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Abstract

This article discusses two rather recent developments concerning the regulation of managerial compensation in Switzerland: the Swiss voters' acceptance of the initiative "against abusive remunerations" on 3 March 2013 and the Swiss voters' rejection of the so-called 1:12 initiative on 24 November 2013. Many international commentators have argued that Switzerland has imposed one of the most restrictive manager pay regimes of the world and has therefore become a much less attractive place to do business. In my article, I challenge this view by closely examining the relevant rules on say-on-pay votes, bonus bans, and salary caps. I conclude that the new Swiss rules on management compensation are not as interventionist as they are sometimes thought to be and Switzerland's liberal economic spirit and dedication to free market economic ideals is still alive and well.

Introduction

Management compensation is a hotly debated topic today. Throughout the world, lawmakers and regulators as well as the general public have discussed and debated this issue. Many countries such as the United States, the United Kingdom, and Switzerland have adopted new rules and regulations on this matter.[1] The new Swiss rules on management compensation have attracted particular interest, as they are perceived as one of the most restrictive say-on-pay regimes in the world and also for other reasons said to turn Switzerland into a less attractive business hub.[2] It is therefore worth looking more closely at the actual economic effect of the Swiss rules governing man-

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1 The United States mainly rely on disclosure rules on executive compensation, but recently introduced advisory say-on-pay votes. Having in place advisory say-on-pay votes for about ten years, the United Kingdom shifted towards a binding say-on-pay regime and adopted further disclosure rules on directors' pay more recently. Switzerland recently adopted a binding say-on-pay regime, certain bonus bans, and transparency improvements on management compensation, but clearly rejects any form of salary caps, including CEO to worker pay ratios.

2 See for example John Revill, *Swiss to Vote on Executive Pay*, http://online.wsj.com/news/articles/SB10001424127887324103504578372203886463598 (accessed 25 June 2015) or Neil MacLucas, *Should Swiss CEO Pay Be Capped? A Vote May Make It So*, http://online.wsj.com/news/articles/SB10001424052702304868404579191542062955968 (accessed 25 June 2015).

agement compensation, while putting those rules into comparative perspective on an international level.

Current international interest in Switzerland's regulatory policy is due in part to the fact that the Swiss voters were asked to vote on management compensation twice in 2013. First, the then accepted[3] and adopted[4] popular initiative "against abusive remunerations", which applies to all Swiss public companies, provides for a binding say-on-pay regime, certain bonus bans, more transparency on executive loans, and criminal penalties for violations of these regulations. Secondly, the shortly afterwards rejected[5] 1:12 initiative, which would apply to all Swiss companies, attempted to adopt a relative salary cap into Swiss law based on the idea that no one in a company should earn more in a month than others in a year. These two initiatives express similar concerns about the often very high salaries of top managers of Swiss companies. Nevertheless, these two initiatives could not be more different in principle. The initiative "against abusive remunerations", initiated by a CEO of a small family business who later on became a member of the Swiss Parliament, unambiguously espouses a shareholder value approach.[6] In contrast, the 1:12 initiative, brought and promoted by the Young Socialist Party, is inspired by socialist ideals such as the distribution of wealth amongst members society through relative wage equality.[7]

In this article, I will argue that the new Swiss rules on management compensation are not as interventionist[8] as often believed; despite these rules, Switzerland's business environment still expresses a liberal[9] spirit that promotes international business with and from Switzerland. In making this argument, I will examine how manager pay is regulated in Switzerland and evaluate how restrictive the new rules are. For this purpose, my analysis focusses on three major building blocks of management compensation: the regulation of say-on-pay votes, bonus bans, and salary caps. As I will further discuss in the remainder of this article, Switzerland has adopted binding

[3] The initiative "against abusive remunerations", BBl 2577 (2008) was accepted by the Swiss voters with an overwhelming majority of 68 percent and all 26 Cantons on 3 March 2013.

[4] On 3 March 2013, the Swiss Constitution was amended by a new provision, which contains a mandate to the legislator to regulate Swiss public companies in accordance with certain principles set forth by the initiative (Federal Constitution of the Swiss Confederation of 18 April 1999, SR 101, art. 95 para. 3) (the "Swiss Constitution"). On 20 November 2013, the Swiss Federal Council published the corresponding implementing legislation, the Ordinance against Excessive Compensation in Public Companies, AS 2519 (2013) (the "Swiss Compensation Ordinance"), which will become effective as of 1 January 2014.

