Banking and Finance in Switzerland

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Preface

Banking and Finance in Switzerland is an overview of topics of relevance to a wide variety of individuals and organisations ranging from those simply doing business with Swiss financial institutions to those considering opening or expanding operations in Switzerland.

Since our previous edition published in 1996, globalisation of banking and financial services has continued apace and there have been significant changes in the Swiss legal and regulatory framework to harmonise the requirements with the rest of the world, the European Union in particular. We have therefore substantially revised this edition of our publication. Using the structure set out below, the publication now provides an overview of the Swiss banking industry and highlights the recent changes that have occurred in addition to providing the basic framework of governing regulatory, tax and accounting rules.

- Section 1 provides a general introduction to the Swiss banking industry including background on each of its sub-industry components, and an overview of the key regulatory bodies and industry organisations.

- Section 2 provides information on the legal and regulatory environment, including details of the recent fundamental changes.

- Section 3 focuses specifically on considerations for establishing a banking operation in Switzerland – in addition to legal foundation procedures it includes information on personnel and premises, two of the largest overhead expenses in any financial institution.

- Section 4 provides an overview of the Swiss taxation system, particularly in respect of the operation of subsidiaries and branches of foreign banks.

- The annexes include unofficial English translations of key legislation, specimen reporting documentation and checklists. Full English translations of other important texts are available from KPMG Zurich office banking department on request.

Although this publication provides an introduction to many of the issues affecting the banking industry in Switzerland in late 1998, it should not be used as a substitute for specific consultation with professional advisers.

The legislative and regulatory environment for Swiss banks is fast-moving and becoming ever more complex. Qualified professional advice is essential on legal, accounting, auditing, taxation, regulatory and general business matters. KPMG is a recognised leader in providing services to the banking industry world-wide and is especially experienced in providing assistance to international banks and securities houses operating, establishing or expanding in Switzerland. As the global leader we are organised to provide advice in all of these areas locally, nationally and internationally, tailored to individual requirements.

5th edition
Zurich, December 1998

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The Swiss Banking Industry

The financial sector in Switzerland is changing fast. Proactive advice across a range of disciplines is essential to success in the market. KPMG offers advice from professionals specialised in serving the banking industry in the following key areas:

- Audit and accounting
- Compliance
- Legal and tax advisory
- Management consulting
- Risk management consulting
- Regulatory/financial reporting software
- Information technology
- Real estate
- Insurance

Chapter 1

The Swiss Banking System

Overview

Switzerland has a highly developed banking system encompassing approximately 400 banks, of which more than 150 are subsidiaries or branches of foreign banks. The number of banks in the market has been consistently shrinking since 1990 as a result of competition and rationalisation caused by increasing competition in domestic markets. Mergers and acquisitions have streamlined and strengthened the position of the remaining participants.

At December 31, 1997, the following categories of banks made up the banking community:

	Number	Total Assets (SFr. billion)
Large banks	4	1,121.2
Cantonal banks	24	269.0
Regional and savings banks	117	70.7
Loan associations	1	57.2
Private banks	16	11.5
Foreign banks (including branches)	152	145.1
Other banks	80	107.5
Total at December 31, 1997	394	1,782.2
Comparative total at December 31, 1990	*625*	*1,059.1*

Source: Swiss National Bank

These statistics only show part of the assets managed by Swiss banks. Firstly, the figures relate to the banks within Switzerland and exclude domestic and foreign group companies (unless they are domestic banks). Furthermore, Swiss banks are heavily engaged in private banking and the funds under management are estimated to be between SFr. 3.5 and SFr. 4.0 trillion. In the past, because such figures are not publicly reported the exact size of the market remained only an informed estimate. In recent times, certain banks, amongst them the two large banks, commenced to disclose the amount of funds managed by them. According to unofficial statistics recently published by *Finanz und Wirtschaft*, a reputable Zurich-based economic journal, over 85% of the assets under management are held by the following banks (data at June 30,1998):

Ranking	**Name**	**Assets (SFr. billion)**	
1	UBS AG	1,663	(*)
2	Credit Suisse Group	960	(*)
3	Zurich Financial Services	239	(**)
4	Pictet et Cie. (est.)	121	
5	Bank Julius Bär	97	
6	Lombard Odier et Cie. (est.)	92	
7	Bank Vontobel	55	
8	BZ Bank	53	
9	Union Bancaire Privée	51	
10	Zurich Cantonal Bank	43	

Source: Finanz und Wirtschaft *(*) figures include assets managed abroad*
(**) insurance-related

During the last ten years, the total numbers of persons employed by all banks in Switzerland has declined from 115,166 in 1988 to 106,912 in 1997, whereas the total numbers of employees of Swiss banks abroad has increased from 6,653 to 12,779 over the same period. Most of the employees abroad and the increase in these numbers over the ten year period relate to the two large Swiss banks. This phenomenon reflects the increasing globalisation of Swiss banks and rationalisation of domestic markets (a tendency expected to continue) and the acquisition of a selected number of financial institutions abroad, notably in the city of London.

Large Banks

Since the above National Bank statistics were prepared, the merger of the Swiss Bank Corporation and Union Bank of Switzerland was announced. After this merger, the two largest banks in Switzerland – UBS AG and Credit Suisse Group (encompassing two distinct banks, a private bank and an investment bank) – dominate the banking community. Their activities are universal, spanning acceptance of deposits, extension of credit, dealing in foreign exchange and precious metals, portfolio management, trust activity, underwriting, and many others. They operate not only throughout Switzerland, but in virtually all the major financial centres of the world.

The total consolidated assets of these banks at June 30, 1998 were as follows:

	Total Assets (SFr. billions)
UBS AG	1,084.1
Credit Suisse Group	748.2
	1,832.3

Cantonal Banks

At the end of 1997, there were 24 Cantonal banks operating in Switzerland, mainly in the areas of acceptance of savings and the issue of mortgages and debentures. Their funds are primarily used to finance local commercial and private needs and to extend loans to public authorities. Since the late 1980's their operations have become more diversified, now including services such as asset management, consumer credit and export financing and leasing.

Almost all were originally state established and traditionally had their liabilities guaranteed by the cantons. However, falling property prices and increasing non-performing loans have caused a number of these banks severe financial difficulties in recent years, resulting in consolidation and acquisition by other banking institutions in a number of cases.

Cantonal banks vary substantially in size, with balance sheet totals ranging from SFr. 1 billion to over SFr. 58 billion (Zurich Cantonal Bank). In order to protect their common interests, and in particular to co-operate in the area of finance, the Cantonal banks formed the Association of Swiss Cantonal Banks.

Regional and Savings Banks

This group of banks essentially comprises mortgage and savings institutions. Mortgage banks are generally defined as entities for which mortgage loans make up at least 60% of their assets. In most instances the mortgage banks function as savings institutions to encourage savings in their local communities. Since 1990, the number of these banks has declined from 204 to 117 in 1997, with a contraction in total assets from SFr. 93.6 billion to SFr. 70.7 billion over the same period.

Loan Associations

This group of approximately 890 banks are grouped under a single association known as the Swiss Federation of Raiffeisenkassen. They are individually organised in the form of co-operatives in small, primarily rural and semi-rural communities, spread across the whole of Switzerland.

The main purpose of these banks, which are largely used by middle-income earners, small and medium sized businesses and local government is to use the savings of local communities to grant credits to their members, primarily in the form of secured mortgage loans. These banks have over 600,000 members and 1.3 million customer relationships, holding 8% of the market in bank mortgages and 10.4% of savings.

This group of banks has also seen consolidation since 1990. The total number of individual institutions has reduced from 1,228, and a second federation, the Fédération Vaudoise de Crédit Mutuel, which comprised 13 institutions in 1990, was merged into the Swiss Federation in 1994.

Private Banks

Private banks, located principally in Zurich, Geneva and Basle, represent the oldest members of the Swiss banking system and still occupy an important position in the banking community even though they represent a fraction of the credit market.

Private bankers still generally operate as partnerships and are therefore fully liable to their creditors to the extent of their entire private assets. By virtue of Art. 6 par. 6 of the Banking Law, those private bankers which do not publicly solicit customer deposits are not required to prepare interim financial statements nor publish or make available their annual financial statements to the public.

These institutions traditionally dealt mainly with private customers in the areas of asset and portfolio management, although more recently they have engaged in other commercial banking activities.

Foreign Banks

A large number of foreign banks operate in the Swiss market either through closely held, locally incorporated entities (the majority) or through branches of an offshore group entity. The advantages and disadvantages of each structure are discussed in Chapter 12.

The main reasons for foreign banks to operate in the Swiss market, apart from image and prestige, are:

- to provide foreign banking services to their domestic customers (including foreign subsidiaries of those customers);
- to maintain a presence in one of the most important and stable financial centres in the world;
- to solicit business from Swiss companies operating in their own country (for example, loans to foreign subsidiaries of Swiss companies operating in their home country);
- to participate in the capital markets;
- to provide private banking services to non-resident nationals of their own countries and other nationalities where possible; and
- to take advantage of the comparatively low interest and tax rates prevailing in Switzerland, by borrowing funds in the country for re-lending abroad.

Foreign control is deemed to exist where "foreigners" hold more than half of the voting rights of capital stock or otherwise have a controlling interest. Foreigners are legal entities or partnerships with their registered offices abroad or who are controlled by non-resident individuals even if their registered office is in Switzerland. In terms of individuals, a person who possesses neither Swiss nationality nor a permanent residence permit for Switzerland is deemed to be a foreigner. It is possible under these definitions for Swiss banks to be controlled by foreign nationals who are permanent residents of Switzerland.

Since 1979, Gotthard Bank, Lugano[1], has published annually a study of the key financial data of all foreign banks in Switzerland based upon their prior year's published financial statements. Details of the size of assets under management by these banks is not disclosed as such information in financial statements is purely voluntary. The annual study, however, gives a good overview of the activities of this group of banks. In 1997, the 13 largest foreign banks by equity, total assets, net income, commission income and personnel numbers were as follows:

Ranking by equity	Ranking by total assets	Ranking by net income	Ranking by commission income	Personnel numbers	Name
1	3	1	5	3	Banque Paribas (Suisse) SA
2	2	2	1	2	Gotthard Bank
3	1	3	4	5	Republic National Bank of New York (Suisse) SA
4	5	7	6	7	Discount Bank and Trust Company
5	4	21	2	4	UEB United European Bank
6	10	10	11	9	Crédit Lyonnais (Suisse) SA
7	9	11	7	6	ABN AMRO Bank (Schweiz) AG
8	8	5	8	not computed	Guyerzeller Bank AG
9	20	25	– not computed –		Arab Bank (Switzerland) Ltd.
10	8	8	10	11	Banque Nationale de Paris (Suisse) SA
12	12	4	3	10	Deutsche Bank (Suisse) SA
n/a	15	18	9	8	Lloyds Bank PLC – Geneva Branch
16	14	27	not computed	1	Habib Bank AG Zurich

Source: Gotthard Bank

Commission income and numbers of employees are also ranked as this figure will, in most cases, point to those banks with large amounts of assets under management.

Other Banks

Like the foreign banks, other banks mainly consist of closely held corporations engaged in a wide range of banking activities, primarily located in Zurich, Geneva, Basle, Lugano and Lausanne.

[1] *Gotthard Bank, Viale S. Francini 8, 6901 Lugano (Tel.: ++41 91 808 1111)*

Finance Companies

Until the early nineties, a group of entities known as "bank-like finance companies" existed. With an amendment of the legal definition of banking activity in 1994 this classification of company essentially disappeared.

The majority of bank-like finance companies which did not convert to banks at the time continued mostly as secondary-market security dealers (see below) or represent special purpose vehicles of industrial and commercial groups whose activities are limited to financing their groups' operations. So long as these entities did not maintain more than 20 deposits from the public on a continuing basis, they did not fall under the scope of the Banking Law. By virtue of FBC Circular 98/2 of March 26, 1998, group treasury centres operating in Switzerland will also be exempted from the Stock-Exchange Law so long as their activities are closely connected with the trading transactions of the group.

Securities Dealers

With the implementation of the Federal Law on Stock Exchange and Trading in Securities during 1997 with a transitional period ending in January 1999, companies or individuals acting as professional securities dealers, including banks licensed under the Banking Law, require a license from the Federal Banking Commission to conduct security dealing.

The requirements largely follow those of the Banking Law. In addition, the legislation imposes on all licensed security dealers detailed record-keeping and reporting obligations regarding security trades and fundamental rules of conduct in dealings with customers. The Swiss Bankers' Association has also issued best practice guidelines for registered securities dealers which further develop the fundamental rules of conduct set out in the Law. This code deals with such matters as the need to adapt duty of informational disclosures to the experience and knowledge base of each customer; the timing and content of informational disclosures; best execution in terms of price, timing and quantity; the timely confirmation and recording of trades; the transparency of billing; the handling of conflicts of interest; fair and equal treatment of all customers; the chronological execution of trades; and prohibition of front running and price manipulation. The same organisation has issued models for risk disclosure statements to be supplied to customers and acknowledged by them. As in the case of banks, licensed securities dealers must appoint special auditors recognised by the supervisory authority who verify and report upon compliance with stock-exchange legislation.

Swiss Post Office and Retail Payment Systems

The postal authorities work together with the Swiss National Bank to provide a very effective system of money circulation in Switzerland. Apart from the bank giro system handled by the Swiss National Bank, an efficient postal check system is operated by the postal authorities which, in terms of volume, is the country's chief money transfer mechanism. Operating through a network of some 3,500 branches, the Swiss Post Office maintains some 1.7 million accounts with a total deposit value of some 17.4 billion Swiss francs or some 20% of total deposits in the banking system. Most Swiss prefer to pay their bills by this system, and suppliers, when rendering invoices, will include a postal payment form. Most banks maintain an account with the postal system and make payments through it on their customers' behalf. The postal authorities have recently commenced paying interest on all accounts at competitive market rates.

The use of the personal bank check is not as prevalent as in some European countries, although it is becoming more common, and all major banks issue Eurocheques, backed by Eurocheque cards.

The use of credit cards is extensive. Eurocard/Mastercard, Visa, Amex and Diners Club hold the largest market share. Point of sale technology, automatic teller machines and other forms of electronic funds transfer are also growing rapidly.

Chapter 2

Regulatory Bodies and Other Organisations and Associations

The Federal Banking Commission

The banking system in Switzerland is regulated by the Federal Banking Commission, which is located in Bern. The Commission comprises 7 to 11 members who are elected by the Federal Council and is independent of the Swiss National Bank.

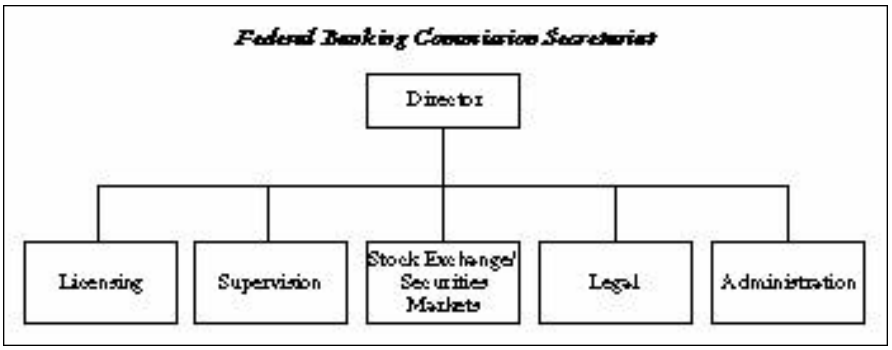
The Federal Banking Commission is also responsible for supervising the application of the Investment Fund Law and the Law on Stock Exchanges and Trading in Securities.

As the highest supervisory authority, the Commission is responsible for supervision of the banking system, security dealers and investment fund business. The Commission has the power to grant and withdraw licences, to announce decisions necessary to enforce the laws and to prescribe the content and format of financial statements and audit reports which it receives. The Commission is very active in issuing instructions by way of circular letters ("Circulars") to all market participants and audit firms in connection with the application of specific legal regulations or reporting requirements. Its annual bulletin publishes the major decisions, and therefore provides an update on current administrative practice to be followed under Swiss Banking Law. The bulletin also reproduces the most important Circulars and official commentaries on them.

In the context of the growing market and increasingly complex issues faced by the banking industry, the Federal Banking Commission has again recently enlarged its permanent secretariat in Bern. This secretariat deals with day to day administration

and includes legal and supervisory departments. However, it does not customarily perform its own examinations of banks, relying instead on authorised audit firms which operate in an official capacity as "Banking Law Auditors" (see Chapter 8) or similar capacity under the Investment Fund and Stock Exchange Laws.

According to the 1997 Annual Report of the Banking Commission, the secretariat of the Commission is organised into 5 departments reporting to a director as follows:



During late 1998, the Banking Commission announced the creation of a new department responsible for supervising large banks.

The Swiss National Bank

The Swiss National Bank ("SNB") is a limited company, whose issued capital is held by the cantons, Cantonal banks and local authorities (61%), and private shareholders (34%) with the balance of shares unissued (5%). However, according to its internal structure, this bank, which has registered places of business in Zurich and Bern, is the agent responsible for the implementation of those parts of the governments' monetary policy that relate to banks (see Chapter 11). It issues directives concerning, amongst other things, the maintenance of reserve requirements, expansion of credit facilities, acceptance of foreign source deposits, export of capital and foreign exchange transactions. It publishes extensive statistical data on a monthly basis.

The SNB also manages the National Bank clearing house or bank giro, which is mainly used for cash transfers between banks. It is closely linked to other clearing systems such as the Swiss Interbank Clearing system ("SIC") (see below) and that of the Post Office (see Chapter 1). Many smaller banks do not use the bank giro.

Swiss Bankers' Association

The Swiss Bankers' Association (the "Association") is probably the most influential industry body in Swiss banking. Its offices are located in Basle. This body has established rules and conventions which its members are obliged to follow. It devotes itself to representation and protection of the interests of the banking industry in general. It actively starts or participates in initiatives designed to strengthen the Swiss banking system from a competitive and service point of view. It also co-operates closely with the government, the Federal Banking Commission and the SNB in the development of new banking legislation. Recent examples of this are legislation against insider trading and money laundering. The Association is also very active in maintaining a code of ethics for the Swiss banking community. The standards and procedures for the acceptance of deposits (see Chapter 4, due diligence convention) and the code of conduct for security dealers are an example.

The Association has played a key leadership role in co-ordinating joint initiatives of the Swiss banks in developing improved service infrastructures. The service and delivery activities of the following organisations are of particular interest.

Other Key Institutions within the Swiss Financial Market

Exchanges

Swiss Exchange

Starting in the early nineties, the Swiss financial markets have undergone a process of fundamental change. In 1991, four of the seven stock exchanges then existing were closed (Bern, Lausanne, Neuchâtel and St. Gallen); in 1992, the project to create an Swiss Electronic Exchange commenced, the Swiss Exchange was established and, at the same time, the Swiss Market Feed went on-line; in 1993 and 1994, SEGA (see below) started its electronic clearing and settlement system (SECOM) followed by INTERSETTLE; in late 1995, the trading of foreign equities and derivatives could be commenced on the exchange and August 1996 saw the transfer thereto of trading in

Swiss equities and bonds, thus putting an end to trading on the remaining local stock exchanges in Zurich, Basle and Geneva which disappeared. As a result of this process and the linking of the trading platforms to SEGA/INTERSETTLE and to the Swiss Interbank Clearing system, Switzerland was able to develop the first fully-automated stock exchange trading and trading system in the world.

During the same time-frame, Swiss lawmakers introduced new legislation on the operation of stock exchanges and trading in securities including the imposition of new code of conduct on security traders and reporting of trades to the Swiss Exchange, thereby enhancing control over a poorly regulated market segment.

At the present, there are some 3,200 securities listed on the Swiss Exchange, of which one third approx. are issued by foreign companies and at the end of 1997, Swiss Exchange ranked number 6 amongst world stock exchanges with a total market capitalisation of domestic shares of some SFr. 839 billion, of which amount 76% represents the market capitalisation of 10 leading Swiss companies.

The requirements for membership of the Swiss Exchange are set out in the Membership Rules of the Swiss Exchange and these may be classified into general admission requirements and specific stock-exchange requirements. Membership is open to all registered banks in Switzerland and entities which trade in securities on a professional basis. These latter can be security dealers without banking status with registered office in Switzerland or foreign security dealers with or without banking status. All registered Swiss banks and registered Swiss security dealers are deemed to have fulfilled the general requirements because of their existing status under the Banking and Stock-Exchange Laws, respectively. The latter category of security dealers (foreign dealers) must meet similar requirements to those imposed on banking and security dealers institutions in Switzerland (appropriate internal organisation, submission of by-laws and business rules and subsequent amendments to the Stock Exchange, proof of integrity and professional qualifications of key officers, appointment of auditors recognised by the Banking Commission who have a control function similar to that of Banking-Law auditors for Swiss banks, minimum capital of SFr. 10million, compliance with the capital-adequacy, liquidity, risk-diversification provisions of the Banking Ordinance and provisions on credits to governing bodies). In addition to these general requirements, there are further requirements relating to the use of the stock-exchange system (stock-exchange licence), technical pre-requisites, pre-requisites in relation to settlement arrangements (compulsory membership of SEGA and/or INTERSETTLE clearing institutions) and requirements in relation to the admission of traders. There is also a one-time entry admission fee of SFr. 350,000 and various annual fees.

Because of the extremely high costs of membership, only a limited number of organisations have become members of the Swiss Exchange where the volume of trades make commercial sense to become a direct Stock Exchange member. At present, there are some 57 members, all which are Swiss banks (with one exception), including 19 foreign-controlled banks.

Also because of the high costs of membership, the status of "associate member" was introduced in 1997. Associate membership status gives access to certain services of the Swiss Exchange, mostly of a technical nature including reporting software of the Swiss Exchange to enable associated members to fulfil their reporting obligations to the Exchange. Also, associate members are exempted from payment of stock-exchange turnover fees on security trades with Stock Exchange members and other associated members.

Eurex

In September 1998, the highly successful Swiss options and futures exchange, SOFFEX, owned by the Swiss Exchange, discontinued operations and, from this date onwards, all trading in options and futures was assumed by Eurex Zurich AG, a company held jointly by Swiss Exchange and Deutsche Börse AG, Frankfurt. Eurex Zurich AG also owns the entire capital of Eurex Frankfurt AG, Frankfurt, a company authorised to trade similarly in options and futures in Frankfurt which in turn owns Eurex Clearing AG, Frankfurt which acts as the clearing house for the whole Eurex group. This restructuring of activities previously conducted by the two shareholders of Eurex was rendered possible by the creation of a uniform technical platform and integration of trading and clearing systems and products. The strategic goal behind this cross-frontier co-operation was the timely repositioning of these two successful markets in view of the introduction of the Euro and increasing globalisation. All three Eurex entities have identical Boards and Managements.

Eurex membership is open to any companies fulfilling the following requirements:

- professional activities as securities dealer and proof of supervision of the exchange member by a Banking or Supervisory Authority in the country of origin;
- personal qualifications and reliability of the persons acting on behalf of the applicant's institution;
- an equity capital of at least DM 100,000, unless the applicant is a bank;
- admission and registration of at least one trader;
- fulfilment of the technical requirements of Eurex;

- participation in the clearing process, either as a General- or Direct-Clearing Member, or by entering into a clearing agreement with a General-Clearing Member as a Non-Clearing Member; and

- an EDP installation ensuring the orderly processing of trading and settlement through the exchange's EDP system.

At the start of trading on September 28, 1998, more than 260 members from 11 countries in Europe participated in Eurex with over 100 Eurex members located outside Germany and Switzerland (so-called "remote members"). To facilitate access to Eurex for remote participants, Eurex has installed access points in Amsterdam, Chicago, London, Madrid and Paris. Further access points in Helsinki and New York are under construction. A further access point in Singapore is planned.

All Eurex members are required to participate in the clearing process, either as general clearing members (clearing for their own clients as well as non-clearing members), direct-clearing members or non-clearing members. Because of interfaces to either Swiss settlement systems (SIC, SEGA and SNB) or German systems (Deutsche Börse Clearing AG and LZB), only one local central administrator for all physical deliveries and collaterals in Swiss francs, DM or Euro is necessary. Settlement in other currencies is assured through accounts with the Deutsche Börse Clearing AG.

Clearing and Custody

Telekurs

Held by Swiss banks, Telekurs Holding AG which was founded in 1930, plays a key role in Swiss financial markets. Through its subsidiary operating companies, it provides a wide range of activities in the field of settlements and provision of market data, as follows:

- through Telekurs SIC AG, it operates the Swiss Interbank Clearing system – see separate section below;

- also through Telekurs SIC AG, it is developing the euroSIC Inter-bank clearing system for settlements in the Euro – see below;

- through EUROPAY (Switzerland) AG, it manages and markets in Switzerland and Liechtenstein non-cash payment instruments and electronic payment systems which are supplied either through banks or directly to consumers, such as Eurocard/Mastercard,ec-Card, Maestro and CASH;

- through its subsidiary, Payserv AG, it provides a full range of processing and logistics services for banks and card issuers as well as for the Telekurs Group itself. In particular, it operates the BANCOMAT cash dispenser network of the Swiss banks, in conjunction with the parallel system of the Swiss Post Office through a combined network of 4,300 cash dispenser stations;

- through its subsidiary, Telekurs Financial Information AG, it provides support for investment advisors, asset managers, financial analysts and other professionals active in the field of securities administration and settlement.

Recently, it has established a joint venture banking investment in Frankfurt, the SECB Swiss Euro Clearing GmbH, together with Credit Suisse Group and UBS AG, whose goal will be to monitor the euroSIC system currently under development and whose purpose will be to facilitate settlements, on a secured basis, in the Euro as from January 1, 1999.

Besides Switzerland, Telekurs has principal offices in Germany, Luxembourg, the Netherlands, Italy, the Czech Republic, Great Britain, the USA, Japan and Singapore.

Swiss Interbank Clearing (SIC)

This on-line inter-bank clearing system started operations in 1987 and was replaced by a new enhanced system in July 1994. Its objectives are to speed up clearing in the Swiss banking system, to reduce paperwork, to improve liquidity and increase the level of unconditional payments (i.e. without Swiss National Bank margin control). At the end of 1997, there were 180 on-line connections on the system with 220 banks and it was handling an average of SFr. 182 billion of transactions a day.

Swift

This global inter-bank electronic communication system is used extensively by the Swiss banking system, with Telekurs access points in Geneva and Zurich. In 1997, Switzerland accounted for approximately 5.3% of world-wide message volumes, 77% of which related to messages between Switzerland and the US, UK and Germany.

SEGA

SEGA ("Schweizerische Effekten-Giro AG") is the central clearing organisation for the settlement of Swiss securities transactions and in Olten, it operates the central depository for all Swiss securities and stock rights and for all foreign securities and

stock rights traded in Switzerland. It handles over 6,600 securities, including Swiss and foreign shares, bonds and private placements. The value of securities deposited at the end of 1997 amounted to SFr. 1.38 trillion.

SEGA was started by Swiss banks to streamline and consolidate the domestic settlement process for its members. SEGA clears, settles and warehouses securities involving transactions between residents within Swiss borders. Settlement is on a book-entry basis as the overwhelming majority of securities listed are covered by global certificates only. Transfers of funds are made through the SIC system of the Swiss National Bank. Swiss banks and, from July 1, 1998, security dealers recognised by the Swiss Exchange can currently become members of SEGA.

Settlement for securities in SEGA are transacted via the SECOM system that electronically links SEGA, the SIC system, INTERSETTLE and the Swiss Exchange. With this system, banks only need a single cash fund for all inter-bank payments and securities settlements.

Intersettle

INTERSETTLE is the Swiss custodian for international transactions. INTERSETTLE was created to streamline and consolidate the settlement process with securities world-wide. In contrast to its affiliate, SEGA, which has only banks and, from July 1, 1998, security dealers recognised by the Swiss Exchange as members, INTERSETTLE is open to other market participants such as brokers, finance companies and insurance companies. Rather than each bank having independent international settlement networks, participants now have an account at INTERSETTLE, and INTERSETTLE uses its network to settle. It uses a network of some 16 first-class banks in each major country to perform custodial functions. INTERSETTLE operates in direct competition with CEDEL and Euroclear although it tends to focus more on Swiss domestic bonds and international equities. The value of the 46,500 securities deposited at the end of 1997 amounted to SFr. 159.2 billion.

According to recent press reports, SEGA and INTERSETTLE plan to merge their operations.

Other Associations

Other professional organisations worth mentioning include the following:

- Association of Cantonal Banks;

- Association of Swiss Regional Banks;
- Swiss Private Bankers' Association;
- Association of Foreign Banks in Switzerland;
- Association of Swiss Commercial and Investment Banks;
- Association of Swiss Holding and Finance Companies;
- Bank Ombudsman.

Internet Home Pages

Many of the above institutions maintain Internet sites which can provide useful up-to-date information on a variety of issues of topical interest, certain of it in English. Details of the sites are as follows:

- Swiss National Bank: http://www.snb/ch/
- Swiss Bankers' Association: http://www.swissbanking.org/
- Telekurs: http://www.telekurs.com
- SEGA and INTERSETTLE: http://www.sega.ch/eindex2.htm
- Swiss Exchange: http://www.swx.ch/
- Eurex: http://www.eurex.ch/

The Federal Banking Commission does not currently maintain an Internet site but plans are afoot to create one in the short term.

Section II

The Legal and Regulatory Environment

The pace of change and increasing complexity of legislation and regulation in Switzerland affects every bank and financial institution in the market. KPMG has qualified auditors and lawyers with the technical expertise and experience to offer assistance. We can provide and offer advice on all types of services related to the operation of banks and security dealers.

Chapter 3

Banking Legislation

Overview

Recent years have seen the introduction of extensive new legislation which has important repercussions for Swiss financial markets and Swiss banks. The Banking Ordinance has been systematically overhauled to incorporate changes in financial-statement reporting (1995), in the rules governing capital adequacy to support credit risks (1995), risk diversification (1996) and, more recently, those governing capital adequacy to support market risks (1997). Also, a whole new body of legislation governing the activities of stock exchanges and security trading was enacted in 1995 and took effect in 1997. 1997 also saw the enactment of the Money Laundering Law which took effect on July 1, 1998 which will have wide important repercussions on Swiss financial markets particularly on financial intermediaries without banking status. At the heart of all of these changes was the requirement to adapt Swiss legislation to international norms and the strengthen the hand of Switzerland in negotiations at an international level.

The most important legislation governing the conduct of banks in the Swiss market now comprises:

- Federal Law on Banks and Savings Banks ("Banking Law") of 1934 which was last amended March 18, 1994;

- Implementing Ordinance on Banks and Savings Banks ("Banking Ordinance") of 1972 which was last amended December 8, 1997;

- Guidelines of the Federal Banking Commission Concerning Provisions Governing the Preparation of Financial Statements of Articles 23 through 27 of the Banking Ordinance ("Financial-Statement Reporting Guidelines") of December 14, 1994, as amended under dates of November 14, 1996 and October 22, 1997;

- Ordinance of Foreign Banks in Switzerland ("OFB") of October 21, 1996;

- Federal Law on Investment Funds of March 18, 1994;

- Ordinances on Investment Funds of October 19, 1994 and October 27, 1994;

- Federal Law on Stock Exchanges and Trading in Securities ("Stock-Exchange Law") of March 24, 1995;

- Implementing Ordinances to Federal Law on Stock Exchanges and Trading in Securities of December 2, 1996 (last amended on December 8, 1997) and June 25, 1997;

- Federal Code of Obligations;

- Federal Criminal Code; and

- Federal Law on Money Laundering of October 10, 1997.

In addition, all Swiss banks are obliged to adhere to the professional rules of the Swiss Bankers' Association, details of which are set out below.

Banking Law

The main provisions governing banking, its regulation and supervision, are contained in the Banking Law. A full unofficial English translation of the text of the Banking Law is reproduced in Annex 1 to this publication[2]. The Banking Law specifically covers the following:

[2] *A proposal to amend the Banking Law has been published under date of May 25,1998; the amendment is subject to optional referendum and the date of implementation thereof will be communicated subsequently. The amendment deals with Cantonal banks and the ability of foreign supervisory authorities to conduct inspections in Switzerland (under certain circumstances).*

- definition of banks;
- regulations regarding the granting and termination of a banking license;
- rules regarding financial resources and liquidity;
- restrictions on extension of credits;
- rules on savings deposits and customer protection in case of bankruptcy;
- supervision by the Federal Banking Commission;
- reporting and auditing requirements, including the appointment of specially qualified auditors (so-called "Banking-Law Auditors");
- postponement of maturity, moratorium and bankruptcy provisions in cases of distress.

The primary objective of the Banking Law is to protect the interests of creditors.

Implementing Ordinance to the Banking Law

The Implementing Ordinance provides detailed guidance on the implementation of certain provisions contained in the Banking Law. For example, the Ordinance contains detailed instructions on the calculation of capital adequacy, risk diversification limits and measurement and disclosure rules for the presentation of financial statements. The latter rules are amplified in separate Guidelines on the preparation of financial statements issued by the Federal Banking Commission. A full unofficial English translation of the text of the Ordinance is included in Annex 2 to this publication.

Ordinance on Foreign Banks

This ordinance, which was last revised in 1996, contains regulations regarding the establishment and operation of branches and representative offices of foreign banks. In the case of foreign bank branches, the provisions of the Banking Law in respect of capital requirements and equity and legal lending requirements do not apply. A full English translation of the text of the Ordinance is included in Annex 3.

Federal Law on Stock Exchanges and Trading in Securities

The Federal Law on Stock Exchanges and Trading in Securities, which was put into effect on February 1, 1997 with a 2-year transitional period, forms the basis for regulation of stock exchanges in Switzerland and securities trading. Under the terms of the Law, all banks wishing to deal in securities, be for their own account or for the account of customers, will require an additional license from the Federal Banking Commission. The requirements largely follow those of the Banking Law. In addition, the legislation imposes on all licensed security dealers detailed record-keeping and reporting obligations regarding security trades and fundamental rules of conduct in dealings with customers. As in the case of banks, licensed securities dealers must appoint Stock-Exchange Auditors recognised by the supervisory authority who verify and report upon compliance with stock-exchange legislation.

National Bank Law

The National Bank Law is the founding legislation for the Swiss National Bank and its organisational structure. It defines the relationship between the National Bank and the Federal Government and sets out the scope of its functions. It also details basic policies in the monetary control area which are discussed further in Chapter 11.

Federal Code of Obligations

The Code of Obligations contains general provisions regarding Swiss commercial law, including contracts, partnerships, corporations, the commercial register and commercial accounting. In terms of corporate legislation, the Code of Obligations applies in the absence of any specific banking legislation.

Federal Criminal Code

The Swiss Criminal Code provides a vehicle for dealing with a number of criminal matters, including those in which institutions and their employees are involved. The Code includes articles making insider trading and money laundering criminal offences.

Federal Law on Money Laundering

The objective of the Federal Law on Prevention of Money Laundering in the Financial Sector is to impose prudent behaviour rules on all financial intermediaries to prevent "dirty" money entering into the Swiss monetary system. In the banking sector, regulations for the prevention of money laundering have existed for some time, but to date other financial intermediaries have not been subject to mandatory rules. The new law applies not only to banks, fund managers, insurance companies and securities dealers, but generally to persons who, on a professional basis, accept or deposit funds or assist in investing or transferring them. Most importantly, it contains detailed rules regarding the identification of the beneficial owner of funds and related documentation, as well as the duties of the financial intermediaries in situations where there are well-founded suspicions that money involved in the business relationship is connected with criminal activities. The law is further backed up by detailed Guidelines issued by the Federal Banking Commission.

A full English translation of the text of the Law is included in Annex 9.

Circulars of the Federal Banking Commission

Within the framework of the Banking Law, the Federal Banking Commission periodically issues circular letters ("Circulars") to banks and auditing firms. The purpose of these Circulars is to clarify the Banking Commission's interpretation of the Banking Law or to give instructions on specific topics. The Circulars which are currently valid (as of July 1, 1998) deal with the following topics:

Ref.no.	Name of Circular
■ 63/1	Audit Report
■ 72/1	Public Solicitation of Deposits
■ 81/1	Recording of Precious Metals
■ 86/1	Monies from Blocked Pension Arrangements
■ 90/3	Cash Liquidity
■ 92/1	Approval and Notification Requirements for Banks and Banking Auditors

- 93/1 Interrelationship between Banking Law and Revised Company Law
- 95/1 Internal Audit
- 96/2 Early Information After End of Financial Year
- 96/3 Audit Report: Form and Content
- 96/4 Acceptance of Deposits from Public by Non-Banks
- 96/5 Segregation of Fund Manager from Custodian Bank
- 96/6 Maintenance of Security Journal by Security Dealers
- 97/1 Guidelines Governing Capital Adequacy Requirements to Support Market Risks
- 97/2 Applicability of FBC Circulars Concerning Banks to Security Dealers
- 98/1 Guidelines concerning the Combating and Prevention of Money Laundering
- 98/2 Commentaries Regarding the Definition of Security Dealer (relates only to legislation on stock-exchange and securities trading)
- 98/3 Recognised Rating Agencies (relates only to investment fund legislation)
- 98/4 Short-Term Inter-Bank Receivables

At the time of drafting the current version of this publication, draft circulars on outsourcing and the management of interest-rate risk had been circulated and are expected to be issued, after due public discussion, within a horizon of some 3–6 months, at the latest.

Professional Rules of the Swiss Bankers' Association

All banks, whether they are member of the Swiss Bankers' Association or not, are to comply with the professional rules of the latter. The currently valid list of such professional rules is as follows:

- Guidelines concerning the Concept and Organisation of Internal Audit in Banks of 1977 (Circular No. 358 D of January 4, 1978)

- Guidelines concerning Internal Control in Banking Institutions as a Task of Management of 1987 (Circular No. 768 D of April 6, 1987)

- Guidelines concerning Customs and Practices in Area of Foreign Currency Operations of 1990 (Circular No. 919 D of April 10, 1990)

- Guidelines concerning Dealing with Counterfeit Money and Fake Precious Metal Coins and Bars of 1990 (Circular No. 952 D of December 11, 1990)

- Guidelines concerning a Code of Conduct with regard to the Exercise of Due Diligence of 1998 (Circular No. 1033 D of January 28, 1998)

- Convention XIX concerning Notes of Foreign Issuers of 1987/1993 (Circular No. 1071 of March 19, 1993) (in so far as signed)

- Agreement concerning the Protection of Depositors in the Case of a Forced Liquidation of a Bank of 1992 (Circular RN. 1077 D of May 27, 1993) (in so far as signed)

- Guidelines concerning Fiduciary Transactions of 1979/1993 (Circular No. 1079 of June 22, 1993)

- Guidelines concerning the Processing and Valuation of Credits Secured by Mortgage (Direct and Indirect Mortgage Business) (Circular No. 1102 of December 23, 1993)

- Guidelines concerning the Treatment of Accounts, Custody Deposits and Safe Deposit Boxes Remaining Dormant at Swiss Banks (Circular No. 1193 D of September 12, 1995)

- Guidelines concerning Risk Management in Trading and Use of Derivatives (Circular No. 1214 D of January 31, 1996)

- Guidelines and Commentary concerning the Exercise of Management Mandates of 1990(Circular No. 1224D of April 26, 1996)

- Rules of Conduct for Security Dealers in Conducting Security Transactions (Circular No. 1214 D of February 4, 1997)

- Guidelines for the Management of Country Risk of September 4, 1997 (Circular No. 1326 D of November 28, 1997)

One of the most significant documents issued by the Swiss Bankers' Association is the Due-Diligence Convention (in German "Standesregeln zur Sorgfaltspflicht bei Banken" [VSB]). As far back as 1977, in the face of growing concern about abuse of the facilities offered by the Swiss banking system, the Swiss Bankers' Association and the Swiss National Bank entered into an agreement designed to ensure that banks are aware of the true identity of their account holders when accepting deposits and take measures to prevent the use of such accounts for illegal purposes.

In 1987 the agreement was replaced by a self-regulatory agreement between the Swiss Bankers' Association itself and its member banks. This agreement was last updated in 1998. The current version contains general rules and practices relating to due diligence at all times – specifically on account opening and has been revised to take account of the new provisions of the Money-Laundering Law. Under the agreement the banks have committed themselves to:

- identify their contracting partner at the date of account opening or in case of cash or certain other transactions in excess of SFr. 25,000;
- to identify the beneficial owner when different from the contracting party;
- in cases of doubt, to carry out further research to identify the beneficial owner;
- avoid any active assistance to flight capital activities;
- provide no active assistance to tax evasion;
- desist from issuance of any form of declaration or certificates which would be misleading.

This self-regulatory agreement is policed by an arbitration committee to consider breaches. It has the power to levy substantial fines and regularly publishes its decisions.

The Federal Banking Commission takes an extremely tough stance on this issue and, independent of the activities of the arbitration committee, will itself investigate breaches and the circumstances leading up to them. The Banking Law auditor, whose job it is to check compliance, has little or no flexibility in reporting exceptions to the arbitration committee.

The Risk-Management Guidelines applicable to dealing activities and the use of derivatives constitute also an important recommendation. They lay down the framework for identifying, managing and limiting risks arising from dealing and the use of derivatives.

Chapter 4

Banking License

Definition of a Bank

Before a bank can commence operations in Switzerland it is required to obtain a license from the Federal Banking Commission. The definition of a bank is set out in Articles 2a, 3 and 3a of the Implementing Ordinance to the Banking Law and includes institutions which are active principally in the field of finance, and in particular those:

■ which accept deposits from the public on a professional basis or solicit them publicly in order to finance in any way, for their own account, an undefined number of unrelated persons or enterprises (Article 2a par. a).

Public solicitation is deemed to include publicity in the form of advertisements, prospectuses, circulars or electronic media. Where an institution accepts more than 20 deposits from the public on a continuing basis, it is deemed to be acting on a professional basis within the meaning of the law. Sources of deposits not deemed to be public and funds not deemed to be deposits are also detailed in Article 3.

■ which refinance themselves in substantial amounts from a number of banks which are not significant shareholders and with which they form no economic entity in order to provide any form of financing for their own account to an undefined number of unrelated persons or institutions (Article 2a par. b).

"Substantial amounts" and "a number of banks" are defined by the authorities as over SFr. 500 m. sight and time deposits from over five banks measured on the rolling average of the position of the banks on the last four quarter ends at time of measurement.

Prior to 1995, security dealers active in the new issue business were also caught by a further definition under Article 2a par. c, thereby rendering them subject to Banking Law. This definition was done away in 1995 in connection with the introduction of the new Stock-Exchange Law. From this date onwards, entities active in the new issue business fall under the provisions of the Stock-Exchange Law and not the Banking Ordinance.

Requirements for License

A license will be granted if the requirements of the Banking Law are met. The license may be withdrawn if, for whatever reason, the bank is unable to continuously meet the requirements of the Law. These include the requirement to manage the bank in a proper and professional manner, or the requirement to observe the prescribed liquidity and equity ratios on a permanent basis.

Details of the information and documentation to be contained in an application for a banking license according to the non-exhaustive checklist of the Federal Banking Commission as of January 1997 are included in Annex 4.

