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Ordinance on Additional Liquidity Assistance Loans and the Granting of Federal Default Guarantees for Liquidity Assistance Loans from the Swiss National Bank to Systemically Important Banks

Amendment of 19 March 2023

*The Swiss Federal Council
ordains:*

I

The Ordinance of 16 March 2023² on additional liquidity assistance loans and the granting of federal default guarantees for liquidity assistance loans from the Swiss National Bank to systemically important banks is amended as follows:

Art. 1 para. 1 let. i

¹ This Ordinance regulates:

- i. the loss protection guarantee.

Art. 3 para. 2 and 4

² The Federal Council shall set the maximum level of the additional liquidity assistance loans payable by the National Bank per financial group. The Federal Council shall consult the National Bank beforehand.

⁴ Article 4 paragraphs 3 and 4, Article 8 paragraphs 1 and 7, Article 9 and Article 10 paragraph 1 apply by analogy, including when granting an additional liquidity assistance loan.

Art. 5a Additional Tier 1 capital

At the time of the credit approval in accordance with Article 5, FINMA may order the borrower and the financial group to write down additional Tier 1 capital.

SR

² SR xxx (or) AS xxx

Art. 9 para. 4

⁴ The duties described in paragraph 1 shall not apply if the borrower or financial group is taken over by a third entity and the borrower or financial group is absorbed into a unit of the third entity.

Art. 10a Derogations from the Mergers Act

¹ Where necessary to protect the Swiss economy and the Swiss financial system, the following shall apply to transactions in accordance with the Mergers Act of 3 October 2003³ (MergA) between banks supervised by FINMA which are systemically important or are part of a systemically important financial group in accordance with Article 7 of the BankA and which are internationally active:

- a. the performance of such transactions does not require decisions by the general meetings of the entities concerned, where the transaction is performed in agreement with FINMA;
- b. Articles 11, 14, 15 and 16 of the MergA shall not apply, where the transaction is performed in agreement with FINMA;
- c. in agreement with FINMA, there may be further derogations from the transaction-related provisions of the MergA, where the special circumstances so require; in this case, FINMA shall consult the cantonal commercial registry authorities concerned and the Federal Commercial Registry Office beforehand.

² FINMA's decisions shall be binding for the commercial registry authorities.

Section 3a. Loss Protection Guarantee*Art. 14a*

¹ With regard to a transaction in accordance with the MergA between banks supervised by FINMA which are systemically important or are part of a systemically important financial group in accordance with Article 7 of the BankA and which are internationally active, the Confederation may grant a guarantee to the acquiring bank in order to protect against losses on the assets of the acquired bank which are to be wound up.

² Article 5 shall be applied by analogy to credit approvals. The maximum loss protection guarantee shall be CHF 9 billion.

³ The following prerequisites must be met for a loss protection guarantee to be granted:

- a. all assets to be settled have been definitively realised;
- b. the acquiring bank in accordance with paragraph 1 has incurred definitive losses of CHF 5 billion on the assets to be wound up;

³ SR 221.301

- c. FINMA shall monitor the prerequisites described in paragraph a and b and shall provide the Confederation with confirmation of the acquiring bank's definitive losses of CHF 5 billion, and of the definitive loss to be covered by the guarantee.

⁴ The details of the loss protection guarantee shall be set out in the guarantee agreement between the Confederation and the acquiring bank in accordance with paragraph 1.

II

This Ordinance comes into force at 20:00 on 19 March 2023.

19 March 2023

On behalf of the Swiss Federal Council

President of the Swiss Confederation: Alain Berset
Federal Chancellor: Walter Thurnherr