[5] The 1:12 initiative, BBl 3725 (2011) was rejected by a 65 percent majority of Swiss voters and all 26 Cantons on 24 November 2013.

[6] The introductory phrase of art. 95 para. 3 of the Swiss Constitution describes the purpose of the new rules as protecting "the economy, private property, and shareholders" and guaranteeing "sustainable corporate governance".

[7] See the Report of the Swiss Federal Council to the Swiss Parliament regarding the 1:12 initiative, dated 18 January 2012, BBl 637 (2012), at 642–644.

[8] The term "interventionist" refers to economic interventionism, which in general favors interventions in the market in the public interest on behalf of the government.

[9] The term "liberal" refers to economic liberalism, which is generally opposed to government interventions in the free market.

say-on-pay votes and selective bonus bans under the initiative "against abusive remunerations", but no salary caps as demanded by the 1:12 initiative and other reform proposals.

Binding Say-on-Pay Votes

The most important element of the new Swiss rules on management compensation is undoubtedly the establishment of a binding say-on-pay regime. According to the new rules, shareholders vote on the total compensation of the board of directors, the executive board, and the advisory board (if any), but not on individual pay of each director or officer.[10] The new rules, however, do not provide a default rule for how the say-on-pay regime shall be implemented in each publicly held company.[11] In fact, the law imposes only three minimum requirements for such votes: say-on-pay votes must occur on a yearly basis; must address the total compensation of the board of directors and the executive board; and must have a binding effect.[12] The new rules are thus very flexible, allowing the companies' bylaws to regulate most details of such votes.[13] In this context, the bylaws must define the nature of the say-on-pay vote and the voting mechanism and may further define the consequences of a no vote.

A first item of required bylaws content is the nature of the say-on-pay vote.[14] The main issue in this area is whether the shareholders' vote qualifies as an approval or a resolution. This is important because the latter but not the former gives shareholders a right to submit motions, allowing them not only to ratify the total director and officer compensation, but also to submit their own proposals in relation to these compensation packages. Leading scholars[15] and practitioners[16] have argued that there are good reasons to opt for an approval rather than a resolution. Should a company still choose to provide for a shareholders' right to submit motions, the company's bylaws have to specify more closely the applicable procedure.

A second item of required bylaws content is the voting mechanism.[17] Retrospective voting[18] allows shareholders to take into account a manager's performance dur-

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[10] Swiss Constitution, art. 95 para. 3 (a); Swiss Compensation Ordinance, art. 18 para. 1.

[11] An earlier draft of the implementing legislation provided for a default rule, *see* Preliminary Draft to the Ordinance "against abusive remunerations", published 16 June 2013, art. 18 para. 1 (the "Primarily Draft").

[12] Swiss Compensation Ordinance, art. 18 para. 3.

[13] Swiss Compensation Ordinance, art. 18 para. 2.

[14] Swiss Compensation Ordinance, art. 12 para. 1 no. 4.

[15] Hans Caspar von der Crone & Adriano R Huber, *Festlegung von Vergütungen in Publikumsgesellschaften* 109 SJZ 297, 302 (2013).

[16] Ralph Malacrida & Till Spillmann, *Corporate Governance im Interregnum* 8 GesKR 485, 488–499 (2013).

[17] Swiss Compensation Ordinance, art. 12 para. 1 no. 4.

[18] In a retrospective voting system, shareholders at their annual meeting vote on total director and officer compensation of a reference period (such as the one year period since the last annual shareholders' meeting or the last business year, which is at the same time the reporting period) in the past.

ing the preceding year. However, retrospective voting poses managers at risk of not receiving their normally expected compensation due to shareholder veto power.[19] Prospective voting[20] assures managers that their compensation is not blocked by shareholders before delivering their services to the company. However, prospective voting makes it impossible for shareholders to reward performance in advance because management already knows what it will earn in the upcoming year. A mixed system combines elements of both retrospective and prospective voting.[21] Such a system might mitigate but cannot eliminate the described problems of retrospective and prospective voting. In all systems, companies thus face a tradeoff between the interests of the shareholders (reduction of agency costs due to proper performance incentives for management) and the managers (predictable salaries and bonuses). It is up to the company to decide which system suits best to their needs.[22]

