BANKING - SWITZERLAND

Federal Council – banking deposit protection scheme and segregation of custody assets

July 07 2017 | Contributed by Meyerlustenberger Lachenal

The Federal Council recently announced its intention to strengthen the existing deposit protection scheme through a series of different measures. The federal finance department is in charge of preparing a draft for consultation to be published by the end of 2017.

Clients of banks and securities dealers authorised by the Swiss Financial Market Supervisory Authority (FINMA) benefit from protection of their privileged deposits up to a maximum of Sfr100,000 in case of a bankruptcy proceeding by the relevant bank or securities dealer. Provided that the insolvent bank or securities dealer has sufficient liquid assets, privileged deposits up to Sfr100,000 per client held at Swiss and foreign branches are paid out immediately without the need to first go through the procedure of filing claims and establishing a formal schedule of claims. If it is not possible to pay out the privileged deposits in their entirety within a reasonably short period, privileged client deposits held at Swiss branches are paid out by the Swiss deposit protection scheme for Swiss banks and securities dealers – esisuisse – as quickly as possible in the form of an advance. To the extent that esisuisse pays such privileged claims to the insolvent financial institution's clients, it subrogates in the respective claims against the bankruptcy estate of the insolvent bank or securities dealer. Deposits exceeding Sfr100,000 are not privileged and are thus treated as ordinary bankruptcy claims, which are paid out as a bankruptcy dividend to the extent that proceeds are available at the end of the bankruptcy procedure (for further details please see "Protection of deposits with banks and savings banks").

Unlike cash deposits, assets held in custody accounts (eg, shares, bonds, fund units, other securities and fiduciary deposits held with other financial institutions) are deemed to be held by the bank's clients directly (ie, they have a direct proprietary interest in such assets and can therefore request their immediate delivery to another bank of their choice). The same applies to precious metals that are deposited with an insolvent bank in the name of the client.

In December 2014 the expert group in charge of the development of the financial markets strategy adopted recommendations and proposed several measures to strengthen the existing deposit protection scheme. The Federal Council instructed several agencies, including FINMA and the Swiss National Bank, to review and analyse the proposed improvements to the existing deposit protection scheme.

On the basis of this internal analysis and after an industry consultation, the Federal Council decided to adopt the following three measures:

- The timeframe for the repayment of privileged deposits in a bankruptcy procedure of a bank or securities dealer shall be shortened in line with international standards that provide for a seven-day maximum repayment period. The interplay between esisuisse and FINMA shall remain unchanged. Banks and securities dealers will have an implementation period of at least five years to implement the required changes.
- The financing of the deposit protection system shall be reinforced by a deposit of securities representing 50% of the contributions due in an insolvency case by the financial institutions that are members of esisuisse. This measure shall ensure that member banks and securities dealers can comply with their payment obligations as participants of the esisuisse system in case of insolvency of a member institution. Conversely, the requirement for members to hold

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sufficient liquidity to protect against any outflow of funds to the protection scheme will be eliminated. The other half of the contributions due from member institutions will be retained in the existing form of *ex post* financing obligations of all members. A change in the existing system to a scheme providing for the setting up of an *ex ante* fully financed fund has been dropped.
- The upper limit of the system will be changed from a nominal amount in Swiss francs to a percentage of the aggregate amount of the guaranteed deposits (ie, to 1.6% of the total amount of all guaranteed deposits). However, the nominal limit shall not be less than Sfr6 billion. With the collaterisation of half of the contributions due, the overhauled regulations will be comparable to those in force in the European Union.

In addition, the Federal Council intends to further strengthen the regulations on the protection of securities and other assets deposited by clients with a bank or securities dealer by introducing a new obligation to keep those assets segregated from other clients' assets on a sub-custodian level, to the extent that the chain of custody is in Switzerland.

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