Internal Guidelines on Corporate Governance of Listed Banks in Switzerland

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Anna Nikulina

from

Russia

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Prof. Dr. Roland Müller

and

Prof. Dr. Martin Hilb

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The President:

Prof. Dr. Thomas Bieger

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Abbreviations and Acronyms

AG	Stock Company
AGM	Annual General Meeting
AMLA	Anti-Money Laundering Act
AMLO	Anti-Money Laundering Ordinance
APPKB	Appenzeller Kantonalbank
Art.	Article
Banking Act	Swiss Federal Banking Act (SR 952.0) of 8 November 1934, status as of 1 January 2009
Banking Ordinance	Swiss Federal Ordinance on Banks and Savings Banks (SR 952.02) of 17 May 1972, status as of 1 January 2010
Basel Committee	Basel Committee on Banking Supervision
Basel III	A Global Regulatory Framework for More Resilient Banks and Banking Systems
BCV	Banque Cantonale Vaudoise
BEKB	Berner Kantonalbank
BEKB Law	Law on the Public Company Berner Kantonalbank (BSG 951.10) of 23 November 1997, status as of 15 January 2005
BLKB	Basellandschaftliche Kantonalbank
BLKB Law	Cantonal Bank Law of Basel-Landschaft (SGS 371.0) of 24 June 2004, status as of 1 January 2005
BoD	Board of Directors
CBD	Swiss Banks' Code of Conduct
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CG	Corporate Governance

CGC	Chairman's and Governance Committee
Circ.	Circular
CO	Federal Law Intended to Supplement the Swiss Civil Code (Part Five: Swiss Code of Obligations) (SR 220) of March 1911, status as of 1 January 2011
Criminal Code	Swiss Criminal Code (SR 311.0) of 21 December 1937, status as of 1 January 2011
CSG	Credit Suisse Group
DCG	Directive on Information Relating to Corporate Governance of 29 October 2008, status as of 1 July 2009
e.g.	exempli gratia (for example)
EB	Executive Board
EM	Executive Management
et al.	and others
etc.	et cetera (and so on)
FINMA	Swiss Financial Market Supervisory Authority
FINMA Circ. 08/24	Supervision and Internal Control of Banks of 20 November 2008, status as of 01 January 2009
FINMA Circ. 10/1	Remuneration Schemes: Minimum Standards for Remuneration Schemes of Financial Institutions of 21 October 2009, status as of 01 January 2010
FINMASA	Federal Act on the Swiss Financial Market Supervisory Authority (SR 956.1) of 22 June 2007, status as of 1 January 2009
FMA	Financial Market Authority
GKB	Graubündner Kantonalbank
GKB Law	Law on the Graubünden Cantonal Bank (BR 938.200) of 29 November 1998, status as of 1 October 1999

GNC	Governance and Nominating Committee
HR	Human Resources
HSBC	Hong Kong and Shanghai Banking Corporation
i.e.	id est (that is)
IBE	Institute of Business Ethics
Ibid.	Ibidem (the same place)
ICB	Industry Classification Benchmark
ICGN	International Corporate Governance Network
IFPM	Institute for Leadership and Human Resource Management of the University of St. Gallen
Internal Guidelines	Internal Guidelines on Corporate Governance
IoD	Institute of Directors
Irish Code	Corporate Governance Code for Credit Institutions and Insurance Undertakings
King III	King Code of Governance for South Africa
KonTrag	Control and Transparency in Business Act of 5 March 1998
LR	Listing Rules of 12 November 2010
LLB	Liechtensteinische Landesbank
mdn	Median
n.	Number (count)
NAB	Neue Aargauer Bank
n.d.	No date
NED	Non-Executive Director
no.	Number (document)
NYSE	New York Stock Exchange

OECD	Organisation for Economic Cooperation and Development
OR	Organizational Regulations
p.	Page
para.	Paragraph
PLC	Public Limited Company
pp.	Pages
SEC	Security and Exchange Commission
Sec.	Section
SESTA	Federal Act on the Exchange and Securities Trading (Stock Exchange Act) (954.1) of 24 March 1995, status as of 1 January 2009
SFBC	Swiss Federal Banking Commission
SGKB	St. Galler Kantonalbank
SGKB Law	Cantonal Bank Law of St. Gallen (SGS 861.2) of 03 October 1995, status as of 01 January 2004
SID	Senior Independent Director
SIX	Swiss Infrastructure Exchange (formerly SWX Swiss Exchange)
SME	Small and Medium-Sized Enterprises
SNB	Swiss National Bank
SOX	Sarbanes-Oxley Act
SPI	Swiss Performance Index
st. dev.	standard deviation
Swiss Code	Swiss Code of Best Practice for Corporate Governance
UBS	Union Bank of Switzerland
UK	United Kingdom

UK Code	UK Corporate Governance Code
USA	United States of America
VPB	Verwaltungs und Privat Bank
vs.	versus
ZUGER KB	Zuger Kantonalbank
ZUGER KB Law	Law on the Zuger Kantonalbank (BGS 651.1) of 20 December 1973, status as of 10 July 2003

Abstract

Good corporate governance depends on clear structures and processes. One way to establish these is to codify desired behaviors and practices. The increasing demand for accountability and good governance resulted in the wide-spread development and adoption of international and national recommendations for good corporate governance. Listed banks, especially, are urged to develop high standards in corporate governance ensuring that the board of directors functions effectively and efficiently.

Internal Guidelines on Corporate Governance represent a codified spirit of corporate governance of the listed bank. They define responsibilities and rights of the board, its directors and committees ensuring effective and efficient corporate governance of a bank and upholding the values of the bank and its directors.

The study reviews existing theories and models on corporate governance, theories on organizational practices and rules, and written business codes. On this basis, the researcher forms a theoretical framework, which integrates universal corporate governance principles along with governance problems typically found in the banking industry and empirically examines the current state of Internal Guidelines on Corporate Governance in listed banks in Switzerland.

Results of this study show that large multinational banks, small- and medium sized banks and cantonal banks that are listed on the SIX Swiss Exchange have written documents containing corporate governance principles for the board of directors.

Findings show that Internal Guidelines contain a mix of universal corporate governance principles and rules of procedure for the board and its committees. The Internal Guidelines should not only focus on tasks and responsibilities of the board, but also inform directors of their rights. As a result, Internal Guidelines help to ensure that the board of directors of a listed bank represents the interests of stakeholders, is well run and that it performs its monitoring and control functions effectively and efficiently. Internal guidelines play a role in risk management, show commitment to onwers strategy, communicate and instill a culture of governance and play a role in corporate reputation.