Article 3 of the Banking Law states that a license will be granted if:

- the articles of association, by-laws and business rules of the bank provide for a clear definition of the scope of business and establish an adequate organisation in view of the proposed business activities;

- the bank has fully paid-in capital up to the minimum determined by the Federal Council (currently SFr. 10 million);

- the persons charged with the administration and management of the bank enjoy a good reputation and thereby assure the proper conduct of the business operations;

- individuals or corporate entities holding more than 10% of the capital or voting rights of the bank (or other parties who can influence the bank in a significant manner) guarantee that their influence will not impact negatively on prudent and solid business activity;

- the persons entrusted with the management of the bank have their domicile in a place where they may exercise management in a factual and responsible manner.

In general, the Federal Banking Commission enjoys considerable discretion within the framework of the Banking Law when granting licenses. For example, although the minimum requirement for paid-in capital is currently SFr. 10 million, in practice it is necessary to pay in considerably higher amounts to establish credibility and meet capital adequacy and risk diversification requirements.

A banking license is not transferable. A foreign bank is required to seek a license under all circumstances, even if it acquires control of a bank that is already foreign controlled.Likewise, a Swiss controlled bank transferring to foreign control requires advance approval by the Federal Banking Commission.

Article 3bis of the Banking Law contains the so-called reciprocity requirement. This requirement means that the foreign country of residence of the applicant must permit the establishment of Swiss controlled banks in its territory and the business operations of those banks must not be subject to materially more limiting provisions than those imposed on foreign banks operating in Switzerland unless there are formal treaties which grant reciprocity on a general basis.

The Banking Law (Art. 3bis par. 1 lit. a) provides for exceptions to the reciprocity requirement when Switzerland is bound by "divergent international agreements". The consequence of this clause is that the requirement for reciprocity is no longer applied for states which have ratified the agreement in the field of financial services as part of the General Agreement on Trade and Services (GATS)[3]. In such cases, the Banking Commission no longer examines the question whether reciprocity is assured in the case of applications from persons or companies resident in such states.

In order for a foreign bank to obtain a license it must also confirm that it will adhere to the policies of the Swiss National Bank at all times. The National Bank is primarily concerned with the protection of the Swiss currency, orderly development of the money supply, adequate supply of credit in the system and, importantly, good international relations and co-operation with other central banks. Before it is able to commence operations, the National Bank will supply a foreign bank with all relevant information it requires.

A majority of the board of directors of the bank must be Swiss nationals and resident in Switzerland. As far as management is concerned, the Banking Law normally requires Swiss residence but not Swiss nationality for the individuals concerned.

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[3] According to the final agreement, ratification by all member states of the World Trade Organisation is to occur by March 1, 1999, at the latest. Until such date the temporary agreement of July 28, 1995 shall remain in force.

Other Types of Companies Active in the Field of Finance

As mentioned in Chapter 1, until 1994, a further category of financial institution i.e. the bank-like finance company was recognised under the Banking Law but this type of company became basically obsolete with the Amendment of 1994 to the Banking Ordinance. As of this date, existing bank-like finance companies either met the conditions requiring them to apply for a full licence or not. Those bank-like finance companies which had previously accepted deposits from the public on a professional basis were required to apply for full banking licenses (so long as the number of depositors did not exceed, on an on-going basis, the number of 20). In this connection, the issuance of debentures to the public is not considered to constitute the acceptance of deposits from the public.

Nowadays, a finance company (for instance, a group treasury centre or group refinancing structure) would only fall under the scope of the Bank Law if it is caught by the definition of banking activities set out in the section "Definition of a Bank" above. If such entity, however, deals in securities on a professional basis, it would be subject to the Federal Stock Exchange Law. This is true whether the entity deals exclusively for its own account or for that of its customers. In the former case (proprietary trading), it would only fall under the scope of the Stock Exchange Law if the gross volume of security trades exceeds five billion Swiss francs.

Entities offering portfolio management advisory services may escape subordination to the Stock-Exchange Law under certain conditions. So long as such companies do not trade in securities on a professional basis for the account of customers and they neither operate accounts for these customers for the settlement of security trades either themselves or with third parties nor hold investors' securities in own safekeeping accounts or, in their own name, with third parties, then they escape regulation under the Stock-Exchange Law.

Chapter 5

Liquidity Requirements

Overview

Under the current regulations set out in Articles 15 to 20 of the Implementing Ordinance of the Banking Law, banks are required to maintain an emergency buffer to ensure that there are sufficient liquid funds in the banking system, and to protect the interest of creditors against the impact of any unexpected drain of money from the banking system.

The following requirements currently apply; the Federal Banking Commission has, however, recently instituted a working group with the task of overhauling the current system in the direction to align them more closely to European Union regulations. The proposed requirements is expected to become known within the course of 1999.

Cash Liquidity

Under the current rules, the first line of liquidity, or cash liquidity, is to ensure that there are sufficient giro deposits with the Swiss National Bank. The required liquidity is based on defined Swiss franc short-term liabilities. These liabilities include sight balances, time deposits up to 90 days and 20% of savings, deposits and similar books or accounts, excluding pension fund liabilities. The base is computed as the average of outstanding balances at the end of the three months preceding the computation. The liquidity requirement is set by the Federal Department of Finance up to a maximum of 4% of such average liabilities – the rate is currently set at 2.5%. For the purposes of the computation, liquid assets are defined as cash holdings and balances on giro

and postal checking accounts. The required liquid assets must be held on average for the entire 30-day period from the 20th of the month following the calculation period to the 19th of the month after that. In other words, the required liquidity calculated based on the defined liabilities for the period November 1, 1998 to January 31, 1999 must be available on average for the entire period from February 20, 1999 to March 19,1999. It is then recalculated monthly based on the new average. A cash liquidity return has to be prepared on the official forms monthly – an example is contained in Annex 5.

Total Liquidity

The second line of liquidity, or total liquidity, is designed to ensure that a bank retains an emergency supply of liquidity to meet its own calls for one to two weeks. The short-term liabilities which form the basis for the computation include three components:

- the excess of offsettable short-term liabilities (as defined in Article 17a of the Implementing Ordinance) over easily realisable offsettable assets (as defined in Article 16a);

- 50% of short-term creditors and other accounts or books without withdrawal restrictions;

- 15% of deposits in savings, deposits or similar books or accounts with withdrawal restrictions, excluding amounts not available for distribution (e.g. pension fund liabilities).

Based on this calculation, 33% of the total of these three components must be covered by liquid assets and easily realisable assets. This level of liquidity has to be held continuously and a return completed on the official forms quarterly – an example is given in Annex 6.

A further provision in relation to total liquidity is the requirement for the bank to advise its Banking Law auditors if its sight and other liabilities due within one month to an individual customer or bank exceed 10% of its total unnetted sight and other liabilities due within one month. The liabilities to a customer include related parties when there are majority interlocking share-holdings. This information has then to be included by the auditor in his annual audit report and he is also required to recommend corrective action if the funding appears to be inappropriately concentrated.

Off-balance sheet positions remain excluded from the liquidity computation.

Banks are also responsible for ensuring that their group maintains adequate levels of liquidity. The term adequate is not specifically defined and is left to the auditors' judgement. A materially different or worse liquidity position in a subsidiary of the bank could result in this provision not being adhered to.

Chapter 6

Provisions Governing Capital Adequacy and Risk Diversification

Share Capital

For banks subject to the Banking Law[4], paid-in capital must amount to at least SFr. 10 million. In practice, however, the Federal Banking Commission currently determines the required capital on a case-by-case basis which generally results in a much higher level of capitalisation than required by law.

Legal Reserves

Article 5 of the Banking Law requires banks to transfer at least 5% of their annual net profits to a legal reserve designated to cover losses and permit write-offs. The transfers have to be effected until this reserve amounts to 20% of the paid-in capital or, in the case of banks with no paid-in capital, to 5% of deposits.

The following must also be allocated to the legal reserve even after the required statutory level has been reached:

- any proceeds exceeding the nominal value of share issues or issues of participation certificates after deduction of the issue costs;

[4] *See below regarding capital requirements for licensed security dealers.*

- 10% of the amounts which are distributed from net profits to holders of shares or participation certificates after regular allocations to reserves and after dividends or interest on participation certificates of 5% have been paid to the entitled parties.

These requirements do not apply to Cantonal banks or to private bankers who do not publicly solicit customer deposits.

Capital-Adequacy Requirements

The current capital-adequacy requirements for Swiss banks are contained in the 1994 and 1996 Amendments to the Banking Ordinance. The 1994 Amendment, which became fully mandatory on December 31, 1995, dealt with capital-adequacy requirements to support principally credit risks, whereas the 1996 Amendment,which becomes only mandatory on December 31, 1999, dealt with requirements for the much more complex subject of market risks. The purpose of these changes is to align Swiss rules to those of major OECD countries and allow Swiss banks to compete equally with foreign banks; the new rules now reflect fully the Recommendations regarding Capital Adequacy of the Basle Committee on Banking Supervision.

Under these rules which are contained in Articles 11–13 of the Banking Ordinance, a bank's eligible equity must amount to at least 8% of the sum of risk-weighted positions (Art. 12 par. 2 – reflecting principally counterparty credit risks) and the non-risk-weighted requirements to support market risks (Art. 12 par. 5), reduced by a certain percentage of existing value adjustments and provisions.

In line with internationally accepted practice, eligible capital is equal to the sum of "core capital" (as defined) and "supplementary capital" (as defined and further split into lower and upper supplementary capital); in addition, a further component referred to as "additional capital" was created exclusively to support market risks. Supplementary capital and additional capital, together, may not exceed 100% of the core capital and further limitations exist as to how much lower supplementary capital and additional capital as a percentage of core capital may be included in eligible equity.

The computation of required equity is made following the complex rules set out in Art. 12a through 12o of the Banking Ordinance (see Annex 2 for full translation of the Banking Ordinance). The requirements to support market risks are further regulated through Guidelines issued in the form of an FBC Circular (98/1).

The market risks may be computed using the standard approach described in the Ordinance and Guidelines or, with the consent of the Federal Banking Commission, using a model-based approach. The use of the model-based approach is conditional upon the bank fulfilling an extensive catalogue of requirements. Conversely, simplified rules apply for computing capital charges on trading book positions if a bank's trading book at no time exceeds 6% of all on- and off-balance-sheet positions and the absolute level of SFr. 30 million (so-called "de-minimis"rule).

Required equity statements must be prepared within 2 months after each quarter end using a form laid down by the Banking Commission and submitted to the Swiss National Bank. The Banking Commission must be informed immediately whenever capital-adequacy requirements are not met. An English translation of the form to be completed is included under Annex 7.

These capital-adequacy requirements are not applicable to Swiss branches of foreign banks. According to the current position of the Federal Banking Commission, it is up to the bank supervising authority of the country where the head office is established to monitor the bank's consolidated equity position properly. Under the old version of the Foreign Bank Ordinance (1984), Swiss branches of foreign banks had to retain 10% of their assets in Switzerland. Under the revised Foreign Bank Ordinance of 1996, this requirement has been dropped but the Banking Commission can require foreign banks to deposit collateral, if considered necessary to safeguard the interests of creditors.

For tax purposes, a company must also be adequately equity-financed. If a bank maintains the equity levels prescribed by Article 4 of the Banking Law, as described above, it can safely assume that it is adequately capitalised for tax purposes as well.

Risk Diversification Requirements

The Swiss risk diversification rules are modelled on those of the BIS and those prevailing within the European Union and are set forth in Article 21 of the Banking Ordinance. Under these provisions, a bank is required to limit its aggregate exposure to a single counterparty or group of connected counterparties which term is defined in the provisions.

The limitation of risk concentrations occurs on three levels. The first limit of 10% of eligible equity turns a risk position into a risk concentration in so far as it is reached or exceeded. This risk concentration, although in principle it is authorised in this size, must be communicated to the auditors. The Ordinance further foresees a limit of 25%

of eligible equity, which a risk concentration may not exceed unless it is covered by one of the exemptions. Finally the new provisions introduce a limit of 800% of eligible equity. The sum of risk concentrations of a bank may not exceed this limit.

The provisions provide for exemptions from the upper limit, in particular for group companies. Such exemptions are granted either automatically or upon application to the Banking Commission. A prerequisite for such exemption is that the bank is part of a banking or finance group which is subject to an appropriate consolidated supervision. In addition, the upper limit may be exceeded without immediate notification whenever and in so far as the excess is covered completely by freely eligible equity resources. An allocation of this nature of freely eligible equity resources is to be disclosed in the quarterly computation of required equity submitted to the Swiss National Bank.

One of the principal aspects of the rules is the use of the indirect method of measuring risks, the risk position not being subject to a direct limit itself, but only to the extent of its risk-weighted equivalent. Each counterparty constitutes an individual risk position which is composed of receivables appropriately weighted, off-balance-sheet transactions which have been converted into their credit equivalent and then weighted and net long positions in securities. As a general rule, the risk weightings as determined in the capital adequacy provisions, are applied for risk diversification positions. The methods of calculation used for capital adequacy purposes, are in principle to be followed for risk diversification. This applies in particular for the determination of the credit equivalent of off-balance-sheet transactions, of borrowing and repurchase transactions and for the computation of net long positions of debt and equity securities.

Finally, the provisions expressly provide for compliance therewith by the bank on an individual-company as well as consolidated basis if and inasmuch as the equity requirements are to be complied with on a consolidated basis.

The above-mentioned limits do not apply to Swiss branches of foreign banks.

Under the terms of the Banking Law, banks, whose parent companies are supervised by banking or financial market supervisory authorities, may transmit information or documents not publicly available to their parent companies which are necessary for the purpose of consolidated supervision, in so far as:

a. such information is used exclusively for internal control or direct supervision of banks or other financial intermediaries subject to licence;

b. the parent company and the supervisory authorities responsible for consolidated supervision are bound by official or professional secrecy;

c. this information may not be transmitted to third parties without the prior permission of the bank or on the basis of a blanket permission in a state treaty.

In cases where doubt exists regarding the transmission of data, banks may demand a directive from the Banking Commission to allow or forbid the transmission of information.

Securities Dealers

Securities dealers, be they with or without banking status, are regulated by the Stock-Exchange Law and its Implementing Ordinance which provide that securities dealers shall apply the same provisions regarding capital adequacy and risk diversification as are imposed under the Banking Law and Ordinance[5].

[5] *The required minimum capital for securities dealers without banking status is fixed at SFr. 1.5 million.In addition,security dealers without banking status must comply with the so-called "base requirement"which means that their equity may not be less than 75% of annual full costs which are defined as personnel and administrative expenses, amortisation of capital assets and value adjustments, provisions and losses. At present, there is an expectation that this 75% will be reduced to level of the EU Capital Adequacy Directive of 25% but this has not been confirmed officially.*

Chapter 7

Accounting Requirements and Principles

Accounting Records

The obligation for Swiss banks to maintain proper accounting records and the general principles governing record-keeping derive principally from the Swiss Code of Obligations. They require the preparation of financial statements which must be complete, true and clear, drawn up in accordance with generally recognised commercial principles and expressed in Swiss currency. Rules governing the valuation of assets and liabilities are set out in part in the Federal Code of Obligations[6], but principally in the extensive Financial-Statement Reporting Guidelines issued by the Federal Banking Commission[7].

The Law does not specify which accounts are to be maintained; however, the Financial-Statement Reporting Guidelines for Banks (applicable also to security dealers) lays down the content of annual financial statements and all banks organise

[6] *On October 18, 1998, the Federal Council issued the draft of a new Federal Law on Financial-Statement Reporting and Auditing for public discussion and comments. The Law, if issued,would dramatically change Swiss accounting rules by aligning them to the practices of the European Union (4th and 7th Directives). The draft law is subject to optional referendum.Implementation of such law, if adopted,is not expected until early into the next millennium. The full text of the proposals are available under http://www.admin.ch/bj/vernehm/vernehmd.htm (German text) or http://www.admin.ch/bj/vernehm/vernehmf.htm (French text).*

[7] *A full English-Language translation of the Guidelines is available from KPMG Zurich.*

their accounting records in a manner which facilitates annual financial-statement reporting.

The law does not specify where the books and vouchers should be maintained, although they have to be readily available to the tax authorities and courts, and Swiss directors frequently require them to be maintained in Switzerland. Further, the Federal Banking Commission has, to date, also maintained the position that they be kept in Switzerland to ensure that secrecy regulations are respected and management can properly exercise its responsibilities.

Financial-Statement Reporting

All banks constituted as limited-liabilities companies are to prepare and publish annual financial statements for the bank and, if the bank has subsidiaries or exercises control over one or more companies in another manner either directly or indirectly, it shall prepare consolidated financial statements if the exemption limits have been exceeded (less than 50 employees and total assets of one billion Swiss Francs).Single-company annual financial statements of banks are to be prepared using legal valuation and presentation policies (so-called "statutory" or legal reporting). They do not purport to show a true and fair view of the bank's balance sheet and income statement; indeed, the legal valuation principles allow banks to create reserves by undervaluing assets and creating provisions which are not economically justified. Consolidated financial statements of banks must present a true and fair view of the financial position and profitability of the banking group and thus all silent reserves must be released. Which policies are applied in the preparation of consolidated financial statements of Swiss banks themselves will first depend on whether they are listed on the Swiss Exchange or foreign stock exchanges, in which case the rules of the exchange are be followed. In case of Swiss groups which are not listed on any stock exchange, the rules laid down in the Financial-Statement Reporting Guidelines of the Banking Commission shall be applied at a minimum.

The valuation and presentation rules to be followed by Swiss banks for single-company (statutory) reporting are based upon the legal principles set out in the Code of Obligations, modified and complemented extensively by the general valuation principles contained in the Financial-Statement Reporting Guidelines of the Banking Commission. Given the fact that the Financial-Statement Reporting Guidelines contain provisions which may be at variance with or go further than similar provisions in the Code of Obligations, the Banking Commission has issued a Circular detailing which takes precedence for annual statutory reporting.

In a recent Amendment to the Banking Ordinance and Guidelines, banks may also prepare their annual financial statements in accordance with IAS or US GAAP or, in the case of banks controlled by persons or companies resident or established in the European Economic Space, in accordance with the accounting and presentation policies applicable in the country of origin. Similar exemptions exist for annual financial-statement reporting by Swiss branches of foreign banks.

In general, Swiss valuation principles for statutory reporting purposes are conservative. In most situations, assets may not be valued in excess of the lower of cost or market (except for liquid securities held in the trading portfolio which must be marked to market) and full provision for all known liabilities must be made. In addition, the law gives discretionary powers to the board of directors to value assets at amounts lower than maximum carrying values prescribed by law, or to set up silent reserves although the Financial-Statement Reporting Guidelines impose strict rules on banks as to how they may create and release such reserves. In addition, for individual-bank statutory reporting, positions within the same balance sheet caption may be valued collectively i.e. unrealised losses may be offset against unrealised gains in the same caption.

The Financial-Statement Reporting Guidelines of the Banking Commission are designed to render the annual financial statements of Swiss banks more transparent and useful for investors and regulators alike. They are heavily influenced by accounting practices followed by banks in the European Union. In particular, they impose a number of matters which were inadequately or not dealt with in the Code of Obligations, viz.:

- they prescribe the obligation to present a statement of cash flows if the bank's total assets exceed SFr. 100 million;

- they introduce classification rules of assets and liabilities, income and expense items and for the statement of cash flows which are characteristic for EU banks;

- they establish clear rules for those cases where assets and liabilities and income and expenses may be netted for presentation purposes;

- they introduce the requirement for value-date as opposed to trade-date accounting on or before December 31, 2004[8];

[8] *A revision to this rule is currently under evaluation by the Banking Commission which, if accepted,would allow banks and security dealers to apply also the more wide-spread practice of trade-date accounting.*

- they introduce specific rules for valuing trading assets, financial investments and derivative financial instruments;

- they impose precise rules as to how banks may create, record and release silent reserves as permitted under the Code of Obligations including disclosure of any material releases of silent reserves; and

- they introduce the obligation for banks to make extensive informational disclosures in the form of notes to financial statements.

Valuation of Securities

The Guidelines require separate disclosure in the financial statements between securities held for trading purposes and those held for investment purposes.

Trading Securities

Depending on the marketability of the security, the following valuation principles apply:

- listed securities and quoted securities (OTC) with a representative market value;

- quoted securities (OTC) without a representative market – lower of cost and (estimated) market principle;

- unquoted securities – lower of cost and (estimated) market principle.

A representative market is defined as an organised market with regular publication of prices on which at least three market makers who are independent of each other quote prices, normally on a daily basis.

The lower of cost and estimated market principle requires securities to be valued at values which reflect declines in value as a result from higher current market yields, problems with the credit-worthiness of the issuer, conversion premium loss of value, etc.

Investment Securities

Depending on the nature of the security, the following valuation principles apply:

- equity securities – lower of cost or market;

- non equity-linked debt securities – the valuation policies will depend on whether it is the bank's intention to hold the securities or not. Securities which are to be held until maturity are to be valued in accordance with the amortised cost method

(allocation of the interest component of premiums and discounts on acquisition over the life of the instrument). Securities which are not to be held until maturity are to be valued at the lower of cost and (estimated) market value. In both cases, provisions for credit risks are to be established, when necessary, to recognise all recognisable collectibility risks;

- equity-linked debt securities – equity-linked debt securities are to be valued at the lower of cost and (estimated) market value, unless the bank opts to value the option component separately, in which case the option component shall be valued at the lower of cost and market and the interest component using the amortised cost method. The valuation method selected on acquisition shall be retained over the life of the instrument. Provisions for credit risks are also to be established, when necessary, to recognise all recognisable collectibility risks.

Derivative Financial Instruments

Derivative financial instruments are to be valued using the following principles:

- positions held for active trading – at market value if quoted on the stock exchange or a representative market exists, otherwise using the acquisition cost principle;

- investment and strategic positions – according to the lower of cost and market principle;

- hedging transactions – the same method as adopted for the underlying hedged transaction.

The positive and negative replacement values as well as contract volumes of derivative financial investments at year end must be disclosed in the appendix to the financial statements. Uncompleted spot transactions as of balance sheet date are to be included with “forward”transactions.

Loan Loss Reserves

There are no specific regulations governing the method of providing for loan loss allowances. Both specific and general allowances are customary.

Taxation

Because taxes on income or profits of any one financial year or period are generally assessable to tax only in a later tax (calendar) year, provision for the taxes eventually payable must be set aside in the accounts of the year or period in which the income was earned to comply with US or UK generally accepted accounting principles. Although this concept now has greater support in Switzerland, it is still common practice to provide only the taxes assessable in the accounting period.

Sovereign Risks

Under Circular 92/4 of the Banking Commission which was repealed as of January 1, 1999, banks were to establish sovereign-risk provisions in respect of all exposures in countries listed in an appendix to the circular and at provisioning rates specified therein, subject to certain exemptions.

As of this date, the circular was repealed and was replaced by the Guidelines of the Swiss Bankers' Association which imposes on banks the obligation to introduce their own systems of identifying, controlling and measuring country risk. Banks are free to introduce the new system earlier if desired.

Chapter 8

Audit Requirements

Appointment Under Company Law

Swiss company law (Federal Code of Obligations) requires that all banks incorporated as limited-liability companies must appoint a statutory auditor(s) whose appointment is not subject to the prior approval by the regulatory authorities. Article 727 of the Code of Obligations sets out the procedure for the election of auditors by the shareholders in a general meeting.

The statutory auditor must be independent of the bank, and specifically may not be a member of the Board of Directors or be otherwise employed by the bank, and may not assume managerial duties for the company.

The auditor is required to perform a full-scope examination of the bank's financial statements and deliver a report to the annual general meeting of shareholders. The report, with or without qualification, generally contains a recommendation to approve the accounts and a proposed distribution and allocation of profits, when available.

Although auditing approaches vary from audit firm to audit firm, the Swiss Institute of Certified Public Accountants and Tax Consultants provides considerable guidance in this area in its Auditing Manual.

Audit Requirements Under Banking Law

External Audit

All banks, whether organised in the form of a limited company, a partnership or a branch of a foreign bank, must have their annual financial statements audited by independent auditors licensed by the Federal Banking Commission. As regards banks which are limited by shares, this requirement is in addition to, and not in substitution for, the requirement to appoint statutory auditors as described above.

The criteria for recognition as licensed bank auditors are exacting, and are set out in Article 20 of the Banking Law and Article 35 of the Banking Ordinance. As of December 31, 1997, 16 audit firms were licensed by the Federal Banking Commission to perform audits of banks and security dealers and a list of these firms is available on request from the Commission although many of these firms have merged and the individual licenses are retained for historical reasons. KPMG holds two licenses on the list under the legal names KPMG Fides Peat and KPMG Klynveld Peat Marwick Goerdeler SA.

The auditors are appointed by the Board of Directors and are required to perform a full-scope audit of the bank's financial statements and verify that the bank complies with the provisions of the Banking Law, its Implementing Ordinance and the Code of Obligations. The Banking Law requires that, as part of their annual examination, auditors perform one or several interim examinations on a surprise basis to ascertain the existence of the bank's assets and the reliability of its records. Article 40 of the Banking Law requires that the external auditors also perform unannounced interim examinations.

It should be noted that the same auditing firm, provided it is recognised by the Federal Banking Commission, can and usually performs both the statutory and the Banking Law audits.

Internal Audit

A Federal Banking Commission Circular on internal audit became effective on January 1, 1996 and applies to all banks.

The Circular requires all banks to establish an internal audit function by January 1, 1998. Although the Circular contains provisions for very small banks to apply for exemption from the requirements, the Commission has indicated that in practical terms very few will be granted. Where the establishment of a bank's own internal audit function appears inappropriate (for example, not cost-effective), the function of internal audit may be transferred to:

- the internal audit function of the parent company or another group company if it is a bank, securities company or other financial intermediary under state supervision;or

- an auditing firm licensed by the Commission which is independent of the Banking Law auditors of the organisation; or

- independent third parties who can demonstrate thorough knowledge of banking and bank auditing operations.

Key points in the Circular to note are that the internal audit function must be independent of management (reporting to the governing body) and independent of the Banking-Law auditors, and that the internal audit function and the Banking Law auditors must co-ordinate their activities.

The Banking Law auditor is required to evaluate the internal audit function in his annual audit report.

Reporting

Statutory Auditors' Report to the Shareholders

When banks are incorporated as limited companies, the Code of Obligations requires the statutory auditor to issue his statutory report to the shareholders to enable the latter to hold their annual general meeting within 6 months after year-end. This report is a simpler and shorter document than the Banking-law auditors' report to the Board. The statutory auditor certifies that the books of account, the financial statements and the proposed appropriation of retained earnings are in accordance with the law and the bank's articles of incorporation.

Banking Law Auditors' Report to the Directors

At the conclusion of the audit, the Banking Law auditor delivers a report to the Board of Directors of the bank and to the statutory auditor, if this is not the same firm. The Federal Banking Commission receives a copy of this report.

The Banking Law auditors' report, which must legally be issued within 12 months of the bank's financial year-end, but in practice is expected within 6 months, is detailed and comprehensive; it must adhere to a format designed by the Federal Banking Commission and must contain, among other things, a detailed analysis of the balance sheet as well as the profit and loss account. In particular, commentary is required on credit, market and liquidity risks, risk management, development of the bank's

operations, internal organisation, profits, ratios, compliance with Banking Law regulations (presentation of financial statements, liquidity, equity, evaluation of risks, legal lending limits, etc.) and any applicable breaches of the Banking Law. The Circular also requires Banking-Law auditors to subject at least one significant area of the bank's activities to so-called "in-depth audit procedures" and the results thereof are to be presented in the Banking-Law report. The detailed content of such report is set out in Circular 96/3 of the Federal Commission.

The Banking-law report may not be sent abroad.

When an audit discloses either violations of the law or other irregularities, the auditor is required to set a time limit for the bank to take necessary corrective measures. In the event that corrective action is not taken in time, the auditor is required to advise the Federal Banking Commission. When the establishment of such a time limit appears to the audit firm to be of no value, or if the audit firm discovers serious breaches of the law or other irregularities jeopardising the security of the creditors, it is required to report the matter immediately to the Federal Banking Commission.

Other Reports to the Federal Banking Commission

Under Article 23bis of the Banking Law, banks and finance companies or their auditors may be required to furnish the Federal Banking Commission with any information deemed necessary by the Commission to carry out its duties as supervising authority of the Swiss banking industry. Such information includes, but is not limited to, financial statements and audit reports. The Federal Banking Commission may also retain the services of an audit firm to perform special reviews.

Reports to Other Organisations

The Banking Law auditor is from time to time required to examine particular aspects of a bank's operations and report to specific organisations. For example, reports may be required on adherence to the regulations of the Swiss Exchange.

A more specific permanent requirement exists for the auditor to check adherence to the Due Diligence Convention (see Chapter 3) and to report any exceptions to the arbitration committee of the Swiss Bankers' Association.

Chapter 9

Publication, Reporting and Other Filing Requirements

Publication of Financial Statements

Within four months of their financial year end, banks are required to publish an annual report, containing a report of the Board on the year's activities, the annual financial statements, prepared in accordance with the format prescribed by the Banking Ordinance and the Financial-Statement Reporting Guidelines of the Federal Banking Commission and the report of the auditors. In addition, interim balance sheets and profit and loss accounts must be published semi-annually in the Swiss Commercial Gazette or a Swiss newspaper by those banks with total assets of more than SFr. 100 million within two months of period-end.

If the publication deadlines cannot be adhered to, extensions must be sought from the Federal Banking Commission.

Other Regulatory Requirements

Banks are subject to substantial reporting and filing requirements. Those pertaining to adherence to provisions of the Banking Law, with the general exception of monetary matters, are reported to the Federal Banking Commission. Monetary related reporting is generally to the Swiss National Bank.

Annex 7 of this publication reproduces Circular 92/1 of the Federal Banking Commission which summarises the more important reporting and filing requirements, the recipient, the frequency and the regulatory reference.

Tax Filing

A financial institution operating in Switzerland, either as a legal entity or in the form of a branch, is required to file a copy of its annual financial statements, as approved in the case of a legal entity by the general meeting of shareholders, with the relevant Federal and Cantonal tax authorities. Further details on this subject are given in Chapters 16 to 20 and in our related publication "Investment in Switzerland and Liechtenstein".

Chapter 10

Bank Secrecy

Secrecy Regulations

In addition to protection offered by Swiss civil and penal law, customers of banks in Switzerland are afforded additional protection by the provisions of Article 47 of the Banking Law. The same protection is given to customers of security dealers (Article 43 of the Stock-Exchange Law).

Specifically, any person who divulges secret information or tries to induce another person to divulge secrets, is liable to up to 6 months imprisonment or a fine of up to SFr. 50,000. Although the law does not define what constitutes secret information, legal precedent supports the assumption that nothing should be disclosed which might in any way harm the interest of a customer of a bank or impinge on his or her rights to confidentiality.

In practical terms this means that absolutely no information about customers can be given by a bank to third parties – public or private – without the customer's specific approval. An important exception to this rule applies in criminal cases, bankruptcy or debt collection procedures, where relevant disclosures are mandatory.

The disclosure of secret information to foreign authorities or government agencies is also not permitted unless an international treaty (tax treaty on mutual assistance in criminal matters) specifically provides for such disclosure. In these situations the foreign authority could in principle only obtain information that would be available to the Swiss authorities under similar circumstances.

Article 4quinquies of the Banking Law specifically addresses situations where the parent companies of Swiss banks are supervised by banking or financial market supervisory authorities. In these cases the Banking Law specifically permits banks to transmit information or documents not publicly available to their parent companies which are necessary for the purpose of consolidated supervision, provided that:

- the information is used exclusively for internal control or direct supervision of banks or other financial intermediaries subject to licence;
- the parent company and the supervisory authorities responsible for consolidated supervision are bound by official or professional secrecy;and
- the information may not be transmitted to third parties without the prior permission of the bank or on the basis of a blanket permission in a state treaty.

In cases of doubt, banks may request a decision from the Federal Banking Commission allowing or forbidding the transmission of information.

There is currently a general trend towards increased co-operation between national regulatory authorities, especially in the fight against organised crime. In more recent times this has resulted in an increased readiness to exchange information.

Numbered Accounts

Numbered accounts are customer accounts identified only by a code number instead of by a client name. The identity of the owner of the account must be known to management of the bank.

The purpose of a numbered account is to ensure additional discretion as to the number of people with knowledge of the details of an account. Banking Law auditors are required to inspect these accounts in undertaking their responsibilities under the Banking Law. They are, however, bound by the general obligation to observe bank secrecy, and this inspection role does not, therefore, violate the principle of the banker-client professional relationship.

Cross-Border Inspections by Foreign Banking Supervisory Authorities

At the present time, foreign banking supervisory authorities are prohibited from undertaking direct inspections of the Swiss subsidiaries and branches of banks over which they exercise consolidated supervision in the home country. Under the terms of new legislation which has been recently proposed, the Banking Commission may permit foreign banking and financial market supervisory authorities to carry out direct inspections at Swiss establishments of foreign banks insofar as these authorities:

a. are responsible for the consolidated supervision of the banks subject to audit within the framework of home country control;

b. shall use the information obtained exclusively for the direct supervision of banks and other financial intermediaries requiring authorisation;

c. are bound by official or professional secrecy;and

d. will not transmit this information to competent authorities or bodies which are entrusted with supervisory activities in the public interest without the consent of the Banking Commission. The transmission of information to penal authorities is not permitted whenever legal assistance in penal matters would be excluded. The Banking Commission shall decide after consulting with the Federal Office of the Police.

During the conduct of cross-border direct inspections, only data necessary for a consolidated supervision over banks or financial intermediaries may be investigated. These shall encompass in particular data as to whether a bank or financial intermediary throughout the group:

a. is appropriately organised;

b. identifies, limits and monitors risks inherent in its business activity;

c. is managed by persons who offer guarantees for the proper conduct of business activities;

d. complies with capital-adequacy and risk-diversification provisions on a consolidated basis; and

e. complies with reporting duties vis-à-vis the supervisory authorities.

Insofar as foreign banking and financial-market supervisory authorities during their direct inspections within Switzerland wish to sight information which directly or indirectly relate to asset management or deposit activities for specific customers, the Banking Commission shall gather the information itself and shall transmit it to the authorities requesting it.

It must be stressed that this legislation has not been enacted as of yet.

Chapter 11

Monetary Controls

Background

Prior to 1972, Switzerland was one of the few countries not to have legislative or regulatory restrictions in the area of foreign exchange control. Non-residents could acquire and maintain unlimited balances of Swiss currency, and the free convertibility of the Swiss franc was one of its outstanding features. Prompted by massive speculation caused by this freedom, which resulted in permanent overvaluation of the Swiss franc and problems for Swiss exporters, the government introduced a series of measures, enforceable on a discretionary basis, to enable the Swiss National Bank to adequately monitor the capital and liquidity requirements of the country. The basic objectives of these measures in 1992 were to:

- keep the increase of the domestic money supply at a level commensurate with the growth of the GNP;

- keep the annual inflation rate at a reasonable level, which is considered a prerequisite for full employment and marginal but steady growth of the Swiss economy.

Legislation was therefore enacted to bring the money supply under control by limiting the inflow of foreign capital and encouraging capital exports.

Legal Basis

The basis for establishing monetary measures lies in the Swiss Federal Constitution. The Federal government has introduced legislation over time for various purposes.

The most important of these laws are the Banking Law and Article 16 of the National Bank Law.

Capital Export

Article 8 of the Banking Law (Annex 1) defines the types of capital export transactions made by banks which are subject to advance approval by the Swiss National Bank.

Given the complexities of the various types of capital export transactions, the Swiss National Bank has published a circular which clearly sets out which transactions are subject to reporting and approval. This circular is regularly updated to reflect changes in the capital and money markets. The last amendment to this circular was dated February 1, 1997 and requires specific details of all Swiss franc bond issues, as defined, to be reported to the Swiss National Bank by the lead manager. Lead managers may only be banks or branches within the terms of the banking laws of Switzerland or Liechtenstein and security dealers licensed under the Federal Stock Exchange Law, and reporting must take place no later than the day of issue. In the case of international issuing programmes, such as medium-term note programmes, every tranche denominated in Swiss francs or having any other link with the Swiss franc is deemed to be a Swiss franc bond issue.

All lead-managing institutions must assume the duties of the lead manager from within Switzerland and, as a consequence, have employees with the necessary knowledge and experience as well as appropriate facilities in Switzerland.

Other Foreign Exchange Regulations

The National Bank Law, through its amendment in 1978, gives the National Bank a broad basis for developing foreign exchange regulatory measures as circumstances warrant. Major areas covered by the law are:

- minimum reserve requirements;

- foreign currency positions;

- foreign source funds.

In practical terms, none of these measures are currently enforced. However, if market conditions changed significantly, the National Bank would have authority to introduce such measures overnight.

Section III

Establishing a Banking Operation

KPMG can provide support in a number of key areas in the establishment, expansion or restructuring of operations in Switzerland:

- Regulatory compliance advisory services
- Information Technology advisory
- Drafting the application for a license
- Real estate
- Insurance pension fund consulting

Chapter 12

Legal Form

Overview

Prior to establishing a banking operation, consideration must be given to the appropriate legal form. The following questions need answering:

- Under which laws do the proposed activities in the short and medium term fall? Would a full bank serve the business purposes, or would the status of security dealer or an unregulated finance company be a more appropriate vehicle?
- In the case of a bank, is it preferable to form a subsidiary company or to open a branch office?
- Is it more appropriate to form a new company or to acquire an existing bank?

Bank or Non-Bank?

One of the first questions confronting an investor is to know under which laws his proposed activities – both in the short and longer term – fall i.e. Banking Law, Stock-Exchange Law or neither. A license under the Banking Law is required if either the future activity involves the acceptance or solicitation of deposits from the public or if the proposed activities are to be refinanced by more than 5 unrelated banks in an average volume of more than SFr. 500 million (see definition of a bank – Chapter 4). Not all activities undertaken by banks thus require a banking license per se. For instance, corporate advisory services (match making, privatisation services etc.) do

not require a banking licence nor does, for instance, leasing activities which are refinanced exclusively by inter-company debt, although, in this case, it may be disadvantageous from a tax point of view (because of thin-capitalisation rules). In addition, if the proposed activities involve any form of security trading on a professional basis, be for its own account (provided that they are principally active in the financial sector), as issuing house, derivative trader, underwriter, market maker or broker, even if a banking license is sought additionally, a license under the Stock-Exchange Law is required. There are a few cases where trading in securities are exempted from the law: viz.: trading for own account with annual transaction volumes of less than SFr. 5 billion and group treasury centres (see above). Thus, entities offering portfolio management advisory services may escape subordination to the Stock-Exchange so long as such companies do not trade in securities on a professional basis for the account of customers and they neither operate accounts for these customers for the settlement of security trades either themselves or with third parties nor hold investors' securities in own safekeeping accounts or, in their own name, with third parties. Most foreign potential investors in Switzerland are interested in establishing a private-banking operation and this activity will require a banking license and, most probably, a security dealer's license.

A not unimportant further consideration when contemplating a potential investment in Switzerland is the question of reciprocity and the chances of making a successful license application. Considerations as to the reciprocity issue are contained in Chapter 4 above. In addition, the Federal Banking Commission is becoming increasingly restrictive in granting such licences to persons or companies who cannot demonstrate adequate financial standing, proven experience in the field(s) of proposed activity in their home country and the existence of proper supervision over the financial markets in their home country. As a general rule, license applicants from OECD countries which can demonstrate the necessary experience and financial standing will not be refused a banking or security dealer license.

The costs of maintaining a fully-fledged bank or licensed security dealer need to be understood and to be seen to be in relationship to expected income flows. Until recently, the cost of capital to be maintained in Switzerland to support operations was, in certain cases, very high but with the introduction of capital-adequacy and risk diversification requirements which are essentially based upon BIS models applied throughout OECD countries, this cost disadvantage has been largely removed. Also, the minimum capital requirements of the Banking Law and Stock-Exchange Laws are no more onerous than those imposed in other advanced nations. On the other hand, Swiss Banking Law imposes certain administrative costs which may not be applicable in the applicant's home country, viz.:

- costs incurred with the requirement to segregate the roles of the Board of Directors and Management;

- the requirement to appoint special auditors under the Banking Law or Stock-Exchange Law;

- the requirement to establish an internal audit function in all but the very smallest banks;

- the difficulty, until the present, of outsourcing back- and middle-office functions to group companies or service providers abroad, thus requiring Swiss banks to maintain duplicate accounting and control systems and personnel within Switzerland, mostly as a response to the need to respect banking secrecy;

- generally higher levels of expense in Switzerland for many key expense items conditioned mostly by decades of restrictive immigration policies and conservatism.

Until now, outsourcing had been handled extremely restrictively by the supervisory authorities particularly as regards outsourcing to entities outside the frontiers of Switzerland. A recently issued discussion draft of a circular on outsourcing by the Banking Commission points to a certain relaxation of the previous conservative position.

Banking status, subject to all relevant provisions, may be appropriate in all those situations where a foreign banking institution considers the financial centre of Switzerland as a vital element of its long term strategies. Currently most major international banks operate a subsidiary bank and/or branch in Switzerland. Indeed and in spite of the aforementioned cost structures, there are numerous foreign banks which have been able to develop successful banking operations in Switzerland with, in 1997, returns on opening equity for the 10 largest banks ranging from 9–29% with an average return of 16%. Virtually all of these banks were able to attain such results principally because of successful private banking activities. Marketing and prestige reasons can also often play an important part in the decision making process.

Subsidiary versus Branch?

If the decision to open a bank has been made, the next question will be whether to incorporate a subsidiary or to establish a branch.

At December 31, 1997, there were 134 foreign controlled banks operating as subsidiaries and 18 operating as branches in Switzerland. Some foreign banks maintain a dual structure, with both a Swiss subsidiary and a Swiss branch of an overseas head office.

The advantages and disadvantages of each form of organisation must be considered on a case-by-case basis. Factors to be taken into consideration include the provisions of relevant income tax treaties, the overall tax burden, the need to have suitable local directors for a subsidiary, the desired flexibility of action, the effect of slightly different reporting requirements for branches, intangible matters of image, prestige, preferences of the foreign bank, and the prevailing preferences of the Swiss authorities.

In summary, the following tax and non-tax considerations for and against the formation of a subsidiary company as against the establishment of a branch should be taken into account:

Tax Considerations

For

- a subsidiary is a resident for income tax treaty purposes and qualifies for reduction of, or exemption from, foreign withholding taxes on investment income (essentially interest and dividends) from foreign sources.

Against

- a subsidiary is subject to federal stamp tax on its original paid-in-capital and subsequent increases. Branches have no capital requirement;

- profit remittances by a subsidiary to its parent are subject to Swiss withholding taxes, subject to whatever reductions and exemptions are available where tax treaties apply. Branch profits may be remitted on a withholding tax free basis.

Non-Tax Considerations

For

- legal liability of the parent bank for its subsidiary's operations is limited. In practice, however, for an international bank of any substance the moral liability is unlimited;

- activities of a subsidiary are limited only by its statutes and Swiss Banking Law. Those of a branch are sometimes significantly limited by foreign legislation;

Against

- credit standing of a subsidiary may not be as high as that of its parent. A branch benefits automatically from the parent's reputation;
- contrary to subsidiaries, branches of foreign banks are not subject to minimum equity requirements and legal lending limits;
- the system of reporting to head office or regional headquarters is generally more cumbersome for a subsidiary than for a branch, given also the information needs of a local board of directors.

Incorporation or Purchase?

A major consideration is whether to establish a new banking subsidiary or to acquire an existing bank under Swiss or foreign control.

