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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

of 16 March 2023

The Swiss Federal Council,

based on Article 184 paragraph 3 and Article 185 paragraph 3 of the Federal
Constitution²,

ordains:

Section 1: General Provisions

Art. 1 Objective and purpose

¹ This Ordinance regulates:

- a. the additional liquidity assistance loans from the Swiss National Bank (National Bank) to a systemically important bank;
- b. federal default guarantees to the National Bank for liquidity assistance loans from the National Bank to systemically important banks;
- c. the exchange of information between the Federal Department of Finance (FDF), the Swiss Financial Market Supervisory Authority (FINMA) and the National Bank;
- d. the reduction of risk;
- e. interest rates, risk premia, the commitment premium and the costs for third-party services;
- f. the duties of the borrower;
- g. further measures; and
- h. the preferential rights in bankruptcy proceedings relating to liquidity assistance loans.

SR

² SR 101

² The Ordinance is aimed at helping to ensure the stability of the Swiss economy and the Swiss financial system in the event of unforeseen developments.

Art. 2 Definitions

¹ A liquidity assistance loan from the National Bank to a bank that is systemically important or part of a systemically important financial group in accordance with Article 7 of the Banking Act of 8 November 1934³ (BankA) (borrower) shall be deemed to be the following:

- a. Emergency liquidity assistance loans: liquidity assistance loans in accordance with the National Bank's guidelines of 25 March 2004⁴ on monetary policy instruments (as at 1 July 2021).
- b. Additional liquidity assistance loans: liquidity assistance loans that are granted in addition to the emergency liquidity assistance loans and are secured by means of preferential rights in bankruptcy proceedings.
- c. Liquidity assistance loans with a default guarantee: liquidity assistance loans that go beyond the additional liquidity assistance loans and are secured by means of preferential rights in bankruptcy proceedings and a federal default guarantee.

² A default guarantee is deemed to be the guarantee issued to the National Bank by the Confederation for securing the potential loss from liquidity assistance loans in accordance with paragraph 1 letter c.

Section 2: Additional Liquidity Assistance Loans

Art. 3

¹ In derogation from Article 219 paragraph 4 of the Federal Act of 11 April 1889⁵ on Debt Enforcement and Bankruptcy (DEBA), National Bank claims from additional liquidity assistance loans shall be assigned to the second class in accordance with Article 219 paragraph 4 of the DEBA. In derogation from Article 220 paragraph 1 of the DEBA, the remaining second-class claims in accordance with Article 219 paragraph 4 letters a to f of the DEBA are to be satisfied first.

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

³ In all other respects, the National Bank shall set the conditions for the additional liquidity assistance loans. Within the maximum level set by the Federal Council in accordance with paragraph 2, the National Bank may grant separate additional liquidity assistance loans to more than one bank in accordance with Article 2 paragraph 1 within the same financial group.

³ SR 952.0

⁴ [Guidelines of the Swiss National Bank on monetary policy instruments \(snb.ch\)](#)

⁵ SR 281.1

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

Section 3: Liquidity Assistance Loans with a Default Guarantee

Art. 4 Granting of default guarantees

¹ The Confederation may grant default guarantees to the National Bank in connection with liquidity assistance loans. It shall assess the risks associated with the granting of default guarantees, while taking particular account of the preferential rights in bankruptcy proceedings in accordance with Article 11.

² With a default guarantee, the Confederation commits to assume any definitive loss incurred by the National Bank on the liquidity assistance loan guaranteed by the Confederation in the amount of the approved funds after the conclusion of bankruptcy proceedings against the borrower, including accrued interest and the National Bank's premium in accordance with Article 8 paragraph 2.

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

- a. significant damage to the Swiss economy and the Swiss financial system cannot otherwise be averted;
- b. the liquidity assistance loans are appropriate and necessary to ensure business continuity at the borrower;
- c. FINMA confirms the solvency of the borrower or confirms that a resolution plan is in place. If the borrower is part of a financial group, FINMA's confirmation covers the entire financial group.

⁴ Payment of the liquidity assistance loans with a default guarantee shall take place if the borrower has exhausted the funding sources that can be accessed with own means. At the time of the first payment, the National Bank shall confirm to the FDF that neither the borrower nor the financial group have any further appropriate collateral to secure emergency liquidity assistance, and that the additional liquidity assistance loans are exhausted. FINMA shall confirm to the FDF that no further funding sources are available to the borrower and the financial group.

⁵ There is no legal entitlement for the Confederation to grant the National Bank a default guarantee for liquidity assistance loans to the borrower.

⁶ The details of the liquidity assistance loans secured with a default guarantee shall be set out in the guarantee agreement between the Confederation and the National Bank, and in the master loan agreement between the National Bank and the borrower.

Art. 5 Credit approval

The approval of the required guarantee credit shall be governed by Article 28 of the Financial Budget Act of 7 October 2005⁶.

Art. 6 Information exchange and data processing

¹ The FDF, FINMA and the National Bank shall exchange such non-public information as is necessary, specifically in connection with the granting, management, monitoring and settlement of liquidity assistance loans and default guarantees.

² The authorities described in paragraph 1, plus the Swiss Federal Audit Office and the third parties engaged for the enforcement of this Ordinance, may process, link, and inform each other of personal data and other information, to the extent that this is necessary for the enforcement of this Ordinance, specifically for the granting, management, monitoring and settlement of liquidity assistance loans and collateral or for market monitoring purposes.