The study indicates that it is important that the board of a listed bank examines its corporate governance practices, as well as compares them with existing models, methods and recommendations in order to determine appropriate and relevant corporate governance standards for itself. The study points out that open discussion of corporate governance at the board level ensures that the board acts in the long-term interests of the bank and its shareholders.

The study suggests that is is not enough to simply develop Internal Guidelines, but the board of a listed bank must plan how it will implement and administer Internal Guidelines. The study concludes with theoretical and practical implications for how the board of directors of a listed bank in Switzerland can effectively develop, implement and administer Internal Guidelines on Corporate Governance, including a step by step breakdown of content decisions.

Zusammenfassung

Gute Corporate Governance ist abhängig von klaren Strukturen und Prozessen, welche durch die Kodifizierung der gewünschten Verhaltensweisen und Praktiken etabliert werden können. Die steigende Nachfrage nach Rechenschaftspflicht und verantwortungsvoller Führung führten zu einer weit verbreiteten Entwicklung und Einführung von internationalen und nationalen Empfehlungen für eine gute Corporate Governance. Vor allem börsennotierte Banken sind dazu aufgefordert, hohe Standards im Bereich der Corporate Governance zu entwickeln, damit der Verwaltungsrat seine Funktionen wirkungsvoll und effizient ausführt.

Interne Richtlinien zur Corporate Governance repräsentieren den kodifizierten Inhalt und Sinn der Corporate Governance der börsennotierten Bank. Sie bestimmen die Verantwortlichkeiten und Rechte des Verwaltungsrates, der Direktoren und Organen, stellen die wirksame und nachhaltige Corporate Governance der Bank sicher, und wahren die Werte der Bank und ihrer Direktoren. Die Studie prüft bestehende Theorien und Modelle zur Corporate Governance, Theorien über Praktiken und Regeln einer Organisation, und relevante Business Codes. Auf dieser Basis wird ein theoretischer Rahmen erstellt, der die universellen Grundsätze zusammen mit Governance-Problemen, die sich typischerweise in der Bankenbranche finden, miteinbezieht und empirisch den aktuellen Stand in der Schweiz untersucht .

Die Ergebnisse dieser Studie zeigen, dass in grossen, multinationale Banken, kleinen und mittleren Banken, sowie Kantonalbanken, die an der SIX Swiss Exchange kotiert sind, schriftliche Corporate-Governance-Grundsätze für den Verwaltungsrat existieren. Solche interne Richtlinien enthalten eine Mischung aus universellen Corporate-Governance-Grundsätzen sowie Verfahrensregeln für den Verwaltungsrat und seine Ausschüsse. Die internen Richtlinien sollten sich nicht nur auf Aufgaben und Verantwortlichkeiten des Verwaltungsrates konzentrieren, sondern auch die Direktoren über ihre Rechte informieren. Interne Richtlinien spielen eine wichtige Rolle im Risikomanagement, sind der Eignerstrategie verpflichtet, kommunizieren und vermitteln eine Unternehmenskultur im Bezug auf Governance.

Die Studie streicht die Wichtigkeit heraus, dass der Verwaltungsrat einer börsennotierten Bank ihre Corporate-Governance-Praktiken hinterfragt und sie mit den bestehenden Modellen, Methoden und Empfehlungen vergleicht, um geeignete und relevante Corporate Governance-Standards für sich selbst zu bestimmen. Eine offene Diskussion der Corporate Governance auf Verwaltungsratsebene sorgt dafür, dass der Verwaltungsrat in den langfristigen Interessen der Bank und ihrer Aktionäre handelt.

Die Studie legt nahe, dass die ausschliessliche Entwicklung von Internen Richtlinien alleine nicht genügt. Der Verwaltungsrat einer börsennotierten Bank muss auch planen, wie und in welcher Form diese Richtlinien zu implementieren und zu verwalten sind, wozu die Studie mit einer Übersicht über die theoretischen und praktischen Vorkehrungen (unter Einbezug einer schrittweisen Aufschlüsselung der relevanten Inhalte) zur Entwicklung von zweckmässigen Internen Richtlinien zur Corporate Governance enthält.

Part I: Introduction

1. Introduction

1.1. Research Problem

"Corporate governance in the broader sense of the term covers all organizational and structural aspects of companies."[1] Corporate governance is "the system by which companies are strategically directed, interactively managed, holistically controlled in an entrepreneurial and ethical way in a manner appropriate in each particular context."[2] Corporate Governance is said to improve the effectiveness of management and control and to improve risk management. It promotes transparency and as a result reduces the costs of raising capital and cost of insurance. Companies with good corporate governance ratings also find it easier to attract investors and have better relationships with customers. Directly and indirectly, corporate governance protects the interests of owners or shareholders.[3] Thus, corporate governance research has probably never before been as important as it is today. There is increased interest among the investment community, as well as an ongoing wave of regulatory reforms and subsequent responses from corporations, especially in the aftermath of the financial crisis of 2008-2009.

Examination of corporate governance practices in the banking sector, with a focus on listed banks in Switzerland, has even higher relevance and interest, both from theoretical and practical perspectives. Corporate governance practices of Swiss companies were first put into the spotlight during the real estate crisis of 1991-1992, then again in the late 1990's when UBS AG reported substantial losses.[4] Ten years later, banks are again being scrutinized over their boardroom practices. Questions are being raised over the board of director's abilities in their management oversight as well as their commitment to good governance practice, accountability and disclosure.[5]

A wave of international and national recommendations for best practice in corporate governance came about in the in 1990's with the aim to minimize principle-agent problems and align interests of management with that of shareholders. Based on these recommendations, banks are being asked to develop their own best practices in governance and report on these to shareholders and regulatory bodies. As a result, there has

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[1] Hoffstetter (2002, p. 6).
[2] Hilb (2008a, p. 9).
[3] Müller (2011).
[4] Schüler (2002, p. 146).
[5] Swissinfo (2008).

been an increase in the use of codified organizational practices, processes and procedures. On one hand, the development of written policies on corporate governance, ethics and conduct is driven by legal and regulatory requirements, on the other, there is a desire of listed banks to show good credentials in light of the myriad of corporate scandals and failures, abuses of corporate power, as well as cases of excessive risk taking and questionable executive compensation.[6]

Corporate policies, codes of conduct and various regulations for best practice are central to the way in which a company conducts itself.[7] Written organizational practices are part of the most widely used corporate instruments for stimulating and monitoring responsible behavior because they contain a set of wide-ranging principles and standards for putting those values into practice.[8] They have long been part of corporate life, focusing on both value and compliance orientations and dealing extensively with practices ranging from ethical behavior and social responsibility, to addressing conduct specific issues such as money laundering, conflict of interest or insider trading.