It should be stressed again that any transfer of ownership of a bank, regardless of whether it is already foreign controlled, invalidates the banking license, and that the Federal Banking Commission will only re-issue the license when satisfied as to the competence of the new owners to manage the bank properly and to fulfil the various legal requirements. If purchase is seriously considered, an in-depth investigation is indispensable. Reliance placed on published accounts as a basis of purchase consideration might fail to recognise the accounting practices peculiar to Switzerland.

In summary, while purchase tends to facilitate entry by providing all existing facilities and, in some instances, experienced staff, separate incorporation avoids the problems related to purchase and obviates the need to change operating and personnel procedures which may not be in line with parent bank requirements. The question of recruiting bank personnel is considered in Chapter 14.

License Application

In all cases, either purchase or change or ownership will involve the submission of a license application to the Federal Banking Commission. Applicants themselves may draft such an application, which must be in one of the national languages of Switzerland or, as is more usual, are drafted by legal professionals who are knowledgeable about banking legislation and the organisation and business of

banking. KPMG has assisted many companies, not only to prepare the license application itself, but provide effective input on the organisational structure of a bank, drafting all necessary business rules and key operating procedures, define the bank's IT needs and help implement the solution selected, all matters which will need to be completed before a banking licence will be granted. Prior to the granting of a license, the Banking-Law auditors must confirm that the future bank meets all organisational and personnel requirements demanded from a bank.

The Banking Commission has issued a memorandum regards the minimum documentation to be provided together a licence application and this is included as Annex 4.

Chapter 13

Registration and Incorporation

General Provisions

Registration and incorporation are matters of relevance to all companies organised under Swiss law, and are covered by the Code of Obligations, Articles 620 et seq. for limited liability companies.

Articles of Incorporation (Statutes)

The articles of association of a bank must be drawn up in a manner which complies with Swiss company law and which reflects clearly the requirements imposed by virtue of Banking legislation both in terms of scope of business activities, organisation and capital. In particular, they must clearly define the separate duties and obligations of the bank's Board of Directors and Management. They may not be registered by the Commercial Register until the Banking Commission has approved the license application. KPMG's legal specialists can assist new applicants to draft articles of incorporation which meet all legal requirements.

Organisation

On incorporation as a limited-liability company, a bank must have appointed a Board consisting of at least three members, all members of the team of general management designated in the application and both banking-law auditors selected from a limited number of audit firms recognised by the Banking Commission and statutory auditors which generally will be the same audit firm and, where necessary, the head of internal audit. The majority of directors must be Swiss nationals resident in Switzerland. There is no longer a nationality requirement for Management members but at least one of them must have proven knowledge and experience of Swiss banking legislation and practices. A Swiss bank must be "managed from Switzerland" and members of

management should be reside “in a place from where they may exercise their duties in a factual and responsible manner”. Statutory audit requirements are addressed in Chapter 8.

Branches of foreign banks must appoint a Branch manager with appropriate experience/qualifications.

Location

The company may have its own premises (see Chapter 15) or elect domicile with a local attorney or a trust company. A bank would typically have its own legal domicile.

Company Name

Care must be taken to avoid conflict with existing and protected names. If the proposed name includes a national or territorial designation, prior authorisation is required but recently, the procedure has been much simplified.

A foreign bank must be named in such a way as to clearly indicate its foreign controlled character and must not use the fact that it is incorporated in Switzerland in its advertising to give the impression that it is Swiss. The public should not be allowed to assume that the bank is Swiss owned under any circumstances.

Capitalisation

The amount of initial capital must be transferred to a blocked account with one of the Swiss banks having authority to receive such funds on behalf of a company in formation. Upon receipt of the funds, the depository bank issues a statement to the notary to the effect that the amount of subscribed capital has been paid in and will be made available to company management upon completion of the incorporation formalities. More complex rules apply in the event the founding shareholders decide to contribute assets in lieu of cash in exchange for the shares issued by the new company.

Questions concerning the required amount of capital are discussed in more detail in Chapter 6.

Registration

In order for a newly formed company to come into legal existence, a general meeting of the founding shareholders must pass the necessary resolutions. These resolutions must be notarised. The company must be registered in the local Register of Commerce.

Chapter 14

Personnel

Recruitment

Depending on the type of business that a bank wishes to conduct and the availability of work and residence permits for a non-Swiss manager, it may be necessary or desirable to hire a local manager. It is usual to advertise such positions in newspapers such as *"Le Journal de Genève"* for the French speaking regions and *"Die Neue Zürcher Zeitung"* for the German speaking regions. The *International Herald Tribune*, *Wall Street Journal* and *The Financial Times*, as well as other local newspapers, are also frequently used.

In view of the relative scarcity of good top and middle management staff, many banks use the services of executive search consultants with a thorough knowledge of the banking industry. This is usually time-saving and more cost-effective than the traditional advertisement route.

Employment of Foreign Nationals

Non-Swiss are not entitled to reside or to work in Switzerland without an appropriate permit, and the Federal government imposes severe restrictions on the issuance of new permits. Any company wishing to set up offices in Switzerland must give consideration to the problem of finding most of its qualified personnel among nationals or long-term resident foreigners with permits. Permits are issued upon application, which must give evidence as to the need of the bank to employ a non-Swiss person. However, each application is judged by the authorities on its individual

merits and therefore no general guidelines as to how to obtain a permit can be given. The problem is critical for those organisations which, as part of their executive career development policies, wish to rotate management.

In cities such as Lugano, Geneva and Basle, it is possible to employ residents of bordering countries (Italy, France and Germany) who commute to work. Permit requirements for cross-border workers are substantially less severe than for immigrants who come to work and reside in Switzerland.

Working Conditions

General

Wages and salaries are normally based on company or industry-wide agreements, certain of which fix minimum salary levels, which are otherwise absent from Federal legislation. There are no compulsory profit-sharing schemes.

Consultation of Employees

Private enterprises with a minimum of 50 employees are required to set up an employees' representative body, if the employees consent to it in a secret vote. The size of this representative body depends on the size and the structure of the enterprise and is commonly fixed by the employer and the employees. The employer has a duty to inform the representative body extensively and in a timely manner on all matters necessary for the proper conduct of the duties of the employees, and at least annually on the effects of business trends on employment and the employed persons. In addition, in the cases enumerated in the law, employees have a right of consultation in questions regarding safety at work and health protection, the transfer of the enterprise or a part thereof to a third party and in cases of mass dismissal. In enterprises without representative bodies employees have direct rights to information and consultation.

Hours Worked

Generally, the working week is 40–45 hours. A 5-day week is normally worked. Overtime for employees may be compensated, with their approval, with equivalent free time. Overtime pay premiums start normally only after 60 hours overtime per calendar year for white-collar employees, while they are immediate for blue-collar workers. Yearly overtime may not exceed 260 hours in industry for technicians and white-collar workers, and 220 hours for other workers. Up to 60, in some cases 90, hours in yearly overtime may be worked without authorisation. Cantonal authority

must be requested for any overtime in excess of these limits. Temporary night and Sunday work is voluntary and must be remunerated by minimum 25% and 50% premiums.

Vacation Entitlement

Federal law prescribes at least four weeks as the annual vacation entitlement, and at least 5 weeks in the case of juvenile employees, up to the age of 20.

Termination of Employment

In general, legal minimum termination notice periods are fixed at 1 month for employees with less than 1 year of service, 2 months for 2 to 9 years of service and 3 months for periods of service of 10 years or over. On the employee's request, the reasons for dismissal must be given in written form. Employees with more than 20 years of service and who are over 50 years of age at the time of dismissal have a right to an indemnity of normally 2 to 8 months' salary.

Compensation

Staff are normally paid monthly, and it is usual for them to receive an extra month's salary at Christmas. Members of management frequently participate in bonus plans. In general, parent organisation remuneration policies can be followed.

To give specific ranges of salaries would not be meaningful, since they would soon be outdated. As a rule, however, Switzerland has traditionally experienced one of the highest cost of living and salary structures in the world. As a result of this and the strong Swiss franc, salaries will almost always appear very high when converted into other currencies.

Social Security

The Federal social security legislation is compulsory for all persons, whether employed or of independent means. As regards retirement benefits, it is customary in Switzerland to speak of a "three pillar" system; the first pillar refers to the federal old age insurance, the second to the occupational retirement and disability pension schemes and the third to the employee's own saving efforts (e.g. life insurance or bank savings). Federal legislation covers both the first and second pillars.

Federal Old Age and Disability Insurance ("First Pillar")

Resident individuals and individuals having a gainful activity in Switzerland are required to contribute to the mandatory old age and disability insurance scheme. Employers also have the same obligation. The contribution rate is 10.1% of total

remuneration, 5.05% being borne by the employee. Employers are required to withhold the insurance premiums monthly and to remit the amounts to the social security authorities each month or quarter.

The exact amount of benefits is calculated on the basis of the amount and the number of years of the individual's contributions. Minimum and maximum retirement benefits as of January 1, 1998 were:

	Minimum SFr.	Maximum SFr.
Single persons	11,940	23,880
Married couples	17,910	35,820

Old age pensions are payable at the age of 65 for men and 62 for women. Special pensions for a married couple are paid only when the husband is older than 65 and his wife older than 62. Benefits are also payable to widows (minimum SFr. 9,552/ maximum SFr. 19,104) and to orphans (minimum SFr. 4,776/maximum SFr. 14,328).

Occupational Retirement and Disability Insurance ("Second Pillar")

In 1985, a Federal law came into effect making occupational retirement and disability insurance compulsory for all employees subject to the Federal Old Age and Disability Insurance with annual earnings of SFr. 23,880 and above. The maximum compulsory pensionable annual earnings are SFr. 47,760 which represents that part of the annual earnings between SFr. 23,880 and SFr. 71,640, although many companies may continue to have voluntary schemes whose pensionable annual earnings and benefits may be considerably higher. The minimum amount which must be insured is SFr. 2,985 per annum. The retirement pension generated by the compulsory insurance depends on the amount of accumulated retirement credits and interest at retirement age. Conversion rates are fixed by the Federal Council.

Unemployment Insurance

Individuals having a gainful activity in Switzerland are subject to mandatory unemployment insurance. The contribution rate as of January 1, 1998 is 3% of remuneration up to a monthly salary of SFr. 8,100, and 1% of monthly salary between SFr. 8,100 and SFr. 20,250. The employer and the employee each bear 50% of the monthly contribution.

Under the unemployment insurance scheme, the employee receives 70% (single persons) or 80% (married persons) of his final salary per month. In order to qualify for these benefits, the employee must have contributed to the scheme for a minimum period of six months within the two years prior to becoming unemployed.

Accident Insurance

All companies in Switzerland must contract occupational accident insurance for all employees, temporary or permanent. Occupational illnesses must also be covered. This insurance is obtained through private insurance companies.

Health Insurance

Although no mandatory Federal insurance exists, certain cantons have provided health insurance for their residents. The cost of the insurance depends largely on the type of benefits provided. Employees usually pay the sickness insurance premiums.

Family Allowances

Employers must unilaterally contribute to Cantonal family allowance schemes. This contribution varies from canton to canton and amounts from 1.5% to 3% of the employee's pay. Allowances are paid to employees on a monthly basis. Amounts vary according to the age and number of the children and the canton of residence but are usually in the range of SFr. 140 to 378 per child.

Social Security Agreements with Other Countries

In the absence of social security agreements, migrant workers are always exposed to the risk of, alternatively, double coverage (in their home country and in the country where services are performed) and hence double cost, or of inadequate coverage because none of the social security schemes provide full social security benefits otherwise available to ordinarily resident employees. Social security agreements are designed to avoid both double and inadequate coverage. Switzerland has concluded over 25 agreements, mainly with its traditional trading partners.

Under these agreements, a migrant worker temporarily assigned from one country to another country may retain the coverage of his home country social security system. He and his employer will therefore continue to contribute to that system, and he will also receive full benefits from that system.

In situations where a migrant worker is permanently assigned from one country to another, he will lose the right to receive benefits from the home country social security system and become eligible for benefits from the social security system of the country where he resides and has an income producing activity. Under the clearance mechanism established by international agreement, the home country social security system will then transfer some of the accumulated premium to the other country, to enable the latter to provide full benefits as if full contributions had been made to that system as of the beginning (so-called totalisation of benefits).

Chapter 15

Premises

Financial Centres

Selection of an appropriate location will depend essentially on the location of customers, the country of origin of the financial institution and the principal type of business transacted. Companies specialising in the raising of finance and commercial lending usually locate in Zurich, the centre of the Swiss capital market. There is a tendency for Zurich, Geneva and Lugano to concentrate on portfolio management services. This is evidenced by the large number of private banks in Geneva which cater essentially for this type of business. The Zurich banking community is now engaging extensively in portfolio management, having traditionally tended to concentrate on the more traditional banking operations of foreign exchange dealing, underwriting, precious metals and international trade financing.

Where purchase of premises is considered the best solution, the final location may not necessarily reflect the foreign bank's initial intention, because a suitable bank may become available for purchase in another city.

Renting and Purchasing Considerations

The financial community in Switzerland, in common with most European countries, tends to congregate in certain areas of the principal cities. Rents in these areas can be considerably higher than average; recent examples of the rental cost per square meter per annum are as follows:

		Ground floor	Other floors
Zurich,Geneva,Lugano	SFr.	1,000–3,500	200–550
Basle, Bern		20%–40% lower	

The difference between minimum and maximum is due to the totally different localities of the offices, the quality, finish and size of the space required.

Many offices in the cities are vacant and have become attractive again as their prices are relatively low in comparison to the last eight years. A trend to marginal higher rental costs is to be expected in future for larger office space in central city areas (over 600 sq. meters).

Leases are usually for an initial period of three to five years, renewable for additional periods of equal length.

Restrictions imposed upon the purchase of own business premises by foreign controlled companies and banks are not severe. The purchase of land and buildings which constitute the permanent place of business of a bank and security dealer no longer requires prior authorisation. Approval of the authorities must be sought under the Law on Acquisition of Real Estate by Non-Residents (so-called Lex Friedrich) in respect of buildings for other use. The choice between rental or purchase, therefore, can be based upon objective considerations such as availability of suitable space, impact upon financial statements (notably own funds required) and corporate policy.

Section IV

Taxation of Banks

KPMG can provide support in a number of key areas of tax structuring and consulting and on-going compliance advisory services:

- Taxation advisory
- Taxation compliance
- Executive tax planning and compliance

Chapter 16

The Swiss Taxation System

Overview

Switzerland essentially has two levels of taxation – federal taxes and Cantonal/ communal taxes. Each level of tax is based on completely separate laws, which are very different in many respects.

Most Swiss tax revenues are generated by direct taxes on individuals and corporations, with the Cantonal taxes usually about twice the federal tax rates.

Summary of Principal Tax Charges

The major taxes for financial institutions and the 1998 rates are listed in the table below:

	Federal	**Cantonal/Communal**
Direct Taxes		
Corporate income tax	8.5%	5–37%
Corporate net asset value ("capital") tax	Not taxable	0.19–0.85%
Individual income tax[9]	0–11.5%	0–34%
Individual net asset value tax	Not taxable	0–1.0%
Indirect Taxes		
Stamp duty on contributions to equity of corporations	0%–1%	
Stamp duty on debt securities of Swiss issuers	0.06%–0.12%	
Securities turnover tax on transactions in securities	0.15% on securities of Swiss issuers, 0.3% on other securities	
Value-added tax ("VAT")	7.5% regular rate, 2.3% or 3.5% preferential rate	

All of the above taxes are self-assessed. In other words, they are to be declared and paid by the taxpayer based on declarations submitted. Corporate and individual income taxes are to be declared annually, while VAT and Securities Turnover Taxes are declared quarterly, and Stamp Duty upon the occurrence of the contribution or issue.

[9] *Self-employed individuals engaged in banking activities ("private bankers") are also subject to social security contributions of 11.2%.*

Withholding taxes are considered provisional tax payments and can be offset against mainstream tax liabilities. For non-Swiss residents, they may, in many cases, represent the final Swiss tax charge.

All these taxes are explained further in the following chapters.

Chapter 17

Corporate Taxes

Introduction

The basic rules for corporate taxes on income and capital set out below apply to Swiss incorporated taxpayers. Points of special interest for branches of foreign banks are highlighted at the end of this chapter.

Taxable Income

Taxable income is based on the taxpayer's statutory accounts. Adjustments to the disclosed accounting income are then made for the purpose of determining taxable income. The major adjustments are:

Business Expenses

In order to be deductible for tax purposes, expenses must be wholly and exclusively incurred for the purpose of the business and be borne at an arm's length basis. Capital expenditures are specifically not deductible to the extent that the name and address of the recipient are not disclosed. In addition, the character of these payments as necessary expenses must be properly documented.

Interest Expense

Interest paid by banks or financial institutions is a deductible business expense. However, interest expense paid to affiliates is scrutinised as to its deductibility and may be subject to limitations.

Regulated banks are subject to required equity rules as explained in Chapter 6 above. These requirements are usually respected by the tax authorities. Non-regulated entities, however, may come under scrutiny in some cantons if their interest bearing debt exceeds 6 times their equity. Any excess would be considered a dividend distribution, disallowed as an expense and subject to Swiss withholding tax of 35%.

Higher gearing for non-regulated entities engaged in finance activities is possible to the extent that the tax authorities can be convinced that it is "at arm's length".

The rate of interest used should reflect fair market rates. Interest payments made in excess of fair market rates and interest rates exceeding those published by the Federal Tax Administration for advances to and from shareholders are likely to be scrutinised and possibly disallowed.

Depreciation

Depreciation charges are deductible if they are in accordance with the write-off tables published by the Federal Tax Administration. The following declining balance rates applied in 1998 for Federal Tax Purposes:

- office buildings (excluding land) 4%
- office furniture and equipment 25%
- computer hardware 40%
- computer software 40%
- motor vehicles 40%
- intangible assets 40%

If the straight-line depreciation method is used, the above rates should be reduced by half. Some cantons allow accelerated depreciation under certain circumstances.

Bad Debt Reserves and Country Risk Provisions

Bad debt reserves are allowed as follows:

- individual risks can be adjusted at the discretion of the bank, and these adjustments can be challenged at the discretion of the tax authorities. Provision can be made before the debtor has been declared bankrupt. Write-offs of bad debts are made only when the debtor is adjudged bankrupt or it is highly unlikely that the debtor will ever be in a position to pay;

- in addition, a general reserve can be made on the remaining outstanding receivables if the debtors are not banks in an OECD country. In general, 5% of the outstanding receivables from Swiss clients an up to 7% on the outstanding receivables from non-Swiss clients are allowed.

Regulated entities are required by the Federal Banking Commission to set aside country risk provision of up to 100% of receivables from residents from certain designated countries (including sovereign risk). These country risk provisions are respected by the tax authorities to the extent that they are imposed by the Commission.

All provisions must be reviewed annually and adapted. Failure to do so will lead to disallowance of excess bad debt reserves or of country risk provisions non longer required.

Tax Expense

Corporate income and net asset value taxes paid to the Swiss Confederation as well as to the Canton and the Commune are usually a deductible item. The same applies to most other taxes paid by financial traders, but not to fines.

Losses Carried Forward

Federal income tax laws allow losses to be carried forward up to a maximum of 7 years, while several Cantonal laws are less generous (4 or 5 years). Losses usually cannot be carried back in Switzerland.

Tax Rates

Since January 1, 1998 a flat rate of 8.5% on the federal level is applicable. Tax rates applicable to companies are often graduated on a Cantonal level. In other words, some Cantonal taxes are determined as a function of the return on equity realised in the reporting period. For example, Zurich Cantonal and communal income tax is imposed at a minimum rate of 10% up to a return of 4% on equity, with an additional 12.5% is applied to the return in excess of 4%, a further 12.5% on the return exceeding 8% of equity, with a maximum rate of 30% being reached at a return on equity over 30%.

The following table illustrates different Cantonal tax rates based on this principle:

Return on equity	Federal Tax Rate	Cantonal Tax Rate		
		Geneva	Lugano	Zurich
5% 10% 15%	8.5% 8.5% 8.5%	14.03% 17.54% 26.31%	22.20% 22.20% 22.20%	12.5% 20.0% 25.0%

The return on equity for these calculations is based on tax adjusted figures for earnings and equity.

Tax Credits

Credits against corporate income and net asset value taxes are generally granted in respect of:

- Swiss withholding taxes (see below): Swiss source investment income is usually subject to 35% Swiss withholding tax. By filing a special return with the Federal Tax Authorities, a corporate taxpayer can obtain a refund of such tax;

- an individual taxpayer will file such a claim together with his income tax declaration and will receive a credit for the withholding tax with only the excess being refunded to him;

- foreign withholding taxes under certain treaties: Swiss residents receiving interest (similar rules applied to dividends and royalties) which has suffered foreign

withholding taxes in the source country with which Switzerland has concluded a qualifying double taxation treaty, can obtain a credit for the foreign withholding tax (or a deemed paid foreign withholding tax) against the Swiss corporate income tax due on the net result of the lending transaction.

Taxation of Swiss Branches of Foreign Banks

The above rules also apply in principle to branches, with the following exceptions:

Interest Expense

There are no required equity rules for branch offices of foreign banks in Switzerland. The tax authorities have therefore set their own requirements for the level of non-interest bearing funding from foreign banks to theirs Swiss branches. These must be between one-seventh and one-eleventh of the assets of the branch (mainly depending on the nature of a branch's assets). In an important case, the Swiss Federal Supreme Court has decided that the equity requirements of the overseas regulator for the head office bank must be respected by the Swiss tax authorities. This case can only be applied to regulated banking institutions whose head offices are in OECD countries.

Credit for Withholding Taxes

A Swiss branch can obtain a credit for Swiss withholding taxes on interest and possibly dividends which are related to the branch's own businesses, but not for withholding taxes on Swiss source income which is related to business carried on by the head office or other branches of the same corporation outside Switzerland.

A Swiss branch of a foreign corporate entity cannot claim a credit for foreign withholding taxes, as it is not entitled to the benefits of Swiss double tax treaties.

Capital Tax

Capital tax is levied by the Cantons only on the net equity or the deemed net equity of a branch of a foreign entity. Net equity comprises share capital, paid-in surplus, the legal reserve, other open reserves shown on the balance sheet, as well as retained earnings. In addition, amounts disallowed by the tax authorities which have been taxed as a result are also part of the net asset value basis.

The capital tax can make up a very substantial part of the total tax charge of Swiss banks and financial institutions due to the substantial required equity levels.

For 1998, the tax rates at the Cantonal level were 0.45% for Geneva, 0.56% for Lugano and 0.375% for Zurich.

Chapter 18

Withholding Tax and Issue Tax

Income Subject to Withholding Tax

Federal withholding tax is levied at source on:

- income from bonds and similar indebtedness by Swiss issuers;
- dividend distributions by Swiss corporations;
- distribution of income by Swiss investment funds;
- interest paid on deposits with Swiss banking establishments.

The rate of withholding in each of the above cases is 35%. For the purpose of the withholding tax the definition of interest paid on bank deposits is very broad and includes any compensation for deposits made with any Swiss "business" which pays interest to 20 or more customers on a regular basis (not taking into account interest for late payment of commercial deliveries). The only exception applies to interest on inter-bank deposits. Interest paid by the foreign branch of a Swiss "bank" is exempt only if it relates to the branch's own business and is not replaced through the Swiss head office.

The term "bond" is also defined very loosely as any form of indebtedness on which interest is paid on identical terms and conditions to more than 10 creditors. For bonds, the total compensation paid to the holder of the bonds by the issuer is subject to withholding tax. This includes the difference between issue and repayment price, as well as any other "capital"compensation.

Sub-participation in loans granted by Swiss banks can lead to the creation of a "bond".

Distributions made by a Swiss corporation, either on a regular basis, or upon its liquidation, whether openly declared or transferred as a hidden advantage (either by granting conditions not arms' length or by not collecting an amount due according to arms' length principles) are taxable.

Distributions by investment funds are subject to withholding tax unless they qualify as distributions of capital gains which are made separately from the income distribution.

Interest from Fiduciary Deposits

To minimise the impact of Swiss withholding tax on the liquidity held by foreign investors with Swiss banks, the Swiss banks have created so-called "fiduciary deposits". These are deposits of client funds made by Swiss banks in their own name (but at the risk and on behalf of the investors) with banks established in countries outside Switzerland where such deposits do not attract withholding tax. These deposits are not considered deposits with the Swiss bank, but deposits with the non-Swiss bank and therefore the interest paid thereon is exempt from Swiss (and usually foreign) withholding tax. Special formalities are required to exempt the interest on fiduciary placements from withholding tax.

Additional Withholding Tax by Swiss Custodians on Certain Foreign Source Income

Aside from Swiss domestic withholding tax, Swiss internal laws under double taxation treaties with the United States, Canada and Japan impose a duty on Swiss custodians receiving interest or dividends for the benefit of third parties from these source countries to ensure the original level of withholding tax in those source countries. Investors can claim reimbursement of this additional withholding under the double taxation treaty between their home country and the countries mentioned.

Reduction and Refund of Withholding Taxes

In principle there is no reduction at source for Swiss withholding tax. Reimbursement of excess Swiss withholding tax can be claimed by residents of countries with which Switzerland has concluded a double taxation treaty. Switzerland insists that the forms for reimbursements be signed by the tax authorities in the country of domicile of the investor to ensure the proper taxation of such income in the investor's hands.

Special rules apply to distributions by Swiss investment funds.

Special Withholding Tax on Interest Secured by Swiss Real Estate

Under a different federal law and related Cantonal laws, withholding tax on interest secured by Swiss real estate was introduced on January 1, 1995 throughout Switzerland. The combined Cantonal and federal taxes as of January 1, 1996 are 20% in Geneva, 33% in Lugano and 17% in Zurich.

Withholding tax on interest secured by Swiss real estate is levied independently from normal withholding tax and in certain instances the two taxes could be levied cumulatively.

Issue Tax

Issue tax is payable in respect of the following instruments:

- bonds, which are defined for the purposes of this tax as bonds, promissory notes issued in sequence and similar paper, discount paper and any other evidence of indebtedness in the form of a debt security or traded as if there were a debt security which is intended for placement in public, all with a term of more than 12 months, as well as sub-participations in loans granted by banks to Swiss debtors;

- money market papers, which are identical instruments to bonds with a fixed term or not more than 12 months, issued by a Swiss body.

The following tax rates apply:

- 0.12% of the nominal value for each year or part thereof up to the maturity of a bond;

- 0.06% p.a. on the same basis for sub-participations and “Kassenobligationen”/ “obligations de caisse”.;

- 0.06% p.a. on commercial paper: face value calculated at 1/360th for each day on which such paper is outstanding;

Issue tax on the issue and increase of the equity of Swiss corporations is levied at a rate of 1%, with contributions on incorporation up to SFr. 250,000 tax free on all transfers of cash or in kind or waivers of claims by shareholder to a Swiss corporation, to the extent that the shareholder did not receive commercial consideration for such transfer or waivers.

Chapter 19

Securities Turnover Tax

Qualifying Transactions

Securities turnover taxes are levied on transfers of Swiss and foreign securities in which Swiss securities traders participate in any way.

Securities traders are defined as:

- banks subject to Swiss banking supervision including branches of foreign banks;
- brokers and other operations or individuals as well as branches of foreign entities whose activity is mainly to trade in securities for third parties or to act as investment advisors for the purchase and sale of securities;
- investment fund management companies;
- Swiss corporations holding taxable securities valued at more than SFr. 10 million in their balance sheets.

Taxable securities include the following instruments:

- securities issued by domestic debtors such as bonds, certificates of deposits, debenture bonds, shares, jouissance bonds, units in investment funds, bills of exchange and similar commercial papers;
- securities issued by non-resident debtors if their economic function is similar to the above;

- documents covering participations in any of the securities referred to above.

The classification of more sophisticated financial instruments is rather complex. Options and many other derivative instruments are not subject to Swiss securities turnover tax. However, the exercise of such financial instruments or derivatives may lead to the delivery of a security transaction which is a taxable event.

Tax Rates and Tax Charges

The ordinary rates of turnover tax are:

- 0.15% for securities issued by a resident of Switzerland (plus Cantonal taxes, if any);

- 0.30% for securities issued by a resident of a foreign country (plus Cantonal taxes if any).

Tax is calculated based on the market value of the securities traded. The tax is payable by the securities dealer (taxpayer) who usually passes the tax burden on to his clients. Given that two parties are involved in each security transaction, half of the tax is accounted for and reported by each registered securities dealer. If the counterpart is not a registered securities dealer, a dealer also has to pay and declare the other half of the tax for the counterpart.

This leads to the exemption of transactions between registered securities dealers executed on the same day. In addition, professional dealers who carry a trading inventory are exempt from the tax for their purchases from and into their trading inventory. To simplify trading between Swiss registered securities dealers and foreign counterparts, the tax which would fall on the foreign counterpart is waived in the case of securities by foreign issuers, so that foreign securities can be traded by Swiss registered securities dealers with foreign parties and with Swiss professional counterparts as intermediaries or for/from their trading inventory without any Swiss securities turnover tax.

In addition, the following exemptions from securities turnover tax apply:

- the issue by foreign debtors of bonds denominated in foreign currency and, as a special concession, in Swiss Francs, as well as the issue of foreign shares;

- trading in Swiss and foreign money market papers; intermediary transactions between two foreign parties (which need not be qualifying securities brokers) for the purchase and sale of foreign bonds;

- all issue transactions which have suffered Swiss issue tax.

Chapter 20

Value-Added Tax

Introduction

Value-added tax ("VAT") was introduced in Switzerland on January 1, 1995. The following section represents a summary of the current rules, which are rapidly evolving.

Taxable Turnover

Most traditional banking services are exempt from taxable turnover whether they are provided to Swiss, European or non-European clients. This means that banks are partially exempt from VAT and that allocation of claimable input VAT is difficult to calculate.

No VAT is due on services (such as investment advice) which are rendered to persons outside Switzerland and are used outside Switzerland. These services are deemed "zero rated" for the purposes of input tax. However, exempt services provided to persons who are not resident in Switzerland, are not deemed "zero rated".

Exempt services include account maintenance and operation fees, granting of credit, guarantees, money transfers, trading in currencies and securities, issue of securities, investment funds management and advice and trading in precious metals.

Services which are subject to VAT include investment advice and custody, including collection of dividends and interest, applications for reimbursement of withholding

tax and other similar services, asset management, fiduciary transactions and, in particular, fees and charges for fiduciary placements, leasing transactions and the provision of other services relating to banking. The supply of beverages and other food to employees or clients (self consumption) is also subject to VAT.

Taxpayer

Taxpayers include every individual or corporate entity (Swiss or foreign) with a taxable turnover of SFr. 75,000 per annum or over, and any Swiss person (individual or corporation) who imports services of more than SFr. 10,000 per annum (provided such services would be subject to VAT if supplied by a Swiss person).

Tax Rates

The ordinary tax rate is 7.5% (for periods after January 1, 1999) for all supplies of goods, as well as for services which are not exempt and are not subject to the preferred rate. The preferred rate of 2% respectively 2.3% after January 1, 1999 applies to all foodstuffs and drinks (with the exception of alcoholic beverages, prepared foods and drinks which are served), cattle, poultry and fish, various agricultural supplies, seeds and flowers, drugs, newspapers, magazines, books and similar printed matters, mains water supply and the supply of radio and television programs. A third rate in the amount of 3% and 3.5% after January 1, 1999 is applicable for accommodation services.

Formalities

Each taxpayer has to render invoices to its clients, indicating its name and address, VAT number, the name and address of the recipient of the goods or services, the date and the time of the supply, its description, the charge for the supply and the tax amount. The latter may be indicated by the applicable tax rate only, but preferred practice is to state the amount of tax in Swiss Francs (in particular when the invoice amount is in a foreign currency). The same particulars have to be given in invoices received by a taxpayer to claim input tax.

Input Tax

All taxes charged on "pleasurable" activities, including the purchase and maintenance of large motorcycles, sailing and motor boats, and sports aircraft, are excluded from input tax.

Only 50% of VAT on invoices for catering can be reclaimed. Moreover, input VAT has to be reduced to the extent that a taxpayer's turnover is exempt. This applies to the input VAT on fixed assets which are, from the moment of delivery, used for tax exempt activities.

Regulated banks can use a simplified method of calculating the share of input VAT which they can claim related to taxable or "zero-rated" turnover outside precious metal trading, leasing out real estate or carrying on other activities which are not considered exempt banking services, such as supplies of food and beverages to employees. This simplified method also covers transfers of fixed assets from taxable to exempt or from exempt to taxable, activities within a bank.

A bank has to report its turnover according to Swiss banking regulations, showing interest and commission net and analysing commission as to taxable and exempt amounts to determine taxable commission as a percentage of total turnover. This percentage, possibly increased by a certain amount, represents the element of input tax which may be reclaimed by the bank. Included in taxable commission is commission which is subject to VAT in principle, but where VAT is not levied due to the foreign residence of the recipient of the service.

Section V

Annexes

Annex 1

Federal Law on Banks and Savings Banks

of November 8, 1934 (as last amended under date of March 18, 1994)

The Federal Assembly of the Swiss Confederation, based upon Articles 34ter, 64 and 64bis of the Federal Constitution, after examination of the message of the Federal Council of February 2, 1934,

resolves:

Section I – Scope of the Law

Art. 1

1 The present Law shall apply to banks, private bankers (individual proprietorships, general and limited partnerships) and savings banks, hereinafter referred to as banks.

2 Natural persons and legal entities, which are not subject to this law, may not accept deposits from the public on a professional basis. The Federal Council may foresee exceptions so long as the protection of the depositors is assured. The issue of bonds is not deemed to be the acceptance of deposits on a professional basis.

3 The present Law does not apply to:

a) stock exchange agents and stock exchange firms trading in securities and transactions which are directly related thereto, provided they do not engage in regular banking business;

b) trustees, notaries and business agents who simply manage their customers' funds and who do not engage in regular banking business.

4 The term bank or banker, alone or in combination with other words, may only be used in the company name, designation of the business purpose or advertising, in the case of institutes which have obtained a licence from the Federal Banking Commission (Banking Commission). Art. 2 par. 3 shall take precedence.

5 The Swiss National Bank and the central mortgage institutions are governed by the provisions of the present Law to the extent expressly stated.

Art. 2

1 The provisions of the present Law shall apply by analogy to the offices, branches, agencies and permanent representatives of foreign banks in Switzerland.

2 The Banking Commission shall issue the necessary directives. It may, in particular, require that these unincorporated entities are adequately capitalised and that guarantees are provided.

3 The Federal Council is empowered, on the basis of reciprocal recognition of equivalent rules over banking activities and equivalent measures in the field of banking supervision, to enter into treaties with states which grant the possibility for banks from the contracting states to open a branch, agency or representation without the permission of the Banking Commission.

Section II – Licence to Engage in Banking Business

Art. 3

1 Banks are required to obtain a licence from the Banking Commission prior to engaging in business operations; they may not register with the Register of Commerce before such licence has been granted.

2 A licence will be granted if:

a) the articles of association, by-laws, company contracts and business rules of the bank provide for a clear definition of the scope of business and establish an adequate organisation corresponding to the proposed business activities; where the scope or the importance of the business activities is significant, the bank must create separate bodies for the management on the one hand and for the direction, supervision and control on the other. The authorities of these bodies must be segregated in a manner so as to ensure the effective supervision of the bank's management;

b) the bank discloses the minimal fully paid-in share capital as determined by the Federal Council;

c) the persons charged with the administration and management of the bank enjoy a good reputation and thereby assure the proper conduct of the business operations;

c^{bis}) natural persons or legal entities, which directly or indirectly participate in at least 10% of the capital or voting rights of a bank or otherwise whose business activities are such that they may influence the bank in a significant manner (qualified participation), guarantee that their influence will not have a negative impact on a prudent and solid business activity;

d) the persons entrusted with the management of the bank have their domicile in a place where they may exercise the management in a factual and responsible manner.

3 The bank shall file its articles of incorporation, by-laws, company contracts and internal regulations with the Banking Commission and notify that body of all subsequent amendments concerning the business purpose, the scope of business, the capital or the internal organisation of the bank. Such amendments may not be registered with the Register of Commerce unless they have been approved by the Banking Commission.

4 *repealed*

5 Each natural person or legal entity shall notify the Banking Commission prior to acquiring or selling directly or indirectly a qualified participation as defined in par. 2 lit. c[bis] in a bank organised in accordance with Swiss law. This duty to notify also exists whenever a qualified participation is increased or decreased in such a manner that the threshold of 20, 33 or 50% of the capital or voting rights is reached or exceeded or declines thereunder.

6 The bank shall make notification of those persons who fall under the requirements of par. 5 as soon as it has knowledge thereof, at least however once a year.

7 Banks organised under Swiss law shall notify the Banking Commission before they establish a subsidiary, branch,agency or representation abroad.

Art. 3a

1 Par. 1, 2 and 3 of Art. 3 do not apply to Cantonal banks. The cantons ensure compliance with corresponding requirements. Cantonal banks are those which have been established by Cantonal decree for whose liabilities the Canton is responsible as well as banks established by the Cantonal decree prior to 1883 which are managed in co-operation with the Cantonal authorities but whose liabilities are not guaranteed by the Canton.

2 The Cantons may transfer the banking supervision over their Cantonal banks fully to the Banking Commission. In such a case, the Cantonal banks must fulfil the requirements as set out in Art. 3 par. 2 and 3. The establishment and dissolution of Cantonal banks as well as the supervision of compliance with legal Cantonal prescriptions, remain the responsibility of the Cantons.

Art. 3[bis]

1 The licence to establish a bank which is to be organised in accordance with Swiss law, but in whose case a controlling foreign influence exists, as well as the licence to establish an office, a branch or an agency of a foreign or foreign-controlled bank and the licence to appoint a permanent representative of a foreign bank is to be subjected additionally to the following conditions:

a) the country of residence of the foreign bank or of the foreign controlling corporate or individual shareholder shall guarantee reciprocity, as long as no contradictory commitments exist;

b) the corporate name of the foreign controlled Swiss bank shall in no way indicate or suggest that the bank is Swiss controlled;

c) *repealed*

1bis If a bank forms part of a group which operates in the field of finance, the licence may be given subject to it submitting to appropriate consolidated supervision by foreign supervisory authorities as well as their approval to operate the business.

2 The bank must inform the Swiss National Bank of the scope of its business activities and its relations with other countries.

3 A bank organised under Swiss law falls under the provisions of par. 1 whenever a foreigner with a qualified participation directly or indirectly holds more than 50% of the voting rights in the bank or a significant influence on it is exercised in another manner.

A foreigner is deemed to be:

a) natural persons who are neither Swiss citizens or do not possess an establishment permit in Switzerland;

b) legal entities and partnerships who have their registered office abroad or, if they have their registered office in Switzerland, are controlled by persons defined under a).

Art. 3ter

1 An additional licence within the meaning of Article 3bis must be obtained by any bank which falls under foreign control.

2 A new additional licence must be obtained, if a foreign controlled bank experiences a change of its foreign shareholders holding a qualified participation.

3 The members of the Board and the management of a bank are to notify the Banking Commission of all matters which may lead one to conclude that the bank is foreign-controlled or that there has been a change in foreigners holding qualified participations.

Art. 3quater

1 The Federal Council is empowered through treaties with other states, to declare the particular requirements of Art. 3bis and Art. 3ter as totally or partially inapplicable if citizens of a contracting state as well as legal entities with registered office in a contracting state establish or take over a bank organised under Swiss law or acquire a qualified participation therein. In so far as no

international commitments to the contrary exist, the Federal Council can subject this to the existence of reciprocity in the contracting state.

2 Should the legal entity on its part be controlled directly or indirectly by citizens of a third state or by legal entities with registered office in a third state, the aforementioned provisions are applicable.

Section III – Equity, Liquidity and Other Requirements Relating to Business Operations

Art. 4

1 Banks must provide for an adequate relationship between:

a) their equity and their total liabilities;

b) their liquid assets and their easily marketable assets on one hand and their short-term liabilities on the other hand.

2 The Implementing Ordinance establishes the directives to be observed in this respect under normal circumstances, taking into consideration the kind of business and the type of bank; it shall define the terms of own funds, liquid assets, easily marketable assets and short-term liabilities.

2bis The qualified participation of a bank in an enterprise outside the fields of finance or insurance may not exceed the equivalent of 15% of its equity. The total of such participations may not exceed 60% of equity. The Federal Council decides upon exceptions.

3 In special cases the Banking Commission is authorised to permit less stringent application of the guidelines or to seek enforcement of more stringent provisions.

4 *repealed*

Art. 4bis

1 The loans of a bank to any single customer, as well as the participation in any single company, must bear an appropriate relationship to the bank's equity.

2 The Implementing Ordinance establishes the lending limits with special consideration given to loans to public authorities and to the type of security furnished.

3 *repealed*

Art. 4ter

1 Credit may be granted to the bank's governing bodies and controlling shareholders, as well as to related persons and companies, only in conformity with generally accepted principles of the banking profession.

2 *repealed*

Art. 4quater

Both in Switzerland and abroad, banks shall abstain from misleading or obtrusive publicity of their Swiss domicile or Swiss traditional practices or institutions.

Art. 4quinquies

1 Banks, whose parent companies are supervised by banking or financial market supervisory authorities, may transmit information or documents not publicly available to their parent companies which are necessary for the purpose of consolidated supervision, in so far as:

a) such information is used exclusively for internal control or direct supervision of banks or other financial intermediaries subject to licence;

b) the parent company and the supervisory authorities responsible for consolidated supervision are bound by official or professional secrecy;

c) this information may not be transmitted to third parties without the prior permission of the bank or on the basis of a blanket permission in a state treaty.

2 In cases where doubt exists regarding the transmission of data pursuant to par. 1, banks may demand a directive from the Banking Commission to allow or forbid the transmission of information.

Art. 5

1 Banks shall transfer at least one twentieth of their yearly net profits into a reserve fund designated to cover losses and to permit write-offs. The transfers have to be effected until this fund amounts to one fifth of the paid-in capital or, in the case of banks which have no paid-in capital, to one twentieth of the deposits.

1bis The following shall be allocated to reserve funds even after these have reached the statutory level:

a) any proceeds exceeding the nominal value of share issues or issues of stock certificates after covering the issue costs;

b) one tenth of the amounts which are distributed from the net profits after regular allocations to the reserve fund and after a dividend or interest on stock certificates of 5% has been paid to the parties entitled to such a share in earnings.

2 This article does not apply to Cantonal banks or to private bankers who do not publicly solicit customer deposits.

Section IV – Annual Financial Statements and Balance Sheets

Art. 6

1 Banks shall prepare for each business year an annual report consisting of annual financial statements and a business report. The Federal Council determines those cases where consolidated financial statements are to be prepared in addition.

2 The annual report is to be drafted in accordance with the provisions of the Code of Obligations pertaining to companies limited by shares and with this law. Whenever general conditions require it, the Federal Council may permit departures therefrom. Such a decision of the Federal Council is to be published.

3 The Federal Council determines which banks are to prepare interim financial statements.

4 Single-company, consolidated and interim financial statements are to be published or made available to the public.

5 The Federal Council lays down the classification rules for single-company, consolidated and interim financial statements and lays down in which form and to which extent and within which deadlines they are to be published or made available to the public.