The regulation of the consequences of a no vote is an item of permitted bylaws content.[23] Unlike in an earlier draft,[24] the new rules do not require the company to call an extraordinary shareholders' meeting within a certain time. As suggested in the legislative report,[25] the company's bylaws could allow the board to make a new motion to the shareholders at the same meeting. However, this could have adverse effects because it induces the board generally to propose the highest possible amount.[26] Another option would be to call another shareholders' meeting within a certain time in order to hold a new vote. However, this is not very practical since the convocation of another shareholders' meeting is very costly for any public company. It is therefore arguably the best approach for the company to amend the bylaws to vote on any unauthorized compensation packages in the next annual shareholders' meeting. The downside of this approach is that it exposes management to a high degree of uncertainty whether or not their compensation packages will eventually go through.[27]

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[19] While such a system provides more effective performance incentives, there is reason to believe that it ultimately leads to even higher management pay since managers will demand an additional risk premium for the uncertainty they face. There is reason to believe that the risk premium is considerably high since managers have undiversified invested their whole human capital and typically also a large part of their real capital in the firm.

[20] In a prospective voting system, shareholders vote on director and officer compensation of the ongoing (time period until the next annual shareholders' meeting or the current business year) or a future (one fiscal year starting on July 1 after the shareholders' meeting) reference period.

[21] For example, such a system might contain prospective non-variable pay votes and retrospective variable pay votes.

[22] For current market trends, see Homburger, *Final Ordinance Against Excessive Compensation Published*, http://www.homburger.ch/aktuell/aktuell/bulletins (accessed 25 June 2015) or Bär & Karrer, *Minder Rules in their Final Form Published Today*, http://www.baerkarrer.ch/publications-en/briefings.html (accessed 25 June 2015).

[23] Swiss Compensation Ordinance, art. 12 para. 2 no. 6.

[24] See Primarily Draft, art. 18 para. 2.

[25] Federal Office of Justice, Supplementary Report to the Swiss Compensation Ordinance, dated 8 October 2013, 9–10 (the "Supplementary Report").

[26] See Stefan Knobloch, *Ist die Initiative 'gegen die Abzockerei' umsetzbar?* 7 GesKR 372, 375–377 (2012).

[27] From a policy perspective, it is most likely that such a rule will increase management compen-

The Swiss rules are not necessarily more stringent on say-on-pay than the U.S. and U.K. regulations.[28] Since 2011, the U.S. rules require at least every three years an advisory vote about the compensation of the top five executive officers.[29] Under these rules, shareholders further have to vote at least every six years on whether they wish annual, biannual, or triennial say-on-pay votes. The United Kingdom has already implemented advisory votes on the remuneration policy report in 2002.[30] The new U.K. rules, as in effect since 1 October 2013, require a binding shareholder vote on the remuneration policy report and separate advisory votes on the individual compensation of executive and non-executive directors.[31]

As all these statements and observations illustrate, the new Swiss rules on say-on-pay are flexible in many respects. The new law's moderate restrictions enable Swiss public companies to choose their favored regulatory regime according to their own needs and wishes. Moreover, the Swiss rules are not considerably stricter than comparable U.S. and U.K. rules. The object of the vote (global vs. individual compensation) is much narrower defined under the Swiss rules. There is further no significant difference between an advisory and a binding say-on-pay vote because public companies' boards cannot ignore either of them. It is thus not accurate to denote the Swiss say-on-pay votes as one of the strictest of the world.

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sation since managers will demand an additional risk premium for this uncertainty (see also fn 19). In the worst case scenario, managers might also decide to quit their jobs, which most often is not in the best interest of the company.

[28] For a rough overview on say-on-pay in the United States and the United Kingdom, *see* Lillian Tsu et al., *Say-on-Pay in the U.S. and U.K.*, http://about.bloomberglaw.com/practitioner-contributions/say-on-pay (accessed 25 June 2015).

[29] See sect. 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act") (requiring companies to approve the compensation of executives as disclosed in the annual financial statement and the aggregate total amount of compensation that may be paid to an executive officer related to an acquisition, merger, consolidation, or asset sale); see also sect. 229.402 (item 402) of the Code of Federal Regulations, 17 CFR 229.402 (2011) (requiring companies to disclose all compensation of the CEO, the CFO, and the three additional most highly compensated executive officers).

[30] See sect. 241A of the Companies Act (1985), as amended by the Directors' Remuneration Report Regulations of 2002, S.I. 2002/1986, which was adopted as sect. 439 of the Companies Act (2006) (requiring companies to give shareholders a right to an advisory vote on the remuneration report); see also sect. 420 and sect. 421 of the Companies Act (2006) (requiring companies to publish a report on directors' remuneration as part of the annual reporting cycle and making provision for the Secretary of State to regulate what should be in the remuneration report) and Schedule 8 of the Large and Medium-sized Companies and Groups Regulations of 2008, S.I. 2008/410 (setting out what must be included in the remuneration report).