Following launches of codes and recommendations by the international community, the Swiss Business Federation developed the "Swiss Code of Best Practice for Corporate Governance" in 2002 in an effort to improve controlling and management structures in listed firms and to protect shareholder interests. This was closely followed by the "Agreement on the Swiss Banks' Code of Conduct with Regard to the Exercise of Due Diligence" of the Swiss Bankers Association.[9] In 2004, the "Swiss Code of Ethics" was introduced in order to set conduct guidelines for Swiss companies and to enable them to pursue their business according to ethical principles.[10]

There is evidence that listed banks commit to writing and adopting written policies that define responsible behavior in the board room and beyond. For example, it is now commonplace to find business codes and policies on the websites of firms, compared to the 1990's where only a handful of companies had any written codes or guidelines.[11] According to one empirical study only 54% of Swiss firms had a code of ethics in

[6] Arjoon (2005, p. 343).
[7] Davis (1991, p. 150).
[8] Paine et al. (2005, p. 3).
[9] Swiss Bankers Association (2002).
[10] Neue Zürcher Zeitung (2004).
[11] Gallagher (2002, p. 23).

1993.[12] Today, over 69% of the largest listed companies in Switzerland have a code of conduct or a code of ethics and 56% of these disclose them on the corporate websites.[13]

Thus, it is not surprising that listed banks such as Credit Suisse, St. Galler Kantonal-bank, Valiant, UBS and many others have a code of conduct, independence criteria, information policy and even a whistleblowing policy among others. This is often done to build reputation, restore investor confidence and boost employee morale.[14]

In addition to voluntary documents such as a code of conduct, listed banks must also establish remuneration policy and organizational regulations (OR). Unlike a code of conduct, organizational regulations are mandatory. Organizational regulations establish structures and processes in a bank and provide information as to how the bank organizes its activities.[15]

It has long been agreed that good corporate governance depends on clear structures and processes. One way to establish clear processes is to write down or codify desired behaviors, practices and procedures. As a result, companies are urged to establish not only organizational regulations, but to develop corporate governance principles that represent the bank and its board of directors.[16] The board of directors of a listed bank must discuss, agree and then write down its corporate governance principles in the Internal Guidelines on Corporate Governance.

Internal Guidelines represent a codified spirit of corporate governance.[17] It is a tangible document that defines principles and responsibilities of the board of directors and its committees and ensures effective and efficient governance of a company.[18] Internal Guidelines on Corporate Governance focus on specific corporate governance areas in a given bank and address universal corporate governance principles.[19] Together with committee charters, by-laws, and organizational regulations, Internal Guidelines on Corporate Governance form part of the governance framework in a listed bank.[20] Not only this, but written documents are also better at establishing clarity than unwritten and implicit principles. It is easier to communicate responsibilities and expectations if

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[12] Langlois (1993, p. 314).
[13] Ethos Fund (2009, p. 2).
[14] Greil (2010).
[15] Art. 7 of Banking Ordinance.
[16] Basel Committee on Banking Supervision (2010a, p. 8).
[17] Spandana (2007, p. 1).
[18] Bogaert and Peeters (2005, p. 60).
[19] NYSE (2003).
[20] Basel Committee on Baking Supervision (2010a, p. 8).

policies, procedures and principles are contained in written form.[21] Written documents also make a company much more transparent, as the publication of such document on the website allows stakeholders to evaluate the company based on the provisions contained therein.

At present, listed banks in Switzerland are not required to have Internal Guidelines on Corporate Governance. On the other hand, a number of countries have made Internal Corporate Governance Guidelines a legal requirement. For example, the Final NYSE Corporate Governance Rules require firms listed to on the New York Stock Exchange to develop Internal Guidelines on Corporate Governance, and, along with committee charters and a code ethics, to disclose them on the company website. Similar requirements exist in South Africa, where the board of directors must develop a board charter and terms of references for committees.[22]

However, evidence shows that many listed banks in Switzerland already have such internal regulations on corporate governance for the board of directors. For example, Credit Suisse and UBS refer to Internal Guidelines on Corporate Governance in the corporate governance sections of their websites. Internal Guidelines of both of these banks are even available on the Internet. But unlike Credit Suisse which has a separate document titled “Corporate Governance Guidelines”, Internal Guidelines on Corporate Governance of UBS are contained in the bank’s organization regulations. Although corporate governance principles are included in the organizational regulations, the bank declares that this satisfies the NYSE requirements.[23] Based on this, it is reasonable to assume that other listed banks may also have Internal Guidelines on Corporate Governance, possibly included in the organizational regulations.

And while many may argue that codes, guidelines and policies can be self-serving, vague and unnecessary and that they serve no great purpose for a listed bank, the development of codes and corporate governance principles provides an opportunity for a listed bank to establish clear rules and procedures concerning corporate governance practices for the board. In doing so, these regulations can reduce ambiguity and limit misinterpretation, misunderstanding and confusion. Because rules help to establish clear and well-defined responsibilities, it is possible to reduce role conflict and ease tension among various corporate bodies. Guidelines are also said to improve decision making, making it possible to take quick and decisive action in accordance with speci-

[21] March, Schultz and Zhou (2000).
[22] Institute of Directors in South Africa (2009b, p. 1).
[23] UBS (2009a).

fied procures. Organizational rules, codes and principles help to explain and promote the values that the organization places on certain behavior. As a result, Internal Guidelines can help a bank to reconfirm its commitment to good governance.

Unlike implicit organizational practices, explicit written codes and guidelines enhance transparency. Transparency is one of the fundamental aspects of corporate governance. Enhanced transparency leads to an overall improvement in corporate governance mechanisms by strengthening shareholder rights.[24] Disclosure of codes and internal regulations is also said to improve communication between the company and outside stakeholders.[25] Disclosure leads to a more positive reputation as a bank can distance itself from other banks with dubious practices. By showing internal processes to those outside the bank, the board of directors can make a clear statement that the listed bank has good governance practices and they are in accordance with applicable laws and recommendations.

