

Update

Newsflash June 2017

Update on the new Swiss legislation on financial services and financial institutions

The purpose of this Newsflash is to provide an update on the proposed new Swiss legislation on financial services and the supervision of financial institutions. This new legislation will be embodied in the Swiss Federal Financial Services Act (“FFSA”) and the Swiss Federal Act on Financial Institutions (“FAFI”). After the Council of States, the first chamber of the Swiss Parliament, approved the two new acts at the end of 2016, the Commission on Financial Affairs of the National Council started deliberating the draft legislation and, on June 20, 2017, the Commission substantially finished its deliberation on the draft FFSA and FAFI. The Commission on Financial Affairs of the National Council will finalize the deliberation process and proceed with the votes on these two pieces of legislation on August 14 and 15, 2017.

1. A Point on the Enactment Process

On January 23, 2017, the Commission on Financial Affairs of the National Council held a first hearing to discuss the draft FFSA and FAFI. The Commission on Financial Affairs of the National Council continued its discussion, article by article, of the FFSA and the FAFI on June 20, 2017. Contrary to its initial schedule, the Commission on Financial Affairs of the National Council was not in a position to finalize its deliberations during the session of June 20 and thus, has scheduled another meeting on August 14 and 15, 2017, to complete the deliberation process and proceed with the votes on the new legislation.

The FFSA and the FAFI will then be submitted for debates to the National Council in Fall 2017.

Upon the agreement of the Council of States and the National Council on all provisions of the FFSA and the FAFI, the new legislation will be final. This will allow the Swiss Federal Financial Department to proceed with the formal consultation process on the implementing ordinances to the FFSA and the FAFI which will specify many key provisions of the new legislation. Incidentally, the Swiss Federal Financial Department has already launched the drafting process of these implementing ordinances.

The earliest date of the entry into effect of the FFSA and the FAFI currently contemplated is January 1, 2019. Most of the transitional deadlines to implement the new rules, which are key for the industry, will be defined in the implementing ordinances.

2. June 2017 session

During its June session, the Commission on Financial Affairs of the National Council in its deliberations so far essentially supported the modifications made by the Council of States on December 11, 2016.

The following are the principal items discussed in the June session:

a) Prudential supervision over independent asset managers

The Commission on Financial Affairs of the National Council confirmed that independent asset managers should not fall under the direct supervision of FINMA. The Commission on Financial Affairs of the National Council agreed to follow the proposal of the Council of States to submit independent asset managers to the supervision of an independent body which would itself be authorized and supervised by FINMA, rather than to the direct supervision of the Swiss Financial Regulator.

As mentioned in our January 2017 Newsflash, this prudential supervision is based on a “two tier supervisory regime”, where FINMA is responsible for licensing the independent asset managers and trustees and set minimum requirements, including as to corporate governance, and has the right to impose sanctions, while the ongoing (day to day) supervision is delegated to privately organized and FINMA-licensed supervisory organizations. This system benefits from a wide consent within the Swiss financial industry and is a positive element of the new legislation.

b) Fine pursuant to Art. 66 FAFI

The Commission on Financial Affairs of the National Council rejected reducing the amount of the fine that independent asset managers and

trustees could face in the event of a breach of the rules regarding deception, confusion and notification duties. The maximum fine therefore remains at CHF 500'000.

c) Banking insolvency

The Commission on Financial Affairs of the National Council followed the position of the Council of States and recommended that regulations on bank insolvency, which should be amended to align with the FAFI, be amended in a separate project.

d) Cooperative banks

The Commission on Financial Affairs of the National Council resolved not to include rules on cooperative banks in the draft FAFI, but rather move these new provisions to a separate legislative project. The Federal Council would thus have to organize an *ad hoc* consultation on these provisions.

3. Conclusion

The assessments in our January 2017 Newsflash remain essentially valid. As indicated therein, the current drafts of the FFSA and the FAFI are largely aligned with MiFID II and MiFIR while at the same time also providing for more flexible provisions.

The final version of the draft FFSA and draft FAFI, as marked-up by the Commission on Financial Affairs of the National Council should be available in August 2017 and the reconciliations of the differences between the versions of the Council of States and the version of the National Council should take place in winter 2017 or spring 2018.

Please do not hesitate to contact us if you have any questions.

Legal Note: The information contained in this UPDATE Newsflash is of general nature and does not constitute legal advice. In case of particular queries, please contact us for specific advice.

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