[31] See sect. 79–82 of the Enterprise and Regulatory Reform Act (2013), S.I. 2013/2227 (requiring companies to have a directors' remuneration policy, which must be approved by shareholders at least every three years, and to give shareholders a right to approve individual director compensation that is inconsistent with that policy); see also the Large and Medium-sized Companies and Groups Regulations of 2013, S.I. 2013/1981 (prescribing the requirements of the directors' remuneration policy and setting out the minimum requirements of the directors' remuneration policy) and the Companies Act (2006) Regulations of 2013, S.I. 2013/1970 (requiring certain companies to prepare a stand-alone strategic report as part of their annual report).

Selective Bonus Bans

Another important element of the new Swiss rules on management compensation is its various bans on bonuses for the board of directors and executive board members. The new Swiss rules essentially prohibit three specific types of bonuses for directors and officers: severance payments, advance payments, and commission payments in relation to takeovers and restructurings.[32] The Swiss rules do not prohibit anything other than these three types of bonuses.

Under the new Swiss rules, severance payments are no longer permissible. The term "severance payments" includes all contractual and bylaw-based payments, but excludes all severance payments guaranteed by Swiss[33] and foreign statutory law. This new rule does, however, not clearly distinguish between unlawful severance payments and compensation related to non-compete agreements.[34] Furthermore, it enables the company to extend the duration of employment contracts or notice periods under existing contracts to a certain degree, which could in theory have a similar effect to severance payments.[35] This rule thus gives public companies at least some room for interpretation.

The new Swiss rules also outlaw advance payments, defined as any payment given to a manager before that manager actually performs any services for the company. The scope of this prohibition, however, is rather limited. A typical situation in which such payments can become relevant is when a company facing possible bankruptcy wants to hire a top manager to conduct a corporate restructuring.[36] While this is a rather unusual situation, the more relevant question is whether or not to include signing bonuses under this rule.[37] The authoritative legislative materials have clearly negated this question, also because signing bonuses ensure a competitive managerial labor market by facilitating job changes.[38] In light of this exemption, one can argue that again, this new rule is not nearly as restrictive as it might appear.

Additionally, the new Swiss rules restrict commissions paid after takeovers and restructurings within corporate affiliates. The scope of this rule is very narrow: it only

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[32] Swiss Constitution, art. 95 sect. 3 (b); Swiss Compensation Ordinance, art. 20.

[33] See for example Swiss Code of Obligations of 30 March 1911, SR 220, art. 339*b*–339*d*.

[34] The most recent example of a highly compensated non-compete agreement is the agreement between Novartis, the Swiss pharmaceutical company, and Daniel Vasella, its former CEO, providing for total compensation in the amount of CHF 72 million (currently equivalent to USD 69 million), which was ultimately cancelled in early 2013.

[35] However, both the maximum duration and notice periods of employment agreements can be no longer than one year under the new rules (see Swiss Compensation Ordinance, art. 12 para. 1).

[36] The best known example of such an advance payment was the CHF 12 million (currently equivalent to USD 11 million) advance payment made to Mario Corti, then CEO of national carrier Swissair, only a few months before the company filed for bankruptcy in late 2001. This financial scandal was eventually the initial trigger for the initiative "against abusive remunerations".

[37] A signing bonus compensates a manager for forfeited compensation elements due to the job change.

[38] Federal Office of Justice, Explanatory Report to the Swiss Compensation Ordinance, dated 14 June 2013, 25–26 (the "Explanatory Report"); Supplementary Report, 12.

pertains to commissions paid during intragroup takeovers and restructurings.[39] The payment of commissions on such restructurings is further only forbidden if it is paid in relation to one specific transaction.[40] The compensation committee can thus still honor directors' and officers' extraordinary achievements during such restructurings by setting the variable compensation for the business year accordingly.[41] Once again, the new law's prohibition on paying commissions during intragroup takeovers and restructurings is not nearly as restrictive as it appears.

While there are no bonus bans covering all these types of bonuses in the United States or the United Kingdom, both countries have adopted rules prohibiting certain bonuses, in particular severance payments, if the company received bailout money from the government (and the taxpayers, respectively).[42] Despite sound economic rationales for severance payments in theory,[43] actual compensation practices regarding these payments have generated much skepticism about them. The same is true for advance payments and commission payments in relation to takeovers and restructurings. It is therefore not unlikely to assume that other countries will follow the Swiss approach on bonus bans.