According to literature, explicit and written statements help to embed good corporate governance practices and instill ownership for good conduct.[26] Codified and formal forms of knowledge facilitate knowledge acquisition and bring continuity. Research also confirms that clear procedures and guidelines are useful for the induction of employees. Explicit forms of information are geared better towards communicating expected responsible behavior. They can also detail repercussions for non-compliance.[27]

As a result, the development of Internal Guidelines on Corporate Governance is a necessary and a proactive step in establishing a good corporate governance framework in a listed bank, bringing clear value and benefits by improving existing corporate governance principles in and reinforcing commitment to best practice.[28]

1.2. Research Gap

While there are numerous studies that examine the content and value of a code of ethics and conduct[29] and organizational regulations,[30] there appears to be a lack of empirical research that examines Internal Guidelines on Corporate Governance.

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[24] Basel Committee on Banking Supervision (1998).
[25] Bogaert and Peeters (2005, p. 60).
[26] Johnson (1997, p. 5).
[27] Paine (1994, p. 107).
[28] Nijhof et a. (2003, p. 66).
[29] Paine et al. (2005).
[30] Felder (2002).

Instead, many studies focus on “firm-specific codes, trade association codes, multi-stakeholder codes, and intergovernmental codes.”[31] Other studies examine the quality of corporate governance reporting in annual reports, the quality of the corporate social responsibility statements and the content of a code of ethics.[32] Studies on codes of ethics, business codes and codes of conduct also often examine cross-cultural differences in the content of these codes.[33] However, the subject of Internal Guidelines on Corporate Governance remains outside the scope of management and corporate governance research. The use and value of Internal Guidelines on Corporate Governance is yet to be examined.

Previous studies also tend to focus on voluntary and mandatory disclosure benefits of annual reports and code of ethics.[34] For example, one study examines corporate governance practices of companies listed on the stock exchange by inspecting corporate governance statements in annual reports. Although the study finds that most firms have fully adopted the recommended corporate governance guidelines, there is a large variation in the extent of disclosure of corporate governance practices.[35] Other studies examine disclosure levels in annual reports of Swiss cantonal banks (some of which are listed).[36] Studies also examine costs and benefits of financial disclosures by listed companies.[37] Overall, researchers have shown that disclosure of corporate governance information is said to improve reputation, reduce insurance premiums and to improve relationships with shareholders.[38] However, examination of disclosure benefits of Internal Guidelines on Corporate Governance remains outside the scope of past research.

Research on corporate governance practices of banks is also rather limited. Studies mainly focus on the continental corporate governance practices in the banking institutions.[39] Current studies on banks focus primarily on corporate governance problems in the U.S. banks and bank holding companies.[40]

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[31] Wright and Rwabizambuga (2006, p. 93).
[32] Singh (2006).
[33] Paine et al. (2005).
[34] Core (2001, p. 448).
[35] Bujaki and McConomy (2002, p. 112).
[36] Pedergnana, Müller and Piazza (2009, p. 940).
[37] Healy and Palepu (2001).
[38] Müller (2011).
[39] De Andres and Vallelado (2008).
[40] Adams and Mehran (2003).

Existing corporate governance research in the banking sector tends to deal with issues of financial regulation[41] and bank supervision,[42] depositors' insurance or concerns risk management.[43] And although there is literature on corporate governance of European banks, there are limited studies on corporate governance practices of listed banks in Switzerland.[44] For example, a number of studies focus on corporate governance of cantonal banks,[45] while others examine the applicability of international corporate governance codes and laws on Swiss companies.[46] Previous research also focuses on specific governance issues such as the role of non-executive directors,[47] interlocking directorships,[48] or audit committees.[49]

Therefore, the study hopes to fill in the gap in corporate governance research. At the same time, it aims to contribute to the improvement of corporate governance practices in listed banks in Switzerland.

1.3. Relevance to Theory and Practice

Examining the Internal Guidelines on Corporate Governance of listed banks is relevant for the development of the field of corporate governance but also for the development of corporate governance practices in banks. By examining why listed banks have Internal Guidelines and by understanding the process by which Internal Guidelines on Corporate Governance are developed, the researcher hopes to contribute to the growing field of corporate governance but also to organizational practice research. In doing so, the study aims to address the research gaps identified in section 1.2.

Research that examines Internal Guidelines on Corporate Governance is also necessary as Internal Guidelines on Corporate Governance are no longer just manifestations of best practice but are also mandated by regulatory requirements in some countries.[50] Thus, there needs to be a greater understanding of the benefits that Internal Guidelines bring to the board of directors. And although there are no laws and regulations which require listed firms in Switzerland to have Internal Guidelines on Corporate Governance, the board of directors of listed banks must commit and develop best practices in

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[41] Bessis (2002).
[42] Caprio et al. (2007).
[43] Van Greuning and Brajavoc Bratanovic (2003).
[44] Macey and O'Hara (2003).
[45] Pedergnana, Müller and Piazza (2009).
[46] Nobel (2008).
[47] Speck and Tanega (2003, p. 475).
[48] Ruigrok, Peck and Keller (2006, p. 1207).
[49] Canepa and Ruigrok (2005).
[50] Gallagher (2002, p. 23).

corporate governance. For example, it is expected that companies listed on the SIX Swiss Exchange engage in proactive and preventative approaches in their governance practices.[51]

The study hopes to make specific recommendations to boards of directors regarding the content of the Internal Guidelines on Corporate Governance. Although NYSE and King III recommend that Internal Guidelines on Corporate Governance must contain universal corporate governance principles and procedural guidelines, it is not clear if the same universal principles are applicable to listed banks in Switzerland.[52] Even though, studies show that boards of directors of banks are assigned the same legal responsibilities as other boards, regulators and stakeholders often place additional expectations and responsibilities on their board of directors.[53]

Studies suggest that boards of directors of banks must place greater emphasis on board composition and relevant skills. At the same time, the boards of directors in banks plays a much bigger role in strategy and oversight, risk and internal control, as well as other matters such succession planning and director compensation.[54]

Listed banks are unique in terms of corporate governance. For example, poor corporate governance in a bank does not affect the bank alone, but may hinder the entire financial system. Banks are often classified as being more opaque, making it difficult for those outside the bank to monitor management. Unlike other companies, listed banks have dispersed stakeholders, including a large number of small-time depositors, who again may not be as interested in monitoring management. Furthermore, banks are more prone to system-wide risks. As a result, the board of directors must take greater care of risk management. In addition, banks are also heavily regulated.[55]

Therefore, the study hopes to identify not only universal corporate governance principles, but also determine if there are any additional bank specific corporate governance practices which should be part of the Internal Guidelines on Corporate Governance. To do so, the researcher will review legal and regulatory framework in Switzerland and will examine literature on corporate governance and carrying out empirical research.

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[51] Bostrom (2003, p. 204).
[52] NYSE (2003, p. 13).
[53] Adams and Mehran (2003, p. 124).
[54] NYSE (2003, p. 14).
[55] Claessens (n.d).