6 Paragraphs 3 and 4 do not apply to private bankers who do not publicly solicit customer deposits.

Section V – The Relationship Between Banks and the Swiss National Bank

Art. 7

1 Banks shall submit their annual financial statements to the Swiss National Bank.

2 Whenever the size of a bank or the nature of its business activities warrant it, the Swiss National Bank may, in addition, require the submission of detailed semi-annual balance sheets and quarterly or monthly interim balance sheets.

3 The National Bank may demand from the banks additional disclosures concerning these balance sheets. It can, moreover, request other kinds of information, but these must be for the sole purpose of facilitating the task of the National Bank as defined in Art. 2 of the National Bank Law of December 23, 1953.

4 The National Bank establishes the reporting procedure after consultation with the banks; in particular, it may prescribe the use of standard forms.

5 The National Bank takes the necessary measures to be able to supervise the development of Swiss-franc markets.

Art. 8

1 In the case of short-term exceptional capital outflows, which may seriously endanger Swiss monetary and currency policy, the Federal Council may order that banks shall obtain permission of the Swiss National Bank prior to concluding or participating in one of the following transactions:

a) the placement or underwriting of bonds, rescriptions and other debenture bonds, which are issued in the name of a debtor with domicile or registered office abroad or of rights not evidenced by certificate with similar function (book-entry securities) or instruments derived therefrom (derivatives);

b) the constitution, purchase or distribution of book receivables of all types for debtors with domicile or registered office abroad.

2 The National Bank can deny permission or make permission conditional whenever necessary in order to conduct an appropriate monetary and currency policy. The evaluation of the risks inherent in a transaction are not the responsibility of the National Bank.

3 The National Bank may, if applicable, issue implementing provisions to the Ordinance of the Federal Council.

Art. 9

1 The Swiss National Bank shall keep secret all reports and information received.

2 The National Bank publishes statistics where annual financial statements, interim balance sheets and notifications from banks are listed as totals or by groups.

Art. 10

repealed

Section VI – Reduction of Capital; Special Provisions for Co-operative Banks

Art. 11

1 The reduction of capital of banks which are organised as companies limited by shares or limited partnership corporations is governed by the relevant rules of the Code of Obligations, without prejudice, however, to the following provisions:

a) the general meeting may not vote a reduction of the capital unless a special audit report shows that the creditors' claims are fully covered, despite a reduction of capital, and that the liquidity remains assured;

b) the reduction of the capital may be carried out at the expiry of a two month period from the day the resolution, together with the notice to creditors, was published according to the by-laws of the bank, and after the creditors who filed their claims within that period have been paid or secured;

c) the book profit which may result from the reduction of the capital stock must be transferred to the reserve fund unless it is needed for write-offs of doubtful assets or for provisions for such assets.

2 The provisions of paragraph 1 apply by analogy to the reduction of the authorised capital of a limited liability company or the reduction or cancellation of participation certificates in a co-operative company.

Art. 12

1 Banks that are organised as co-operatives may not redeem the participation certificates of retiring co-operative members before the annual financial

statements of the fourth business year after the resignation has been approved. Every other form of invalidation of the membership is equal to a resignation.

2 The participation certificates of retiring co-operative members remain pledged for the commitments of the co-operative bank until their redemption.

3 The redemption may only take place if the creditors' claims remain covered and liquidity is assured.

Art. 13

1 New commercial banks may not be constituted as co-operative banks.

2 Where an existing co-operative bank subsequently becomes a commercial bank, the Banking Commission will fix a time limit for the conversion into a joint stock company, a limited partnership corporation or a limited liability company.

3 In case of doubt, the Banking Commission shall decide whether an institution falls under the classification of commercial banks.

Art. 14

1 In order to avoid liquidations, the Federal Council is authorised to issue provisions facilitating in general or special cases the conversion of a co-operative bank into a company limited by shares or a limited partnership corporation. After due consideration of the interests of the co-operative members and creditors, the Federal Council may depart from the provisions of the Code of Obligations and the Federal Debt Collection and Bankruptcy Act.

2 The shares that are issued after the conversion of the participation certificates are exempt from the issue duty of Articles 18–20 of the Federal Stamp Duty Law of October 4, 1917, provided that it has already been paid on the converted participation certificates, that the shares are distributed only among the former co-operative members, and that the par value of the shares does not exceed the capital paid in on the converted participation certificates.

3 No Federal or Cantonal change of ownership or registration duty may be charged for the transfer of the co-operative assets to the joint stock company.

4 The provisions of paragraphs 1, 2 and 3 apply by analogy to the conversion of a co-operative bank into a limited liability company.

Section VII – Savings and Custody Deposits

Art. 15

1 Deposits referred to as savings in any combination of words whatever may only be accepted by banks publishing annual financial statements. All other types of companies are not authorised to accept savings deposits and they may not use in their company name, or in the designation of their business purpose or in their advertising the term "savings" in connection with the money deposited with them.

2 *repealed*

3 *repealed*

Art. 16

Valuables in safekeeping accounts within the meaning of Art. 37b of the Law are deemed to be:

1. Movable goods and securities of the depositing customer;

2. Movable goods, securities and claims which the bank holds on a fiduciary basis for the depositing customer;

3. Freely available delivery claims of the bank from third parties from spot transactions, completed forward transactions, collateral transactions or issues for the account of the depositing customer.

Section VIII – Pledge Contracts

Art. 17

1 A bank that wants to reserve itself the right to repledge or to give a pledge as replacement, must be authorised by the pledgor in a special deed.

2 The bank may not repledge or give the pledge as replacement for an amount exceeding its own claim against the pledgor. The bank must ascertain that no other rights exceeding that amount accrue in favour of third persons.

Section IX – Supervision and Audit

Art. 18

1 Each year, banks must submit their annual financial statements to audit by an external auditor.

2 *repealed*

Art. 19

1 The auditor must examine the annual financial statements to ascertain whether they comply with the requirements of the law, the by-laws and regulations as regards form and content. The auditor must also ascertain that the provisions of the present Law and its Implementing Ordinance, as well as any possible Cantonal provisions concerning statutory liens in favour of savings deposits and the requirements for holding a banking license, have been adhered to.

2 Banks must at any time make available to the auditor their books, records and other supporting documents which are customary in Swiss banking circles in order to ascertain and value assets and liabilities as well as any other information needed by the auditor to accomplish his duties.

3 If a bank has a professional internal audit department, their report must be submitted to the external auditor. Duplication of auditing efforts shall be avoided as far as possible.

Art. 20

1 In order for an auditing firm to perform bank audits within the meaning of the Law, it must be recognised as a bank auditor. The Implementing Ordinance determines the conditions for recognition. The Banking Commission decides in each individual case.

2 Recognised bank auditors must restrict their activities exclusively to auditing and immediately related professional services such as reviews, liquidations and financial restructurings. They may not engage in actual banking transactions or in trust operations. The Banking Commission will issue directives on the auditing firms' scope of activity.

3 The auditing firm shall be independent of the board and management of the client bank.

4 The audit must be performed with the care of a properly qualified auditor.

5 Except vis-à-vis the responsible governing bodies of the client bank and the Banking Commission, the auditors must keep secret all facts of which they received knowledge during the audit.

Art. 21

1 The auditors shall report on the results of the examination made pursuant to Article 19, paragraph 1. The report must clearly show the relation between investments and credits abroad on the one hand and the balance sheet total on the other hand. The Implementing Ordinance shall determine the details of the contents of the audit report.

2 The auditing report shall be communicated to the body responsible for the direction, supervision and control according to the law, the by-laws, the articles of incorporation or the regulations. Where the bank is organised as a legal entity, the auditing report shall be submitted to the statutory auditors as defined by the Swiss Federal Code of Obligations.

3 In the event that the audit reveals either the violation of a legal provision or any other irregularity, the auditing firm shall set an appropriate time limit for the bank to take corrective action. The auditing firm must inform the Banking Commission if the correction is not carried out within the prescribed time limit.

4 Where the setting of a time limit within the meaning of paragraph 3 appears of no use, or if the auditing firm discovers a criminal offence, serious violations, or losses reducing the capital funds by 50%, or other irregularities jeopardising the security of the creditors, or if it can no longer confirm that the claims of the creditors are still covered by the assets, the Banking Commission shall be informed without delay.

Art. 22

1 The auditing fees shall be borne by the client bank. The level of fees is established in accordance with the scale approved by the Banking Commission.

2 The claims of the bank auditors which are based on this article shall enjoy a bankruptcy privilege of the third priority class.

Section X – The Federal Banking Commission

Art. 23

1 The Federal Council shall elect a Federal Banking Commission consisting of seven to eleven members, and appoint its Chairman and the Deputy Chairman (or chairmen). Sole responsibility for the supervision of the banking system, investment funds, stock exchanges, the disclosure of significant participations and public take-over bids will be transferred to this commission. The Commission shall maintain a permanent secretariat.

2 The Commission, which may be subdivided into several chambers, shall issue regulations governing its own organisation and management which shall require the approval of the Federal Council.

3 Annually, the Banking Commission reports to the Federal Council on its activities. It communicates with the Federal Council via the Federal Department of Finance.

4 The expenses of the Commission and its secretariat shall be covered by emoluments charged. The details thereof shall be fixed by the Federal Council.

5 The members of the Commission must be experts. They may not be the chairman, vice-chairman, delegated member of a Board with executive responsibilities ("Delegierter") or member of the Executive Committee of the Board nor member of the Management of a bank, a fund manager, a stock exchange, a security dealer nor of a recognised auditing firm.

Art. 23bis

1 The Banking Commission issues the decisions necessary to enforce the present law and supervises compliance with the legal requirements.

2 The Banking Commission may demand from the auditors as well as the banks any information or document its needs to fulfil its duties; it is authorised to demand reports from the auditing firm, in particular the auditing report on a bank, and it may retain the services of an auditing firm to perform a special review.

Art. 23ter

1 In all cases where the Banking Commission is informed of violations of the law or of other irregularities, it shall issue the necessary decisions to restore the rightful conditions and remove the abuses.

1bis In implementation of Art. 3 par. 2 lit. cbis and 5 of this law, the Banking Commission can, in particular, suspend the voting rights connected to shares or stock which are held by shareholders or partners with a qualified participation.

2 Where an enforceable decision of the Banking Commission is not implemented within the prescribed time limit after prior warning, the Banking Commission may itself execute the action that was ordered, at the expense of the delinquent bank.

3 In case of non-compliance with enforceable decisions, the Banking Commission may also publish these in the Swiss Commercial Gazette or announce them in some other manner. Formal notice must be given before such a measure can be taken.

4 Where the Banking Commission is apprised of violations of Articles 46, 49 and 50 of the present Law, it informs the Federal Department of Finance without delay. It informs the competent Cantonal authorities of violations of Articles 47 and 48 of the present Law or of common Law felonies or misdemeanours.

Art. 23quater

1 The Banking Commission may delegate an expert to act as its observer in a bank if because of misdemeanours, the claims of the creditors appear seriously jeopardised. An auditing firm recognised under the banking law may be entrusted with this task. The costs are borne by the bank.

2 The observer supervises the activities of the bank's senior officers, particularly the enforcement of the measures ordered by the Banking Commission, which he keeps constantly informed. For this purpose, the observer is granted the unrestricted right to investigate the conduct of business operations and examine the books and the records of the bank, but is not permitted to intervene in the business activities.

3 *repealed*

Art. 23quinquies

1 The Banking Commission shall withdraw the licence to conduct business operations from banks that no longer meet the conditions necessary for such licence or that grossly violate their legal duties.

2 As a result of a decision to withdraw the licence, legal entities and general or limited partnerships shall be liquidated and their registration removed from the Register of Commerce. The Banking Commission designates a liquidator and supervises his activities.

Art. 23sexies

1 The Banking Commission may, in implementation of this law, request information or documents from foreign bank and financial market supervisory authorities.

2 The Banking Commission may only transmit information and documents not publicly available to foreign bank and financial market supervisory authorities, in so far as these authorities:

a) will use such information exclusively for the direct supervision of banks and other financial intermediaries requiring authorisation;

b) are bound by official or professional secrecy;and

c) will not transmit this information to competent authorities or bodies which are entrusted with supervisory activities in the public interest without the prior consent of the Banking Commission or on the basis of a blanket permission contained in a treaty with a contracting state. The transmission of information to penal authorities is not permitted whenever legal assistance in penal matters would be excluded. The Banking Commission decides after consulting with the Federal Office of the Police.

3 In so far as the information to be transmitted by the Banking Commission concerns individual customers of the bank, the Federal Law on Administrative Procedures is applicable.

Art. 24

The decisions of the Banking Commission can be appealed to the Federal Court according to Chapter V of the Federal Law of December 16, 1943 concerning the Federal Jurisprudence.

Section XI – Postponement of Maturity

Art. 25

1 Banks that are exposed to continued and excessive withdrawals may ask the Federal Council to grant them a postponement of maturity.

2 The postponement of maturity can be granted only where it is established by a special audit report that the creditors' claims are fully covered and that the payment of interest can be maintained during the postponement.

Art. 26

The postponement of maturity can be granted for all liabilities of the bank or for certain kinds only with the exception of the interest on funds deposited by third persons; the postponement can be granted either for the total or partial amount of the liabilities.

Art. 27

The Federal Council decides on the postponement of maturity alter consultation with the National Bank and the Banking Commission. The necessary measures are taken on a case-by-case basis by applying Articles 29–35 in an analogous manner. The duration of the postponement must be limited.

Art. 28

Where it appears subsequently that the bank no longer fulfils the conditions for the postponement, the Federal Council will annul the postponement; the bank can initiate proceedings under Article 29 or Article 35, paragraph 2.

Section XII – Moratorium

Art. 29

1 If a bank is no longer in a position to meet its commitments in a timely manner, this bank may ask the competent court that it be granted a moratorium. The request must be accompanied by a statement showing the current status, the available annual financial statements as well as the annual reports and the audit reports of the last five years.

1bis The court appoints a provisional commissioner who has the same powers as the regular commissioner until the court has passed a decision on the request or until bankruptcy proceedings have begun. An auditing firm recognised by banking law

may be designated as provisional commissioner. Legal transactions carried out by the bank between the closing of its offices or in the period between the filing of the application and the appointment of the provisional commissioner are not valid in respect to its creditors.

1ter Where a bank has filed a request for moratorium, the bankruptcy court suspends the adjudication of bankruptcy until such time as this application has been processed.

2 The court grants the moratorium for one year if the current status report proves that the bank can meet its liabilities. When required by the circumstances, the moratorium can be extended for another year.

3 The moratorium must be published and communicated to the Office for Bankruptcy Proceedings, to the Court for Bankruptcy Cases and to the Banking Commission.

4 The Cantonal governments must designate one single Cantonal authority for moratorium cases.

Art. 30

1 If the court grants the moratorium, it appoints one or more qualified persons as commissioner of the bank. A legal entity, in particular a bank or a trust company, may also be nominated as commissioner.

2 The commissioner is placed under the supervision of the court and can be removed by it for important reasons.

3 The creditors and the bank can lodge an appeal with the court against illegal orders of the commissioner; the complaint must be filed in writing within 10 days after the interested party has received knowledge of the order. The decision on the complaint can be appealed in the Federal Court.

Art. 31
Immediately upon his appointment the commissioner must assess the financial situation of the bank in collaboration with the auditing firm and must report it to the court and to the bank; he takes the steps that are necessary to maintain the bank's activities.

Art. 32
1 The moratorium has the effects described in Article 297 of the Federal Law on Debt Collection and Bankruptcy.

2 During the moratorium the bank continues to do business under the supervision and in accordance with the instructions of the commissioner; it shall not, however, perform legal acts which would prejudice the legitimate interests of the creditors or give advantage to individual creditors at the expense of the others. Payments to creditors must be approved by the commissioner. He is authorised to order, at his discretion, payments up to a specified amount, to creditors with due claims, in which connection he shall take into due consideration the interests of creditors with claims privileged by legal act or the law and the interests of the small creditors. These payments may not exceed half of those amounts that are secured according to the commissioner's assessment of the financial situation.

3 During the moratorium the court can at any time take the additional measures it deems necessary, on account of the situation, to protect the interests of the bank or the creditors. It can, in particular, submit to the approval of the commissioner the decision as to the validity of the conclusion of new business transactions, the sale of real estate, the creation of pledges or the issuance of a guarantee; measures to this effect must be published.

4 The bank must make its books and documents available to the court and the commissioner, and must furnish all information that may be required. The commissioner must be invited, in due time, to every meeting of the board of management of the bank; he can personally call such meetings.

Art. 33
1 If the bank wishes to proceed to an extra judicial reorganisation, or to conclude an arrangement with its creditors, the commissioner must give his expert opinion on the propositions to the bank's authorities, to the creditors or to the authority that decides on such arrangements.

2 Where the commissioner deems that the moratorium is no longer necessary, the court may, upon his request, revoke the moratorium; this decision must be published.

Art. 34

1 On request of the commissioner or of one of the creditors, the court must revoke the moratorium and publish this decision:

a) if the bank has obtained the moratorium on the basis of incorrect statements;

b) if the bank does not comply with the commissioner's instructions, if it prejudices the legitimate interests of the creditors or if it gives an unfair advantage to certain individual creditors at the expense of the other creditors.

Art. 35

1 The court may, as an exception, extend the moratorium for another six months, if it becomes obvious during the moratorium that the bank can achieve an extra judicial reorganisation.

2 Where it becomes evident during the moratorium that the assets of the bank no longer cover its liabilities, or that it will not be able to meet its liabilities in time after the expiration of the moratorium, or that it will not be able to achieve an out-of-court reorganisation, the court instructs the commissioner to demand that the bankruptcy court immediately open the bankruptcy proceedings, unless the bank petitions for an arrangement with the creditors. A postponement of the bankuptcy proceedings pursuant to Article 725, paragraph 4, and Article 903, paragraph 5, of the Swiss Federal Code of Obligations is not admissible.

3 In bankruptcy proceedings, the commissioner functions as receiver in bankruptcy; in proceedings for an arrangement with creditors, he fulfils the obligations of the receiver.

Section XIII – Special Provisions for Bankruptcy and Arrangements with Creditors

Art. 36

1 In the bankruptcy procedure, a receiver in bankruptcy is appointed unless a commissioner has already been appointed to this effect.

2 The receiver in bankruptcy exercises all powers, including those of the meeting of creditors. Appeals against his orders can be lodged with the bankruptcy court as sole Cantonal authority within 10 days alter the interested party has received knowledge of the order. The decision taken on the complaint can be appealed to the Federal Court.

3 Claims contained in the bank's books of account are considered as registered.

4 The Cantonal governments must designate one single Cantonal authority as bankruptcy court.

5 The Federal Court can issue additional regulations for the bankruptcy proceedings which may deviate from the Federal Law on Debt Collection and Bankruptcy.

Art. 37

1 When a bank files an application for proceedings for a moratorium, the competent authorities shall appoint a provisional receiver who exercises the same powers as the regular receiver until a decision has been made in respect to the application or until adjudication in bankruptcy has taken place. An auditing firm, recognised under the banking laws, may be designated as provisional receiver. In the event a commissioner, according to Article 30, has already been appointed, the latter becomes the provisional receiver. Legal transactions carried out by the bank after closing of its offices or in the period between the filing of the application for a moratorium and the appointment of the provisional receiver are not valid in respect of its creditors.

1bis Where a bank has filed a request for proceedings for a moratorium, the bankruptcy court suspends the adjudication of bankruptcy until such time as the application has been processed.

1ter If the application for a moratorium is approved by the competent authorities, a regular receiver is appointed, unless a commissioner has already been appointed for such purpose.

2 Appeals against the receiver's orders can be lodged, within ten days after the interested party has received knowledge of the order, with the authorities for such proceedings which is the sole Cantonal authority. The decision taken on the complaint can be appealed to the Federal Court.

3 In the case of proceedings for arrangements with creditors, payment is deferred for a period of six months; if necessary it can be extended for another six months.

4 Claims contained in the books of the bank are considered to have been registered.

5 There is no meeting of the creditors. Once the arrangement with creditors has been drafted, and has been made accessible for inspection, the creditors must be publicly invited to raise their objections.

6 The moratorium shall be approved only if the requirements of Article 306 of the Federal Law on Debt Collection and Bankruptcy are met, and if examination of all the circumstances establishes that the interests of all creditors are better served by a moratorium than by bankruptcy proceedings.

7 The moratorium can grant an adequate deferral of the payment of claims that are secured by pledges.

8 The Cantonal government must designate one single Cantonal court as the competent authority.

9 The Federal Court can issue additional regulations relating to moratorium proceedings which may deviate from the Federal Law on Debt Collection and Bankruptcy.

Art. 37a

1 In bankruptcy and moratorium proceedings with assignment of assets, the claims of creditors are ranked subject to the following particular provisions pursuant to Article 219 of the Federal Law on the Collection of Debts and Bankruptcy.

2 The following claims of a maximum amount of no more than SFr. 30,000 per creditor shall be allocated to a special class between the second and third class:

1. Receivables from accounts to which are transferred regularly income from employment, annuities or pensions from employers or maintenance or support amounts by virtue of Family Law;
2. Claims arising from savings, deposit or investment books or accounts or from medium-term notes (“Kassenobligationen”) with the exception of deposits from other banks.

3 Should bearer shares be involved, paragraph 2 be only apply provided that they can be proven to have been already in the possession of the creditor at the time of the closure of the counter.

4 If several persons are entitled to the claim, the privilege may only be asserted once.

5 The Federal Council may adapt the maximum amount as defined in paragraph 2 to changed monetary conditions.

Art. 37b

1 Valuables in custody accounts as defined in Article 16 shall not be counted as part of the debtor's assets in the case of bankruptcy but shall be segregated subject to the total claims of the bank against the persons depositing the valuables in his/her favour.

2 Should the bankrupt bank have deposited itself valuables in custody accounts with a third party, the valuables in custody shall be assumed to be those of its own customers and segregated in accordance with paragraph 1.

3 The legal administrator of the bank must fulfil their custodian obligations vis-à-vis a third party custodian arising from transactions in accordance with Art. 16 point 3.

Section XIV – Liability for Torts and Penal Provisions

Art. 38

1 With regard to the Cantonal banks, the Cantonal provisions concerning the liability for torts shall apply.

2 With regard to private bankers, the liability for torts is governed by the provisions of the Code of Obligations.

3 All other banks are subject to the provisions of Articles 39–45.

Art. 39

Whoever, on the occasion of the establishment of a bank or on the issue of shares, of authorised investment certificates, of participation certificates or of bank bonds has, in prospectuses, in circular letters or in similar documents, made or divulged untrue assertions or statements contrary to the requirements of the law, intentionally or negligently, shall be liable for the damages caused to each associate (shareholder, partners of limited liability companies, co-operative members) or bondholder.

Art. 40
Whoever co-operates in the establishment of a bank shall be liable for damages to the bank as well as to each associate or creditor:

a) if he has intentionally or negligently contributed to define incorrectly or incompletely, to conceal or to omit in the articles of establishment or in the by-laws, the paid-in capital or the assets taken over or the preferences given to individual associates or other persons or if he has in some other way disregarded the law on the occasion of the approval of such a measure;

b) if he has intentionally or negligently contributed to the entry of the name of the bank into the Register of Commerce on the basis of a certificate or document containing false statements;

c) if he has deliberately contributed to the acceptance of subscriptions from insolvent persons.

Art. 41
The persons entrusted with the management, direction, supervision and control of a bank are liable to the bank as well as to each associate, shareholder or creditor for the damage caused by the intentional or negligent violation of their duties.

Art. 42
Whoever as liquidator or commissioner of a bank intentionally or negligently violates the duties conferred on him by law or the by-laws shall be liable to the dissolved bank and the associates, shareholders and creditors for the damage caused by him in the same way as the governing bodies of the bank.

Art. 43
1 Insofar as the liability according to Articles 40–42 is concerned partners or creditors have been prejudiced only indirectly by the damage caused to the bank, the claim for the payment of damages only can be brought to the bank.

2 The right of action conferred upon the creditors can be invoked only after bankruptcy proceedings have been instituted.

3 In bankruptcy proceedings against a bank, the claims of the associates, shareholders and creditors are to be raised first by the receiver of the bankrupt bank's estate. If the receiver waives the action, each associate, shareholder or creditor is entitled to demand the assignment of the claim. The proceeds shall be distributed according to the provisions of the Bankruptcy Act.

4 The ratification of the governing bodies' acts by the General Meeting precludes the claim of the associate or shareholder based on responsibility, only if he has given his approval to the resolution or if he has become associated after the decision was taken, and with knowledge thereof, or if he has not brought action within six months alter the decision has been approved.

Art. 44

Where several persons are liable for the same damage they are jointly liable. The judge determines the right of recourse among the parties concerned according to the degree of their fault.

Art. 45

1 Damage claims based on Articles 39 to 42 are barred by the statutes of limitation within five years to be counted from the day the injured party received knowledge of the damage and of the person liable for it; they become barred in any case, however, within 10 years to be counted from the day the damaging act was committed.

2 Where the damage claim arises out of a criminal offence, which, according to the penal law, is submitted to a longer period of limitation, such period also applies to the civil claim.

Art. 46

1 Whoever intentionally:

a) opens a bank, operates a registered office, branch or agency of a foreign bank or appoints a permanent representative therefor without having obtained a licence from the Banking Commission;

b) fails to obtain the complementary licence prescribed for foreign controlled banks;

c) violates the conditions attached to the licence;

d) uses the term bank, banker or savings as part of their company name, their designation of business purpose or in their business advertising without permission;

e) makes misleading statements in advertising or misuses the Swiss domicile of a bank or Swiss traditional practices and institutions;

f) who accepts deposits from the public or savings deposits without being authorised to do so;

g) repledges pledges in violation of Article 17 or gives them as replacement;

h) makes a business transaction subject to Article 8 without previous notice to the National Bank or in disregard of its refusal or conditions;

i) furnishes wrong information to the Banking Commission, the bank auditors or the National Bank;

k) as a recognised bank auditor in the performance of the audit, grossly violates the duties assigned to him by the present Law or Implementing Ordinance; in particular, whoever makes untrue statements in the audit report or omits essential facts or fails to request pertinent information from the client or fails to report his findings to the Banking Commission;

l) fails to keep books of account properly or does not retain account books and records in conformity with the regulations;

shall be punished by a prison term not exceeding six months or a fine not exceeding SFr. 50,000.

2 If the act has been committed by negligence, the penalty shall be a fine not exceeding SFr. 30,000.

Art. 47

1 Whoever divulges a secret entrusted to him or of which he has become aware in his capacity as officer, employee, mandatory, liquidator or commissioner of a bank, as representative of the Banking Commission, officer or employee of a recognised auditing company and whoever tries to induce others to violate professional secrecy, shall be punished by imprisonment for not more than six months or by a fine of not more than SFr. 50,000.

2 If the act has been committed by negligence, the penalty shall be a fine not exceeding SFr. 30,000.

3 The violation of professional secrecy remains punishable even after termination of the official or employment relationship or the exercise of the profession.

4 Federal and Cantonal regulations concerning the obligation to testify and to furnish information to a government authority shall apply.

Art. 48
Whoever in full knowledge of the facts undermines or jeopardises the credit standing of a bank, the National Bank or the Central Mortgage Institutions by the assertion or dissemination of falsehoods, shall, upon indictment, be punished by a prison term or a fine.

Art. 49
1 Whoever intentionally:

a) fails to draw up and publish the annual accounts or interim balance sheets in accordance with the provisions of Article 6;

b) does not order the annual accounts to be audited by recognised bank auditors or fails to have an audit performed that was prescribed by the Banking Commission;

c) disregards the obligations towards the bank auditors;

d) fails to comply with the request of the Banking Commission to re-establish proper conditions and remove irregularities;

e) fails to submit the prescribed reports to the Banking Commission or the National Bank;

f) redeems investment trust certificates in violation of Article 12

shall be punished by imprisonment or a fine not exceeding SFr. 20,000.

2 If the offence has been committed by negligence, the penalty shall be a fine not exceeding SFr. 10,000.

Art. 50
Whoever, despite warning and after being specifically advised of the penalties implicit in this Article, nevertheless fails to comply with a provision of this Law or a related ordinance or an official order relating thereto will be fined up to SFr. 5,000.

Art. 50bis

The special dispositions of the Federal Law on Federal Penal Administration (Articles 14–18) are applicable.

Art. 51

1 The general dispositions of the Swiss Penal Code are applicable to infractions of Articles 47–48.

2 The general dispositions of the Federal Law on Federal Penal Administration (Articles 2–13) are applicable to infractions of Articles 46, 49, 50 and 50bis.

3 The prosecution of violations is subject to a five year period of limitation. This period of limitation may not be extended by more than one half through interruptions.

Art. 51bis

1 The prosecution and judgement of violations of Articles 47 and 48 is the duty of the cantons.

2 Violations of Articles 46, 49, 50 and 50bis shall be prosecuted and judged by the Federal Department of Finance in accordance with the Federal Law on Federal Penal Administration.

Section XV – Transitional and Final Provisions

Art. 52

repealed

Art. 53

1 With the entry into force of the present law the following provisions are *repealed*:

a) the Cantonal regulations concerning banks; without prejudice to the provisions for Cantonal banks, the provisions concerning the provisions concerning professional trading in securities as well as the provisions for the supervision of compliance with legal Cantonal regulations against interest rate abuses;

b) Article 57 of the Final Title of the Civil Code.

2 The Cantonal provisions for a statutory lien in favour of savings deposits shall become void if they are not replaced by new regulations according to Articles 15 and 16 within three years of the coming into force of the present Law.

Art. 54
Article 219 of the Federal Bankruptcy Act is completed with an addition, as follows:
Third class:
b...

Art. 55
repealed

Art. 56
The Federal Council will fix the date when the present Law will enter into effect and it will set out the necessary guidelines to be followed. (Entry into force: March 1, 1935)

Final Provisions to the Changes Dated March 18, 1994

1 Natural persons and legal entities, who hold deposits from the public on the date the law takes effect in spite of the prohibition to do so set out in Art. 1 par. 2,have to repay these within two years of the effective date of implementation of the new law. The Banking Commission may extend or shorten this deadline on a case-by-case basis, whenever particular conditions exist.

2 Bank-like finance companies who are authorised by the Banking Commission to publicly solicit monies prior to implementation of the law, require no new permission to operate as a bank. They must adapt to Articles 4^{bis} and 4^{ter} within one year from the date the law takes effect.

3 Banks must adapt to the provisions of Art. 3 par. 2 lit. c^{bis} and d as well as Art. 4 par. 2^{bis} within one year of the effective date of the law.

4 Cantons have three years after the effective date of the law to ensure compliance with the provisions of Art. 3a par. 1 and Art. 18 par. 1. Should responsibility for supervision as per Art. 3a par. 2 be transferred to the Banking Commission prior to expiry of this deadline, the provisions of Art. 18 par. 1 must be complied with at the time of the transfer.

5 Each natural person and legal entity who at the date on which the law takes effect, holds a qualified participation in a bank according to Art. 3 par. 2 lit. c[bis], must notify the Banking Commission to this effect within one year following the date when the change in the law takes effect.

6 Banks must make the annual notification as per Art. 3 par. 6 for the first time within one year following the date when the law takes effect.

7 Banks organised under Swiss law must inform the Banking Commission within three months following the date when the law takes effect of all subsidiaries, branches, agencies and representations abroad.

Annex 2

Implementing Ordinance to the Federal Law on Banks and Savings Banks

of May 17, 1972 (as last amended under date of December 8, 1997)

The Federal Council, based upon Art. 3 par. 2 lit. b, Art. 4 par. 2, Art. 4bis par. 2, Art. 6 par. 5, Art. 20 par. 1, Art. 21 par. 1, Art. 23 par. 4 and Art. 56 of the Banking Law, (hereinafter referred to as the Law),

decrees:

1. Scope of the Law

Art. 1
The Federal Banking Commission (hereinafter referred to as the Banking Commission) may request from enterprises which may, according to the entry in the Register of Commerce, their business activity or advertising, be subject to the present Law, all records and information necessary to determine if their business activity requires a license.

Art. 2
The Banking Commission shall establish a public register of all enterprises subjected to the Law.

Art. 2a
Considered as banks within the meaning of Art. 1 par. 1 of the Law are those enterprises which are active principally in the field of finance and in particular those:

a) who accept deposits from the public on a professional basis or solicit these publicly in order to finance in any way, for their own account, an undefined number of unrelated persons or enterprises, with which they form no economic unit; or

b) who refinance themselves in substantial amounts from a number of banks which are not significant shareholders and with which they form no economic entity in order to provide any form of financing for their own account to an undefined number of unrelated persons or institutions; or

c) *repealed.*

Art. 3

1 Those who are prohibited, pursuant to Art. 1 par. 2 of the Law, from accepting deposits from the public on a professional basis, may not make publicity in any form for such deposits, in particular in advertisements, prospectuses, circulars or electronic media.

2 Private bankers are not considered to publicly solicit deposits within the meaning of Art. 5 par. 2 and Art. 6 par. 6 of the Law, if their advertising refers solely to their activity as asset managers or security dealers without encompassing the possibility of depositing funds.

Art. 3a

1 In addition to banks, only corporations and establishments which are subject to public law, as well as cashier offices for which they are entirely liable, may accept deposits from the public on a professional basis.

2 Those who accept on a continuing basis more than 20 deposits from the public are considered to be acting on a professional basis within the meaning of the Law.

3 Not considered as deposits are:

a) monies which constitute the contractual consideration for the transfer of property or for the provision of services or are transferred as security;

b) debenture bonds and other standardised debt instruments issued for mass trading or rights with similar function not evidenced by certificates (book register securities) if the creditors are informed in a manner equivalent to that provided for in Art. 1156 of the Code of Obligations;

c) creditor balances on customer accounts of security, currency and precious metal brokers, asset managers or similar enterprises who act solely in order to execute customer transactions so long as no interest is paid thereon;

d) monies, the acceptance of which is inseparably connected with a life insurance contract, employee benefit schemes or other recognised forms of benefit schemes pursuant to Art. 82 of the Federal Law of June 25, 1982 concerning Professional Old-Age, Survivors' and Invalidity Insurance.

4 Not considered as deposits from the public are deposits from:

a) domestic and foreign banks or enterprises under state supervision;

b) shareholders or partners of the debtor who hold a qualified participation in the debtor or who are connected with them by economic or family ties;

c) institutional investors whose cash resources are managed professionally;

d) members of co-operatives in so far as these are not active in the field of finance;or

e) employees as well as retired employees with their employer.

2. Licence to Conduct Business Operations

Art. 4

1 The fully paid in capital required in Art. 3 par. 2 lit. b of the Law must amount to at least 10 million Swiss francs. Where a company is capitalised by contributions in kind, the value of the assets contributed and the extent of the liabilities shall be verified by an auditing company recognised by the Banking Commission; the same applies if an existing company is converted into a bank.

2 Should an existing enterprise be converted into a bank, the fully paid-in capital may amount to less than 10 million Swiss francs if the core capital within the meaning of Art. 11a of the Ordinance has reached this amount. The Banking Commission shall decide on a case-by-case basis.

3 In particular cases, the Banking Commission may grant exemption, namely in so far as

a) the banks form a part of a central organisation which guarantees their commitments;

b) the central organisation and its affiliated banks fulfil the prescriptions concerning equity and risk diversification on a consolidated basis; and

c) the management of the central organisation can issue binding instructions to the affiliated banks.

Art. 5

1 Reciprocity within the meaning of Art. 3bis par. 1 of the Law is guaranteed in particular if:

a) Swiss resident persons are permitted to open banks (separate companies or registered offices, branch offices or agencies of Swiss banks) in the foreign country;

b) the business operations of these banks in the foreign country are not subject to materially more limiting provisions than those imposed on foreign banks operating in Switzerland.

2 Reciprocity is granted for permanent representatives of a foreign bank within the meaning of Art. 3bis par. 1 of the Law if Swiss banks are permitted to open permanent representations with the same functions in the foreign country.

Art. 6

1 In applications for a banking licence from new banks, particulars are to be provided concerning persons who are to be entrusted with the administration and management pursuant to Art. 3 par. 2 lit. c of the Law as well as the owners of qualified participations pursuant to Art. 3 par. 2 lit c^{bis} of the Law. The applications are to contain in particular the following:

a) in the case of natural persons: nationality, residence, qualified participations in other companies and pending legal or administrative proceedings as well as a signed curriculum vitae, references, and an extract from the Central Penal Register;

b) in the case of legal entities: the statutes, an extract from the Commercial Register or an equivalent confirmation, a description of the business activities, the financial situation, and, if applicable, the group structure as well as details of any completed or pending legal and administrative proceedings.

2 Applications for a supplementary permission pursuant to Art. 3ter of the Law and

notifications concerning qualified participations pursuant to Art. 3 par. 5 and 6 of the Law must contain the particulars required in par. 1.

3 Persons who possess a qualified participation must provide the Banking Commission with a declaration as to whether they have acquired the participation for their own account or on a fiduciary basis for third parties and whether they have granted options or similar rights for this participation.

Art. 6a

1 The bank shall, within 60 days following the end of the financial year, provide the Banking Commission with a list of all shareholdings which are qualified participations.

2 The list shall contain details as to the identity and share of equity of all holders of qualified participations existing as of the balance-sheet date as well as changes thereto since the prior year.

3 In addition, the particulars and documents required under Art. 6 par. 1 and 3 are to be included as regards shareholdings not previously notified.

Art. 6b

1 Before a bank may be active abroad within the meaning of Art. 3 par. 7 of the Law, all details necessary to assess the activity shall be provided to the Banking Commission. In particular, the following are to be submitted or indicated:

a) a business plan which in particular describes the type of planned transactions and the organisational structure;

b) the address of the business offices abroad;

c) the names of the persons entrusted with the administration and management;

d) the auditors;

e) the supervisory authorities in the country concerned.

2 The bank must make notification of the discontinuance or every significant change in business activities abroad as well as a change in the auditors or supervisory authorities.

3. Internal Organisation

Art. 7

1 The bank must describe precisely its field of business operations, with regard to the objectives and to the geographic terms in the by-laws, shareholder agreements or business rules.

2 *repealed*

3 The scope of the bank's operations shall correspond to its financial resources and administrative organisation.

4 The bank must in fact be managed from Switzerland. General instructions and decisions concerning consolidated supervision remain reserved, in so far as the bank forms part of a group active in the field of finance and which is subjected to an appropriate consolidated supervision by foreign supervisory authorities.

Art. 8

1 Where the business purpose or volume requires a special governing body responsible for direction, supervision and control, such body shall consist of at least three members.

2 No member of the body responsible for direction, supervision and control shall belong to the bank's management.

3 In special cases, the Banking Commission may grant an exception subject to certain conditions.

Art. 9

1 The bank shall provide for an effective internal segregation of functions between trading, asset management and back office. The Banking Commission may grant exemption in certain justified individual cases or require the segregation of further functions.

2 The bank shall lay down in regulations or in internal guidelines the main principles underlying the management of risks and the competencies and procedures for the approval of high-risk transactions. It must in particular identify, limit and supervise market, credit,default,settlement, liquidity and image risks as well as operational and legal risks.

3 The management shall assemble all documents concerning high-risk transactions, which are necessary for taking decisions with respect thereto and the monitoring

thereof. These documents must also enable the auditors to form a reliable opinion on the business transactions.

4 The bank shall be responsible for an effective system of internal control. It shall in particular appoint internal auditors (inspectorate) independent from the management. The Banking Commission may, in certain justified individual cases, exempt a bank from the obligation of appointing internal auditors.

Art. 10
Private banks must include the necessary organisational provisions in their partnership agreement or in their internal regulations.

4. Equity

Art. 11 Eligible Equity

1 The sum of core capital (Art. 11a; tier 1) supplementary capital (Art. 11b; tier 2) and additional capital (Art. 11c; tier 3), reduced by the deductions pursuant to Art. 11d, is deemed to constitute equity. Supplementary capital consists of upper supplementary capital (Art. 11b par. 1; upper tier 2) and lower supplementary capital (Art. 11b par. 2; lower tier 2).

2 Supplementary capital and additional capital are together eligible to be included in equity up to a total amount not to exceed 100% of core capital in accordance with Art.11a. Lower supplementary capital is eligible for inclusion in an amount no greater than 50% of the core capital.

3 Additional capital is eligible exclusively to cover capital requirements to support market risks as defined in Art. 12l par. 1 and is limited to 250%t of the core capital used to support market risks.

4 Lower supplementary capital as defined in Article 11b par. 2 lit. a, which may not be included in eligible capital by reason of the cumulative deduction or limit pursuant to par. 2 sentence 2, may be included in additional capital up to an amount of 250% of the core capital used to cover capital adequacy requirements for market risks provided that the conditions set out in Art. 11c are met.

Art. 11a Core Capital

1 The following shall constitute core capital, including the share of capital of minority interests in fully consolidated subsidiaries for the purposes of the equity computation on a consolidated basis:

a) the paid-in capital (share capital, capital of a limited-liability corporation ("GmbH" or "SàRL"), co-operative capital, dotation or participation capital as well as the capital of limited partners in the case of private banks);

b) the disclosed reserves (reserves for general banking risks, general legal reserve, reserve for own shares, other reserves);

c) the balance of the profit and loss account brought forward;

d) the profit of the current year, in so far as audited interim accounts including a complete profit and loss account pursuant to Art. 25a par. 1 are available, and limited to the net amount remaining after deduction of a provision for estimated dividends;

e) in the case of private banks (sole proprietorships, partnerships and limited partnerships),additionally:

1 the capital accounts, and
2 the accounts of the unlimited partners in so far as it is confirmed irrevocably in writing that, in the case of a liquidation, bankruptcy or restructuring with creditors, they are subordinated to the claims of all remaining creditors and that they may neither be off-set against amounts due to the bank nor secured by assets of the bank.

2 The amount pursuant to par. 1 lit. e points 1 and 2 may only be included if the bank undertakes by means of a written declaration to be deposited with the auditors that it will not reduce, without the prior consent of the auditors, either of the two capital components to under the level of 120% of the required equity.

3 From core capital is to be deducted:

a) net long positions, computed in accordance with Art. 12h of treasury stock not held in the trading book (Art. 14 lit. e) and other equity paper issued by the bank itself and owned either directly or indirectly;

b) accumulated losses brought forward and the loss of the current accounting period;

c) deficiencies in valuation adjustments and provision requirements of the current year;

d) amounts arising upon consolidation which cannot be directly allocated to any asset position (goodwill).

Art. 11b Supplementary Capital

1 The following constitutes upper supplementary capital:

a) instruments having the attributes of own and third-party capital (hybrid instruments) possessing all of the following characteristics:

1 they are fully paid-in, are not secured by assets owned by the bank, contain no fixed re-payment date and are subordinated to all non-subordinated claims;
2 they are not repayable at the initiative of the bearer;
3 the debt agreement must enable the bank to defer payment of any interest matured on the debt;
4 the debt and unpaid interest may be used to assume losses without the bank being compelled to cease its activities;

b) silent reserves included in the caption provisions and value adjustments, in so far as they have been accounted for in a separate account and designated as equity. Their inclusion in supplementary capital is to be confirmed in the auditors' report. They are to be voluntarily reported to the tax authorities;

c) fluctuation reserve for credit risks: maximum of 1,25% of risk-weighted positions as foreseen in Article 12 par. 2;

d) silent reserves included in capital assets: at maximum the difference between the maximum permissible value according to Art. 665 of the Code of Obligations and the book value, whereby the amount eligible for inclusion may not exceed 45% of the difference between the market and book value. Their eligibility as supplementary capital shall be confirmed in the auditors' report. They are to be spontaneously reported to the tax authorities.