At first glance, the aforementioned rules banning certain bonuses appear quite interventionist. After all, generally speaking, a prohibition is the strongest form of market intervention. However, examining them more closely reveals that these prohibitions are narrowly construed and thus provide room for liberal interpretation. Indeed, this seems to be intended by the legislator, since the primary purpose of the bill is to strengthen corporate governance under a shareholder value approach. Moreover, other countries have adopted similar restrictions on bonuses and there is a continuing trend that several other countries are at least considering to implement more extensive bonus bans.

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[39] See Supplementary Report, 12.

[40] See Explanatory Report, 26.

[41] This is important because such payments can provide involuntarily resigning directors and officers with important incentives to continue acting in the best interest of the company until their resignation becomes effective. It sometimes can be difficult to motivate these persons in the face of a highly probable job loss.

[42] See sec. 7001 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5, 123 Stat. 115 (2009), amending the executive compensation provisions of the Emergency Economic Stabilization Act of 2008, which established requirements applicable to participants in the Troubled Assets Relief Program ("TARP") (prohibiting TARP recipient companies from making any golden parachute payment to a senior executive officer during the period the company is receiving financial assistance under the TARP remains outstanding). Similar constraints on severance payments had been introduced under the U.K. bank rescue package of 2008, under which participating banks had to sign up an agreement with the Financial Services Authority to restrict executive pay.

[43] From an economic point of view, banning severance payments is counterproductive, since these payments serve to mitigate top earners' job loss risk. Without severance payments, manager pay will likely rise, because managers will demand higher total compensation as an alternative means of job loss risk mitigation. This is especially true in today's managerial labor market, which is characterized by high CEO turnover rates.

No Salary Caps

Salary caps on executive compensation come in various forms. An absolute salary cap puts a money amount on the maximum amount a manager may earn in a year, as seen in the compensation of some professional sports players.[44] Relative salary caps, on the other hand, can take different forms. For example, one type of relative salary cap focuses on wage spreads, requiring a certain coefficient between the highest and the lowest wage within a company. The Swiss 1:12 initiative is an example of such a total pay ratio. Another relative salary cap are variable pay ratios. Such salary caps require a certain coefficient between non-variable pay and bonuses, as seen in the financial sector salary caps that the European Union is currently implementing. Switzerland has considered all three types of salary caps but the Swiss legislator, including the electorate, has rejected each and every one of them.[45]

Back in 2000, a member of the Swiss Parliament brought a parliamentary initiative before the Swiss Federal Council to create an absolute salary cap of CHF 1 million (approximately equivalent to USD 1 million) for all directors and officers of Swiss companies.[46] However, the Swiss Parliament struck down the initiative on 11 March 2002. The main argument against this and other absolute salary caps is that such a rule is arbitrary and dangerous, since it can lead to a strong misalignment of interests.[47] No similar proposal has been made since, which supports the proposition that the Swiss uphold liberal values.

The paramount example of a relative salary cap focusing on wage spread is the 1:12 initiative. The 1:12 initiative attempts to ensure that no one within a Swiss company shall earn less in a year than any person within the same company earns in a month. In order to guarantee this wage equilibrium, the 1:12 initiative proposed a new constitutional provision[48] that limited the highest wage paid within a company to no more than twelve times the lowest wage with the same company. Nevertheless, on 24 November 2013, 65 percent of the Swiss voters and all Cantons rejected this proposal,[49] which provides clear and up-to-date evidence that Switzerland and its people are opposed to stringent economic regulation and still possess rather liberal notions of the government's interference in private business relationships.

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44 Several major U.S. sports leagues, including the NHL, the NFL, and the NBA, have implemented salary caps as both a method of keeping overall costs down and as a means of ensuring parity between teams.

45 For an overview, see Olivier Blanc & Florian Zihler, *Die neuen aktienrechtlichen Vergütungsregeln gemäss dem Entwurf vom 5. Dezember 2008* 4 GesKR 66, 82 (2009).

46 Parliamentary initiative 00.439, Prohibition of Excessive Salaries, submitted by Flavio Maspoli on 26 September 2000.

47 Absolute salary caps signal to the corresponding person that future increases in performance are not worthwhile since additional efforts are not rewarded, see for example Daniel Leu, *Variable Vergütungen für Manager und Verwaltungsräte*, 292–293 (Schulthess 2005).