The study has also relevance for private banks and other listed companies that want to codify the implicit, unwritten corporate governance practices and procedures. Research shows that companies still vary in the degree of formalization of their corporate practices. Many boards are likely to have some written regulations for the board of directors, but also others have unwritten policies and procedures and many see no need to write these down. Other banks even fear greater liability from a formalization of governance practices.[56] Nonetheless, Internal Guidelines on Corporate Governance act as a tool and just like any good tool, if used properly, can bring clear added value to the board. Today, companies already understand the value of a code of ethics and are aware of steps needed for the development of an effective code of ethics. However, little is known as to how banks develop, implement and administer Internal Guidelines on Corporate Governance. As a result, the study aims to inform members of the board regarding the development process.

There needs to be a greater understanding of the topic as it will help not only those banks that have yet to write down their board practices, but enable boards of listed banks to "clarify and redefine their goals and responsibilities, and processes that support them."[57] For example, the development of Internal Guidelines on Corporate Governance provides a listed bank with an opportunity not just to reinforce its commitment to best corporate governance practices to the public, but enables the board to review, assess and identify those areas of corporate governance that need to be improved.[58] Furthermore, by formulating Internal Guidelines on Corporate Governance boards of listed banks can better define their value, vision and strategic ability.[59]

Researching Internal Guidelines on Corporate Governance has practical implications for regulators. Regulatory bodies pass regulations, but also provide recommendations for banks as to how improve corporate governance practices. Regulatory bodies have self-interest as good corporate governance practices mean strong and healthy banks, which in turn leads to a healthy economic system. Switzerland is one of the worlds' leading financial centers and the banking industry is an important contributor to the national economy.[60] While UBS AG and Credit Suisse Group maintain their status quo as the two 'big' banks and account for 50% of the balance sheet total of all banks in

[56] Gallagher (2002, p. 23).
[57] Johnson (1997, p. 4).
[58] Gallinger (2008, p. 22).
[59] Johnson (1997, p. 5).
[60] Hayek (2003, p. 115).

Switzerland, there are over 327 banks operating in Switzerland.[61] The banking industry also forms part of the Swiss national identity and cultural pride.[62] Switzerland has a bank-centered corporate governance system in which banks play a prominent role in corporate governance of other companies by providing funding. In a way, banks are able to exercise some control of other firms via board structure.[63] As a result, good corporate governance practices in banks can have a spill-over effect on other sectors in the economy.

The study is also of interest for shareholders and investors as it hopes to shed light on benefits of disclosure of Internal Guidelines. There is often a greater asymmetry of information between the agent and the principal in governance of a bank, as modern banking practices are hard to understand, let alone be examined from the outside. Thus, there is an increased need for listed banks to communicate written positions on corporate governance to their stakeholders.[64] For example, research shows that firms that lack appropriate written practices may increase confusion among the stakeholders and may signal a general lack of accountability. The study hopes to develop a minimum standard when it comes to Internal Guidelines and this will make it possible for shareholders to evaluate corporate governance principles of one bank against each other.

1.4. Research Aims and Objectives

The current study draws on the research areas of management science, law, corporate governance, organizational theory and culture, ethics, transparency and disclosure, as well as from other business areas in order to examine Internal Guidelines on Corporate Governance of listed banks in Switzerland.

In doing so, the researcher aims to:

- Investigate the incidence of Internal Guidelines of Corporate Governance among listed banks in Switzerland. The researcher seeks to investigate how wide-spread the use of the Internal Guidelines on Corporate Governance is and determine why listed banks develop such internal guidelines.
- Examine development, implementation and administration of the Internal Guidelines on Corporate Governance in listed banks in Switzerland. Specifically, the study hopes to identify the various steps and key elements in the de-

[61] Swiss Bankers Association (2009, p. 2).
[62] Leuthard (2008).
[63] Mallin (2007, p. 160).
[64] Koppers (1999, p. 8).

velopment process and determine what is needed for the effective and efficient implementation and administration of the Internal Guidelines on Corporate Governance.

- Examine literature on corporate governance and identify universal and bank specific corporate governance principles that may be included in the Internal Guidelines on Corporate Governance. In doing so, the researcher analyzes content design and decision process.

The ultimate aim of the study is to provide a set of recommendations for the board of directors of listed banks as to content decisions, development, implementation and administration of the Internal Guidelines on Corporate Governance.

1.5. Conceptualization

To meet aims and objectives presented in section 1.4, a conceptual model is presented. It combines theoretical concepts from research domains relevant to the study and includes corporate governance theories, models and constructs, including legal frameworks supporting the development of corporate governance, organizational theory, especially organizational practices and rules. The researcher also reviews existing literature on organizational codes. By blending these different areas the researcher aims to achieve the research objectives set out in section 1.4.

Hard and soft laws in a country form an important role in the corporate governance mechanism of listed banks.[65] The legal framework deals with protection and enforcement of investor rights.[66] The responsibilities of the board of directors are defined by law and it is the law that makes the board of directors responsible for shareholder welfare.[67] For example, the power of directors is derived from the shareholders whom they represent and the ultimate responsibility of the board of directors for direction and control stems from the legal system. Hard and soft laws also make provisions as to how the board of directors should structure itself, including duties of the board, disclosure and transparency requirements, and accountability of board members. Therefore, the researcher examines legal and regulatory frameworks concerning corporate governance in Switzerland as well as legal and regulatory frameworks concerning the banking industry.

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[65] LaPorta et al. (1998).
[66] Denis and McConnel (2003, p. 5).
[67] Ibid., p. 6.

Moral hazard, information asymmetry and appropriate behavior are key issues in corporate governance research. Therefore, central to the discussion of the benefits of Internal Guidelines on Corporate Governance is the principal agency problem. Even more so, corporate governance research in banking and financial services sectors is grounded in agency theory.[68] The principal–agent problem is found in most corporate relationships, where the principal hires the agent to conduct the firm on his/her behalf. Firms use a common device, the board of directors, to reduce agency costs by ensuring the separation of "ownership and control" at the top level of an organization. The board of directors becomes an internal control mechanism responsible for entrepreneurial leadership, strategic direction and control of a company.[69] Despite the "checks and balances" system provided by the board listed banks still face many principal-agency problems. First, they arise due to a lack of information between those that own the firm and those that manage it, thus it is important for a company to define and ensure basic norms of behavior, conduct and practices. Second, a principal-agent problem arises when there is divergence of interests between the principal and the agent – a moral hazard problem.[70]

Corporate governance research is also concerned with describing the governance mechanisms used to solve agency problems. The role of the board of directors is to reduce agency costs and align the interests of managers with that of the shareholders.[71] The board of directors is the glue that holds all corporate governance mechanisms together.[72] In order to meet the research aims set out in section 1.4, literature on corporate governance practices of the board needs to be examined including topics such as the responsibilities of the board, the role and responsibilities of CEO and the chairman;[73] the composition of the board;[74] committee functions and responsibilities; as well as issues of independence, director education and assessment. Although the law sets out responsibilities for the board of directors of all companies, the researcher still needs to identify which universal corporate governance principles are applicable to the board of directors in a listed bank and which areas of corporate governance are of particular importance when developing corporate governance principles for the board of directors of a listed bank.