2 The following constitutes lower supplementary capital:

a) loans granted to the bank, including debenture bonds with an initial maturity of at least 5 years, in so far as it is confirmed irrevocably in writing that, in the case of a liquidation, bankruptcy or composition with creditors, they are subordinated to the claims of all other creditors and that they may neither be

off-set against amounts due to the bank nor secured by assets of the bank. In the last five years to maturity, the amount to be included in supplementary capital is to be progressively decreased each year by a factor of 20% of the original nominal value. In case of the possibility of a termination by the creditor, the earliest possible repayment date is deemed to be the relevant final maturity date;

b) in the case of Cantonal banks: lit. a is to be applied by an analogous manner in so far as the subordinated debt in question granted to the bank is not covered by a Cantonal guarantee as a result of a waiver by the creditor or in another manner;

c) in the case of co-operative banks: 50% of the sum of the additional capital payment obligation per capita, in so far as the irrevocable written commitment of the co-operative member pursuant to Art. 840 par. 2 of the Code of Obligations is on hand.

3 The bank must inform the Banking Commission of the reasons therefor whenever its equity included as lower supplementary capital pursuant to Art. 2 lit. a and b exceeds 25% of the core capital.

Art. 11c Additional Capital

Additional capital is deemed to be liabilities which:

a) are unsecured, subordinated and fully paid in;

b) which have an original maturity of at least two years;

c) are not repayable prior to the agreed amortisation date without the consent of the Banking Commission;

d) contain a blocking clause in accordance with which – even on maturity – neither principal nor interest may be paid if, as a result, the equity base of the bank would fall under the minimum required or would remain outside this limit.

Art. 11d Deductions

To be deducted from the sum of the core capital, supplementary capital and additional capital are the net long positions, computed pursuant to Art.12h,of:

a) participations in enterprises active in the fields of banking and finance requiring to be consolidated and subordinated receivables due from the enterprises in question;

b) participations in enterprises active in the fields of banking, finance and insurance not requiring to be consolidated and subordinated receivables due from the enterprises in question;

c) subordinated interest-rate instruments not included in the trading book (Art. 14 lit. e) and issued by the bank itself held directly or indirectly and which were included in supplementary capital and additional capital.

Art. 12 Equity Requirements

1 Eligible equity pursuant to Art. 11–11d must, on a continuous basis, amount at least to 8% of the sum of the risk-weighted positions pursuant to par. 2 and the non risk-weighted requirements for market risks pursuant to par. 5, reduced by the deductions pursuant to Art.13.

2 The following are deemed to constitute risk-weighted positions:

a) receivables as defined in Art.12a;

b) assets unrelated to counterparties as defined in Art.12b;

c) off-balance-sheet transactions as defined in Art. 12c–12f converted into their credit equivalent;

d) net receivables arising from lending and repurchase/reverse repurchase transactions in securities, precious metals and commodities as defined in Art. 12g;

e) net positions in equity securities and interest-rate instruments outside the trading book (Art. 14 lit. e) as defined in Art.12i;

f) net positions in equity securities and interest-rate instruments in the trading book (Art. 14 lit. e) as defined in Art. 12l par. 2 in conjunction with Art.12i;

g) net positions in treasury stock and qualified participations in the trading book (Art. 14 lit. e) as set out in Art.12k.

3 In principle, the same risk weighting factor is to be applied for each counterparty irrespective of the type of transaction. This principle is valid also in the case of

replacement values, accrued receivables, commitment credits, contingent liabilities, irrevocable facilities granted as well as add-ons and credit conversion factors for forward contracts and options. If a bank is unable to analyse a position by counterparties, it must apply a weighting factor of 100% to this position.

4 Receivables arising under guarantee credits which are not reflected under assets are subject to the same equity requirements as receivables as defined in Art.12a.

5 The requirements to support market risks comprise:

a) the requirements, determined in accordance with the standard approach pursuant to Art. 12m, in respect of interest-rate instruments and equity securities in the trading book (Art. 14 lit. e) which are not captured pursuant to Art. 12l par. 2;

b) the requirements, determined in accordance with the standard approach pursuant to Art. 12n, in respect of positions in foreign currency, gold and commodities throughout the bank;

c) the requirements, determined in accordance with the model-based approach pursuant to Art. 12o, in respect of interest-rate instruments and equity securities in the trading book (Art. 14 lit. e) as well as for foreign currency, gold and commodities throughout the bank provided that the standard approach is not applied in accordance with letters a and b.

Art. 12a Risk Weighting per Counterparty

1 The positions are to be weighted with the following factors per counterparty:

1. 0% 1.1 liquid assets;
1.2 amounts due from Central Governments and Central Banks in OECD countries;
1.3 receivables due from European Communities and European Monetary Institute;
1.4 receivables secured by cash deposits pledged by the bank or at least by equivalent collateral;
1.5 receivables secured by medium-term notes ("Kassenobligationen"), debenture bonds and non-subordinated debt securities which are issued by the bank itself and are pledged by it or covered at least by equivalent collateral;

2. 25% 2.1 receivables from the Bank for International Settlements;
2.2 receivables from multilateral development banks pursuant to Art. 14 lit. b;
2.3 receivables from other public-sector entities in OECD countries;
2.4 receivables with a residual maturity of up to one year from banks with head office in OECD countries, including receivables arising from application of Art. 12f par. 2 lit. a;
2.5 domestic mortgage bonds;
2.6 receivables from joint institutions established by banks and recognised by the Banking Commission;
2.7 receivables due from Option and/or Financial Future Exchanges in so far as:
a) the exchanges are subject to appropriate supervision; and
b) the contracts and the collateral are subject to daily revaluation at market prices and daily re-margining;

3. 50% 3.1 receivables directly or indirectly secured by mortgage on:
a) residential properties in OECD countries up to two thirds of their market value;
b) agricultural properties, in so far as they are inscribed in the Swiss land register as such, up to two thirds of their market value;
3.2 receivables with a residual maturity of over one year to three years from banks with head offices in OECD countries;
3.3 receivables with a residual maturity of up to one year from banks with head offices in non-OECD countries, including receivables arising from application of Art. 12f par. 2 lit. a;
3.4 subordinated receivables from public-sector entities in OECD countries;

4. 75% 4.1 receivables directly or indirectly secured by mortgage on:
a) residential properties in OECD countries in excess of two thirds of their market value;
b) construction land, office and commercial properties and multifunctional industrial properties in OECD countries up to one half of their market value;
c) large commercial and industrial properties in OECD countries up to one third of their market value;
4.2 receivables with a residual maturity of over three years from banks with head offices in OECD countries;
4.3 lombard facilities which are secured by movable assets, cash deposits or fiduciary deposits customarily accepted by banks and

which derive from a diversified portfolio and are traded on a recognised stock exchange or on a representative market pursuant to Art. 14 lit. d and which are subject to weekly, or in case of extraordinary market conditions, daily, revaluation to market, in so far as the lombard credits of a customer are not weighted in accordance with par. 2 and 3;

5.	100%	5.1	receivables from public-sector entities in non-OECD countries;
		5.2	receivables with a residual maturity of over one year from banks with head offices in non-OECD countries;
		5.3	receivables from all other counterparties;
		5.4	other receivables secured directly or indirectly by mortgage;
6.	250%	6.1	subordinated receivables other than those named under point 3.4.

2 In the case of receivables which are collateralised by securities of third parties or fiduciary deposits with third parties pursuant to par. 1 points 1–5 or are guaranteed by these, the same risk weighting may be used as in the case of direct receivables from these third parties.

3 Debt securities of banks with registered offices in OECD countries and traded on a recognised stock exchange and deriving from the trading book are deemed to be receivables under one year, irrespective of their residual maturity.

Art. 12b Risk Weighting of Assets Unrelated to Counterparties

Assets which are unrelated to a counterparty are to be weighted as follows:

1.	0%	1.1	*repealed*
		1.2	the debit balance of the equalisation account included under other assets;
2.	250%	2.1	bank buildings as well as participations in related real estate companies;
3.	375%	3.1	other real estate as well as participations in related real estate companies;
4.	625%	4.1	other fixed assets and intangible assets, excluding goodwill as well as amounts capitalised under other assets and which require to be amortised.

Art. 12c Off-Balance Sheet Transactions

Off-balance sheet transactions are to be converted into their credit equivalent and then weighted with the rates listed in Art. 12a according to the counterparty.

Art. 12d Contingent Liabilities and Irrevocable Facilities Granted

1 In the case of contingent liabilities and irrevocable facilities granted, the credit equivalent is calculated by multiplying the nominal value or the present value of each transaction by its corresponding credit conversion factor.

2 The following credit conversion factors apply:

	Factor	Instrument
1.	0,25	1.1 commitments arising from letters of credit for merchandise; 1.2 commitments arising from endorsement guarantees from rediscounting; 1.3 sureties for construction workers for the completion of buildings in Switzerland;
2.	0,5	2.1 guarantees such as bid bonds, delivery and performance bonds including sureties for construction workers which are not included under point 1.3; 2.2 other guarantees, such as bill guarantees, sureties and guarantee commitments as well as other commitments from standby letters of credit which do not serve to cover collectibility risk; 2.3 unused, unsecured irrevocable credit facilities granted, including note issuance facilities, revolving underwriting facilities and similar instruments with a firm commitment of more than one year residual maturity; 2.4 performance-related down-payment guarantees;
3.	1,0	3.1 commitments arising from bill guarantees, sureties and guarantees as well as irrevocable standby letters of credit to cover collectibility risk;
4.	1,25	4.1 commitments arising from payment obligations or margin calls on shares and other equity paper which are not entered into the balance sheet as “participating interests”;
5.	2,5	5.1 commitments arising from payment obligations or margin calls on shares and other equity paper so long as they are not participations requiring to be consolidated;

6. 6,25 6.1 commitments arising from payment obligations or margin calls on shares and other equity paper so long as they are participations requiring to be consolidated.

3 Contingent liabilities in respect of which the bank has transferred sub-participations, may be weighted, to the extent of the sub-participation, as direct receivables from the taker of such sub-participations.

Art. 12e Forward Contracts and Purchased Options

1 In the case of forward contracts (including spot transactions which have not yet been completed and entered into the balance sheet), the credit equivalent may be computed by selecting either the current exposure method or the original exposure method. For purchased options, the current exposure method must always be applied.

2 In using the current exposure method, the credit equivalent is computed on the basis of the current replacement value of the respective contract plus a security margin (add-on) to cover the future potential credit risk during the remaining duration of the contract. An add-on may be netted, up to the limit of the add-on, with the negative replacement value.

3 In using the original exposure method, the credit risk equivalent results from the multiplication of the nominal value of each respective contract by its credit conversion factor.

4 For forward contracts and purchased options, the following add-ons and credit conversion factors per underlying value are applicable:

	Current Exposure Method (add-ons in percent)			**Original Exposure Method** (credit conversion factors in percent)	
	Residual maturity:			Original maturity:	
	≤1yr	>1yr–5yr	>5yr	1yr	in addition, for each further year or part thereof
Basis value					
Interest	0.0	0.5	1.5	1.0	2.0 p.a.
Currencies and gold	1.0	5.0	7.5	4.0	6.0 p.a.
Shares	6.0	8.0	10.0	12.0	9.0 p.a.
Share indices	4.0	5.0	7.5	8.0	6.0
Precious metals (not including gold)	7.0	8.0	10.0	14.0	10.0 p.a.
Other raw materials	12.0	13.0	15.0	24.0	18.0 p.a.

5 In the case of interest-rate contracts, the duration of the underlying basis value is determinant; in the case of other instruments, the duration of the contract is determinant.

6 Add-ons and credit conversion factors are computed on the following basis:

a) in the case of forward-rate agreements, interest-rate swaps and similar instruments, on the basis of the nominal value of the contract or of the present value of the receivable side comprising the nominal value and interest;

b) in the case of currency swaps, on the basis of the nominal value of the receivable side, i.e. the computation basis relevant for the determination of the incoming interest payments or of the present value of the receivable side consisting of the nominal value and interest;

c) in the case of share index swaps, precious metal swaps, non-ferrous metal swaps and commodity swaps, on the basis of the agreed nominal consideration or – if no nominal consideration is stated – on the basis of computation "quantity x fixed price" or of the market value of the delivery claim or the cash value of the receivable side consisting of nominal value and interest;

d) in the case of other forward contracts, on the basis of the market value of the monetary receivable or delivery claim;

e) in the case of options, by analogy to the other forward contracts, however with a corresponding delta weighting.

7 An add-on may be waived for:

a) contracts with an original maturity of at most 14 calendar days;

b) contracts which are traded on a recognised stock exchange on which they are subject to a daily remargining requirement, except in the case of purchased options;

c) contracts traded over-the-counter which fulfil all of the following conditions;

1. the contracts are traded on a representative market;
2. the transactions are conducted on a secured basis; the collateral consists of cash deposits or marketable securities, precious metals and commodities which are pledged or at least collateralised in an equivalent manner;
3. the contracts and the collateral are revalued daily at market prices and are subject to daily remargining.

Art. 12f Netting

1 Banks applying the current exposure method may off-set positive replacement values and all add-ons on the one hand, and negative replacement values on forward contracts and purchased options with the same counterparty as per par. 2, on the other hand, in so far as a bilateral agreement with this counterparty exists which is demonstrably recognised and capable of being enforced according to the following laws:

a) according to the law of the country in which the counterparty has its registered office and, if the foreign branch of an enterprise is involved, in addition according to the law of the place in which the branch is established;

b) according to the law which is applicable for the individual transactions covered by the agreement; and

c) according to the law to which the agreements are subject and necessary to effect the off-set.

2 Netting is permitted in the following cases:

a) for all transactions covered by a netting agreement according to which the bank, in case of default by the counterparty as a result of insolvency, bankruptcy, liquidation or similar circumstances, has the right to receive or pay over the difference of the unrealised gains or losses on transactions covered by the agreement (close-out netting); or

b) for all offsetting receivables and payables maturing on the same day and in the same currency and which through a debt rescheduling agreement between the bank and the counterparty are summarised in a manner which results in a single net amount and thus creates a new legally binding contract which replaces the previous contractual arrangements (netting by novation); or

c) for contracts which are closed out, in so far as an agreement for payment netting exists, according to which on maturity the offsetting payment obligations per currency are expressed on a net-balance basis and only this net balance is paid over.

3 Netting in accordance with par. 2 is not permitted whenever the agreement contains a provision that allows the non-delinquent party to make only limited payments or no payment to the delinquent party even if the latter on a net basis is a creditor (walk-away clause).

Art. 12g Loan and Repurchase and Reverse Repurchase Agreement Operations with Securities and Commodities

As regards the coverage of credit risk in the case of loans and repurchase and reverse repurchase agreement operations with securities and commodities, only the difference between the collateral and the security or commodity position is subject to capital adequacy requirements, if all of the following conditions are fulfilled:

a) the collateral consists of pledged cash deposits, securities and commodities traded on a recognised stock exchange or on a representative market or which are collateralised in an equivalent manner;

b) both the collateral as well as the security or commodity positions are revalued at market rates on a daily basis;

c) all excesses or deficits of collateral coverage in comparison with the originally agreed collateral are off-set by daily margin compensatory payments or changes in the assets deposited. In the case that no supplementary collateral

deposit is effected, the transactions are liquidated within the period of time customary for option and future exchanges.

Art. 12h Computation of the Net Position

1 The net position shall be computed as follows:

	physically on hand
	(plus: to be received from security lending operations
	less: delivery obligations arising from security borrowing operations)
+	unsettled spot and forward purchases (incl. financial futures and swaps)
./.	unsettled spot and forward sales (incl. financial futures and swaps)
+	firm commitments from underwriting, less sub-participations granted and firm subscriptions provided that they eliminate the price risk for the bank
+	future delivery claims arising from call purchases, delta weighted
./.	future delivery obligations arising from written calls, delta weighted
+	future delivery claims arising from written puts, delta weighted
./.	future delivery obligations arising from put purchases, delta weighted.

2 Any amount included under value adjustments and provisions is to be deducted from the net position.

3 For positions outside the trading book (Art. 14 lit. e), the physical holdings are to be taken into consideration at their book value.

Art. 12i Risk Weighting of Net Positions Outside the Trading Book and Those Included in Trading Book in Accordance with Art. 12l par. 2 (De-Minimis)

1 In the case of interest-rate instruments and equity paper outside the trading book (Art. 14 lit. e) and interest-rate instruments and equity shares in the trading book in accordance with Art. 12l par. 2 (De-Minimis) of the same issuer with the same risk weighting, the net position is subject to a capital requirement.

2 For interest-rate instruments, the net position per issuer is to be weighted in accordance with the rates fixed in Art. 12a par. 1, whereby subordinated interest-rate instruments traded on a recognised exchange can be weighted by half. Equity securities are to be weighted per issuer as follows:

1. 125%
1.1 shares and other equity paper which are traded on a recognised stock exchange and not recorded under "participating interests";
1.2 unit certificates in Swiss and foreign investment funds which are allowed to be distributed publicly in Switzerland and whose rules contain the obligation to redeem the certificates on a daily basis;
1.3 unit certificates in real-estate funds which are traded on a recognised stock exchange.

2. 250%
2.1 shares and other equity paper not traded on a recognised exchange and not included under "participating interests";
2.2 unit certificates in Swiss and foreign investment funds which are not allowed to be distributed publicly in Switzerland and whose rules do not contain the obligation to redeem the certificates on a daily basis;
2.3 unit certificates in real-estate funds which are not traded on a recognised stock exchange.

3. 500%
3.1 participations not required to be consolidated excluding participations in the fields of banking and finance;
3.2 shares and other equity paper recorded under financial investments in so far as they constitute, individually or together with securities included under "participating interests" or "financial investments", a qualified participation within the meaning of Art. 3 par. 2 lit. c^{bis} of the Law.

Art. 12k Treasury Stock and Qualified Participations in the Trading Book

1 The following net long positions in treasury stock are to be weighted with 1250%:

a) treasury stock and other equity stock issued by the bank itself held directly or indirectly in the trading book (Art. 14 lit. e);

b) subordinated interest-rate instruments issued by the bank itself held directly or indirectly in the trading book (Art. 14 lit. e).

2 The net positions in shares and other equity instruments in the trading book (Art. 14 lit. e) are to be weighted with a factor of 250% insofar as they individually or together with instruments recorded under financial investments or participations constitute a qualified participation within the meaning of Art. 3 lit. c^{bis} of the Law.

Art. 12l Positions Exposed to Market Risk

1 Market risk positions in interest-rate instruments and equity securities in the trading book (Art. 14 lit. e) as well as in foreign exchange and commodities throughout the bank shall be computed in accordance with the standard or model-based approach.

2 The bank can compute equity requirements for interest-rate instruments and equity securities in the trading book (Art. 14 lit. e) in accordance with Art. 12a to 12i, if the limits set forth in the Guidelines of the Banking Commission are not exceeded ("de-minimis rule").

Art. 12m Standard Approach to Computing Market Risks for Interest-Rate Instruments and Equity Securities

1 In applying the standard approach, the requirements for specific and general market risks are to be computed separately for interest-rate instruments and equity securities.

2 The requirements for specific risk in respect of interest-rate instruments result from the multiplication of the net position per issuer computed in accordance with Art. 12h with the following rates:

1. 0% Interest-rate instruments of issuers in accordance with Art. 12a par. 1 points 1.2 and 1.3
2. 2,5% Qualified interest-rate instruments as defined in Art. 14 lit. f
3. 8% Other interest-rate instruments
4. 10% High-yield interest-rate instruments as defined in Art. 14 lit. g

3 The requirements for general market risk in respect of interest-rate instruments correspond per currency to the value determined by means of the maturity or duration method.

4 The requirements for specific risk in respect of equity securities correspond to 8% of the net position per issuer in accordance with Art. 12h. The requirements for diversified and liquid portfolios of shares as defined in Art. 14 lit. h shall amount to 4%, for share index contracts 2%.

5 The requirements for general market risk in respect of equity securities correspond to 8% of the net position per national market or per single currency zone.

Art. 12n Standard Approach to Computing Market Risks for Foreign Exchange, Gold and Commodities

1 The requirements for foreign-exchange positions shall amount to 10% of the greater of the sum of net long positions on the one hand and the sum of net short positions, on the other.

2 The requirements for gold positions shall correspond to 10% of the net gold position.

3 The requirements for commodity positions shall correspond to the sum of 20% of the net position per group of commodities and 3% of the gross position per group of commodities (sum of the absolute values of long and short positions).

Art. 12o Model-Based Approach to Computing Market Risks

1 The Banking Commission can grant permission to the bank upon application to compute the equity requirements to support market risks in accordance with the model-based approach, provided that the latter meets the minimum requirements listed in the guidelines of the Banking Commission.

2 The requirements computed in accordance with the model-based approach shall correspond to the greater of the following amounts: on the one hand, the value-at-risk of the preceding day or, on the other, the average of the daily values-at-risk of the preceding sixty trading days multiplied by the multiplication factor specific to the institution set by the Banking Commission. The multiplication factor specific to the institution shall amount at least to three and shall depend on the fulfilment of the minimum requirements and the degree of preciseness of forecasting of the risk aggregation model specific to the institution.

Art. 12p Guidelines of Banking Commission

The Guidelines of the Banking Commission shall be followed in order to compute the capital requirements to support market risks using the standard or model-based approach as well as consolidated capital requirements.

Art. 13 Deductions from Required Equity

The sum of required equity is reduced:

a) in the case of all banks by 6% of value adjustments and provisions entered under the liabilities and which cover positions for which equity is required, after deducting silent reserves which may be added to equity pursuant to Art. 11b par. 1 lit. b and after deducting value adjustments entered under the liabilities and which are included in the computation of the net position pursuant to Art. 12h par. 2;

b) in the case of Cantonal banks, for whose total non-subordinated liabilities the Canton is responsible, by a further 12.5% of required equity in so far as subordinated liabilities have not been included in equity pursuant to Art.11b par. 2 lit. b.

Art. 13a Consolidation of Equity

1 The equity requirements are to be fulfilled both on a single-bank and consolidated basis if the bank, together with one or more enterprises active in the field of finance or real-estate companies, forms an economic unit or if it may be assumed in other circumstances that it is legally committed or is de facto obligated to provide assistance to such enterprises.

2 An obligation to consolidate as per par. 1 exists in principle whenever the bank participates, directly or indirectly, in more than half of the voting rights of enterprises active in the fields of banking or finance and of real-estate companies with registered offices in Switzerland or abroad or if it exerts a controlling influence thereover in another manner.

3 Should controlled enterprises active in the field of banking and finance be, individually or collectively, immaterial for compliance with the equity requirements in view of their relation to the bank or on the basis of their own size and business activities, the bank may, with the consent of its auditors, dispense with consolidating them or may dispense with preparing a computation of consolidated required equity. The Banking Commission may exempt sub-groups from the requirement to consolidate equity if the total group is itself subject to an appropriate supervision on a consolidated basis.

4 An obligation to consolidate exists further as soon as the bank, together with other non-consolidated shareholders or partners, exercises a controlling influence in so far as its own share of the voting capital reaches at least 20% and the bank, on the basis of this common control, is legally bound or de facto obligated to provide support to the jointly-held enterprise to the extent of its capital share.

5 The companies to be consolidated pursuant to par. 1 and 2 are in principle to be consolidated using the method of full consolidation. Minority shareholdings pursuant to par. 4 are accounted for according to the method of proportional consolidation. Participations whose voting rights are held in equal shares together with a second shareholder or partner, may be included in the consolidation either by full or partial consolidation.

6 Participations of more than 50% of the voting rights may be included by proportional consolidation with the consent of the Banking Commission if it is contractually provided that:

a) the support to the company required to be consolidated is limited to its own proportion of capital; and

b) the other shareholders or partners are committed to, and are legally and financially able to provide the necessary support to the extent of their own proportion of capital.

7 As a departure from par. 1, the Banking Commission may, in certain cases, exempt banks, either in part or in full, from the fulfilment of the capital adequacy requirements on a case-by-case basis, notably when a central organisation fulfils the conditions of Art. 4 par. 3.

Art. 13b Statement of Required Equity

1 A statement of required equity is to be prepared and submitted to the Swiss National Bank using a form laid down by the Banking Commission within two months, as follows:

a) on a single-company basis, each quarter;

b) on a consolidated basis, semi-annually.

2 The bank must inform the Banking Commission immediately whenever the capital adequacy requirements are not fulfilled.

3 The Banking Commission may demand additionally from internationally active banks as defined in Art. 14 lit. c a computation of eligible and required equity on a consolidated basis in accordance with the currently valid minimum standards of the Basle Committee for Banking Supervision.

Art. 14 Definitions

The following definitions shall apply as regards Art.12–13b:

a. OECD Countries:

1. Countries which are full members of the Organisation of Economic Co-operation and Development;

2. Countries which have concluded special credit agreements with the International Monetary Fund in connection with the General Agreements on Credit of the latter;

   excluding those countries which have rescheduled their external debts during the preceding five years and those countries whose rating for long-term liabilities in foreign currencies as defined by one of the rating agencies recognised by the Banking Commission is lower than "investment grade" or which have no rating and whose yield to maturity and remaining duration are not comparable with those of long-term liabilities with an investment grade rating.

b. Multilateral Development Banks:

1. International Bank for Reconstruction and Development, IBRD,
2. International Finance Corporation, IFC,
3. Inter-American Development Bank, IADB,
4. Asian Development Bank, AsDB,
5. African Development Bank, AfDB,
6. European Investment Bank, EIB,
7. Council of Europe Social Development Fund,
8. Nordic Investment Bank,
9. Caribbean Development Bank,
10. European Bank for Reconstruction and Development, EBRD.

c. Internationally Active Banks:

Banks which have branches abroad or have foreign participations in the fields of banking and finance requiring to be consolidated pursuant to Art.13a.

d. Representative Market:

A representative market shall mean an organised market with regular publication of prices on which at least three market makers, who are independent of each other, quote prices, normally on a daily basis.

e. Trading Book:

The trading book shall consist of positions which met all of the following conditions:

1. the positions are actively managed and are held by the bank with the intention of profiting from fluctuations in market prices;

2. the bank envisages to hold the position risks in the short term;

3. the position risks can be traded on a recognised exchange or a representative market;

4 the positions are revalued daily to market prices.

f. Qualified Interest-Rate Instruments:

1. investment-grade rating or higher of at least two rating agencies recognised by the Banking Commission; or

2. investment-grade rating or higher of one rating agency recognised by the Banking Commission without the availability of a lower rating of a rating agency recognised by the Banking Commission; or

3. without rating but with a yield to maturity and remaining duration which are comparable with instruments of investment-grade rating and trading of one instrument of this issuers on a recognised exchange or a representative market as defined in Art. 14 lit. d.

g. High-Yield Interest-Rate Instruments:

Interest-rate instruments which meet one of the following criteria:

1. rating such as "Caa", "CCC" or lower for long-term or an equivalent rating for short-term interest-rate instruments of a rating agency recognised by the Banking Commission;or
2. without rating, but with a yield to maturity and remaining duration which is comparable to those with a rating such as "Caa","Caa" or lower for long-term or an equivalent rating for short-term interest-rate instruments.

h. Diversified and Liquid Share Portfolios:

A portfolio is deemed to be diversified and liquid if

1. no position of a single issuer exceeds 5% of the total share portfolio, and
2. the shares are quoted on exchanges.

Art. 14a

Art. 4 par. 2bis of the Law is not applicable whenever:

a) participations have been acquired temporarily within the framework of a company restructuring or rescue;

b) securities have been underwritten for the normal duration of a new issue;

c) the difference between the book value and the relevant maximum value for participations is covered by freely available eligible equity.

5. Liquidity

Art. 15
Liquid assets within the meaning of Art. 4 of the Law are cash holdings and balances on giro and postal checking accounts.

Art. 16
1 Easily realisable assets within the meaning of Art. 4 of the Law are:

a) bills of exchange, bonds, rescriptions and debt register claims, which can be discounted at the Swiss National Bank;

b) bills of exchange, bonds, rescriptions and debt register claims, which can be pledged at the Swiss National Bank;

c) securities which can be pledged or discounted at the central bank of a foreign branch;

d) bonds, rescriptions and other debt instruments of foreign states and other public-law corporations if they are traded on a representative market;

e) debt instruments and acceptances from first-class foreign banks, or other equally rated instruments due within 6 months;

f) precious metals (gold, silver, platinum, palladium) and precious metal balances receivable within one month, as long as there are no offsetting liabilities within each type of precious metals;

g) current-account receivables and fixed-term advances within one month, secured by assets pledgeable at the Swiss National Bank;

h) excess of the easily realisable assets (Art. 16a) over the offsettable short-term liabilities (Art. 17a).

2 Easily realisable assets represented by claims against foreign debtors can be taken into consideration only insofar as either the payment in Swiss francs or the transfer of the payable amount in foreign currency into Switzerland is secured.

3 Marketable assets which have been pledged must be deducted to the extent that the credit facilities have actually been utilised.

Art. 16a

1 Easily marketable assets which can be offset, where they are collectible within one month,are:

a) due from banks at sight or time;

b) bonds, rescriptions, bills of exchange and debt instruments, not included under Art.16;

c) money-market book receivables; such assets are unsecured receivables from first-class debtors who have issued bonds, notes or other money-market paper which have maturities of up to one year;

d) receivables included in other assets.

Art. 17

Short-term liabilities within the meaning of Art. 4 of the Law are:

a) the excess of the offsettable short-term liabilities (Art. 17a) over the easily realisable offsettable assets (Art. 16a);

b) 50% of the short-term payables and other accounts or books without withdrawal restrictions;

c) 15% of deposits in savings, deposit or similar books or accounts with withdrawal restrictions, excluding amounts not available for distribution (e.g. pension-fund liabilities).

Art. 17a

1 Short-term liabilities, which can be offset when they are due within one month are:

a) due to banks at sight and on time;

b) due to customers on time;

c) restricted pension fund monies;

d) bonds, cash bonds and certificates of deposits;

e) precious metal accounts as long as there are no offsetting assets or balances within each type of precious metal;

f) payables included in other liabilities.

2 Short-term liabilities assumed against the pledging of marketable assets (Art. 16 par. 3) may be deducted and do not fall into the offsetting process.

Art. 18

1 Liquid assets and easily realisable assets must together be at least equal to 33% of the short-term liabilities.

2 A bank must advise its auditors if its sight and other liabilities due within one month to an individual customer or bank exceed 10% of its total unnetted sight and other liabilities due within one month. Liabilities falling within Art. 17c are only included in this computation at the percentage rate stated in that Article. Liabilities to independent legal entities and persons who are linked through interlocking share capital interests of over 50% are to be considered as one group.

3 Banks are responsible for ensuring that their group maintains adequate levels of liquidity within the meaning of Art. 12 par. 2.

Art. 19

1 Swiss-franc liquid assets must, on the basis of a monthly average (from the 20th of one month to the l9th of the following month), be equal to a specific percentage of the following Swiss-franc liabilities:

a) due to banks at sight or on time, due within three months, excluding metal accounts;

b) due to customers at sight or on time, due within three months, excluding metal accounts;

c) 20% of the savings, deposit and similar accounts, excluding pension fund liabilities.

2 The percentage applicable in par. 1 of this article is, at maximum, 4%. It will be fixed by the Federal Department of Finance on the basis of a recommendation by the Federal Banking Commission and the Swiss National Bank.

3 Liabilities are computed on the basis of the average of outstanding balances at the end of the three months preceding the computation.

4 The Federal Banking Commission will involve the services of the Swiss National Bank to supervise the adherence to the provisions of par. 1.

Art. 20

Banks are required to file the following liquidity returns on the official forms:

a) Cash liquidity: monthly (Art. 19);

b) Total liquidity: quarterly (Art. 18).

6. Risk Diversification

Art. 21 Notification of Risk Concentrations

1 A risk concentration is deemed to have arisen when the aggregate risk position for one counterparty computed pursuant to Art. 21d reaches or exceeds 10% of the bank's eligible equity resources pursuant to Art.11–11d.

2 The bank shall prepare quarterly a list of all risk concentrations existing at the selected cut-off dates and shall submit it to its organs for direction, supervision and control as well as, within one month, to its banking auditors in accordance with a form prescribed by the Banking Commission. The auditors shall supervise the internal control exercised by the bank over the risk concentrations and appreciate its development.

3 Should the risk position involve a member of the bank's governing bodies or a person who holds a qualified participation in the bank within the meaning of Art. 3 par. 2 lit. c^{bis} of the law or any person or body corporate closely related to them, the risk concentration shall be designated accordingly in the list under the collective term "Transactions with Governing Bodies".

4 Should a risk position involve group companies which are included in the consolidated capital adequacy and risk diversification position of a bank or of a bank or financial group to which it belongs, or a company not requiring to be consolidated but controlled by the bank, the risk concentration shall be designated in the list under the collective term "Transactions with Group Companies". To be reported are also those parts of the risk position "Transactions with Group Companies" which are exempted from the upper limit in accordance with Art. 21a par. 2 and Art. 22 par. 2 lit. b.

5 Risk concentrations pursuant to Art. 21a par. 5 are to be reported prior to deducting the allocated freely eligible equity resources.

Art. 21a Upper Limit for Risk Concentrations

1 A risk position may not exceed 25% of the bank's eligible equity resources as computed in accordance with Art.11–11d.

2 If a bank belongs to a banking or finance group which is subject to supervision on a consolidated basis considered to be appropriate, the risk positions of those group companies which are included in the consolidated capital adequacy and risk diversification positions and:

a) in turn are individually subject to appropriate supervision, or

b) as counterparty only have group companies, which in turn are individually subject to appropriate supervision,

are exempted from the upper limit in accordance with par. 1.

3 Should the bank discover that a risk position has exceeded the upper limit, it shall immediately notify its Auditors and the Banking Commission.

4 If the excess arises only as a consequence of the connection of counterparties who were previously independent of each other or of a connection of the bank with other enterprises active in the field of finance, the excess shall be eliminated within two years.

5 The upper limit may be exceeded without immediate notification pursuant to par. 3 whenever and in so far as the excess is covered completely by freely eligible equity resources. An allocation of this nature of freely eligible equity resources is to be disclosed in the Statement of Own Equity pursuant to Art.13b.

Art. 21b Upper Limit for Aggregate Risk Concentrations

1 The aggregate amount of risk concentrations pursuant to Art. 21 may not exceed 800% of the bank's eligible equity resources pursuant to Art.11–11d.

2 The following positions are not required to be included in the computation in accordance with par. 1:

a) receivables listed in bullets 2.1, 2.2,2.4, 2.6 and 2.7 of Art. 12a par. 1;

b) receivables from group companies of the banking or finance group in so far as they are exempted from the upper limit in accordance with Art. 21a par. 2 and Art. 22 par. 2 lit. b;

c) portions of a risk position which are covered by freely eligible equity resources;

d) risk positions which, after deducting the amounts as per lit. a–c, no longer constitute risk concentrations pursuant to Art. 21 par. 1;

e) receivables from a consortium pursuant to Art. 21c par. 1 lit. c, in so far as and to the degree that they are simultaneously added to a risk position of one or several consortium member(s) as a risk concentration pursuant to Art. 21e par. 4.

3 Article 21a par. 3, 4 and 5 and Article 22 par. 2 lit. a and c are to be applied by analogy.

Art. 21c Group of Related Counterparties

1 Two or more natural persons or legal entities shall be considered as a group of related counterparties and are to be dealt with as a unit, if:

a) one of them directly or indirectly holds more than half of the voting rights of the other or exercises a controlling influence over the other in another manner; or

b) recognisable inter-dependencies exist between them which render it probable that if one of them falls into financial difficulties, the other will encounter payment difficulties; or

c) they form a consortium; several consortiums are not considered as inter-related counterparties even if individual or all consortium members are identical; similarly, other receivables from individual consortium members are not to be cumulated therewith.

2 Legally independent public enterprises are not to be considered as related counterparties either amongst themselves or together with the controlling public body if the public body is not liable for the liabilities of the enterprise or if it is a bank with head office in a OECD country.

3 In the case of a group of related counterparties, the risk position of the group is the sum of the individual risk positions per counterparty.

Art. 21d Risk Positions

1 The risk position of a counterparty comprises the following positions entered into with this counterparty:

a) receivables weighted according to Art.21e;

b) off-balance-sheet transactions converted into their credit equivalent and weighted in accordance with Art.21e;

c) net long positions in securities computed in accordance with Art.21k.

2 Equity and subordinated debt securities which are deducted from core capital or from the total equity resources or which are weighted with a factor of 1250% (Art. 11a par. 3 lit. a, Art. 11d and Art.12k par. 1) shall not be included in the risk position.

3 Each commitment of a counterparty to a bank must be included in the amount of the credit limit which has been approved by the responsible governing body and which is utilisable without any further credit-granting decision or, if it is higher, the actual credit amount used.

4 The netting of receivables and commitments is only permissible under the same conditions and to the same extent as is foreseen in the Bank Accounting and Capital Adequacy Rules.

5 Individual value adjustments or individual provisions which have been constituted for receivables, off-balance-sheet transactions and net long positions may be deducted from the risk position, however, prior to application of the risk weighting factor.

6 Trading transactions (spot and forward transactions as well as options) for which the own obligations have been fulfilled, but the counterparty thereto has not fulfilled its obligations on the agreed value date, shall be risk-weighted at their value on the receivable side.

7 Receivables from payment transfers and trading transactions are only included in the risk position as from the third bank working day after the agreed value date.

Art. 21e Risk Weighting according to Counterparty or Collateral

1 For each position involving a counterparty, the risk weighting factor corresponding to this counterparty or to the collateral received pursuant to Art. 12a par. 1 is to be applied. In contrast thereto, in the case of lombard credits pursuant to Art. 12a par. 1 point 4.3, a risk weighting factor of 50% shall be applied.

2 If a position is collateralised by debt securities of third parties or fiduciary deposits with third parties or is guaranteed by these, the bank must include the collateralised portion in the risk position of that counterparty whose credit-worthiness was relevant for the granting of the credit facility. In contrast thereto, lombard credits may be attributed to the counterparty.

3 If the credit-worthiness of the counterparty and of the third party has been judged as equal, the bank has the option, with respect to the collateralised part, of either:

a) treating it as a direct receivable from the third party, or

b) including it in the counterparty risk position without considering the collateral.

4 Receivables from a consortium shall be attributed to the consortium members in relationship to their quota share. In the case of a joint and several guarantee, the bank must attribute the whole receivable to that consortium member whose credit-worthiness was classified as highest at the time of granting the credit facility.

Art. 21f Off-Balance-Sheet Transactions

Off-balance-sheet transactions are to be converted into their credit equivalent pursuant to Art. 21g and 21h and weighted with the factors set out in Art. 21e according to the counterparty or collateral.

Art. 21g Contingent Liabilities and Irrevocable Facilities Granted

1 For contingent liabilities and irrevocable facilities granted, the credit equivalent is computed by multiplying the nominal or net present value of the respective transaction with its credit conversion factor pursuant to Art. 12d par. 2.

2 Irrevocable secured and unsecured credit facilities granted are dealt with, irrespective of their duration, as credit lines approved by the responsible governing body and utilisable without any further credit-granting decision within the meaning of Art. 21d par. 3.

3 Contingent liabilities and irrevocable facilities granted in respect of which the bank has ceded sub-participations, are to be dealt in a manner analogous to that of Art. 21e par. 2 and 3.

Art. 21h Forward Contracts and Purchased Options

1 For forward contracts and purchased options, Art. 12e and 12f are to be applied.

2 For contracts traded on a recognised stock exchange, the bank may deduct the margin collateral in so far as it consists of cash deposits, securities, precious metals or commodities traded on a recognised stock exchange or on a representative market which are pledged or similarly collateralised and which are subject to daily revaluation to market.

3 If a transaction is not executed upon maturity, banks who use the current exposure method must treat it as a forward contract with maturity of under one year up to the moment the transaction is executed. Banks using the original exposure method, must apply a credit conversion factor which corresponds to the duration of the transaction since consummation thereof, plus one extra year.

Art. 21i Loan and Repurchase Transactions in Securities Precious Metals and Commodities

In the case of loan and repurchase transactions with securities, precious metals and commodities, only the difference between the collateral and the security, precious metal or commodity position is to be included in the computation, in so far as the requirements of Art. 12g are fulfilled.

Art. 21k Default Risk Exposures Specific to Issuers

1 The net long positions of debt and equity securities of each individual issuer with the same risk weighting in and outside the trading book (Art. 14 lit. e) shall be computed in accordance with Art. 12h and are to be weighted in accordance with Art. 12i par. 2. In contrast thereto, for participating interests not requiring to be consolidated pursuant to Art. 12i par. 2 point 3.1, a risk weighting factor of 166⅔% shall apply.

2 In computing the net long position in accordance with Art.12h, firm commitments arising from underwriting activities, less sub-participations ceded and firm subscriptions provided that they eliminate the price risk for the bank may be multiplied with the following credit conversion factors:

1.	0.05	from and including the day on which the commitment to underwrite was irrevocably entered into;
2.	0.1	on the date on which the issue is paid up;
3.	0.25	on the second and third bank working day after payment of the issue;
4.	0.50	on the fourth bank working day after payment of the issue;
5.	0.75	on the fifth bank working day after payment of the issue;
6.	1	from and including the sixth bank working day after payment of the issue.

Art. 21l Market Risks

Each bank shall adequately provide for internal limits considering relevant market risks of each of its activities.

Art. 21m Consolidation

The provisions regarding risk diversification are to be complied with both on a single-company and consolidated basis if and in so far as the bank, pursuant to Art.13a,is obligated to comply with the capital adequacy requirements on a consolidated basis. The notification pursuant to Art. 21 par. 2 must be made semi-annually on a consolidated basis within 2 months.

Art. 22 Relaxation and Tightening

1 In special cases the Banking Commission can allow an easing of the regulations of the Articles 21–21m, or it can order a tightening of them.

2 In particular, the Banking Commission can:

a) set a lower upper limit than 25% for a risk position;

b) declare the exception of the upper limit according to Article 21a par. 2 for the individual or for the whole of the group companies as not applicable or

extend them to individual group companies that do not fulfil the requirements according to Article 21a par. 2;

c) allow a short-term excess of the upper limit based on an application made beforehand;

d) set a different deadline than foreseen in Article 21a par. 4;

e) raise or lower the applicable risk weighting factor according to Article 21e par. 1 for a specified counterparty of the bank;

f) stipulate upper limits for land holdings held by a bank.

7. Annual Financial Statements

Art. 23 Contents

1 Annual financial statements consist of the balance sheet, the statement of earnings and the appendix. They are supplemented by the annual business report; the latter also includes details of all material events which occurred subsequent to the balance-sheet date.

2 Banks with a balance-sheet total of at least 100 million Swiss francs and whose on-balance-sheet operations represent a significant part of their business, must prepare in addition a statement of cash flows as part of the annual financial statements.

Art. 23a Consolidated Accounts

1 Should a bank hold, directly or indirectly, more than half of the voting rights of one or more companies or exercises in another manner a controlling influence thereover (banking group), it is to prepare in addition consolidated financial statements (consolidated accounts). If the controlled companies are immaterial to the objectives of consolidated accounts, consolidated accounts are not to be prepared.