³ Access to this information and data in accordance with the Freedom of Information Act of 17 December 2004⁷ is excluded.

Art. 7 Risk reduction and repayment

¹ FINMA and the National Bank as lender shall ensure to the extent possible that the risks to the Confederation from default guarantees are reduced.

² In addition to its supervisory activities, FINMA shall monitor the use of liquidity assistance loans with a default guarantee. For this purpose, it can, in particular, implement all measures in accordance with Article 26 of the BankA⁸, irrespective of whether protection measures were implemented.

³ The borrower must repay liquidity assistance loans with a default guarantee before other loans granted to it by the National Bank. Prior repayment of emergency liquidity assistance loans is reserved, where sufficient collateral is no longer available for them owing to market changes, or where the Confederation has agreed beforehand to such repayment of an emergency or additional liquidity assistance loan in justified cases.

Art. 8 Interest, risk premia, commitment premium and costs for third-party services

¹ The National Bank shall be entitled to interest on liquidity assistance loans with a default guarantee.

² The Confederation and the National Bank shall each be entitled to a risk premium to compensate for the risks assumed in connection with the liquidity assistance loans with a default guarantee. The risk premia shall be based on the size of the liquidity assistance loans with a default guarantee provided, and shall be set on a case-by-case

⁶ SR 611.0

⁷ SR 152.3

⁸ SR 952.0

basis. The Confederation and the National Bank may adjust their risk premium, in particular in light of a change in the risk situation.

³ The Confederation shall be entitled to a premium for providing a default guarantee. It shall be based on the size of the default guarantee and shall be set on a case-by-case basis.

⁴ The National Bank shall charge the premia described in paragraphs 2 and 3 to the borrower as part of the granting of the loans and shall credit the Confederation with the risk premium and commitment premium due to it.

⁵ The details shall be set out in the guarantee agreement between the Confederation and the National Bank, and in the master loan agreement between the National Bank and the borrower.

⁶ In the case of bankruptcy proceedings, the National Bank is authorised and obligated to claim the accrued premia described in paragraphs 2 and 3 on behalf of the Confederation.

⁷ Third-party service costs incurred by the Confederation or the National Bank in connection with the granting of liquidity assistance loans with a default guarantee shall be charged to the borrower.

Art. 9 Duties of the borrower arising from liquidity assistance loans with a default guarantee

¹ For the duration of the master loan agreement between the National Bank and the borrower and, in the event that the agreement is terminated, until the full repayment of the liquidity assistance loans with a default guarantee and the full repayment of the accrued interest and premia in accordance with Article 8, the borrower and its direct or indirect subsidiaries may not:

- a. decide on or execute the payment of dividends and royalties to persons outside the borrower's group;
- b. reimburse capital investments;
- c. grant loans to or repay loans from the owners of the group parent company.

² It is permitted to meet pre-existing ordinary interest and repayment obligations in the case of activities described in paragraph 1 letters b and c.

³ The borrower and the directly or indirectly linked group companies may not perform activities which could jeopardise the repayment of these loans and the full settlement of the interest and premia in accordance with Article 8, nor may omit to perform activities that are conducive to the repayment of these loans and the full settlement of the interest and premia in accordance with Article 8.

Art. 10 Further measures

¹ In the event of recourse to liquidity assistance loans with a default guarantee, FINMA may require the replacement of some or all of the bodies responsible for overall management, supervision and control, as well as the senior management body of the borrower, where FINMA considers this to be necessary for business continuity.

² The FDF shall issue a ruling on remuneration-related measures in accordance with Article 10a of the BankA⁹. FINMA shall monitor its implementation.

Art. 11 Preferential claims in connection with liquidity assistance loans with a default guarantee

In derogation from Article 219 paragraph 4 of the DEBA¹⁰, National Bank claims from liquidity assistance loans with a default guarantee, the accrued interest and the accrued premia in accordance with Article 8 shall be assigned to the second class in accordance with Article 219 paragraph 4 of the DEBA. In derogation from Article 220 paragraph 1 of the DEBA, the remaining second-class claims in accordance with Article 219 paragraph 4 letters a to f of the DEBA and claims from additional liquidity assistance loans are to be satisfied first.

Art. 12 Recourse by the National Bank to the default guarantee

¹ Recourse by the National Bank to the default guarantee is contingent upon:

- a. the National Bank making a comprehensive claim in bankruptcy proceedings for the liquidity assistance loans with a default guarantee, the accrued interest, the National Bank's risk premium and, on behalf of the Confederation, the accrued commitment and risk premia; and
- b. the bankruptcy proceedings being completed with legal effect.

² Any further requirements for recourse to the default guarantee shall be set out by the Confederation and the National Bank in the guarantee agreement.

Art. 13 Due date

The claim arising out of a default guarantee shall fall due five years after the bankruptcy proceedings have been completed with legal effect.

Art. 14 Criminal law provision

¹ Unless a more serious offence under the Swiss Criminal Code¹¹ has been committed, any person who wilfully breaches the duties in accordance with Article 9 shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

² Jurisdiction shall be based on Article 50 of the Financial Market Supervision Act of 22 June 2007¹².

⁹ SR 952.0

¹⁰ SR 281.1

¹¹ SR 311.0

¹² SR 956.1

Section 4: Commencement

Art. 15

¹ This Ordinance comes into force at 20:00 on 16 March 2023.

² It shall remain in force for six months after commencement.

16 March 2023

On behalf of the Swiss Federal Council

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