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[68] Kern (2006, p. 20).
[69] FRC (2008, p. 5).
[70] Kern (2006, p. 18).
[71] Eisenhardt (1989, p. 59).
[72] Böckli (2000, p. 12).
[73] Rechner and Dalton (1991, p. 157).
[74] Baysinger and Hoskisson (1990, p. 84).

The debate regarding the value of Internal Guidelines on Corporate Governance is also grounded in the theory of organizational practice, especially relating to organizational rules and the benefits which derive from them. Organizational rules are part of the organizational practice, which can be described in terms of actions, routines and procedures.[75] Organizational practice represents ways in which organizational functions are conducted. Corporate governance practices are part of the overall organizational practices, which have long been transformed into codified, explicit forms comprising of codes, corporate policies, charters and various other guidelines. Codes contain value and compliance orientations.[76] For example, they can address problems of moral hazard, define norms of behavior and deal with the issues of public interest.[77] While no research was previously carried out on the Internal Guidelines on Corporate Governance, the author will use constructs from research on codes of ethics and codes of conduct on which to build the ground for researching the Internal Guidelines on Corporate Governance.

It is also important to examine the theory and frameworks concerning the internal control and risk management as they are of superior importance in governance of a listed bank. For example, clear rules and procedures are necessary in order to establish clear lines of responsibility. To so, the board must ensure that there is regulation, establishment, maintenance, monitoring and supervision of internal control functions. Written documents and regulations are part of the internal control systems and risk management that exist in a listed bank.[78]

When examining Internal Guidelines on Corporate Governance, there is value in having a closer look at literature on transparency and disclosure. There is increased pressure for greater disclosure and transparency from listed banks as these issues represent fundamental building blocks for sound and effective corporate governance.[79]

Corporate governance not only includes the board of directors, but also shareholders and capital markets.[80] And in order for the shareholders to function effectively, listed banks must disclose information about their activities.[81] So far this has been accomplished by including a corporate governance section in the annual report. However,

[75] March and Simon (1958).
[76] Paine (1994, p. 106).
[77] Jamal and Bowie (1995, p. 704).
[78] FINMA-Circ. 08/24.
[79] Basel Committee on Banking Supervision (2006, p. 15).
[80] Fama and Jensen (1983, p. 320).
[81] Holmstrom (1979).

given the importance of corporate governance, regulators are now asking for greater disclosure and expect clarity in corporate governance processes from the board of directors. Even when regulations on disclosure exist, there is still a great degree of variation in the quality and quantity of the disclosure about company specific governance practices.[82] Research confirms the importance of corporate disclosure, but also suggests that firms do not just disclose any information but selectively choose to disclose information that is advantageous to them.

Corporate governance issues have become so significant that listed banks now use codes of conduct and various other policies and guidelines as tools to promote their corporate image and reputation.[83] Reputation is a valuable asset and corporations must protect it. According to a resource-based view, firms with valuable assets possess a competitive advantage and may earn superior financial profit and returns.[84] For example, disclosure of corporate governance information allows stakeholders to compare governance practices across listed banks. They are used as a signal to clients, shareholders, investors, future employees or even community groups and regulators that a company is legitimate and sound. Studies have found that transparency at the board level leads to more favorable reputation among the investors.[85] As a result, corporate codes have long been used by organizations to build reputation.

Another stem of research relates to values, culture and continuity of practice. Organizational members can learn and acquire desirable behavior by means of explicit rules and guidelines. Explicit guidelines help organizations in transferring the functional values to organizational members, by focusing on goals, functions and style of operations. For example, spelling out duties and responsibilities of directors and committee members makes it easier for new board members to acquire the necessary knowledge quickly and correctly. Furthermore, explicit guidelines signal appropriate behavior and means of achieving such behavior.[86] To be effective, organizational codes and company guidelines need to be supported by training and open discussion of the content in order to desired behavior in a company.

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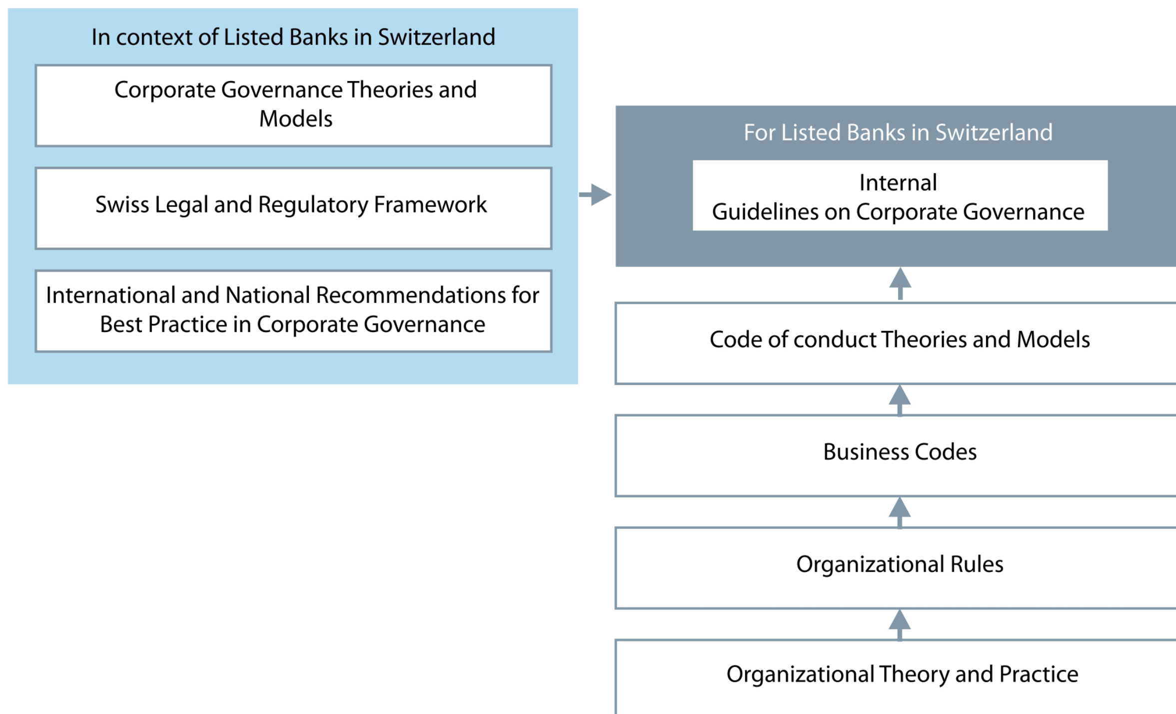
[82] Labelle (2002, p.12).
[83] Ibid.
[84] Roberts and Dowling (2002, p. 1077).
[85] Ljubojevic and Ljubojevic (2008, p. 225).
[86] Wiener (1988, p. 537).