2 Consolidated accounts are to be drawn up in accordance with generally accepted accounting principles pertaining to consolidations.

3 Banking groups which have total assets of less than one billion Swiss francs and less than 50 employees are exempted from the obligation to prepare consolidated accounts.

4 Consolidated accounts must nevertheless be prepared whenever:

a) the bank has its own bonds in circulation;

b) the equity securities of the bank are listed on the stock exchange;

c) persons representing at least 10% of the bank's capital require them;

d) they are necessary for the most reliable possible assessment of the net assets, financial and profitability situation of the bank;

e) by holding the majority of voting rights or in another manner, the bank controls one or more banks, and financial or real-estate companies with registered offices abroad.

5 A Swiss banking group which is included as a sub-group in its parent company's consolidated accounts and subject to the provisions of par. 4 lit. c, need not prepare separate consolidated accounts whenever:

a) the consolidated accounts of the ultimate parent company are drawn up and audited in accordance with the provisions of this Ordinance or equivalent foreign regulations; and

b) it makes available to the public the consolidated financial statements of the ultimate parent company like its own annual financial statements.

Art. 23b Interim Accounts

1 Banks with a balance sheet total of at least 100 million Swiss francs must draw up semi-annual interim accounts, and banks which are obligated to prepare consolidated accounts, consolidated interim accounts.

2 The interim accounts consist of the balance sheet and the profit and loss account.

3 The presentation and valuation principles applicable to interim accounts are to follow the same principles as apply for annual financial statements.

4 For banks which are obligated to prepare consolidated accounts, Art. 23a par. 2 applies by analogy.

Art. 24 Orderly Accounting

1 The accounts for single companies are to be prepared according to principles of orderly bookkeeping in such a manner as to permit the most reliable possible assessment of the net assets, financial situation and profitability of the bank.

2 Accounts are to be drawn up in particular according to the principles of:

a) orderly recording of transactions;
b) completeness of financial statements;
c) clarity of information;
d) materiality of information;
e) prudence;
f) continuation of the enterprise as a going-concern;
g) consistency in presentation and valuation;
h) proper matching of revenues and expenses between accounting periods;
i) prohibition of set-off of assets and liabilities as well as of income and expenses;
j) substance over form.

3 Material (par. 2 lit. d) are considered to be those matters and amounts which have an effect on the financial statements in such a manner that the recipient of the financial statements could be influenced in his evaluation and decisions concerning the bank.

4 The creation of silent reserves is permitted under Art. 25a par. 3. A release of silent reserves must be disclosed whenever the reported results are presented in a materially more favourable manner than the actual results as a result of a release of silent reserves.

5 Comparative figures are to be given in the annual accounts. In interim accounts, the balance sheet should contain the figures of the prior year's annual accounts and the statement of earnings those of the prior year's interim accounts.

Art. 25 Classification of Balance Sheet

1 In single-company accounts, the balance sheet must be classified at least as follows:

1. Assets

1.1 Liquid assets
1.2 Amounts due arising from money-market paper
1.3 Amounts due from banks
1.4 Amounts due from customers
1.5 Amounts due secured by mortgage
1.6 Securities and precious metals held for trading purposes
1.7 Financial investments
1.8 Participating interests

1.9 Fixed assets
1.10 Accrued income and prepaid expenses
1.11 Other assets
1.12 Unpaid capital
1.13 Total assets
1.13.1 Total subordinated amounts receivable
1.13.2 Total amounts due from group companies and holders of qualified participations

2. Liabilities

2.1 Amounts due arising from money-market paper
2.2 Amounts due to banks
2.3 Amounts due to customers in the form of savings or deposits
2.4 Other amounts due to customers
2.5 Medium-term bonds ("Kassenobligationen")
2.6 Debentures and mortgage bond loans
2.7 Accrued expenses and deferred income
2.8 Other liabilities
2.9 Value adjustments and provisions
2.10 Reserves for general banking risks
2.11 Company capital
2.12 General legal reserve
2.13 Reserve for own shares
2.14 Revaluation reserve
2.15 Other reserves
2.16 Retained earnings brought forward
2.17 Earnings for the year

Less:

2.18 Accumulated losses brought forward
2.19 Loss for the year
2.20 Total liabilities
2.20.1 Total subordinated amounts payable
2.20.2 Total amounts payable to group companies and holders of qualified participations

3. Off balance-sheet transactions

3.1 Contingent liabilities
3.2 Irrevocable facilities granted

3.3 Contingent liabilities for calls and margin liabilities
3.4 Commitment credits
3.5 Derivative financial instruments
3.6 Fiduciary transactions

2 Further positions which are material to individual banks are to be disclosed in the balance sheet or appendix. Zero positions may be omitted. Immaterial positions of similar nature may be regrouped.

3 Value adjustments which may be allocated directly to individual assets may be set off directly from the related asset position or may be included in liabilities under the caption "value adjustments and provisions" under par. 1 point 2.9. The method chosen is to be applied consistently and disclosed in the appendix under the accounting principles applied. Value adjustments directly set-off are also to be disclosed in the appendix.

4 Separate disclosure of the reserves for general banking risks according to par. 1 point 2.10 may be omitted; in this case, the reserves for general banking risks are to be disclosed in the caption "value adjustments and provisions" under par. 1 point 2.9.

5 Own shares held for trading purposes are not to be considered in the appropriation of a special reserve under par. 1 point 2.13.

6 The interim accounts are to be classified according to par. 1. Disclosure of amounts due to and from group companies and qualified participants under par. 1 points 1.13.2 and 2.20.2 may be omitted.

Art. 25a Classification of Profit and Loss Account

1 In single-company accounts, the statement of earnings must be classified at least as follows:

1. Income and expense from ordinary banking operations

1.1 Net profits/losses from interest-differential business
1.1.1 Interest and discount income
1.1.2 Interest and dividend income from trading portfolios
1.1.3 Interest and dividend income from financial investments
1.1.4 Interest expense
1.1.5 Sub-total net profits/losses from interest-differential business
1.2 Net revenue from commission business and services
1.2.1 Commission income from lending activities

1.2.2 Commission income from security and investment activities
1.2.3 Commission income from other services rendered
1.2.4 Commission expense
1.2.5 Sub-total net profits/losses from commission business and services
1.3 Profits/losses from dealing
1.4 Other ordinary profits/losses
1.4.1 Profits/losses on sales of financial investments
1.4.2 Income from participating interests
1.4.3 Profits/losses from real estate
1.4.4 Other ordinary income
1.4.5 Other ordinary expenses
1.4.6 Sub-total other ordinary profits/losses
1.5 Administrative expenses
1.5.1 Personnel expenses
1.5.2 Operating expenses
1.5.3 Sub-total administrative expenses
1.6 Gross profit

2. Profit/loss for the year

2.1 Gross profit
2.2 Depreciation and amortisation of fixed assets
2.3 Value adjustments, provisions and losses
2.4 Sub-total
2.5 Extraordinary income
2.6 Extraordinary expenses
2.7 Taxes
2.8 Profit/loss for the year

3. Appropriation of profit/elimination of losses

3.1 Profit/loss for year
3.2 Retained earnings/accumulated losses brought forward
3.3 Retained earnings/accumulated losses
3.4 Appropriation of retained earnings:
- appropriation to general legal reserve
- appropriation to other reserves
- distributions in relation to capital
- other appropriations

Elimination of losses:
– transfer from general legal reserve
– transfer from other reserves
– other elimination of losses

3.5 Retained earnings/accumulated losses to be carried forward

2 Further positions which are material for individual banks are to be disclosed in the statement of earnings or appendix. Zero positions may be omitted. Immaterial positions of similar nature may be added together.

3 In the statement of earnings, the creation of silent reserves must be booked in the captions "depreciation and amortisation of fixed assets" under par. 1 point 2.2, "value adjustments, provisions and losses" under par. 1 point 2.3 or "extraordinary expenses" under par. 1 point 2.6 and the dissolution of silent reserves in the position "extraordinary income" under par. 1 point 2.5.

4 The position "sub-total" under par. 1 position 2.4 is only to be disclosed when the annual profit or loss is materially affected by extraordinary profits or losses.

5 The position "interest and dividend income from trading portfolios" under par. 1 point 1.1.2 may be omitted when the cost of refinancing security trading transactions is included in the caption "profit from dealing" as per par. 1 point 1.3 and the interest and dividend income from trading portfolios is also included in this caption.

6 Banks, which are required to prepare interim accounts pursuant to Art. 23b may limit the presentation of the statement of earnings to the line "gross profit" as per par. 1 point 1.6; in this case and in place of the positions as per par. 1 point 2, the development of risks as well as provisions and value adjustments must be commented upon. In addition, the statement of earnings contained in interim accounts is to be classified in accordance with par. 1.

Art. 25b Classification of Cash Flow Statement

1 The cash flow statement must show, through the source and use of funds, the sources of changes in liquidity during the reporting period.

2 In single-company accounts, the cash flow statement must be classified at least as follows:

Cash flows from:

1. operations (inner financing)

2. capital transactions
3. transactions with fixed assets
4. banking operations.

3 Funds generated from banking operations must be analysed in such a manner that the refinancing is visible.

Art. 25c Contents of Appendix

1 In single-company accounts, the appendix must contain at least the following information:

1. Commentary relating to the volume of individual business areas and their effect on reporting; number of employees.

2. Presentation and valuation policies used for the financial statements, principles underlying the recording of transactions as well as commentary as to the management of risks, in particular how interest-sensitivity risk is dealt with and the use of derivative financial instruments.

3. Information concerning the balance sheet:

3.1 Summary of collateral for loans and off-balance sheet transactions;
3.2 Analysis of securities and precious metals held for trading purposes, of financial investments and participating interests:
3.2.1 In addition, all positions held for trading and investment purposes and lent out are to be disclosed;
3.2.2 Material receivables and payables contained in other captions and which are valued at market prices (trading portfolios) and when the result is shown under income from dealing are to be additionally broken down.
3.3 Registered name, registered office, business activity, company capital and percentage of significant shareholdings (shares of voting rights and capital as well as any contractual relationships).
3.4 Analysis of capital assets:
3.4.1 In addition, the fire insurance values of real estate and other fixed assets are to be disclosed;
3.4.2 To be disclosed also is the aggregate amount of leasing commitments not entered into the balance sheet.
3.5 Capitalised establishment expenses, capital increase and organisational costs.
3.6 Aggregate amount of assets pledged or assigned to secure own liabilities as well as assets subject to reservation of title.
3.7 Indication of commitments to own welfare and pension funds.

3.8 Analysis of outstanding debenture bonds.

3.9 Analysis of value adjustments and provisions as well as reserves for general banking risks and analysis of changes thereof during the reporting year:

3.9.1 Value adjustments and provisions are to be analysed according to: value adjustments and provisions for risks of default (collectibility and country risks), for other business risks, for financial investments, provisions for taxes and deferred taxes as well as other provisions;

3.9.2 Value adjustments and provisions for specific risks must be disclosed in the positions pursuant to 3.9.1;

3.9.3 Value adjustments directly set off against assets are to be deducted from the total of value adjustments and provisions;

3.9.4 Material releases and re-utilisations of value adjustments and provisions as well as reserves for general banking risks are to be commented upon and justified.

3.10 Composition of the company's capital:

3.10.1 Cantonal banks shall disclose the interest and maturity conditions pertaining to their dotation capital in so far as this is provided at agreed fixed rates and an obligation to pay interest thereon exists which is not dependent on the annual profit;

3.10.2 To the extent that they are known or should be known, shareholders or groups of shareholders linked by voting rights, whose participation at the balance sheet date exceeds 5% of all voting rights, are to be disclosed by name and percentage of capital held for each person; whenever a limit inferior to 5% is laid down by the by-laws, this limit is determinant;

3.10.3 Private bankers may omit the disclosures pursuant to this bullet.

3.11 Proof of equity and changes therein prior to appropriation of profits/ elimination of loss.

3.12 Maturity structure of current assets, financial investments and liabilities to third parties.

3.13 Amounts due to and from affiliated companies as well as to and from governing bodies.

3.14 Breakdown of assets and liabilities analysed according to domestic and foreign origin according to the principle of domicile, in so far as the bank has total assets of at least one billion Swiss francs or more than 50 employees.

3.15 If foreign business is material and in so far as the bank has total assets of at least one billion Swiss francs or more than 50 employees, total assets are to be further analysed by country or groups of countries:

3.15.1 The bank may itself determine the degree of detail of the analysis;

3.15.2 The percentage size of each country or group of countries is to be added next to their absolute amount.

3.16 Breakdown of individual assets and liability captions according to the most significant currencies for the bank, in so far as the bank has total assets of at least one billion Swiss francs or more than 50 employees:

3.16.1 The bank may itself determine the degree of detail of the analysis.

4. Information concerning off-balance sheet transactions:

4.1 Contingent liabilities analysed according to guarantees to secure credits and similar, to performance guarantees and similar, to irrevocable commitments and other contingent liabilities.

4.2 Commitment credits analysed according to commitments arising from deferred payments, commitments arising from acceptances and other commitments arising from guarantee credits.

4.3 Derivative financial instruments open at year end indicating the positive and negative replacement values and contract volumes analysed according to interest-rate instruments, foreign currencies, precious metals, equity securities/indices and others.

4.4 Fiduciary transactions analysed according to fiduciary deposits with third-party banks, fiduciary deposits with group banks and affiliated banks and fiduciary loans and other fiduciary financial transactions.

5. Information concerning the statement of earnings:

5.1 Details of significant income from refinancing in the position “interest and discount income” pursuant to Art. 25a par. 1 point 1.1.1, in so far as the corresponding refinancing costs have been set off against the income from dealing according to Art. 25a par. 5.

5.2 An appropriate analysis of income from dealing split by business area

5.3 Breakdown of the caption “personnel expenses” into salaries, social costs and other personnel expenses.

5.4 Breakdown of the caption “operating expenses” into expenses for office space, expenses for EDP, equipment, furniture, motor vehicles and other installations and other business expenses.

5.5 Commentaries on significant losses, extraordinary income and expenses as well as on material releases of silent reserves, reserves for general banking risks and releases of value adjustments and provisions no longer necessary.

5.6 Revaluations of fixed assets up to the limit of purchase cost (Art. 665–665a CO) are to be justified.

5.7 Banks active abroad with more than 50 employees or with a total balance sheet of more than one billion Swiss francs must present income and expenses from ordinary banking transactions in accordance with Art. 25a par. 1 point 1 analysed between domestic and foreign according to the principle of permanent establishments.

2 Zero positions may be omitted and immaterial positions of similar nature may be added together.

Art. 25d Principles Underlying Consolidated Financial Statements

1 The consolidated financial statements must give a true and fair view of the net asset, financial situation and profitability of the banking group. Orderly book-keeping is to follow particularly the principles set out in Art. 24 par. 2 and 3.

2 Art. 24 par. 5 applies as regards prior year's comparative figures.

Art. 25e Principles of Consolidation

1 Banks, finance companies and real estate companies with domicile in Switzerland or abroad are to be consolidated according to the method of global consolidation whenever control is exercised by virtue of a shareholding of more than 50% of voting rights or controlled in another manner.

2 The consolidation of capital is to be performed using the purchase method.

3 Minority interests in companies named in par. 1 as well as all other participating interests over which the bank can exercise a significant influence are, in principle, to be consolidated using the equity method. They may, however, be accounted for according to the principle of partial consolidation whenever the prescriptions regarding capital adequacy provide therefor. A significant influence is presumed to exist in the case of a participation of 20% or more in the voting capital.

4 Insurance companies are in principle to be dealt with in accordance with par. 3; in case of a majority holding or control in another manner, they can be accounted for by full consolidation. In both cases, individual positions of the financial statements which are impacted in a significant manner are to be disclosed in the appendix.

5 Shareholdings of 50% in jointly-held enterprises may be included in the consolidated accounts using the partial consolidation method or the equity method.

6 Temporarily-held participating interests are not to be consolidated. Non-consolidated participating interests are to be included in the balance sheet at their acquisition cost less economically necessary provisions.

Art. 25f Classification of Consolidated Balance Sheet

1 Unless otherwise provided for in the following paragraphs, the consolidated balance sheet is to be classified according to Art. 25 par. 1.

2 The caption "intangible assets" is to be inserted prior to the position "other assets" pursuant to Art. 25 par. 1 point 1.11.

3 The position "reserves for general banking risks" pursuant to Art. 25 par. 1 position 2.10 must be disclosed.

4 Instead of the positions "general legal reserve", "reserve for own shares", "revaluation reserve", "other reserves", "retained earnings brought forward", "profit for the year", "accumulated losses brought forward" and "loss for the year" as per Art. 25 par. 1 positions 2.12–2.19, the positions "capital reserves", "income reserves", "minority interests in capital and reserves", "revaluation reserves" and "consolidated profit" as well as "less consolidated loss" are to be utilised. The captions "consolidated profit" or "loss" are to indicate in sub-captions "thereof minority interest in consolidated profit" and "thereof minority interest in consolidated loss".

5 Art. 25 par. 2, 3 and 6 are to be applied as well.

Art. 25g Classification of Consolidated Statement of Earnings

1 Unless otherwise provided for in the following paragraphs, the statement of earnings is to be classified according to Art. 25a par. 1 points 1 and 2.

2 The caption "revenue from participating interests" as per Art. 25a par. 1 point 1.4.2 is to be re-analysed and should disclose separately the aggregate amount of income from participating interests accounted for according to the equity method and from other non-consolidated participating interests.

3 The position "profit for the year" as per Art. 25a par. 1 position 2.8 is to be shown as consolidated profit with separate disclosure of the interest of minority shareholders in the profit.

4 Art. 25a par. 2 as well as 4 to 6 are to be applied as well.

Art. 25h Classification of Consolidated Statement of Cash Flows

1 In the consolidated accounts, the cash flow statement is to be classified according to Art. 25b par. 2 and 3.

2 The positions are to be added to by analogy according to the particularities of the consolidated accounts.

Art. 25i Appendix to Consolidated Financial Statements

1 Unless otherwise provided for in the following paragraphs, the appendix is to be classified according to Art. 25c par. 1.

2 The disclosures pursuant to Art. 25c par. 1 point 2 are to include details of the principles underlying the preparation of the consolidated accounts.

3 In the caption pursuant to Art. 25c par. 1 point 3.3, the details concerning participating interests are to show separately the participating interests accounted for according to the full consolidation method, partial consolidation method, according to the equity method and other non-consolidated participating interests.

4 In the caption pursuant to Art. 25c par. 1 point 3.4, participating interests accounted for according to the equity method are to be disclosed separately. In addition, capitalised goodwill is to be shown as a separate item; material changes in goodwill are to be commented upon.

5 The proof of equity and changes therein pursuant to Art. 25c par. 1 point 3.11 is to be adapted accordingly in the consolidated balance sheet within the meaning of Art. 25f par. 4.

6 The disclosures pursuant to Art. 25c par. 1 point 3.10 are to be omitted.

Art. 25k Impact of Consolidated Accounts on Single-Company Accounts

1 If the bank is obligated to prepare consolidated financial statements, it is exempted from presenting a statement of cash flows in the single-company accounts pursuant to Art. 25b and from positions 3.1, 3.2, 3.3, 3.4, 3.8, 3.12, 3.14, 3.15, 3.16, 4.1, 4.2, 4.3, 5.1, 5.3, 5.4 and 5.7 of the appendix pursuant to Art. 25c par. 1.

2 The duty to prepare consolidated interim accounts further exempts the bank from the need to prepare single-company interim accounts.

Art. 26 Manner of Publication

1 The publication of annual financial statements and annual reports must be made in printed form. The business reports are to be made available to the press and any person requesting them.

2 Interim financial statements are to be published in the Swiss Official Gazette or in a Swiss newspaper; they may be published also in common by a banking association in the form of a printed summarised table, which is to be published as the other interim accounts.

3 Private banks which solicit monies from the public as well as banks with a balance sheet total of less than 5 million. Swiss francs may limit themselves to making their business reports, or whenever applicable, interim financial statements available for viewing by the public at their cash counters.

4 Three copies of the annual report and interim financial statements are to be sent to both the Banking Commission and the Swiss National Bank.

Art. 27 Deadlines for Publication

1 Annual financial statements are to be published or made available for viewing by the public within four months, and interim financial statements within two months of the end of the business year in accordance with Art. 26 or must be made available for inspection by the general public.

2 If a bank cannot comply with the deadlines set out in par. 1, it must file for an extension with the Banking Commission on a timely basis. If the circumstances justify it, the Banking Commission will consent to the extension.

Art. 28 Guidelines of the Banking Commission

1 The Guidelines of the Banking Commission are to be followed in the preparation and classification of annual and interim financial statements.

2 In its Guidelines, the Banking Commission may consent to financial-statement reporting systems which deviate from the above provisions if these are in conformity with recognised international standards which guarantee at least equivalent information for the public.

8. Interest Rates on Medium-Term Notes

Art. 29
Repealed

9. Special Provisions Concerning Co-Operative Banks

Art. 30
Recalled participation certificates of co-operative banks may be repaid prior to the time prescribed in Art. 12 par. 1 of the Law if at the same time participation certificates of at least the same amount are subscribed for and fully paid in.

10. Savings Deposits

Art. 31
repealed

Art. 32
repealed

11. Pledge Contracts

Art. 33
1 Banks that are authorised to repledge collateral pursuant to Art. 17 par. 2 of the Law, shall ascertain that third parties do not acquire rights to the repledged titles, in particular no charging lien, exceeding the amount of its claim against the pledgor. The pledge shall be redeemed upon payment of the debt to the bank, according to the agreement.

2 The authorisation of the bank to use the pledge for a contango transaction must mention the date on which the bank must revert to the pledgor's property securities identical to those used for the contango transaction (but not necessarily bearing the same serial numbers).

3 The repledging of several collateral deposits in their entirety is not admissible.

4 Where the bank causes its debtor to sign additional bills of exchange for the realisation of its claim, it must, in repledging or rediscounting such bills of exchange, ascertain that no claims exceeding the amount of its own accrue against the debtor.

12. Auditing Firms and Auditing Procedures

Art. 34
repealed

Art. 35
1 Only the following can be recognised as bank auditors within the meaning of Article 20 of the Law:

a) auditing associations to which are affiliated at least 12 banks and which can demonstrate that they possess capital and reserves or an unconditional guarantee capital of their members of no less than 1,000,000 Swiss francs within the meaning of Art. 870 par. 1 of the Code of Obligations, or furnish a bond of at least 1,000,000 Swiss francs; they must possess an organisationally independent internal auditing department;

b) fiduciary and auditing companies established as a legal entity which can demonstrate that its paid-in capital is of at least 1,000,000 francs; limited-liability companies ("GmbH") must in addition consist of at least four associates;

c) *repealed.*

2 In order to obtain accreditation, an auditing company must fulfil the following conditions in addition to those set out in Art. 20 of the Law:

a) its organisation must guarantee the efficient and continuous performance of the audit engagements; it must be detailed in its articles of incorporation, by-laws or regulations;

b) the members of its management must be of good repute and the majority of them must possess thorough knowledge of auditing, banking, financial and legal matters;

c) the recognised banking auditors must be of good repute and possess a Federal professional accountant's diploma ("eidg. Bücherexpertendiplom"), an equivalent foreign diploma or demonstrate in another manner a thorough knowledge of banking business and of bank auditing;

d) the auditing firm must undertake to perform its services for third parties only and abstain from conducting any business for its own account and its own risk, unless it is absolutely necessary for the proper operation of the auditing firm (e.g. investment of equity);

e) the auditing firm must prove that it will obtain audit engagements from at least five banks with combined assets of no less than SFr. 300 million. The Banking Commission sets a reasonable time limit for the fulfilment of this condition;

f) the auditing company must possess a professional indemnity insurance which is appropriate for its business policies.

3 The Banking Commission decides at its own discretion on the recognition of foreign or foreign controlled auditing firms. It can subject recognition of such companies to special conditions, such as the establishment of a branch in Switzerland, the payment of a deposit or the granting of reciprocity by the country in which the firm has its registered or its main office.

4 The Banking Commission maintains a list of the recognised auditing firms; this list is made available to interested parties.

Art. 36

1 The members of the administration and management and the employees of a fiduciary company or the internal auditor of an auditing association must be independent of the bank to be audited and its affiliated companies.

2 *repealed*

3 The auditing company shall accept no administrative or bookkeeping functions on behalf of the client bank nor assume any other duties which are incompatible with the audit.

4 The annual fee income derived from one bank or company affiliated to said bank shall not exceed 10% of the total annual fee income of the auditing firm; the Banking Commission may approve exceptions to this rule.

Art. 37

1 The written application for recognition as bank auditor must be accompanied by all records attesting that the conditions of Art. 35 and 36 are met.

2 Art.23^{quinquies} par. 1 of the Law applies by analogy to auditing firms.

Art. 38

Auditing firms recognised by the Banking Commission are required to:

a) inform the Banking Commission immediately of any change in their by-laws, articles of incorporation and regulations as well as of any change in the membership of their governing bodies and in the staff of principal auditors; the Banking Commission is authorised to inquire into the reasons for the withdrawal of members of the management and of principal auditors;

b) entrust with the direction of the audit only those auditors who have been reported to the Banking Commission and satisfy the stipulated conditions;

c) inform the Banking Commission immediately when the auditing report is delivered to the audited bank (Art. 21 par. 2 of the Law);

d) submit their balance sheet and profit and loss statement as well as their annual report, if any, to the Banking Commission every year.

Art. 39

1 Banks must appoint a recognised auditing firm, at the beginning of each financial year, for the audit of their annual financial statements.

2 A bank must obtain the approval of the Banking Commission prior to changing its auditing firm or appointing one for the first time. The Commission will refuse its approval if it feels that the auditing firm presented may not, under the circumstances, fulfil the audit properly according to regulations.

3 A bank that wants to change its auditors must explain its motives to the Banking Commission.

4 If a bank audit has not been performed according to regulations, the Banking Commission can oblige the bank to retain a different auditing firm at the beginning of the following year to perform its next audit.

5 The bank must make the last audit report available to the new auditing company.

Art. 40
The auditors shall perform unannounced interim audits within the course of the business year.

Art. 40a
1 The internal auditors of the bank shall submit their reports to the external auditors and shall communicate to them all information needed by them to fulfil their duties.

2 The internal auditors shall co-ordinate their activities and shall thereby avoid duplication of auditing efforts as far as possible.

Art. 41
1 Whenever an auditing firm has given a bank a time limit for establishing orderly conditions, it shall perform a corresponding supplementary audit immediately after expiry of such time limit. If corrective action has not been taken in time, the last regular audit report and a special report on the supplementary audit shall be forwarded to the Banking Commission without delay.

2 Whenever the auditing firm informs the Banking Commission immediately, within the meaning of Art. 21 par. 4 of the Law, it shall do so in writing and enclose the last regular auditing report.

Art. 42
1 Applications for a change in the scale of auditing fees shall be submitted in writing to the Banking Commission by the professional association of the auditing industry stating the reasons for such change. Uniform fees for the whole of Switzerland should be established, with lower rates scheduled for smaller mortgage institutions and savings banks operating chiefly on a local basis.

2 No fee arrangements shall be made on the basis of a lump sum compensation or on a fixed number of hours to be spent for an audit engagement.

3 The approved fee schedule shall be published by the Banking Commission.

13. Audit Report

Art. 43
1 The audit report shall clearly present the financial condition of the bank. It must, first of all, indicate whether the bank's liabilities shown in the properly drawn up

balance sheet are covered by existing assets and whether the reported equity is intact.

2 The audit report must, in its first part, contain a summary of any qualifications, with reference to the corresponding parts of the report.

3 The auditing firm must value the assets and liabilities independently; for this purpose the bank makes available the necessary documents and records.

4 If the bank maintains a qualified internal audit function, the auditing firm must take its reports into consideration, and may demand to receive these reports on a regular basis. However, the responsibility for the statements pursuant to par. 1 of the present Article remains vested with the auditing company.

5 The Banking Commission is authorised to issue general instructions concerning the form and the content of the audit report. In special cases it can furthermore determine the scope and details of the audit and the report.

Art. 44

The audit report must express an opinion, if necessary by citing figures, with regard to the following points:

a) the observance of the conditions for obtaining a license;

b) orderliness of the single-company and consolidated financial statements as to form and content;

c) the compilation of all risks and of the necessary value adjustments of the assets as well as the provisions and undisclosed reserves established to cover them;

d) the treatment of interest on doubtful debts and of interest whose collection is doubtful;

e) coverage and risk of the endorsement, surety, guarantee indemnity and letter of credit liabilities of the bank;

f) the risks associated with forward transactions;

g) volume and proper treatment of fiduciary transactions; effectiveness of measures designed to protect clients' fiduciary deposits against the risk of

their holdings being offset by claims against the bank by the recipient of the fiduciary transaction;

h) compliance with the risk diversification provisions;

i) credits that do not conform with the provisions of Art. 4ter of the Law;

k) compliance with the minimum ratio between the bank's equity and liabilities;

l) the observance of the minimum liquidity; liabilities which exceed the levels of Art. 18 par. 2, including their appropriateness in the light of the spread of risk among the short-term liabilities; appropriateness of the liquidity from a consolidated group perspective (Art. 18 par. 3);

m) the observance of legal and statutory provisions regarding allocations to reserves;

n) the ratio of assets located abroad to total assets. The assets abroad must be subdivided into those whose capital and earnings may be transferred without restrictions and others;

o) the legality, expedience and performance of the internal organisation of the bank with particular regard to the supervision and control over business activities and the account presentation by means of operational and organisational measures;

p) the expediency and reliability of the organisation and control of the securities deposit department, with explicit determination of the proper safeguarding of securities accounts;

q) the total amount of the collateral repledged or given as replacement by the bank, advances granted and received thereon as well as the observance of Art. 17 of the Law and of Art. 33 of the present Implementing Ordinance;

r) the compliance with the provisions on capital exports contained in Art. 8 of the Banking Law;

s) the compliance with Cantonal provisions, where applicable, for the protection of savings deposits in accordance with Art. 16 of the Law.

Art. 45

1 The audit report shall, furthermore, contain information on the following points, insofar as they are necessary for the assessment of the financial situation and the profit-earning capacity of the bank:

a) coverage of unsecured liabilities through the freely available assets enclosing a short summary of pledged assets and credits granted and obtained thereon;

b) total nominal amount and original cost of the bank's own shares or participation certificates in its possession;

c) total nominal amount of the bank's own shares or participation certificates given as collateral for loans, as well as the amount of credits granted for the purchase of such shares or participation certificates;

d) book value of non-income bearing securities and participations;

e) observance of the provisions concerning the repayment of capital pursuant to Art. 11 and 12 of the Law;

f) membership applications of co-operative members in the case of co-operative companies with unlimited joint liability or with a liability to further assessment by the co-operative members;

g) foreign exchange position of the bank (comparison of assets and liabilities in foreign currencies, including forward transactions).

2 Wherever the auditing firm ascertains that a private banker, in any form, solicits customer deposits although he claims the privileges connected with the waiver of such advertising, it shall report such act to the Banking Commission.

3 The auditing firm is authorised to extend the scope of the engagement to any other points it deems important, and shall report on such points in the audit report.

Art. 46

1 The auditor who has assumed engagement responsibility must declare in the audit report whether the bank has furnished all the information provided for in Art.19 par. 2 of the Law.

2 The audit report must bear the legally binding signature of the auditing firm and the signature of the auditor who has assumed engagement responsibility.

Art. 47

1 The audit report must be remitted within one year after the date of the annual financial statements or, at the stipulation of the Banking Commission, in a shorter period. When a deadline cannot be observed, the auditing firm shall inform the Banking Commission and explain the reasons for the delay.

2 The audit report shall be communicated to:

a) the chairman of the Board of Directors, in the case of companies limited by shares (Aktiengesellschaft, société anonyme);

b) the supervisory board, in the case of limited partnership corporations;

c) a partner authorised to represent the company, in the case of a limited liability company (GmbH, SàRL);

d) the president of the body responsible for the direction, supervision and control, in the case of a co-operative company;

e) a partner liable without limitation, in the case of a limited or unlimited partnership.

3 Where the auditing firm finds it necessary to report to the Banking Commission pursuant to Art. 21 par. 3 of the Law, it shall enclose its latest auditing report.

Art. 47a

1 The Banking Commission will ask for a copy of the reports according to a schedule that it will establish.

2 The Banking Commission can choose not to ask for an auditor's report for Raiffeisen banks.

Art. 48

1 In banks established as legal entities, the audit report shall be circulated among the members of the governing body in charge of direction, supervision and control and possibly the supervising authority designated by the Code of Obligations, or be made available to them for inspection. Each member of these bodies shall confirm, by his signature, that he has read the report. The audit report must be discussed in a minuted meeting of the body responsible for the direction, supervision and control.

2 The annual financial statements may be submitted to the general meeting for approval only after the members of the body responsible for the direction,

supervision and control, and the supervising authority have reviewed the audit report of the previous year in accordance with par. 1. If the audit report on the annual financial statements of the current year has already been established, the annual financial statements of the current year may be submitted to the general meeting for approval only after the members of the above-mentioned bodies have examined this report.

3 In the case of limited or unlimited partnerships, the net profit resulting from the financial year shall be distributed only after all partners liable without limitation have examined the audit report on the annual financial statements of the previous year.

Art. 49

1 As a general rule, the special audit report provided for in Art. 11 par. 1 lit. a and Art. 25 par. 2 of the Law shall be drawn up by the auditing firm that has audited the annual financial statements of the previous year.

2 If necessary, the Banking Commission can itself appoint a recognised auditing firm for the conduct of special review pursuant to Art. 23bis par. 2 of the Law. In this case, the bank must, upon request, pay an advance on the costs.

14. Federal Banking Commission

Art. 50

1 The term of office of the members of the Banking Commission is four years.

2 The president, the vice president and the other Commission members receive a remuneration fixed by the Federal Council. They also receive per diem allowances and reimbursement of their travel expenses as set forth in the corresponding ordinance.

Art. 50a

1 General questions of supervision are handled by the chairman. To this effect he shall maintain contact with Swiss and foreign authorities and with groupings of banks, investment funds, stock exchanges, security dealers and auditors.

2 The president runs the meetings of the Commission and supervises the management of the Secretariat without, as a general rule, getting involved in the actual examination of cases.

Art. 51

1 The Federal Council appoints the director and assistant director of the Secretariat of the Banking Commission.

2 The Banking Commission appoints the other employees of the Secretariat; the Commission is competent to establish and to terminate employment contracts of the staff.

3 The employment of the staff of the Secretariat is governed by the legal provisions concerning Federal employees.

Art. 51a

1 The Secretariat prepares the files for the Commission, makes proposals and implements the decisions of the Commission.

2 In minor cases, the Banking Commission can instruct the Secretariat to take decisions in its place.

3 The Secretariat shall deal directly with banks, stock exchanges, security dealers, auditors, fund managers and custodian banks as well as with other participating parties. It handles all the administration and, when needed, will carry out investigations with respect to persons on whom the Federal Law on Banks and Savings Banks, the Stock Exchange Law of March 24, 1995 or the Law on Investment Funds of March 18, 1994 impose duties.

Art. 51b

The competent officials of the Secretariat and the Banking Commission members are authorised to hear witnesses in the framework of administrative procedure.

Art. 52

The Federal Department of Finance establishes and maintains the contact between the Banking Commission and the Federal Council.

Art. 53

The expenses and revenues of the Banking Commission and of its Secretariat are governed by the regulations issued for the budgets of the Federal Government.

Art. 54

repealed

15. Postponement of Maturity and the Granting of a Moratorium

Art. 55
The publications in the case of postponements of maturity and of a moratorium are made in the Swiss Commercial Gazette and in the official publications of the cantons in which the bank maintains, or, at the beginning of the proceedings, maintained offices.

Art. 56
Prior to granting a moratorium, appointing a commissioner and deciding on the measures to be taken, the court for moratorium cases consults with the Swiss National Bank and the Banking Commission.

Art. 57
1 As a general rule, the court for moratorium cases fixes the remuneration of the commissioner every six months. The bank must guarantee this remuneration. The court determines the amount and the form of the guarantee at the same time as it grants the moratorium.

2 The commissioner is authorised to consult experts and to hire employees or request them from the bank.

3 The commissioner is authorised to suspend or to terminate the services of persons employed by the bank.

Art. 58
1 Prior to ordering payments pursuant to Art. 32 par. 2 of the Law, the commissioner can ask the court for instructions in moratorium cases.

2 As a general rule, creditors with claims of less than SFr. 5,000 are considered as minor creditors.

Art. 59
If the commissioner has prepared an expert opinion report concerning an extrajudicial reorganisation or an arrangement with creditors (Art. 33 of the Law), this report must, for 20 days, be available for inspection by the partners or shareholders and creditors at the court for moratorium cases and at all other places where the bank maintains or had maintained offices at the beginning of the proceedings. The date and the place where the report can be consulted must be published.

Art. 60
A meeting of the creditors, pursuant to Art. 1157 et seq. CO, must be summoned and conducted by the commissioner or the receiver in bankruptcy.

Art. 61
1 The claims of the central mortgage institutions that are secured by pledges are excluded from the postponement of maturity according to Art. 25 of the Law and from the moratorium pursuant to Art. 29 of the Law; furthermore, it is not possible to grant a postponement pursuant to Art. 37 par. 7 of the law for such claims.

2 The provisions of Art. 42 and 43 of the Federal Law on the Issuance of Mortgage Bonds remain applicable.

3 If a central mortgage institution must lodge a claim outside the bankruptcy proceedings, the Federal Council issues orders pursuant to Art. 42 of the Federal Law on the Issuance of Mortgage Bonds, thereby privileging the institution's claims similarly to Art. 28 of the above mentioned Law.

16. Transitional and Final Provisions

Art. 62
1 The balance sheet provisions do not apply to annual financial statements and interim balance sheets ending before December 31, 1972.

2 The provisions concerning the balance sheet treatment of fiduciary transactions do not apply to annual financial statements and interim balance sheets ending before December 31, 1974.

3 Art. 8 par. 2 does not apply to persons who belonged both to the governing body responsible for the direction, supervision and control and to the management of the same bank prior to the entry into force of this Implementing Ordinance.

4 Banks' equity and liquidity must conform with the requirements of Art. 11 to 19 for the first time in the annual or interim balance sheet and the liquidity statement as of December 31, 1973.

5 The bank shall report already existing liabilities of a customer exceeding the percentages stipulated in Art. 21 to the Banking Commission within three months after this Implementing Ordinance enters into force. The Banking Commission is

authorised to demand that such liabilities be reduced.

6 The auditing firms must furnish proof of their equity, guarantee capital or securities required in accordance with Art. 35 par. 1, no later than December 31, 1973.

7 Finance companies that do not constitute banks within the meaning of Art. 1 par. 2 lit. b, of the Law must have the equity stipulated in Art. 14 of this Implementing Ordinance at their disposal no later than December 31, 1973.

8 The Banking Commission is authorised to extend the time limits of par. 6 and 7 in response to a timely and well-founded application.

Art. 63

1 This Implementing Ordinance comes into force on July 1, 1972.

2 Its entry into force repeals the Implementing Ordinance of August 30, 1961, to the Federal Law for Banks and Savings Banks, with the reservation of the provisions relating to bankruptcy and proceedings for an arrangement with creditors (Art. 49 par. 2 and Art.50–54). These shall remain in force in accordance with Art. 36 par. 5 and Art. 37 par. 9 of the Law until such time as the Federal Court issues new regulations.

Final Provisions of the Amendment of August 23, 1989

1 Enterprises which are subject to the law by virtue of this Amendment, shall notify the Banking Commission of this fact within six months of the date on which the Amendment takes effect and to satisfy the requirements of the Law within three years of this date. The Banking Commission may prolong or shorten this deadline in individual cases, whenever particular conditions prevail.

2 The Banking Commission may prolong the deadline set forth in par. 1 in particular in those cases in which the requirement of reciprocity of Art. 3^{bis} par. 1 lit. a has not been fulfilled. After expiry of this prolonged deadline, the Banking Commission takes appropriate measures.

3 If an enterprise, which is subject to the Law by virtue of the Amendment,fulfils the requirements of the Law, the Banking Commission shall grant a licence to commence banking operations. Prior to that event, it may neither use the term

"bank" nor accept savings deposits.

4 If an enterprise, which is subject to the Law by virtue of the Amendment, does not fulfil the requirements of the Law within the deadline set in par. 1, it must cease the activities which led to it becoming subject to the Law. If it is not prepare to do this, the Banking Commission shall order its liquidation. Other appropriate measures remain reserved in those cases where the reciprocity requirement alone is not fulfilled.

Final Provisions of the Amendment of December 4, 1989

1 The statement of required equity, the balance sheet and the audit report are to be prepared in accordance with this Ordinance for the first time as of December 31, 1989.

2 If a bank does not satisfy the requirements of this Amendment, it must bring its equity to the required level by December 31, 1991. Until this time, its equity computed under the previous law may not drop under the level required until now. The Banking Commission may prolong the deadline to adapt its equity in particular cases.

Final Provisions of the Amendment of December 12, 1994

1 Existing banks whose minimum or core capital does not reach the amount named in Art. 4 at the time of implementation of this Amendment may continue their activities. Its equity, however, may not be less than that disclosed on the Statement of Required Equity as of December 31, 1994.

2 The Banking Commission may require that a Cantonal Bank, even prior to the expiry of the deadline set forth in par. 4 of the Concluding Provisions to the Amendment in Law of March 18, 1994, be subject to audit by Banking-law auditors within the meaning of Art. 20 of the Law, if it concludes that the internal audit activities are conducted by persons who do not possess the appropriate knowledge or are not independent of the management.

3 Existing auditing companies must fulfil the provisions of Art. 35 par. 1 lit. a and b within two years following the date of implementation of this Amendment.

4 The notifications foreseen according to Par. 5, 6 and 7 of the Concluding

Provisions of the Amendment of the Law of March 18, 1994 shall contain the particulars foreseen in Art.6, 6a and 6b of the Amendment.

5 The statement of required equity and the computation pursuant to Art. 13 par. 3 are to be prepared for the first time in accordance with these provisions as at December 31, 1995. In the meantime, banks are free to draw up the statement of required equity in accordance with the new provisions already as at January 1, 1995. The Banking Commission may, in particular cases, defer the first-time preparation of a consolidated statement of required equity.

6 Should a bank not fulfil the requirements of this change on December 31, 1995,it has until December 31, 1999 in order to bring its equity up to the required level. Until this date, however, its equity as computed under the previous provisions of law may not decline under the level required under the previous law. The Banking Commission may extend the deadline in particular cases.

7 The guarantee amounts of communes assumed without condition and included in equity pursuant to Art. 11 par. 1 lit. c may continue to be included in equity of the bank until December 31, 1999 at the latest.

8 During a transitional period of until December 31, 1999 at the latest, banks in the form of a co-operative associated with a central organisation may include in equity the supplementary payment obligation pursuant to Art. 11b par. 2 lit. c to the extent of the total core capital and additionally subordinated loans pursuant to Art. 11b par. 2 lit. a to the extent of half of the total core capital. The sum of the supplementary capital, however, may not exceed in aggregate 150% of the core capital. The Banking Commission may extend this deadline.

9 The financial statements according to this Ordinance are to be prepared for the first time as of December 31, 1996. An earlier implementation is permitted as regards the accounts for 1994 or 1995; comparative figures according to the modified provisions may be omitted in this case.