48 Swiss Constitution, art. 110*a* (not entered into force).

49 See for example James Shotter, *Swiss Voters Reject Wage Caps in Referendum*, http://www.ft.com/intl/cms/s/0/bbf51592-5512-11e3-86bc-00144feabdc0.html#axzz2ngDE.DAoW (accessed 25 June 2015).

The Swiss have also considered adopting a relative salary cap focusing on a variable pay ratio. During the four-and-a-half years of parliamentary debate about the initiative "against abusive remunerations", the Swiss Parliament discussed and ultimately rejected a statutory provision that stipulates a variable pay ratio.[50] Some also proposed requiring Swiss companies to establish their own variable pay ratio within their bylaws or include such a ratio in the compensation report as an integral part of their annual report rather than fixing a rigid number in the statute.[51] Nevertheless, the fact that none of these proposals ultimately succeeded further indicates the Swiss people's continued commitment to liberal economic policy.

In contrast, the regulatory environment of the United States and the United Kingdom is more recently strongly in favor of relative salary caps. On 18 September 2013, the U.S. Securities and Exchange Commission proposed a new rule regarding the CEO versus average worker pay.[52] Although the Commission does not dictate a rigid total pay ratio, but instead plans to implement a corresponding disclosure rule,[53] the floor is now open to discuss further rules in this area. In addition, the United Kingdom faces even more severe regulations. Initiated by the European Banking Authority, current E.U. initiatives are about to impose rather strict relative salary caps for the financial services industry in the near future. The new E.U. rules restrict bankers' bonuses to 100 percent of their base salary, although bonuses may be enlarged to 200 percent of the base salary with explicit shareholder approval.[54] The E.U. Parliament passed this bonus cap in April 2013, but its practical implementation by the Member States is still ongoing and not yet completed. In this context, it is further worth noting that the United Kingdom launched a legal challenge against these plans to cap bankers' bonuses on 20 September 2013, which was eventually withdrawn on 21 November 2014.[55]

Switzerland's position on salary caps, arguably the most significant restriction on management compensation, demonstrates strong commitment to liberal values. The Swiss legislator and electorate have routinely rejected any salary cap, whether in absolute or relative terms. In contrast, new regulations on salary caps are about to be implemented in the United States and the United Kingdom. Indeed, one could argue that Swiss dedication to economic liberalism gives Switzerland an important com-

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[50] This rule was proposed as part of the counterproposal to the initiative "against abusive remunerations" which the Swiss voters voted and rejected alongside the general initiative (which was approved) on 3 March 2013.

[51] Franziska Bächler, *Vergütungen von Verwaltungsräten und Geschäftsleitungsmitgliedern in Banken*, 195 (Schulthess 2012).

[52] Securities and Exchange Commission, *Pay Ratio Disclosure*, http://www.sec.gov/rules/proposed/2013/33-9452.pdf (accessed 25 June 2015).

[53] Under the mandate of sect. 953 (b) of the Dodd-Frank Act, the Commission proposes to amend Item 402 of Regulation S-K.

[54] Directive 2013/36/EU of the European Parliament and the Council of 26 June 2013, art. 94.

[55] See Tom Fairless & Ainsley Thomson, *U.K. Files Suit at EU's Top Court Over Banker Bonus Cap*, http://online.wsj.com/news/articles/SB10001424052702304526204579.097153885902932 (accessed 25 June 2015).

petitive advantage over other major financial centers, including the City of London, if the E.U. bankers' bonus cap becomes effective.

Conclusion

The new Swiss rules on management compensation are not as interventionist as they may at first appear. First, while the Swiss say-on-pay regime is binding, its implementation is nevertheless very flexible and can be tailored to companies' specific needs and concerns. In addition, the Swiss say-on-pay votes are arguably more lenient than those of the United States or the United Kingdom. Secondly, the new Swiss rules' bans on bonuses are quite selective and narrowly construed. Therefore, those rules are not much more restrictive than the applicable U.S. and U.K. regulations. Thirdly, Switzerland has not adopted salary caps of any kind. By comparison, it is not unlikely that both the United States and the United Kingdom will adopt salary caps in one form or the other over the next few years. Analyzing the Swiss legal framework towards these three building blocks of management compensation regulation – not only as such, but also from an international perspective – reveals that the liberal spirit is still alive in corporate Switzerland.