Figure 1 presents an overview of the relevant theoretical concept and models which will be examined in this study.

Figure 1: Relevant Areas of Research for the Present Study



Source: own development.

2. Scientific Approach

This section outlines the scientific approach that the study will adopt. The goal of academic research is to examine fragments of practice and to make contributions to existing theory and knowledge.[87] Yet, business research must also have relevance to practice.[88] Corporate governance research falls into the management science domain and therefore has both practical and theoretical implications. While management science is viewed by many as a practical and applied subject, there should still be emphasis on rigor.[89] Consequently, by examining the Internal Guidelines on Corporate Governance of listed banks in Switzerland the researcher aims not only to make contributions to existing theory, but to add to the development and promotion of best corporate governance practices in listed banks. In order to proceed with such research, the researcher

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[87] Gummesson (2000, p. 10).
[88] Syed, Mingers and Murray (2009, p. 72).
[89] Mingers (2001, p. 3).

must first set out clearly the choice of a research paradigm which will underline the scientific inquiry surrounding the Internal Guidelines on Corporate Governance.

A paradigm is "a basic set of beliefs that guides action."[90] Paradigms are concerned with guiding disciplined or scientific inquiry. Although, there exist multiple systems of beliefs or paradigms, they all provide starting points as to how the researcher will proceed with the inquiry into the Internal Guidelines on Corporate Governance.

Positivism remains one of the most frequently used paradigms in research. Positivists argue that the primary role of science is to "predict and control natural phenomena."[91] Positivists maintain that "social observation should be treated as entities in much the same way that physical scientists treat physical phenomenon." Here, "researchers must eliminate biases and maintain emotional detachment with the subjects of the study."[92] However, applying a positivist paradigm to the examination of the Internal Guidelines on Corporate Governance presents several weaknesses. A positivist approach disregards the fact that "subjective decisions are made throughout the research process."[93] Positivism calls for carefully controlled conditions, where values and "other confronting factors are automatically excluded from the outcomes".[94] However, the research question may benefit from some degree of subjectivism and interpretation as it will provide a greater understanding of the topic. The approach is also associated with quantitative research methods, however, the use of quantitative or survey data will not provide sufficient depth and will prevent the researcher of gaining different perspectives on the topic.

Corporate governance research also encompasses the areas of organizational and individual behavior. As a result, Internal Guidelines on Corporate Governance could be examined using interpretivist paradigm. Interpretivists argue that "context-free generalizations are neither desirable nor possible". They say that research must be value bound and it is not possible to distinguish between the cause and effect.[95] For example, interpretivists argue that "the researcher and reality are inseparable".[96] "Knowledge of the world is intentionally constituted through a person's lived experience".[97] However, in-

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[90] Guba (1990, p. 17).
[91] Ibid., p. 19.
[92] Johnson and Onwuegbuzie (2004, p.14).
[93] Ibid., p. 15.
[94] Guba (1990, p. 20).
[95] Johnson and Onwuegbuzie (2004, p.15).
[96] Weber (2004, p. iv).
[97] Saunders, Lewis and Thornhill (2003, p. 116).

terpretivism is often associated with purely qualitative studies. Critics argue that qualitative research suffers from lack of generalizeability. Although content and the development process of the Internal Guidelines on Corporate Governance can be understood through an interpretative approach, the researcher's goal is not only to generate descriptions, insights and explanations, but also to provide hard data to support research findings.[98] Interpretivism suites the social science research better as it calls for 'understanding' rather than explanation.[99]

It is clear that taking either a positivist or an interpretivist approach provides limitations for the undertaken research topic. The study of the Internal Guidelines on Corporate Governance of listed banks requires combining quantitative and qualitative approaches. In the past, quantitative and qualitative methods have long been associated with different approaches to research. However, management research is often a mix between the two sides of the spectrum.[100] It is clear that "today's research world is becoming increasingly interdisciplinary, complex and dynamic [and] researchers need to complement one method with another."[101] As a result, the researcher wanted to adopt an approach that would reflect the reality of business practice as well as the need for rigor in academic research.

"Pragmatism offers empirical researchers a useful middle position, philosophically and methodologically; it offers a practical and outcome-oriented method of inquiry that is based on action and leads to further action and the elimination of doubt; and it offers a number of methodological mixes that can help researchers better answer their research questions."[102] It represents a practical and applied research philosophy.[103]

It seems therefore that the study of the Internal Guidelines on Corporate Governance and the type of research questions that surround the topic are best answered through mixed research solutions.[104] Pragmatism supports that the research methods should follow the research aims and questions in such as a way as to provide the best chance of gaining useful answers. Furthermore, the mixed method research fits well with the pragmatic paradigm as it supports the combining of qualitative and quantitative re-

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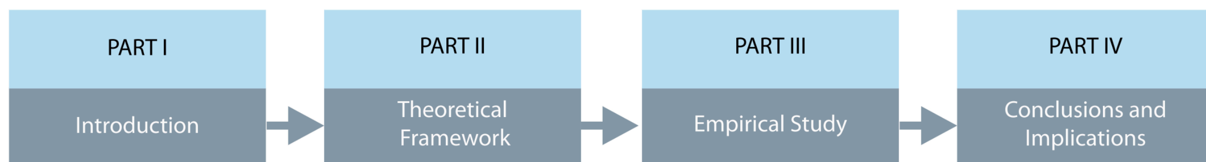
[98] Gioia and Pitre (1990, p. 588).
[99] Holloway (1997, p. 93).
[100] Saunder, Lewis and Thornhill (2003, p. 6).
[101] Johnson and Onwuegbuzie (2004, p.15).
[102] Ibid., p. 17.
[103] Tashakkori and Teddlie (1998, p. 30).
[104] Johnson and Onwuegbuzie (2004, p. 18).

search methods.[105] The researcher hopes to combine semi-structured interviews with a quantitative questionnaire and a qualitative (quantitative) analysis of documentary sources. Individual research tools will be examined in greater detail in Part III.