10 Interim accounts are only to be prepared according to the modified provisions after the first-time preparation of annual accounts according to the modified provisions.

11 From the date when the changes to the Ordinance take effect, silent reserves which may be added to equity may be booked under “reserves for general banking risks” as per Art. 25 par. 1 point 2.10 or under “other reserves” according to Art. 25 par. 1 point 2.15.

Final Provisions of the Amendment of November 29, 1995

1 The modified risk diversification provisions must be complied with from January 1, 1998 onwards.

2 A bank can apply the amended risk diversification provisions prior to January 1, 1998. It shall inform the Banking Commission of the date from which the change is valid. In these cases, a bank is exempted from the obligation to make notifications of risk concentrations pursuant to Art. 21 par. 2 and Art. 21m for the period up to December 31, 1997. In spite of the exemption, the upper limits in accordance with Art. 21a and Art. 21b must be complied with.

3 As long as a bank applies the previous risk diversification provisions it may apply for risk diversification purposes the eligible equity resources calculated in accordance with the provisions applicable before February 1, 1995.

4 All positions arising prior to January 1, 1998 must be brought back to under the upper limit foreseen in Art. 21a and 21b by December 31, 2000. The Banking Commission may prolong this deadline in particular cases.

Transitional Provisions of the Amendment of December 8, 1997

The modified provisions governing capital adequacy must be applied on December 31, 1999 at the latest. The Banking Commission may prolong this deadline in certain cases.

Annex 3

Ordinance on Foreign Banks

of October 21, 1998

The Federal Banking Commission (hereinafter referred to as the "Banking Commission"), on the basis of Article 2, paragraph 2 of the Federal Law on Banks and Savings Banks of November 8, 1934,

decrees:

Part 1: General Provisions

Art. 1 Foreign Bank

1 A foreign bank is every corporation which is organised according to foreign law, and which:

a) possesses a bank license in a foreign country;

b) in its name, purpose of business or in its correspondence uses the term "Bank" or "Banker";or

c) performs banking activities as defined in Art. 2a of the Implementing Ordinance dated May 17, 1972.

2 If the foreign bank is effectively managed in Switzerland or if all or a majority of

its business activities are undertaken in or from within Switzerland, then the bank must be organised according to Swiss law and is subject to the regulations governing domestic banks.

Art. 2 Licensing Obligation

1 A foreign bank requires approval from the Banking Commission if it employs persons in Switzerland who on a permanent and commercial basis in or from within Switzerland:

a) enter into transactions, maintain customer accounts or legally bind the bank (branch);

b) are active in a manner other than mentioned under lit. a, namely if they forward client orders to the foreign bank or if they represent the foreign bank for marketing or other purposes (representative office).

2 The Swiss branch of a foreign bank shall obtain a license from the Banking Commission if it intends to set up an office which is not entered into the Commercial Register (agency).

3 If the Banking Commission receives evidence of any other cross-border activities, it can inform the responsible foreign supervisory authorities under the requirements of Art.23^{sexies} of the Banking Law.

Art. 3 Applicable Law

1 Insofar as this Ordinance does not otherwise specify, the Banking Law, with the exception of the provisions of the banks' equity resources (Art. 4) and the diversification of risks (Art. 4bis) – as well as the Implementing Ordinance, shall apply by analogy.

2 The Banking Commission can require that foreign banks fulfil all legal provisions for Swiss banks, if the legal provisions at the location of headquarters of the foreign bank does not grant Swiss banks similar relief and if an international agreement does not exist.

Part 2: Bank Branches

Art. 4 Licensing Requirements

1 The Banking Commission will grant the foreign bank a license to open a branch if:

a) the foreign bank is appropriately organised and possesses adequate qualified staff and financial resources to operate a branch in Switzerland;

b) the foreign bank is subject to adequate supervision, which includes the branch;

c) the responsible foreign supervisory authorities make no objection to the establishment of a branch;

d) the responsible foreign supervisory authorities state that they will immediately inform the Banking Commission in the event of circumstances arising that may seriously jeopardise the interests of bank creditors;

e) the responsible foreign supervisory authorities are able to provide the Banking Commission with official support;

f) the conditions governing the granting of a license, as stated in Art. 3bis, paragraph 1 of the Banking law are met;

g) the branch meets the conditions for the granting of a license within the meaning of Art.3,par. 2 lit. c and d of the Banking Law and the possesses a regulation that precisely defines its business activities and provides for an adequate organisation; and

h) the foreign bank provides evidence that the company name of the branch qualifies for entry into the Commercial Register.

2 If the foreign bank is part of a group which is active in the financial business sector, then the Banking Commission can add to the licensing requirements that the group is subject to an appropriate consolidated supervision by foreign supervisory authorities.

Art. 5 Entry into the Commercial Register

The foreign bank can only enrol the branch for registration into the Commercial Register when it has obtained a license from the Banking Commission to set up a branch.

Art. 6 Multiple Branches

1 If a foreign bank sets up more than one branch in Switzerland, then it must:

a) obtain a license for every branch;

b) designate one of them as the branch responsible for all communication with the Banking Commission.

2 These branches must fulfil the requirements of the Banking Law, the Implementing Ordinance and this Ordinance as a group. A single audit report is sufficient.

Art. 7 Securities

The Banking Commission may require the branch to lodge security, if necessary, for the protection of creditors.

Art. 8 Preparation of Annual and Interim Financial Statements of the Branch

1 The branch can prepare its annual and interim financial statements according to the requirements which apply to the foreign bank, if these requirements satisfy international accounting standards.

2 Separate disclosure is required for amounts receivable and payable:

a) with the foreign bank;

b) with corporations that are active in the financial sector or real estate companies, if:

1. the foreign bank together with these entities represent an economical entity;or

2. it must be assumed, that the foreign bank is legally required or factually forced to financially support such a company.

3 Par. 2 shall also be applicable to off-balance-sheet transactions.

4 The branch shall submit three copies of its annual and interim financial statements to the Banking Commission. A publication is not required.

Art. 9 Publication of the Annual Report of the Foreign Bank

1 Within four months after the year-end, the branch must make the foreign bank's annual report available to the press and to any person requesting it. They must also send the Banking Commission one copy.

2 The annual report of the foreign bank must be written in one of Switzerland's official languages or in English.

Art. 10 Audit Report

1 The auditors shall submit their report in one of Switzerland's official languages to the responsible manager of the branch and to the Banking Commission.

2 The branch transmits the audit report to the unit of the foreign bank that is responsible for the activities of the branch.

Art. 11 Closing of a Branch

The foreign bank shall obtain the Banking Commission's approval prior to closing down a branch.

Part 3: Agencies

Art. 12 Licensing Requirements

1 The Banking Commission will grant the Swiss branch of a foreign bank a license to open an agency, if:

a) the conditions governing the granting of a license, as stated in Article 3bis, paragraph 1 of the Banking law are met;

b) the agency possesses a regulation that precisely defines its business activities and provides for an adequate organisation.

2 The branch must apply for a license for the opening of each further agency.

Art. 13 Closing of an Agency

The branch shall report the closing of an agency to the Banking Commission.

Part 4: Representative Offices

Art. 14 Licensing Requirements

The Banking Commission will grant the foreign bank the license to open a representative office, if:

a) the foreign bank is subject to appropriate supervision;

b) the foreign supervisory authorities raise no objection to the establishment of a representative office;

c) reciprocity is guaranteed according to Art. 5 par. 2 of the Implementing Ordinance, international undertakings to the contrary remain reserved; and

d) the persons charged with the management of the representative office assure a proper conduct of the representation's activity.

Art. 15 Multiple Representative Offices

If a foreign bank sets up more than one representative office in Switzerland, then it must:

a) obtain a license for each one;

b) designate one of them as the office responsible for all communication with the Banking Commission.

Art. 16 Annual Report

The representative office shall submit to the Banking Commission a copy of the annual report of the foreign bank being represented within four months after the year-end.

Art. 17 Closing a Representative Office

The foreign bank shall report the closing of a representative office to the Banking Commission.

Part 5: Final Provisions

Art. 18 Repeal of Previous Law

The Ordinance on Foreign Banks of March 22, 1984 is repealed.

Art. 19 Effective Date

1 The Ordinance shall enter into effect on January 1, 1997.

2 The annual financial statements according to this Ordinance may be prepared for the first time as of December 31, 1996.

Federal Banking Commission
The President, The Director

Annex 4

Guidelines for License Applications for Banks and Security Dealers

These guidelines are not legally binding. They are designed as a working tool to facilitate the processing of applications both for the applicant as well as the Secretariat of the Federal Banking Commission. The guidelines describe the information and supporting documents which are required normally. This does not exclude the possibility that further information can be given by the applicant or further information and documents requested by the Secretariat.

The applications are to be submitted in one of the official languages of Switzerland and shall contain the following minimum information/appendices:

1. General Information

1.1 Purpose of establishment of bank/security dealer

1.2 Planned business activities in Switzerland

1.3 Place of residence/domicile in Switzerland (including exact address)

1.4 History, activity of enterprise, of parent company, where applicable of the group

1.5 For enterprises which wish to convert to a bank or security dealer: description of status and activity up to the present with appendices such as articles of incorporation, extract of Commercial Register and annual report

2. Direct and Indirect Participations

2.1 Planned capital (cf. Art. 4 BankO/Art. 22 SESTO)

2.2 – List of all direct and indirect shareholdings which equal or exceed 5%
– Organisation chart signed by applicant showing the structure of shareholdings, analysed according to share of voting rights and capital

2.3 Particulars of any agreements (e.g. shareholder pooling agreements), as well as concerning other possibilities of control or significant influence in other manners (cf. Art. 3 par. 2 lit. c^{bis} BankL/Art. 28 par. 4 SESTO)

2.4 Details and documents concerning the owners of qualified or significant participations (cf. Art. 6 par. 1 BankO/Art. 23 par. 1 SESTL)

2.5 The following signed declarations/undertakings (corresponding forms are available from the Secretariat of FBC):

- by the applicant concerning holders of qualified or significant participations in the bank or security dealer (Art. 3 par. 6 BankL/Art. 28 par. 2 SESTO)
- by the qualified participant with the following supplementary details: participation for own account or on a fiduciary basis for third parties, the granting of options or similar rights with respect to these participations (cf. Art. 6 par. 3 BankO/Art. 28 par. 2 SESTO)

3. Information Concerning Persons Responsible for the Administration and Management (cf. Art. 6 BankO/Art. 23 SESTO)

3.1 *Board of Directors* (or other governing body responsible for direction, supervision and control):

3.1.1 Composition with indication of Chairman, Vice-Chairman as well as members of any Board committees

3.1.2 Personal details (in particular nationality, domicile and date of birth) of the Board members (or similar body)

3.1.3 Signed curriculum vitae (minimum contents: personal data, school education and professional education and training, list and brief description of previous professional activities, mandates)

3.1.4 Certificate of good repute ("Leumundszeugnis"); extract of Central Penal Register;references

3.1.5 Judicial and administrative proceedings (completed or pending) in so far as they are of economic relevance or may affect the conduct for proper business operations

3.1.6 Qualified (cf. Art. 3 par. 2 lit c^{bis} BankL) or significant (cf. Art. 23 par. 4 SESTO) participations in other enterprises, particularly those active in the financial field

3.2 *Management:*

3.2.1 Details concerning the composition, organisation and competencies of the Management

3.2.2 Information about the members of the Management analogous to that required for the Board of Directors (cf. point 3.1.2–3.1.6); in addition:

- Supplement to the curriculum vitae with an uninterrupted chronological list and short description of previous professional activities, names of superior(s) or number of subordinates at previous place of employment (and, if applicable, in the case of employment prior to that), reasons for changing employment
- References of previous employers
- Information as to the place from where actual management functions are to be exercised
- For members of management resident abroad: evidence that the place of residence will not preclude the actual and responsible exercise of management functions of the bank or of the security dealer (cf. art. 3 par. 2 lit. d BankL/Art. 21 par. 2 SESTO)

4. Internal Organisation

4.1 Articles of incorporation, shareholder agreements and business rules which are tailored to the business activities of a bank or security dealer (cf. Art. 3 par. 2 lit. a BankL/Art. 10 par. 2 lit. a and par. 3 SESTL)

4.2 Organisation chart

4.3 Further particulars regarding internal organisation (staff, logistics, EDP etc.)

4.4 Details regarding the organisation, responsibilities and activities of the internal audit function (cf. Art. 9 par. 4 BankL/Art. 20 SESTO)

5. Business Plan

5.1 Business plan for the first three business years (development of business activities, customers, employees as well as organisation etc.)

5.2 (Rough) budgets for the first three business years (balance sheet, income statement)

6. Legal Auditors

6.1 Written acceptance of the engagement (cf. Art. 18 par. 1 BankL/Art. 17 par. 1 SESTL)

6.2 Opinion of the auditors as to the articles of incorporation, shareholder agreements and business rules as well as the planned internal organisation (infrastructure, staff, EDP, logistics etc.)

6.3 For enterprises which wish to convert to a bank or a security dealer: detailed current audit report (cf. Art. 43–45 BankO/applicable by analogy in accordance with Art. 8 par. 1 SESTO-FBC)

7. Supplementary Requirements for Foreign-Controlled Banks and Security Dealers

7.1 Proof of reciprocity or of existence of differently worded international undertakings (cf. Art. 3bis par. 1 lit. a BankL/Art. 37 SESTL)

7.2 Corporate name and status of registration procedure with Registry of Commerce

7.3 For banks or security dealers which form part of a group active in the financial field: evidence of appropriate consolidated supervision by foreign supervisory authorities through:

- list of consolidated participations with details as to current auditors
- list of non-consolidated participations, with reasons for non-consolidation
- address of competent supervisory authority of the corresponding country

8. General Appendices

8.1 Power of attorney (in so far as the applicant is represented)

8.2 Business reports for the last three business years of the parent company and/or holders of qualified participations

Bern, in January 1997

Annex 5

Cash Liquidity Statement

Liquidity statement I

Bank:

Reporting period from
to

I Liabilities in Swiss francs (acc to Art.19)	in Fr. 1,000	Pos.
(average balances at the end of the last three months, excluding precious metals):		
a. due to banks at sight and on time with maturities up to 90 days		1
b. due to customers at sight		2
c. due to customers on time with maturities up to 90 days		3
d. 20% of deposits or savings, deposit and investment savings books or savings (with restricted pension funds)		4
Total (Pos. 1 – 4)		5
required are 2.5 % (1) of Pos. 5		6

II Liquid assets in Swiss francs (acc. to Art.19)	*in Fr. 1,000*	*Pos.*
(average of daily balances for the period) (2)		
a. Swiss coins and bank notes		7
b. deposits with postal checking system		8
c. giro account deposits with Swiss National Bank		9
d. giro account deposits with a clearing institution recognised by the Federal Banking Commission		10
Total (Pos. 7–10)		11
III Cash liquidity		
Excess (Pos. 11 less Pos. 6)		12
or		
Deficit (Pos. 6 less Pos. 11)		13

1 Percentage laid down by Federal Department of Finance.

2 Computation in accordance with the joint Circular of FBC and SNB dated December 23, 1987.

Annex 6

Total Liquidity Statement

Liquidity statement II

Bank:

Statement per:

		in Fr. 1,000	*Pos.*
I	***Easily realizable assets to be offset*** (Art. 16 a)		
a.	due from banks at sight and up to month		1
b.	bonds, rescriptions, bills of exchange and debt instruments, due within a month, not included under Art. 16		2
c.	money market assets due within a month		3
d.	balances included in other assets due within a month		4
	Total (Pos. 1–4)		5
II	***Short-term liabilities to be offset*** (Art. 17a)		
a.	due to banks at sight and on time with maturities within a month		6
b.	due to customers on time with maturities within a month		7

	in Fr. 1,000	*Pos.*
c. restricted pension funds due within a month		8
d. bonds, cash bonds and certificates of deposits due within a month		9
e. precious metals due within a month, as long as there are no offsetting balances within each type of precious metal		10
f. liabilities included in other liabilities due within a month		11
Total (pos. 6–11)		12
less liabilities included in other liabilities reduced by pledged easily realizable assets		13
Total (pos. 12 less pos. 13)		14
Excess:		
a. Excess of the short-term liabilities over the realizable assets (pos. 14 less pos. 5)		15
or		
b. Excess of the easily realizable assets over the short-term liabilities (pos. 5 less pos. 14)		16
III Short-term liabilities		
Art. 17		
a. excess of the short-term liabilities over the easily realizable assets (pos. 15)		17
b. 50% of the short-term creditors and other accounts or books without withdrawal restrictions		18
c. 15% of deposits in savings, deposit and similar books or accounts with restrictions of withdrawal, excluding amounts not available for distribution (e.g. pension-fund liabilities)		19
Total (Pos. 17–19)		20
Liquidity requirement: 33% of the short-term liabilities (pos. 20)		21

IV Liquid and easily realizable assets	*in Fr. 1,000*	*Pos.*
(Liquid assets as per Art. 15)		22
Easily realizable assets as per Art. 16		
a. bills of exchange, bonds, rescriptions and debt register claims which can be discounted at the Swiss National Bank		23
b. bills of exchange, bonds, rescriptions and debt register claims, which can be pledged at the Swiss National Bank		24
c. securities which can be pledged or discounted at the central bank of a foreign subsidiary		25
d. traded bonds, rescriptions, and other debt instruments from foreign governments and other public entities, on an organized market with regularly published rates, not mentioned under c)		26
e. debt instruments and acceptances from first-class foreign banks, or other equally rated papers due within 6 months, not mentioned under c)		27
f. precious metals (gold, silver, platinum, palladium) and precious metal balances receivable within 1 month, as long as there are no offsetting liabilities within each type of precious metal		28
g. current-account debtors and fixed-term advances receivable within 1 month, secured by assets pledgeable at the Swiss National Bank		29
h. excess of the easily realizable assets over the short-term liabilities (pos. 16)		30
Total (pos. 22–30)		31
Less: pledged easily realizable assets, as fas as they cover existing liabilities, including covering margin		32
Liquid and easily realizable assets:		33

V Total liquidity		
excess (pos. 33 less pos. 21)		34
or		
deficit (pos. 21 less pos. 33)		35

Annex 7

Computation of Required Equity

Swiss National Bank
Department Statistics
8022 Zurich

Computation of Required Equity as of
In thousands of francs

31.12.98

Form C003
Your code

Abbreviated texts: Please find full texts on original form			Nominal[1] / Carrying or Market value	Conversion factor	Total credit equivalent	Credit equivalent split according to risk weighting categories (for definitions see appendix II)						
			Col. 01	**	Col. 02	0% Col. 03	25% Col. 04	50% Col. 05	75% Col. 06	100% Col. 07	250% Col. 08	
6.	Net positions outside trading book, participations and own shares in trading book											
6.1	Net positions outside trading as well as net positions in trading book as per Art. 12i per. 2 BankO											
Interest-rate instruments without subordination		51		1.000								51
Interest-rate instruments with sub-ordination[3]												
	traded on a recognised stock exchange[4]	52		0.500								52
	other[4]	53		1.000								53
Shares and other equity instruments traded on a recognised stock exchange and not recorded as under participations[5b].												
Units of Swiss and foreign investment funds which are approved for sale to the public and whose rules contain no obligation to redeem units on a daily basis; units of real-estate investment funds which are traded on a recognised stock exchange.		55		1.250								55
Shares and other equity instruments not traded on a recognised stock exchange and not recorded under participations[5b]. Units of Swiss and foreign investment funds which are not approved for sale to the public and whose rules do not contain the obligation to redeem units on a daily basis; units of real-estate investment funds which are not traded on a recognised stock exchange.		56		2.500								56
Shares and other equity instruments in the financial investments, provided they, alone or together with securities recorded under participations or in the trading book, constitute a qualified participation within the meaning of Art. 3 per. 2 lit. C[3rd] BankL.		61		5.000								61
Participations not required to be consolidated excluding participations in the field of banking or finance[7]		57		5.000								57
Participations in real-estate companies with assets in the form of	bank buildings	58		2.500								58
	other real estate	59		3.750								59
6.2	Own shares and qualified participations in the trading book											
Net long positions of directly- or indirectly-held own subordinated debt securities issued by the bank itself in the trading book, provided they are included in eligible equity		54		12.500								54
Net long positions of directly- or indirectly-held own shares and other equity paper issued by the bank itself in the trading book, provided they are included in eligible equity		60		12.500								60
Shares and other equity instruments in the trading book, provided that alone or with securities in financial investments or under participations constitute a qualified participation within the meaning of Art. 3 par. 2 lit. C[3rd].		62		2.500								62
TOTAL	prior to risk weighting	65										65

Swiss National Bank
Department Statistics
8022 Zurich

Computation of required equity as of
in thousands of francs

31.12.98

Form
Your code

C001

Abbreviated texts: full texts are to be found on the original form		Carrying/ nominal value	Conversion factor	Total credit equivalent	Credit equivalent split according to risk-weightings (Definitions see Appendix II)					
					0%	25%	50%	75%	100%	250%
		Col. 01	**	Col. 02	Col. 03	Col. 04	Col. 05	Col. 06	Col. 07	Col. 08
3. Contingent liabilities[6]										
Commitments arising from letters of credit for merchandise, endorsement guarantees from rediscounting, sureties for construction workers for completion of buildings in Switzerland	61		0.250							6
Guarantees such as bid bonds, delivery and performance bonds, incl. other sureties for construction workers, other guarantees such as bill guarantees, sureties and standby letters of credit which do not serve to cover default risks, performance-related down-payment guarantees	62		0.500							6
Commitments arising from bill guarantees, sureties and guarantees as well as irrevocable standby letters of credit to cover collectibility risk	63		1.000							6
TOTAL										
prior to risk weighting	70									7
risk-weighted	71									7
4. Irrevocable facilities granted[9]										
Unused unsecured irrevocable facilities granted incl. note issuance facilities, revolving underwriting facilities and similar instruments with a fixed commitment of more than one year residual maturity	81		0.500							8
Commitments arising from share capital payment or capital increase obligations on shares or other equity paper										
Not reflected in caption "participating interests"	82		1.250							8
Participating interests not required to be consolidated	83		2.500							8
Participating interests required to be consolidated	84		6.250							8
TOTAL										
prior to risk weighting	90									9
risk-weighted	91									9

1 Capital charges based on net position and market-risk position, respectively, see points 6 and 7.
2 Capital charges are computed based on market risk position (gold or commodities) see point 7.
3 Capital charges and deduction from equity is based upon net position, see points 6 and 10.9.
4 Provided capital charges are based on current exposure method; add-ons see point 5.1.
5 At market and irrespective of treatment for income-statement purposes e.g. of hedged portfolios

6 Provided capital charges are arrived at using original exposure method; credit conversion factors see point 5.2.
7 Insofar as not entered into balance sheet, in acc. with Art. 12g BankO.
8 Contingent liabilities, in respect of which the bank has ceded sub-participations, may be weighted, to the extent of the sub-participation, as direct receivables from the respective sub-participants.
9 As regards sub-participations, irrevocable facilities granted are deemed to be secured and are to be included here only after deduction of the sub-participations.
10 Is offset from or deducted from core capital, see points 10.1 and 10.2, respectively.

Swiss National Bank
Department Statistics
8022 Zurich

Computation of Required Equity as of
In thousands of francs

31.12.98

Form C002
Your code

Abbreviated texts: Please find full texts in original form			Basis[1]	Add-on Factor	Total Add-ons	Add-ons split by risk weighting rates (for definitions see appendix II) 0%	25%	50%	75%	100%	250%	
			Col. 01	**	Col. 02	Col. 03	Col. 04	Col. 05	Col. 06	Col. 07	Col. 08	
5.	FORWARD CONTRACTS AND PURCHASED OPTIONS											
5.1	CURRENT EXPOSURE METHOD											
5.1.1	FORWARD CONTRACTS/ADD-ONS											
Interest-rate instruments[2]	with remaining duration of up to one year	01		0.000								01
	with remaining duration of 1-5 years	02		0.005								02
	with remaining duration of over 5 years	03		0.015								03
Currencies, gold[3]	with remaining duration of up to one year	04		0.010								04
	with remaining duration of 1-5 years	05		0.050								05
	with remaining duration of over 5 years	06		0.075								06
Equities[3]	with remaining duration of up to one year	07		0.060								07
	with remaining duration of 1-5 years	08		0.080								08
	with remaining duration of over 5 years	09		0.100								09
Equity indices[3]	with remaining duration of up to one year	10		0.040								10
	with remaining duration of 1-5 years	11		0.050								11
	with remaining duration of over 5 years	12		0.075								12
Precious metals[3] (excl. gold)	with remaining duration of up to one year	13		0.070								13
	with remaining duration of 1-5 years	14		0.080								14
	with remaining duration of over 5 years	15		0.100								15
Other commodities[3]	with remaining duration of up to one year	16		0.120								16
	with remaining duration of 1-5 years	17		0.130								17
	with remaining duration of over 5 years	18		0.150								18
TOTAL	prior to risk weighting	30										30
	risk-weighted	31										31

Swiss National Bank
Department Statistics
8022 Zurich

Computation of Required Equity as of
In thousands of francs

31.12.98

Form C002
Your code

Abbreviated texts: Please find full texts in original form			Basis[1]	Add-on Factor	Total Add-ons	Add-ons split by risk weighting rates (for definitions see appendix II) 0%	25%	50%	75%	100%	250%	
			Col. 01	**	Col. 02	Col. 03	Col. 04	Col. 05	Col. 06	Col. 07	Col. 08	
5.1.2	PURCHASED OPTIONS/ADD-ONS											
Interest-rate instruments[2]	with remaining duration of up to one year	41		0.000								41
	with remaining duration of 1-5 years	42		0.005								42
	with remaining duration of over 5 years	43		0.015								43
Foreign currencies, gold[3]	with remaining duration of up to one year	44		0.010								44
	with remaining duration of 1-5 years	45		0.050								45
	with remaining duration of over 5 years	46		0.075								46
Equities[3]	with remaining duration of up to one year	47		0.060								47
	with remaining duration of 1-5 years	48		0.080								48
	with remaining duration of over 5 years	49		0.100								49
Equity indices[3]	with remaining duration of up to one year	50		0.040								50
	with remaining duration of 1-5 years	51		0.050								51
	with remaining duration of over 5 years	52		0.075								52
Precious metals[3] (excl. gold)	with remaining duration of up to one year	53		0.070								53
	with remaining duration of 1-5 years	54		0.080								54
	with remaining duration of over 5 years	55		0.100								55
Other commodities[3]	with remaining duration of up to one year	56		0.120								56
	with remaining duration of 1-5 years	57		0.130								57
	with remaining duration of over 5 years	58		0.150								58
TOTAL	prior to risk weighting	70	0.0									70
	risk-weighted	71										71

5.1.3 OFFSETTABLE NEGATIVE REPLACEMENT VALUES (please enter amounts without + or - sign)		Offsettable negative replacement values	Offsettable negative replacement values split by risk weighting rates (for definitions see appendix II) 0%	25%	50%	75%	100%	250%	
		Col. 02	Col. 03	Col. 04	Col. 05	Col. 06	Col. 07	Col. 08	
Interest-rate instruments	81								81
Currencies, gold	82								82
Equities	83								83
Equity indices	84								84
Prec. metals (excl. Gold)	85								85
Other commodities	86								86
TOTAL prior to risk weighting	90								90
risk-weighted	91								91

[1] Market value of monetary claim or delivery obligation of contract, in case of 5.1.2 delta-weighted; in case of interest-rate contracts the nominal value of the contract or the NPV of the claim comprising the nominal value and interest, in case of 5.1.2 delta-weighted; (cf. also Art. 12e par. 6 BankO).

[2] Remaining duration of underlying instrument

[3] Remaining duration of contract

Swiss National Bank
Department Statistics
8022 Zurich

Computation of Required Equity as of
In thousands of francs

31.12.98

Form C003
Your code

Abbreviated texts: Please find full texts on original form			Nominal[1] / Carrying or Market value	Conversion factor	Total credit equivalent	Credit equivalent split according to risk weighting categories (for definitions see appendix II)						
						0%	25%	50%	75%	100%	250%	
			Col. 01	%	Col. 02	Col. 03	Col. 04	Col. 05	Col. 06	Col. 07	Col. 08	
5.2	FORWARD CONTRACTS ORIGINAL EXPOSURE METHOD											
Interest-rate instruments[2]	with original duration of up to one year	01		0.010								01
	with original duration of 1-2 years	02		0.030								02
	with original duration of 2-3 years	03		0.050								03
	with original duration of 3-4 years	04		0.070								04
	with original duration of 4-5 years	05		0.090								05
	with original duration of over 5 years[4]	06		–								06
Currencies, gold[3]	with original duration of up to one year	08		0.040								08
	with original duration of 1-2 years	09		0.100								09
	with original duration of 2-3 years	10		0.160								10
	with original duration of 3-4 years	11		0.220								11
	with original duration of 4-5 years	12		0.280								12
	with original duration of over 5 years[4]	13		–								13
Equities[3]	with original duration of up to one year	15		0.120								15
	with original duration of 1-2 years	16		0.210								16
	with original duration of 2-3 years	17		0.300								17
	with original duration of 3-4 years	18		0.390								18
	with original duration of 4-5 years	19		0.480								19
	with original duration of over 5 years[4]	20		–								20
Equity indices[3]	with original duration of up to one year	22		0.080								22
	with original duration of 1-2 years	23		0.140								23
	with original duration of 2-3 years	24		0.200								24
	with original duration of 3-4 years	25		0.260								25
	with original duration of 4-5 years	26		0.320								26
	with original duration of over 5 years[4]	27		–								27
Precious metals[3] (excl. Gold)	with original duration of up to one year	29		0.140								29
	with original duration of 1-2 years	30		0.240								30
	with original duration of 2-3 years	31		0.340								31
	with original duration of 3-4 years	32		0.440								32
	with original duration of 4-5 years	33		0.540								33
	with original duration of over 5 years[4]	34		–								34
Other commodities[3]	with original duration of up to one year	36		0.240								36
	with original duration of 1-2 years	37		0.420								37
	with original duration of 2-3 years	38		0.600								38
	with original duration of 3-4 years	39		0.780								39
	with original duration of 4-5 years	40		0.960								40
	with original duration of over 5 years[4]	41		–								41
TOTAL	prior to risk weighting	45										45
	risk-weighted	46										46

Swiss National Bank
Department Statistics
8022 Zurich

Computation of Required Equity as of
in thousands of francs

31.12.98

Form
Year code

C003

Abbreviated texts: Please find full texts on original form			Nominal[1] Carrying or Market value Col. 01	Conversion factor % Col. 02	Total credit equivalent Col. 02	Credit equivalent split according to risk weighting categories (for definitions see appendix II) 0% Col. 03	20% Col. 04	50% Col. 05	75% Col. 06	100% Col. 07	250% Col. 08	
6.	Net positions outside trading book, participations and own shares in trading book											
6.1	Net positions outside trading as well as net positions in trading book as per Art. 12 par. 2 BankO											
Interest-rate instruments without subordination		51		1.000								51
Interest-rate instruments with sub-ordination[2]												
	traded on a recognised stock exchange[3]	52		0.500								52
	other[3]	53		1.000								53
Shares and other equity instruments traded on a recognised stock exchange and not recorded as under participations[4]. Units of Swiss and foreign investment funds which are approved for sale to the public and whose rules contain no obligation to redeem units on a daily basis; units of real-estate investment funds which are traded on a recognised stock exchange		55		1.250								55
Shares and other equity instruments not traded on a recognised stock exchange and not recorded under participations[4]. Units of Swiss and foreign investment funds which are not approved for sale to the public and whose rules do not contain the obligation to redeem units on a daily basis; units of real-estate investment funds which are not traded on a recognised stock exchange.		56		2.500								56
Shares and other equity instruments in the financial investments, provided they, alone or together with securities recorded under participations or in the trading book, constitute a qualified participation within the meaning of Art. 3 par. 2 lit. c[4] BankG.		61		5.000								61
Participations not required to be consolidated excluding participations in the field of banking or finance[5]		57		5.000								57
Participations in real-estate companies with assets in the form of	bank buildings	58		2.500								58
	other real estate	59		3.750								59
6.2	Own shares and qualified participations in the trading book											
Net long positions of directly- or indirectly-held own subordinated debt securities issued by the bank itself in the trading book, provided they are included in eligible equity		54		12.500								54
Net long positions of directly- or indirectly-held own shares and other equity paper issued by the bank itself in the trading book, provided they are included in eligible equity		60		12.500								60
Shares and other equity instruments in the trading book, provided that alone or with securities in financial investments or under participations constitute a qualified participation within the meaning of Art. 3 par. 2 lit. c[4]		62		2.500								62
TOTAL	prior to risk weighting	65										65
	risk-weighted	66										66

[1] Market value of monetary claim or delivery obligation of the contract, in case of interest-rate contracts the nominal value of the contract or the NPV of the receivable consisting of principal and interest. (cf. also Art. 12a par. 6 BankO).
[2] Original duration of underlying instrument
[3] Original duration of contract
[4] Disclose total amount of all contracts involved. Upon request, the Bank must be capable of reproducing the computation.
[5] Excl. net long positions of directly- and indirectly-owned subordinated interest-rate instruments of the Bank as defined in Art. 12b par. 1 lit. b. BankO.
[6] Excl. net long positions of directly- and indirectly-owned shares of the Bank and excl. exchange-traded equity shares of third parties, provided that the latter, alone or together with positions outside the trading book, do not constitute a qualified participation within the meaning of Art. 3 par.
[7] In the case of participations in enterprises active in the field of banking and finance not required to be consolidated, the net long position is to be deducted from equity - see point 10.9)
[8] Net positions in interest-rate instruments and equity instruments of the same issuer in lines a) 52 (Col. 6) and 55 (Col. 7) as well as b) 53 (Col. 6) and 56 (Col. 7) are to be offset in acc. with Art. 12 par. 1 BankO.

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Form C003

In thousands of francs

Your code _____

7. Requirements for Market Risks

			Market value Col. 01		Conversion factor **	Total credit equivalent Col. 02		Risk weighting rate 100% Col. 07	
7.0	Open positions as per BankO in its version of 12.12.94								
Foreign exchange gold									
	long	71		71	1.250		71		71
	short	72		72	1.250		72		72
Precious metals excl. gold)									
	long	73		73	2.500		73		73
	short	74		74	2.500		74		74
Commodities									
	long	75		75	3.750		75		75
	short	76		76	3.750		76		76
TOTAL	prior to risk weighting	80		80			80		80
	risk-weighted	81		81			81		81

7.1 Requirements for Market Risks

using the standard approach as defined in Art. 12m and 12n BankO

			Position Col. 01		Capital charge factor **	Requirement Col. 02		
7.1.1	Market risk of currencies, gold and commodities							
Foreign currency[1]		101		101	0.100		101	
Gold (net positions)		102		102	0.100		102	
Sum of the net positions per commodity group		103		103	0.200		103	
Sum of the gross positions per commodity group		104		104	0.030		104	Control
Total		110		110			110	O.K.

7.1.2 De-Minimis-Test

The computation of points 7.1.3-7.1.9 is to be completed with the test results, provided the trading book exceeds SFr. 30 m. or 6% of the sum of all on- and off-balance-sheet positions.

		Position Col. 01	
Total assets as of prior quarter end	111		111
Contingent liabilities, irrevocable facilities granted, share capital payment or capital increase obligations, commitment credits, contract volumes of derivative financial instruments	112		112
Total on- and off-balance sheet	113		113
Trading book (Art. 14 lit. e)[2]	114		114
Trading book as % of sum of on- and off-balance-sheet	115		115

Control line 114
Control line 115

[1] The greater of the sum of net long positions and the sum of the net short positions is relevant.

[2] Sum of the absolute market values of all long and short positions (per issuer) in the underlying instruments plus the (delta-weighted) contract volumes of all derivative financial instruments in the trading book.

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7.1.3 Specific Risk of interest-rate instruments[3]

		Position Col. 01		Capital charge rate **	Requirement Col. 02	
Central governments and Bank in OECD countries	121		121	0.000		121
Qualified interest-rate instruments	122		122	0.025		122
Other interest-rate instruments	123		123	0.080		123
High-yield interest-rate instruments	124		124	0.100		124
Total	130		130			130

7.1.4 General Market Risk of interest-rate instruments[3]

		Requirement Col. 02	
Value using maturity method	131		131
Value using duration method	132		132
Total	140		140

7.1.5 Specific Risk of equities[4]

		Position Col. 01		Capital charge rate **	Requirement Col. 02	
Diversified and liquid portfolios	141		141	0.040		141
Diversified equity index contracts	142		142	0.020		142
Sum of other net positions per issuer	143		143	0.080		143
Total	150		150			150

7.1.6 General Market Risk of equities[4]

Sum of net positions per national market	151		151	0.080		151
Total	160		160			160

7.1.7 Requirements for options using the simplified approach

		Requirement Col. 02	
Options on interest-rate instruments[3]	161		161
Options on shares or equity indices[4]	162		162
Options on foreign exchange	163		163
Options on gold	164		164
Options on commodities	165		165
Total	170		170

7.1.8 Additional requirements for options using the delta-plus approach[5]

		Requirement for gamma risk Col. 02		Requirement for vega risk Col.02	
Options on interest-rate instruments[3]	171		171		181
Options on shares or equity indices[4]	172		172		182
Options on foreign exchange	173		173		183
Options on gold	174		174		184
Options on commodities	175		175		185
Total	180		180		190

7.1.9 Requirements for options using scenario analysis

	Requirement Col. 02	
Options on interest-rate instruments[3]		191
Options on shares or equity indices[4]		192
Options on foreign exchange		193
Options on gold		194
Options on commodities		195
Total		200

[3] excl. net long positions of directly- or indirectly-held own subordinated interest-rate instruments of the bank as defined in Art. 12k par. 1 lit. b. BankO.

[4] excl. net long positions in directly- or indirectly-held own equity of the bank and excl. exchange-traded equity paper of third parties provided these, alone or together with positions outside the trading book, constitute a qualified shareholding as defined in Art. 3 par. 2 lit. C** BankL.

[5] The delta equivalents are included in the positions 7.1.1 through 7.1.6.

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7.2 Requirements for Market Risks using the model-based approach

pursuant to Art. 12o BankO

		Factor Col. 02			Requirement average VaR Col. 02		Requirement (VaR prior day) Col. 02	
Interest-rate risks	211					211		221
Equity price risks	212					212		222
Foreign-currency risks	213					213		223
Precious metal and commodities risks	214			Control factor		214		224
Total Value-at-Risk	215					215		225
Requirement using the multiplication factor specific to institution	217		216	O.K.		217		
Additional requirements for specific risks	218			Control line 220		218		228
Total requirements	220			O.K.		220		230
Total requirements model-based approach								240

Control line 215	O.K.		
Control line 225	O.K.	Control line 230	O.K.

8. VALUE ADJUSTMENTS AND PROVISIONS [1]

please input amount without + or - sign)

		Carrying Value Col. 01		Conversion factor **	Total credit equivalent Col. 02		Risk weighting rate 75% Col. 06	**
prior to risk weighting	90		90	1.000		90		90
risk-weighted	91		91			91		91

[1] The sum of required equity is reduced by 6% of value adjustments and provisions entered under liabilities, less silent reserves included in eligible equity pursuant to Art. 11b par.1 lit. b BankO and less value adjustments entered under liabilities to cover positions for which equity is required and included in the computation of net positions pursuant to Art. 12h BankO

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Abbreviated texts: Full texts are to be found in original form

(please input amounts ignoring + or - signs)

9.	TOTAL REQUIRED EQUITY		Risk-weighted position	Required equity 8%	
		Col. 01	Col. 01	Col. 02	
1.	On-balance-sheet assets				01
2.	Commitment credits				02
3.	Contingent liabilities				03
4.	Irrevocable facilities granted				04
5.	Forward contracts and purchased options				
5.1	Current exposure method				
	5.1.1 Forward contracts/add-ons				05
	5.1.2 Purchased options/Add-ons				06
	5.1.3 ./.Offsettable negative replacement values				07
	Total of 5.1 (sum of 5.1.1+5.1.2-5.1.3)				08
5.2	Forward contracts - original exposure method				09
6.	Net positions outside trading book				10
7.0	Market-risk positions - open positions				11
7.1	Requirements for market risks - standard approach				
	7.1.1 Market risk for foreign-currency, gold and commodities				21
	7.1.3 Specific risk of interest-rate instruments				22
	7.1.4 General market risk of interest-rate instruments				23
	7.1.5 Specific risk of equity instruments				24
	7.1.6 General market risk of equity instruments				25
	7.1.7 Options using simplified approach				26
	7.1.8 Options using delta-plus approach				27
	7.1.9 Options using scenario analysis				28
7.2	Requirements for market risks - model-based approach				29
	Total of 7.1 and 7.2				30
	Conversion factor 12.5				31
8.	./. Value adjustments and provisions under liabilities				12
9a.	Total required equity/gross				13
9b.	./. Deduction for Cantonal banks (max. 12.5%)				14
9c.	Increases in requirements as per Art. 4 par. 3 BankL				15
9d.	./. Reductions in requirements as per Art. 4 par. 3 BankL				16
9.	TOTAL REQUIRED EQUITY/NET				20

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in thousands of francs

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Abbreviated texts: Full texts are to be found in original form
(please input amounts ignoring + or - signs)

10. ELIGIBLE EQUITY

The sum of core capital (Art.11a BankO; tier 1), supplementary capital (Art.11b BankO; tier 2) and additional capital (Art.11c BankO; tier 3), less the deductions defined in Art. 11d BankO are deemed to constitute eligible equity.

Supplementary capital and additional capital together are eligible to an amount equal to 100% of core capital as defined Art.11a par.3 BankO. Supplementary capital consists of upper supplementary capital (Art.11b par.1 BankO; upper tier 2) and lower supplementary capital (Art.11b par.2 BankO; lower tier2). Lower supplementary capital is eligible up to a maximum of 50% of core capital. Additional capital is eligible exclusively to cover capital charges for market risks as defined in Art. 12l par.1 BankO and may not exceed 70% of the requirements for market risks (cf. Art.11 par.3 and 4 BankO).

