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Commission for Economy and Taxes
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By email to: vernehmlassungen@sif.admin.ch

Bern, September 8, 2022

Consultation on closing a criminal liability loophole in the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FinfraG) - SwissHoldings' comments

Dear Mr. President of the Commission
Ladies and Gentlemen

Thank you for the opportunity to comment on the above-mentioned bill.

The proposal aims to create a new criminal provision, structured as a misdemeanor, in case of violation of the obligation to publish a true and complete offer prospectus or a true and complete pre-announcement. It is to be structured as a mirror image of the penal provision for untrue or incomplete information in the target company's statement (Art. 153 FinfraG).

The FinfraG is currently undergoing an evaluation. Against this backdrop, it is not evident why an individual provision should be brought forward and separately adjusted prior to the publication of the evaluation report of the Department of Finance. Should any need for action be evaluated, it is to be expected that the Federal Council will submit a bill for the ordinary revision of the FMIA for consultation. We therefore see neither urgency nor necessity to bring forward an individual provision of the revision.

Furthermore, the proposed penal provision would also make negligence punishable. As with the current Art. 153 FinfraG, this would be neither expedient nor justified. If the criminal provisions of the FinfraG were to be expanded, this would have to be done within the framework of the ordinary revision. Criminal liability for Art. 153 FinfraG would also have to be limited to the intentional commission of an offense.

We thank you for your consideration of our concerns. Please do not hesitate to contact us if you have any questions regarding our comments.

Kind regards

SwissHoldings
Office

A handwritten signature in black ink, appearing to be "G. Rumo".

Dr. Gabriel Rumo
Director

A handwritten signature in black ink, appearing to be "S. Zemp".

Silvan Zemp
Legal Affairs Officer

