.

## **Art 27**

AFBS understands that proposed regulation applies to intra-group transactions with the parent bank located abroad or similar instances. This must be explicitly clarified in the text to avoid misunderstanding and differing interpretation.

## **Art 29 II**

This paragraph must be waived as simplification offered to banks of categories 4 and 5 in Art 29 I would lose its effect otherwise.