		Col. 01	
10.1	Core capital		
a)	Paid-in capital		01
b)	Disclosed reserves		02
c)	Balance of retained earnings brought forward		03
d)	Profit of current business year		04
e)	In case of private bankers, additionally		
	Capital accounts		05
	Assets of unlimited partners		06
	TOTAL CORE CAPITAL		07
10.2	Deduction from core capital		
a)	Treasury stock or other equity paper issued by bank itself (net long position) as defined in Art. 12h BankO		08
b)	Accumulated losses brought forward and loss of current business year		09
c)	Unbooked value adjustments and provisions required of the current year		10
d)	Differences of capital nature arising on consolidation not directly allocable to assets (goodwill)		11
	TOTAL DEDUCTIONS		12
10.3	TOTAL ELIGIBLE CORE CAPITAL		15

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Abbreviated texts: Full texts are to be found in original form
(please input amounts ignoring + or - signs)

		Col. 01	
10.4	UPPER SUPPLEMENTARY CAPITAL		
	a) Instruments with equity and loan character		16
	b) Silent reserves in the caption "Value adjustments and provisions"		17
	c) Silent reserves in capital assets		18
	d) Fluctuation reserves for credit risks (maximum 1,25% of risk-weighted positions as per Art. 12 par. 2)		26
	TOTAL UPPER SUPPLEMENTARY CAPITAL		19
10.5	LOWER SUPPLEMENTARY CAPITAL (Lines 20+21 -C006 line 21)		
	a) Subordinated third-party liabilities (Point 12 on C006)		20
	b) Subordinated third-party liabilities of Cantonal banks Point 12 on C006)		21
	c) Capital contribution obligations of co-operative members		22
	d) Other components of lower supplementary capital		23
	The guarantee amounts of communes assumed without condition and included in equity pursuant to Art. 11 par. 1 lit. c may continue to be included in equity until December 31, 1999 at the latest. During a transitional period of until December 31, 1999 at the latest, banks in the form of a co-operative associated with a central organisation may include in equity the supplementary payment obligation pursuant to Art. 11b par. 2 lit. c to the extent of the total core capital and additionally subordinated loans pursuant to Art. 11b par. 2 lit. a to the extent of half of the total core capital. The sum of the supplementary capital, however, may not exceed in aggregate 150% of the core capital. The Banking Commission may extend this deadline.		24
	TOTAL LOWER SUPPLEMENTARY CAPITAL		25
10.6	TOTAL SUPPLEMENTARY CAPITAL		30
	Lower supplementary capital as % of core capital		31
	Subordinated third-party liabilities as % of core capital		32
	Supplementary capital as % of core capital		33

		Col.01	
10.7	Additional capital		27
	Additional capital is deemed to be liabilities, which - are unsecured, subordinated and fully paid-in - have an original duration of at least two years - are not repayable prior to the agreed maturity date without the consent of the Banking Commission - contain a blocking clause, according to which - even upon maturity - neither interest nor principal may be paid if, as a result, the equity base of the bank would fall below the required minimum or remain under this limit.		
	Supplementary capital + additional capital as % of core capital		28
	Additional capital as % of capital charges for market risks		29

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Abbreviated texts: Full texts are to be found in original form
(please input amounts ignoring + or - signs)

			Col. 01	
10.8	EQUITY			
	a) Total eligible core capital			34
	b) Total upper supplementary capital			35
	c) Eligible lower supplementary capital (max. 50% of eligible core capital)			36
	d) Eligible additional capital (max. 70% of equity required to support market risks)			38
	e) Total eligible supplementary and additional capital (max. 100% of eligible core capital)			37
	TOTAL EQUITY			40
10.9	DEDUCTIONS FROM TOTAL EQUITY			
	a) Net long positions as defined in Art. 12h BankO of participations required to be consolidated			41
	b) Net long positions as defined in Art. 12h BankO of participations not required to be consolidated			42
	c) Net long positions as defined in Art. 12h BankO of directly- or indirectly-owned subordinated debt securities outside the trading book (Art. 14 lit. e BankO) issued by the bank itself and included in eligible supplemenatry or additional capital.			43
	TOTAL DEDUCTIONS			44
10.10	TOTAL ELIGIBLE EQUITY			45

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in thousands of francs

Form C006
Your code _____

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(please input amounts ignoring + or - signs)

11.	COMPUTATION OF SURPLUS OR SHORTFALL OF EQUITY	Col. 01	Col. 01	**	Col. 03	
11.1	Total eligible equity					01
11.2	Required equity					
	11.2.1 as defined in BankO					02
	11.2.2 as defined in Art. 29 par. 3 SETS for security dealers without banking status (base requirement)					07
	Total required equity[1]					08
11.3	Excess of equity					03
11.4	Shortfall of equity					04
11.5	Portion of excess used to cover the participations pursuant to Art. 14a lit. c BankO.					05
11.6	Portion of excess used to cover the participations pursuant to Art. 21a par. 5 and 21b par. 3 BankO.					06

12.	Proof of subordinated loans incl. debentures	Carrying values		Eligible values	
	Subordination loans incl. debentures in circulation	Col. 02		Col. 03	
	with remaining duration of 5 years and longer		100%		11
	with initial duration of over 5 years and remaining duration of under 5 years		80%		12
	with initial duration of over 5 years and remaining duration of under 4 years		60%		13
	with initial duration of over 5 years and remaining duration of under 3 years		40%		14
	with initial duration of over 5 years and remaining duration of under 2 years		20%		15
	.....		0%		16
	Total subordinated loans incl. debentures as per balance sheet				20
	Total eligible subordinated loans incl. debentures				21

Annex 8

Summary of Reporting and Filing Requirements

1. Purpose

This Circular summarises the matters requiring approval and notification in the case of stock exchanges, banks, security dealers and auditing firms in a clear manner. The requirements are set out according to the sections of the SESTL, SESTO and SESTO-FBC or the BankL and BankO and the FBC-GebV.

2. Stock Exchanges: Matters Requiring Approval

	Contents	*Basis*	*Deadline*
2.1	**Obligations for Stock Exchanges With Registered Office In Switzerland**		
2.1.1	**License to Commence Business Operations**		
	Commencement of business activities as a stock exchange	Art. 3 SESTL	Prior to commencement of operations
	Business rules	Art. 3 par. 2, Art. 4 par. 2 SESTL	Prior to commencement of operations and to amendments thereof
	Continuation of business activities	Art. 3 par. 5 SESTL	Prior to changes in license pre-requisites

	Contents	*Basis*	*Deadline*
	Appeal body: organisational structure, provisions re: procedures and nomination of members	Art. 9 SESTL	Prior to decree, prior to nomination and changes
2.1.2	**Supplementary Duties Regarding Current Business Activities**		
	Selection of head of supervisory body	Art. 8 par. 3 SESTO	Prior to nomination
	Admission of foreign security dealers as stock-exchange members	Art. 12 SESTO	Prior to admission
	Establishment of subsidiary, branch or representative office abroad	Art. 12 SESTO	Prior to establishment
2.2	**Obligations for Stock Exchanges with Registered Office Abroad**		
	Assumption of business activities as stock exchange	Art. 3 par. 3 SESTL Art. 14 SESTO	Prior to commencement of business activities in Switzerland

3. Stock Exchanges: Matters Requiring to be Reported

3.1	**Monitoring of Trading**		
	On-going monitoring of trading	Art. 6 par. 2 SESTL	In case of suspicion of violation of laws or other misdemeanours
3.2	**Supplementary Duty**		
	Levying of supplementary duties on security turnover, notification of total turnover and supporting computation	Art. 8 FBC-GebV	Prior and during course of dutiable year

Contents	*Basis*	*Deadline*

4. Banks and Security Dealers: Matters Requiring Approval

4.1 Swiss-Domiciled Banks and Security Dealers

4.1.1 Approval to Commence Banking Operations

4.1.1.1 Duties of All Swiss-Domiciled Banks and Security Dealers

Commencement of business operations as a bank or security dealer	Art. 3 BankL; Art. 10 SESTL	Before commencement of operations
Statutes, shareholders' agreements as well as organisational and business rules	Art. 3 par. 3 BankL; Art. 10 par. 2 & 6 SESTL, Art. 17 par. 2 and Art. 25 par. 1 lit. a SESTO	Prior to modifications
Exceptions to the prescriptions regarding organisation in accordance with Art.8. par. 1 and 2 BankO	Art. 8 par. 3 BankO	Prior to modifications
End of period of being subjected to Banking or Stock Exchange Law (institution continues to exist but without banking or security-dealer status)	Art. 3 par. 3 Art.23bis BankL, Art. 35 SESTL	As soon as decision is taken internally; in any case prior to general meeting
De-registration from Commercial Register	Art.23bis BankL, Art. 35 SESTL	On completion of liquidation or merger

4.1.1.2 Supplementary Duties for Foreign-Controlled Banks and Security Dealers

Foreign control	Art. 3bis par. 1, 3ter par. 1 and 2 BankL	Prior to commence-ment of business or as soon as changes in ownership are known

	Contents	*Basis*	*Deadline*
	Establishment of branch or agency in Switzerland	Art. 3bis par. 1 BankL, Art.37 SESTL, Art. 56 par. 1–2 and 5 SESTO	Prior to establishment
4.1.2	**Annual Report and Balance Sheets**		
	Application for extension for publication of annual report and interim financial statements	Art. 27 par. 2 BankL	Prior to legal deadline
	Application for exemption from minimum provisioning rates for receivables arising from co-financing with development and investment banks other than those named in par. A5 of FBC-Circ. 92/4	FBC-Circ. 92/4 Appendix 1 Par. A6	Without deadline
4.1.3	**Supervision and Audit**		
	First-time appointment or changes of auditor	Art. 39 par. 2 BankO, Art. 30 par. 2 and 3 SESTO	Prior to appointment or change
	Exemption from requirement to establish internal audit department	Art. 9 par. 4 BankO, FBC-C 95/1 par. 3, Art. 20 par. 3 SESTO	Without deadline
	Approval of exception for transfer of duties of internal audit to external parties as well as special cases	FBC-C 95/1 par. 7–8	Prior to granting mandate
4.2	**Banks and Security Dealers with Offices Abroad**		
4.2.1	**Licence to Commence Business Operations**		
	Establishment of a branch	Art. 2 par. 1 lit. a OFB, Art. 39 par. 1 lit. a point 1 SESTO	Prior to establishment
	Establishment of an agency by the branch	Art. 2 par. 2 OFB	Prior to establishment
	Establishment of a representative office	Art. 2 par. 1 lit. b OFB, Art. 39 par. 1 lit. a point 2 SESTO	Prior to establishment

Contents	*Basis*	*Deadline*
Foreign member of a Swiss-domiciled stock exchange	Art. 39 par. 1 lit. b and Art. 53 SESTO	Prior to membership
Closure of a branch	Art. 11 OFB, Art. 48 SESTO	Prior to closure

4.2.2 Business Report of Foreign Banks and Security Dealers

Application for extension period for publication	Art. 27 par. 2 BankO, Art 29 SESTO	Prior to expiry of legal deadline

5. Banks and Security Dealers: Matters Requiring to be Reported

5.1 Swiss-Domiciled Banks and Security Dealers

5.1.1 Licence to Commence Business Operations

Facts which lead one to conclude that a bank is foreign-controlled or that there has been a change in foreign ownership: name(s) of person(s) who exercise(s) the foreign control	Art. 3ter par. 3 BankL, Art. 56 par. 4 SESTO	As soon as change is known
Purchase, increase or decrease of a qualified participation	Art. 3 par. 2 c^{bis}, Art. 3 par. 5, Art. 3 par. 6 BankL, Art.28 SESTO	As soon as change is known to the Bank, at least once a year
List of holders of qualified participations in the bank	Art. 6a BankO, FBC-Circ. 96/2 par. 3, Art. 28 par. 4–5 SESTO	60 days after year end
Establishment of a subsidiary, a branch, an agency or a representative office abroad	Art. 3 par. 7 BankL, Art. 6b par. 1 BankO, Art. 25 par. 1 lit. b SESTO	Prior to establishment

	Contents	*Basis*	*Deadline*
	Information about commencement, change or cessation of activities abroad as well as change of auditors or supervisory authority abroad	Art. 6b par. 2 BankO, Art. 25 par. 1 lit. c-d SESTO	Prior to change
5.1.2	**Own Funds**		
	Duties for all Swiss-Domiciled Banks and Security Dealers		
	Shortfall of equity requirements	Art. 13b BankO, Art. 29 SESTO	Immediately after shortfall
	Subordinated debt considered as lower supplementary capital exceeding 25% of core capital	Art. 11b par. 3 BankO, Art.29 SESTO	Immediately
5.1.2.	**Supplementary Duties for Internationally Active Banks and Security Dealers**		
	Submission of BIS equity statement	Art. 13b par. 3 BankO, FBC-Circ. 96/2 par. 12, Art.29 SESTO	Within 2 months of year end
5.1.3.	**Liquidity**		
	Submission of cash liquidity statements to SNB	Art. 20 BankO, FBC-C 90/3 par. 1	Monthly
	Submission of total liquidity statements to SNB	Art. 20 BankO	Quarterly
	Liabilities at sight and due within one month towards a customer or bank which exceed 10% of total gross liabilities at sight due within one month, are to be reported to the auditors	Art. 18 par. 2 BankO	Immediately
5.1.5	**Risk Diversification**		
5.1.5.1	**Duties of All Swiss-Domiciled Banks and Security Dealers**		
	Submission of Form "Notification of Risk Concentrations" to Auditors	Art. 21 Par. 2 BankO, Art. 29 SESTO	From 1.1.98 quarterly within one month of quarter end

	Contents	*Basis*	*Deadline*
	Approval for short-term excesses over upper limit	Art. 22 par. 2 lit. c, Art. 29 SESTO	Prior to entering into commitment
	Notification of auditors and FBC if an unsanctioned risk position exceeds upper limit	Art. 21a par. 3 BankO, Art.29 SESTO	Immediately upon discovery
	Notification of auditors and FBC if aggregate unsanctioned risk concentrations exceed upper limit	Art. 21b par. 3 BankO, Art.29 SESTO	Immediately upon discovery
5.1.5.2	**Supplementary Duties for Banks and Security Dealers which must Comply with Provisions on Consolidated Basis**		
	Submission of Form «"Notification of Risk Concentrations" to Auditors	Art. 21m and Art.21 par. 2 BankO, Art. 29 SESTO	From 1.1.98 semi-annually within 2 months of period end
	Approval for short-term excesses over upper limit	Art. 22 par. 2 lit. c, Art. 29 SESTO	Prior to entering into commitment
	Notification of Auditors and FBC if one unauthorised risk position exceeds upper limit	Art. 21m and Art. 21a par. 3 BankO, Art. 29 SESTO	Immediately upon discovery
	Notification of Auditors and FBC if aggregate unauthorised risk concentrations exceed upper limit	Art. 21m and Art. 21b par. 3 BankO, Art. 29 SESTO	Immediately upon discovery
5.1.6	**Annual Reports**		
	Submission of annual report and interim financial statements to SNB	Art. 7 par. 1 and 2 BankL	Deadlines set by SNB
	Submission of annual report and interim financial statements (3 copies each to FBC and SNB)	Art. 26 par. 4, Art. 27 par. 1 BankO, Art. 29 SESTO	Annual report: 4 months after year end/ Interim financial statements: 2 months after period end
	Revaluation of fixed assets over cost	II.FBC-BAG par. 37	Prior to publication of annual report

	Contents	*Basis*	*Deadline*
5.1.7	**Supervision and Audit**		
	General duty of information to FBC	Art.23bis par. 2 BankL, Art.35 SESTO	Determined on case-by-case basis
	Early information	FBC-C 96/2, par. 12, Art. 29 SESTO	Within 60 days of year end
	Notification of 10 largest debtors	FBC-C 96/2, par. 8	Within 60 days of year end
5.1.8	**Supplementary Duties for Large Banking Groups**		
	Submission of consolidated balance sheet and income statement as well as supplementary data of Early Information on consolidated basis	FBC-Circ. 96/2 par. 7	Within 60 days of year end
5.2	**Banks and Security Dealers with Foreign Domicile**		
5.2.1	**Branches in Switzerland**		
	Designation of branch responsible for relations with FBC	Art. 6 par. 1 lit. b OFB, Art. 43 par. 1 lit. b SESTO	Prior to establishment of second branch
	Submission of annual and interim financial statements to FBC (3 copies)	Art. 8 par. 4 OFB and Art. 27 par. 1 BankO, Art. 45 par. 4 SESTO	Annual report: 4 months after year end/ Interim financial statements: 2 months after period end
	Submission of business report of the foreign bank or security dealer (one copy)	Art. 9 par. 1 OFB, Art. 46 par. 1 SESTO	Within 4 months of year end
5.2.2	**Representative Offices in Switzerland**		
	Designation of branch responsible for relations with FBC	Art. 15 lit. b OFB, Art. 50 lit. b SESTO	Prior to establishment of second rep. office
	Submission of business report of the foreign bank or security dealer to the FBC (one copy)	Art. 16 OFB, Art. 51 SESTO	Within 4 months of year end

	Contents	*Basis*	*Deadline*
	Closure of representative office	Art. 17 OFB, Art. 52 SESTO	From moment of closure
5.2.3	**Agencies in Switzerland**		
	Closure of an agency	Art. 13 OFB	From moment of closure
5.2.3	**Supplementary Reporting Duties for Security Dealers**		
	Notification of public issuance of Swiss-franc denominated securities on primary market (to the SNB)	Art. 2 par. 2 SESTO-FBC	Deadline set by SNB

6. Auditing Firms: Matters Requiring Approval

Recognition as bank audit firm	Art. 20 par. 1 BankL Art. 35 BankO, Art. 18 par. 1 SESTL, Art.32 SESTO	Prior to commencing activities
Recognition as leading auditors	Art. 35 par. 2 lit. 2 and Art. 38 lit. b BankO, Art. 32 par. 3 lit. d and Art. 34 par. 1 lit. c SESTO	Prior to commencing activities as leading auditor
Approval on exception basis for mandates from a bank and connected companies which generate more than 10% of the total annual fees of the audit firm.	Art. 36 par. 4 BankO Art. 33 par. 3 SESTO	Immediately

7. Auditing Firms: Matters Requiring to be Reported

7.1 Own Funds

Silent reserves which are considered part of own funds (supplementary capital)	Art. 11b par. 1 lit. b and c BankO, Art. 29 SESTO	In the audit report ("Eigenkapital-analyse")

	Contents	*Basis*	*Deadline*
7.2	**Risk Diversification**		
	Violation by banks of notification requirement in accordance with Art. 21,21a, 21b and 21m BankO (criminal act according to Art. 49 lit. e BankL) and in accordance with Art. 29 SESTO by the security dealer	Art. 21 par. 4 BankL, Art.29 SESTO	Immediately
7.3	**Annual Financial Statements**		
	Forms "Erfolgsanalyse"and "Eigenkapitalanalyse"	FBC-C 96/2, Par. 14/15, Art. 29 SESTO	In the audit report
	The list, analysed by country, with the sum of all debts with foreign risk domicile is from now on to be subdivided into four categories acc. to FBC Circular 92/4 par. 30.	FBC-C 92/4 par. 30, Art. 29 SESTO	In the audit report (Art. 44 lit. n BankO)
	Indication whether the necessary lump-sum provisions for country risks have also been made on a consolidated basis	FBC-C 92/4 par. 29, Art. 29 SESTO	In the audit report (Art. 44 lit. c BankO)
	For security dealers without banking status, details of not easily realisable or illiquid assets	FBC-Circ. 96/3 par. 28	In audit report
7.4	**Auditors and Auditing Procedures**		
	Each modification of statutes, shareholders' agreements and business rules, personnel changes in connection with the composition of the governing bodies of the audit firm and its staff of leading bank auditors	Art. 38 lit. a BankO, Art. 34 par. 1 lit. b SESTO	Immediately
	Balance sheet, income statement and business reports of audit firms	Art. 38 lit. d BankO Art. 34 par. 1 lit. e SESTO	No deadline

Contents	*Basis*	*Deadline*
Criminal acts; serious abuses; loss of more than half of own funds; endangering of creditors, creditors no longer covered by assets (further, it is recalled that the bank auditors, in so far as they are also statutory auditors, are obliged by virtue of Art. 729b CO to notify the courts in case of loss of capital if the Board of Directors of the Bank fails to do so)	Art. 21 par. 4 BankL, Art. 41 par. 2 BankO Ar.19 par. 4–5 SESTO	Immediately upon discovery
All information and documents required by the FBC for the fulfillment of its duties	Art. 23bbis par. 2 BankL, Art. 35 par. 2 lit. b SESTL, Art. 31 SESTO	Determined on case-by-case basis.
Results of interim audit	FBC-C 78/2 par. 6	In the audit report (Summary of Audit Findings)
A special report about interim audit when matters are uncovered requiring rapid action	FBC-C 78/2 par. 6	Immediately after interim audit
For all auditors: opinion concerning internal audit	FBC-C 95/1 par. 20/21	In the audit report

7.5 Audit Report

Submission of audit report	Art. 21 par. 2 BankL, Art. 38 lit. c and Art. 47 BankO, Art. 19 par. 2 SESTL, Art. 10 par. 2 SESTO, Art. 10 par. 1 OFB, Art. 8 SESTO-FBC	Annually according to the timetable supplied by auditors to the FBC
Notification of reasons for delayed submission of audit report	Art. 47 par. 1 BankO, Art. 8 SESTO-FBC	Prior to deadline
Statement of position with regard to compliance of the currently valid circulars of the Federal Banking Commission	FBC-Circ. 96/3 par. 24	In audit report

	Contents	*Basis*	*Deadline*
	Opinion as to compliance with journal-maintenance and reporting obligations of security dealers	FBC-Circ. 96/3 par. 23	In audit report
7.6	**Miscellaneous**		
	Private bankers who do solicit deposits from the public although they claim the privileges connected with the waiver of advertising	Art. 45 par. 2 BankO	Immediately
	Banks which allow their data to be processed abroad without the permission of the FBC	FBC-YR 1990 page 27 et seq., FBC Bulletin 21 pages 24 et seq.	Immediately

8. Reporting and Auditing Duties of Auditors

Banking-Law and Stock-Exchange-Law auditors shall verify compliance by stock exchanges, banks and security dealers with these duties and report instances of non-compliance therewith to the Federal Banking Commission even when the conditions necessitating the request for an approval or a notification to the Banking Commission no longer exist when the non-compliance had been noticed.

9. Abbreviations

BAG-FBC	Bank Accounting Guidelines of Federal Banking Commission
BankL	Federal Law on Banks and Savings Banks
BankO	Implementing Ordinance on Banks and Savings Banks
CO	Code of Obligations
FBC	Federal Banking Commission
FBC-GebV	Ordinance on Levying of Duties and Fees by Federal Banking Commission
FBC-YR	Annual Report of Federal Banking Commission
FBC-Circ.	Circulars of Federal Banking Commission
OFB	Ordinance concerning Foreign Banks In Switzerland
SESTL	Federal Law on Stock Exchanges and Trading In Securities
SESTO	Ordinance on Stock Exchanges and Trading In Securities
SESTO-FBC	Ordinance of FBC on Stock Exchanges and Trading In Securities
SHAB	Swiss Commercial Gazette («Schweizerisches Handelsblatt»)
SNB	Swiss National Bank

Date of Application: December 31, 1992

Amendments effective as of February 1, 1995, June 1, 1996 and July 1, 1997

Annex 9

Federal Law on Combating Money Laundering in the Financial Sector

of October 10, 1997

The Federal Assembly of the Swiss Confederation, on the basis of Art.31bis par. 2, Art. 31^{quater}, Art. 34 par. 2, Art. 64bis of the Federal Constitution; after examining the message of the Federal Council of June 17, 1996,

resolves:

Chapter 1: General Provisions

Art. 1 Object

This Law shall regulate the measures to combat money laundering within the meaning of Article 305bis of the Penal Code and ensure that the necessary due diligence be applied to financial transactions.

Art. 2 Scope of application

1 This Law shall apply to financial intermediaries.

2 Financial intermediaries are:

a) banks as defined in the Banking Law;

b) fund managers as defined in the Investment Fund Law of March 18, 1994 insofar as they maintain accounts of the unit-holders or themselves offer and distribute units in investment funds;

c) insurance institutions as defined in the Insurance Supervisory Law and which underwrite life assurance directly or offer and distribute units in investment funds;

d) security dealers as defined in the Stock Exchange Law of March 24, 1995.

3 Financial intermediaries are also persons who, on a professional basis, accept, or hold in custody, valuables belonging to third parties or assist in investing or transferring these, in particular persons who:

a) undertake credit-granting activities (in particular consumer and mortgage lending activities, factoring, trade financing or finance leasing);

b) provide payment transaction services, in particular undertake electronic transfers for third parties or issue or administer payment means such as credit cards and traveller's checks;

c) deal, both for their own account as well as the account of third parties, in bank notes, coins, money-market instruments, foreign currency, precious metals, commodities and securities (securities in certificate form and book securities) and in derivatives based thereon;

d) offer or distribute units of an investment fund as distributor of a domestic or foreign investment fund as defined in the Investment Fund Law of March 18, 1994 or of a foreign investment fund, as representative, insofar as they are not subject to supervision under the special law;

e) administer valuables;

f) undertake investments as investment advisor;

g) hold in custody or manage securities.

4 Exempted from the scope of application of this Law are:

a) the Swiss National Bank;

b) tax-exempted occupational pension plans;

c) persons who provide their services exclusively to tax-exempted occupational pension plans;

d) financial intermediaries as defined in paragraph 3 who provide their services exclusively to financial intermediaries as defined in paragraph 2 or to foreign financial intermediaries who are subject to supervision which is equivalent to the latter.

Chapter 2: Obligations of Financial Intermediaries

Section 1: Obligations of Due Diligence

Art. 3 Verification of identity of contracting party

1 Prior to commencing business relationships, the financial intermediary must identify the contracting party on the basis of a conclusive document.

2 In the case of cash transactions with a contracting party who has not already been identified, the duty of identification shall exist only if one or more transactions which appear to be inter-connected, reach a considerable value.

3 Insurance institutions must identify the contracting party whenever the amounts of a single premium, the periodic or aggregate premium volume reach a considerable value.

4 Should moments of suspicion of possible money laundering arise in cases set out in paragraphs 2 and 3, identification is to established even when the relevant amounts are not reached.

5 The Supervisory Authorities (Art. 16 and 17) and the Self-Regulating Bodies (Art. 24) shall lay down the considerable values referred to in paragraphs 2 and 3 in relation to their sphere of activity and shall adapt these in case of need.

Art. 4 Establishment of beneficial owner

1 The financial intermediary must obtain from the contracting party a written declaration as to who the beneficial owner is whenever:

a) the contracting party is not identical to the beneficial owner or doubt exist in this regard;

b) the contracting party is a domiciliary company;

c) a cash transaction of considerable value as defined in Article 3 paragraph 2 is undertaken.

2 In the case of collective accounts or collective custody accounts, he must require that the contracting party produces a complete list of the economic beneficiaries and that every change to the list is reported without delay.

Art. 5 Renewed verification of identity of contracting party or identification of beneficial owner

1 During the duration of business relationships, should doubts arise as to the identity of the contracting party or the beneficial owner, the identification or the establishment as defined in Articles 3 and 4 must be repeated.

2 In case of an insurance contract whose value can be repurchased, the insurance institutions, in addition, must establish anew the beneficial owner when the rightful claimant in case of a claim or repurchase is not identical with the person at the time of consummation of the contract.

Art. 6 Particular obligation to clarify

The financial intermediary must clarify the economic background and purpose of a transaction or a business relationship if:

a) it appears unusual, unless its legality is apparent;

b) indications exist that valuables originate from a crime or that a criminal organisation exercises the power of disposition thereover (Art. 260ter point 1 of the Penal Code).

Art. 7 Obligation to establish and retain documents

1 The financial intermediary must establish documents concerning the transactions undertaken and concerning the investigations required in accordance with this law in a manner that qualified third parties may form a reliable opinion concerning the transactions and business relationships as well as concerning compliance with the provisions of this law.

2 He shall retain the documents in a manner which will allow him to respond to any request for information or seizure of the penal prosecuting authorities within a reasonable delay.

3 After the cessation of the business relationship or after consummation of the transaction, he shall retain the documents for at least ten years.

Art. 8 Organisational measures

The financial intermediaries shall take the measures in their sphere of activity which are necessary to prevent money laundering. They shall ensure in particular that their personnel is adequately instructed and that controls are undertaken.

Section 2: Obligations in Case of Suspicion of Money Laundering

Art. 9 Obligation to notify

1 A financial intermediary who knows or has a justified suspicion that the valuables implicated in the business relationship are related to a punishable act as defined in Article 305bis of the Penal Code, that the valuables originate from a crime or that a criminal organisation exercises the power of disposition thereover (Art. 260ter point 1 of the Penal Code), must notify without delay the Notification Office for Money Laundering as defined in Article 23 (Notification Office).

2 Lawyers and notaries – male and female – are not subject to the obligation to notify provided that their activity is subject to professional secrecy as defined in Article 321 of the Penal Code.

Art. 10 Blocking of valuables

1 A financial intermediary must block immediately the valuables which are entrusted to him and which are in connection with the notification.

2 He shall maintain the blocking of the valuables until he receives a decree of the competent penal prosecuting authority, but for no longer than five working days counted from the moment at which he notified the Notification Office.

3 He may inform neither those affected nor third parties of the notification during the period in which he decided to block the valuables.

Art. 11 Exclusion from penal and civil responsibility

The financial intermediary who makes a notification within the meaning of Article 9 of this law or Article 305bis of the Penal Code and blocks valuables pursuant thereto may not be prosecuted for violation of official, professional or commercial secrecy nor made liable for breach of contract if he has acted with due care dictated by the circumstances.

Chapter 3: Supervision

Section 1: General Provisions

Art. 12 Financial intermediaries as defined in Art. 2 par. 2

As regards financial intermediaries as defined in Article 2 paragraph 2, responsibility for supervision of compliance with the obligations as set out in the Second Chapter is incumbent on the supervisory authorities instituted under their respective special laws.

Art. 13 Financial intermediaries as defined in Art. 2 par. 3

As regards financial intermediaries as defined in Article 2 paragraph 3, responsibility for supervision of compliance with the obligations as set out in the Second Chapter is incumbent on:

a) their related recognised self-regulating bodies (Art. 24);

b) the Authority for the Control over the Combating of Money Laundering as defined in Article 17 (Control Body) provided that the financial intermediaries are not affiliated to a recognised self-regulating body.

Art. 14 Obligation to obtain approval and affiliation

1 Financial intermediaries as defined in Art. 2 par. 3 which are not affiliated to a recognised self-regulating body must obtain a licence from the Control Body to exercise their activities.

2 The license will only be granted if the financial intermediary:

a) is inscribed in the Commercial Register as a business enterprise or is active on the basis of a license from the authorities;

b) guarantees the fulfilment of his obligations as set out in this Law through its internal rules and its operational organisation;

c) itself as well as the persons entrusted with its administration and management enjoy a good reputation and guarantee the fulfilment of the duties arising by virtue of this Law.

3 Lawyers and notaries – male and female – must join a self-regulating body.

Art. 15 Co-ordination

The supervisory authorities instituted through special laws and the Control Body shall ensure that the provisions applicable in their domains are equivalent.

Section 2: Supervisory Authorities Nominated by Special Laws

Art. 16

1 The supervisory authorities instituted through special laws shall specify the duties of due diligence as defined in the Second Chapter for the financial intermediaries who are subordinated to them and shall lay down how these are to be fulfilled provided that a self-regulating body does not regulate these duties of due diligence and their fulfilment.

2 The supervisory authorities may take measures as foreseen by Article 20 in addition to the measures which they are authorised to take on the basis of their respective supervisory legislation.

3 They shall make notification in accordance with Article 21.

Section 3: Authority for Control Over Combating Money Laundering

Art. 17 Subordination

The Control Body shall report to the Federal Finance Administration.

Art. 18 Tasks

1 The Control Body shall have the following tasks:

a) it shall grant recognition to self-regulating bodies or withdraw recognition from them;

b) it shall supervise the self-regulating bodies and the financial intermediaries directly subordinated to it;

c) it shall approve the regulations issued by the self-regulating bodies pursuant to Art. 25 as well as amendments thereto;

d) it shall ensure that the self-regulating bodies implement their regulations;

e) it shall specify the due-diligence obligations as defined in the Second Chapter for the financial intermediaries directly subordinated to it and shall lay down how these are to be fulfilled;

f) it shall maintain a register of the financial intermediaries directly subordinated to it as well as of the persons who have been denied a license to exercise the activity of financial intermediary.

2 It may carry out controls on the spot. It may delegate the controls to an auditing firm designated by it.

3 In the case of lawyers and notaries – male and female –, it must delegate its controls to an auditing firm. The latter shall be subject to the same professional secrecy as lawyers and notaries – male and female.

Art. 19 Right to obtain information

The Control Body shall demand all information and documents necessary for the fulfilment of its duties from the self-regulating bodies as well as from the financial intermediaries subordinated to it as well as their auditors.

Art. 20 Measures

1 Should the Control Body receive knowledge of violations of the Law by the financial intermediaries directly subordinated to it, it shall take the measures necessary for the restoration of an orderly state of affairs. In particular, it may:

a) in case of refusal to comply with an enforceable ruling, publish this in the Swiss Commercial Gazette or make it known in another form, provided that it has threatened to do so in advance;

b) withdraw the licence for the activity as a financial intermediary pursuant to Article 14, should financial intermediaries or the persons entrusted with their administration or management no longer fulfil the conditions therefor or violate their legal duties in a grave or repeated manner.

2 If the license is withdrawn from a legal entity, an unlimited or limited partnership or sole proprietor who is active principally as financial intermediary, the Control Body shall order its liquidation, in the case of sole proprietors, its deletion from the Commercial Register.

Art. 21 Obligation to make notification

If the Control Body presumes, on the basis of justified suspicion that a punishable act as foreseen by Article 260ter point 1, Article 305bis or Article 305ter of the Penal Code has been committed or that valuables originate from a crime or that a criminal organisation exercises the power of disposition, it shall make notification thereof to the Notification Office provided that the financial intermediary directly subordinated to it or the self-regulating body has not already made notification.

Art. 22 Emoluments

1 The Control Body may levy emoluments from the financial intermediaries directly subordinated to it or the self-regulating bodies in respect of its activities.

2 The Federal Council shall issue a Tariff of Emoluments.

Section 4: Notification Office as Regards Matters Involving Money Laundering

Art. 23

1 The Central Office for the Combating of Organised Crime shall maintain the Notification Office.

2 The Notification Office shall examine the notifications received and shall take the measures as contained in the Federal Law of October 7, 1994 concerning Central Criminal Police Bodies of the Confederation.

3 It shall maintain its own data processing system for the field of money laundering.

4 If it presumes, on the basis of justified suspicion that a punishable act as foreseen by Article 260ter point 1, Article 305bis or Article 305ter of the Penal Code has been committed or that valuables originate from a crime or that a criminal organisation exercises a power of disposition, it shall make notification thereof to the competent penal prosecuting authorities.

Section 5: Self-Regulating Bodies

Art. 24 Recognition

1 Organisations shall be granted recognition as self-regulating bodies which

a) possess regulations as defined in Article 25;

b) ensure that the affiliated financial intermediaries observe their obligations as set out in the Second Chapter; and

c) ensure that the persons and auditors entrusted by it with the control:

1. demonstrate the necessary professional knowledge,
2. offer assurance for orderly audit activities, and
3. are independent from management and the administration of the financial intermediaries to be controlled.

2 The self-regulating bodies of the PTT-Enterprises pursuant to the Law on the Organisation of the PTT of October 6, 1960 and of the Swiss Federal Railways pursuant to the Federal Law of June 23, 1944 concerning the Swiss Federal Railways must be independent of management.

Art. 25 Regulations

1 The self-regulating bodies shall issue regulations.

2 The regulations shall specify the obligations of due diligence as defined in the Second Chapter for the financial intermediaries affiliated to them and lay down how these are to be fulfilled.

3 In addition, it shall lay down:

a) the conditions for affiliation and exclusion of financial intermediaries;

b) how compliance with the duties set out in the Second Chapter is to be controlled;

c) appropriate sanctions.

Art. 26 Lists

1 The self-regulating bodies shall maintain lists concerning the financial intermediaries affiliated to them and concerning the persons whose affiliation has been denied.

2 They shall inform the Control Body of these lists as well each amendment thereto.

Art. 27 Obligation to inform and report

1 The self-regulating bodies shall report to the Control Body the financial intermediaries whose affiliation has been denied or whom they have excluded.

2 They shall report to it at least once a year on their activity as defined in this Law.

3 They shall set out in an appropriate manner, in documents addressed to the Control Body, details of the tests performed and procedures related to sanctions.

4 If they presume, on the basis of justified suspicion that a punishable act as foreseen by Article 260ter point 1, Article 305bis or Article 305ter of the Penal Code has been committed or that valuables originate from a crime or that a criminal organisation exercises the power of disposition, it shall make notification thereof to the Notification Office provided that the financial intermediary directly subordinated to it or the self-regulating body has not already made notification.

Art. 28 Withdrawal of recognition

1 Should a self-regulating body no longer fulfil the conditions for recognition or should it violate its legal obligations, the Control Body may withdraw its recognition. Prior to this, it should threaten the body to withdraw its recognition.

2 Should recognition be withdrawn from a self-regulating body, the financial intermediaries affiliated to it shall be subordinated directly to the Control Body and must seek a license for their activities pursuant to Article 14 provided that they do not join another self-regulating body within two months.

3 Lawyers and notaries – male and female – which are active as financial intermediaries must join another self-regulating body within two months if recognition is withdrawn from the body to which they were affiliated.

Chapter 4: Administrative Assistance

Section 1: Collaboration with Swiss Authorities

Art. 29

1 The supervisory authorities instituted by special laws, the Control Body and the Notification Office may communicate information and transmit documents to each other as is necessary for the implementation of this Law.

2 The Cantonal penal prosecuting authorities shall inform the Notification Office of all pending procedures in connection with Article 260ter point 1, Article 305bis and Article 305ter of the Penal Code and shall submit to it their sentences and decisions to suspend further prosecution.

3 The Notification Office shall inform the Control Body or the competent supervisory authorities instituted under special laws as to the decisions of the Cantonal penal prosecuting authorities.

Section 2: Collaboration with Foreign Authorities

Art. 30 Supervisory authorities established by special laws

The Federal laws applicable to supervisory authorities mentioned in Article 12 shall govern co-operation between these latter and foreign authorities.

Art. 31 Control Body

1 The Control Body may request information or the transmission of documents from foreign supervisory authorities for the fulfilment of its duty.

2 It may only transmit information or documents not publicly available to foreign authorities responsible for the supervision of financial markets in so far as these authorities:

a) use such information exclusively for the direct supervision of financial intermediaries;

b) are bound by official or professional secrecy;and,

c) do not pass on this information to competent authorities and bodies having supervisory functions dictated by public interest without the prior approval of the Control Body or on the basis of a general power of authority contained in a state treaty. The passing on of information to penal prosecuting authorities is not permitted if administrative assistance in criminal cases would be excluded. The Control Body shall decide after conferring with the Federal Office for the Police.

3 Insofar as the information to be communicated by the Control Body concerns individual customers of financial intermediaries, the Law on Administrative Procedure shall apply.

Art. 32 Notification Office

1 Co-operation of the Notification Office with foreign penal prosecuting authorities shall be governed by Article 13 paragraph 2 of the Federal Law of October 7, 1994 concerning Central Criminal Police Bodies of the Confederation.

2 The Notification Office may transmit personal data to the related foreign authority if a law or state treaty provides for this or if:

a) the information is required exclusively for the purpose of combating money laundering;

b) a Swiss request for information is to be justified;

c) it is in the interest of the person concerned and the latter has consented or his consent may be assumed in the circumstances.

Chapter 5: Treatment of Personal Data

Art. 33 Principle

The processing of personal data shall be governed by the Federal Law of June 19, 1992 concerning the Protection of Data.

Art. 34 Data files relating to the obligation to notify

1 Financial intermediaries shall maintain separate data files which shall contain all information relating to the notification.

2 They may only pass on data from these data files to supervisory authorities, self-regulating bodies, the Notification Office, the Control Body and penal prosecuting authorities.

3 So long as the blocking of valuables foreseen by Article 10 par. 1 and 2 lasts, the persons concerned have no right of access within the meaning of Article 8 of the Federal Law of June 19, 1992 concerning the Protection of Data.

4 The data is to be destroyed five years after the notification is made.

Art. 35 Processing of data by Notification Office

1 The processing of personal data by the Notification Office shall be governed by the Federal Law of October 7, 1994 concerning Central Criminal Police Bodies of the Confederation.

2 The exchange of information between the Notification Office and the supervisory authorities instituted under special laws, the Control Body and the penal prosecuting authorities can be effected by an on-line connection.

Chapter 6: Penal Provisions and Administration of Justice

Art. 36 Exercise of activity without license

1 Whoever is active as a financial intermediary as defined in Article 2 paragraph 3 without possessing a license as foreseen in Article 14 or without being affiliated to a self-regulating body shall be punished with a fine of up to SFr. 200,000. In case of repeated violation, the fine shall be no less than SFr. 50,000.

2 Negligence is also punishable.

Art. 37 Violation of obligation to notify

Whoever disrespects the obligation to notify laid down in Article 9 shall be punished with a fine of up to SFr. 200,000.

Art. 38 Non-compliance with rulings

Whoever fails to comply with a ruling of a supervisory authority instituted under a special law or the Control Body issued with reference of the penal consequences of these Article, shall be punished with a fine of up to SFr. 50,000.

Art. 39 Penal prosecution and statute of limitations

1 The Federal Act on Administrative Penal Law shall apply to infringements mentioned in Articles 36–38. The Federal Department of Finance shall be the prosecuting and sentencing authority.

2 The prosecution of infringements shall be statute-barred after five years. In case of interruption, the statute of limitation shall be extended by a maximum of half of the period.

Art. 40 Appeal

1 The procedure shall be governed by the special laws in question in the case of rulings issued by supervisory authorities.

2 Otherwise the general provisions of the Federal Law on the Administration of Justice shall apply.

Chapter 7: Final Provisions

Art. 41 Implementation

The supervisory authorities instituted under special laws and the Control Body shall issue provisions regarding their area of competence for the implementation of this Law, provided that these are not implemented in an appropriate manner within the framework of self-regulation.

Art. 42 Transitional provisions

1 This Law shall apply to financial intermediaries as defined in Article 2 paragraph 2 from the date it shall take effect. The obligation to make notification pursuant to Article 9 shall apply from this date on for all financial intermediaries.

2 Self-regulating bodies shall submit an application for recognition within one year to the Control Body and submit the regulations pertaining to self regulation for approval.

3 Financial intermediaries as defined in Article 2 paragraph 3 shall be subject to the direct supervision of the Control Body and must submit an application for a license pursuant to Article 14 two years after the date this Law takes effect, provided that they have not joined a self-regulating body.

4 Lawyers and notaries – male and female – which are active as financial intermediaries are to join a self-regulating body within two years following the date on which this Law shall take effect.

Art. 43 Amendment to existing law
Concerns only the French-language version

Art. 44 Referendum and effective date
1 This Law is subject to optional referendum.

2 The Federal Council shall determine the date on which it shall take effect.

National Council, October 10, 1997	Council of the States, October 10, 1997
The President: Judith Stamm	The President: Delalay
The Secretary: Anliker	The Secretary: Lanz

Date of publication: October 21, 1997

Date of limit of referendum: January 29, 1998

Swiss Banking Practice

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	Rusconi Bruno	24 52	
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	Senn Daniel	27 57	
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	Scherer Martin	30 72	*(Tax Advisory)*
	Scheuer Alex	33 16	*(Deputy Head of Bank Consulting, IT)*
	Uebersax Rolf	21 09	*(IT-Audit/Information Risk Management)*
	Wicki Josef	33 17	*(Change Management/ Project Management)*
	Winterskov Otto	23 80	*(IT-Audit /Information Risk Management)*
	Zanetti Arno G.	33 80	*(Advanced Banking Solutions)*

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Legal Advice to Banks and Financial Institutions

(Banking Law, Law on Stock Exchange and Security Trading, Investment Fund Law, Due-Diligence Convention, Insider Rules etc.)

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	Zwicker Stefan	22 66
	Dr. Bühlmann Barbara	32 86
	Dr. Daniel Lengauer	23 89
	Kühne Armin	22 71

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Geneva	Sauvaire Thierry	17 63

Forensic Accounting and Litigation Support

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Geneva	Zach Pierre	15 30