3. Structural Approach

In order to fulfill aims set out in Section 1.4, the researcher will use the following structure for this study. The study consists of four chapters, designated Part I to Part IV.

Figure 2: Overview of the Dissertation



Source: own development.

Part I presents problem analysis, research gap and the relevance of the current study for researchers and practitioners alike, while at the same time presents research objectives of the study. The section also outlines the scientific approach, followed by the conceptual model and key definitions.

Part II provides an in-depth discussion of corporate governance theories. First, there is an examination of the legal system of Switzerland with emphasis on listed companies and banks. This is then followed by a discussion of international and national best practice recommendations on corporate governance and its actual and potential relevance to listed banks. Second, there is an examination of theories and models and concepts concerning the board of directors. Third, the researcher presents an overview of organizational practices and organizational rules. Fourth, since there are no prior studies that examine Internal Guidelines on Corporate Governance, the researcher reviews models and concepts on development, implementation and administration of various corporate codes and especially that of the code of conduct. The part also contains a summary which outlines the theoretical framework for study.

Part III discusses the research approach followed by the research design. The chapter also presents a close examination of the research methods and tools used in the study. There is an in-depth discussion of the employed research procedure which discusses data analysis techniques and limitations of the research tools used in the study. Fur-

[105] Johnson and Onwuegbuzie (2004, p. 17).

thermore, part III contains a discussion of findings, followed by a presentation a framework for the Internal Guidelines on Corporate Governance for listed banks in Switzerland.

Part IV concludes the study by addressing both managerial and theoretical implications. The contribution of this study to the general academic discussion is critically analyzed and areas for future research are also highlighted.

4. Definition and Descriptions of Key Concepts

The present study is anchored in the scientific field of research in corporate governance, law and management science. In the course of the paper, the researcher will repeatedly use a series of terms that belong to these academic domains. Therefore, for further reference it is vital to briefly define key terminology.

Bank is "an enterprise that is mainly active in the field of finance; in particular, it accepts deposits from the public on a professional basis or solicits these publicly in order to finance in any way for their own account an undefined number of persons or enterprises; it refinances itself in substantial amounts from a number of banks that are not significant shareholders in order to provide any form of financing for their own account to an undefined number of persons or institutions."[106]

Board of Directors is "the governing body of an organization and is responsible for decision-making strategies which affect mission of the agency."[107] The board of directors' role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls, set strategic aims, and "set the company's values and standards and ensure that its obligations to its shareholders and others are understood and met."[108]

Code of Conduct is a set of "principles, values, standards, or rules of behavior that guide the decisions, procedures and systems of an organization in a way that (a) contributes to the welfare of its key stakeholders, and (b) respects the rights of all constituents affected by its operations."[109]

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[106] Art. 3 of Banking Act.
[107] Riggar and Matkin (1986, p. 30).
[108] FRC (2003, p. 4).
[109] International Federation of Accountants (2007, p. 6).

Corporate Governance is "the system by which companies are directed and controlled;"[110] is "a set of relationships between a company's management, its board, its shareholders, and other stakeholders;"[111] is "the system by which companies are strategically directed, integratively managed, holistically controlled in an entrepreneurial and ethical way in a manner appropriate in each particular context."[112]

Guideline is "any document that aims to streamline particular processes according to a set routine."[113] "Guidelines may be issued and used by any organization […] to make the actions of its employees or divisions more predictable, and presumably of higher quality.[114]

Hard Law is "the body of binding and enforceable laws;"[115] "used to describe the legally binding nature of various agreements or provisions, which leave little room for discretion."[116]

Independence exists when there are "no relationships or circumstances that might affect the director's judgment."[117]

Internal Control is concerned with conformance, compliance and efficiency.[118] It "encompasses the entire controlling structures and processes which allow a company to achieve its business goals on all levels and support an orderly operation of the institution."[119]

Internal Guidelines on Corporate Governance define tasks and responsibilities of the board of directors, and its committees and ensure effective and efficient governance of a company.[120] They make sure that the board establishes appropriate corporate governance practices for its own work and has in place the means to ensure such practices are followed and periodically reviewed.[121]

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[110] Cadbury (1992, p. 1).
[111] OECD (2004, p.12).
[112] Hilb (2008a, p. 9).
[113] ISBER (2009, p. 1).
[114] Wictionary.com.
[115] Interuniversity Research Centre on Globalization and Work (n.d).
[116] UNEP (n.d).
[117] Mallin (2007, p. 133).
[118] Coyle (2004, p. 141).
[119] Margin 2 of FINMA-Circ. 08/24.
[120] Bogaert and Peeters (2005, p. 60).
[121] Basel Committee on Banking Supervision (2010a, p. 8).

Listed Company refers to a "firm whose shares are listed on a stock exchange for public trading."[122] The Stock Company (AG) is directly equivalent, though not identical to a corporation, most often to the publicly listed corporation.[123]

Organizational Practice can be described in terms of actions, routines and procedures.[124]

Organizational Regulations present an organization's regulations and govern the organization and operations of the company, set out duties and powers of the board of directors, specialist committees, executive management and the CEO.[125]

Soft Law is "used to describe various kinds of quasi-legal instruments such as the codes of conduct, recommendations, communications and guidelines which are often interpreted as non-binding and flexible."[126]

Transparency refers to disclosure to both internal and external audiences in order to create trust. It means that the company is being forthright with its intended audience and not attempting to hide relevant information. Transparency is a well-balanced and fair disclosure related to operations, structures and executive compensation linked to long-term performance.[127]

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[122] BusinessDictionary.com.
[123] Becchio et al. (1996, p. 15).
[124] March and Simon (1958).
[125] Felder (2002).
[126] Encyclopaedia Britannica.com
[127] Rezaee (2007, p. 57).

Part II: Theoretical Framework

1. Theoretical Framework

1.1. Overview of Theoretical Framework

The following section provides the theoretical framework for the examination of the Internal Guidelines on Corporate Governance of listed banks in Switzerland. All the sections in this part discuss vital areas of research, as well as legal frameworks, which contribute to the research aims and objectives as stated in Part I.

Sections 1.2 and 1.3 look closely at the legal corporate governance framework in Switzerland, because laws of a country are of key importance for corporate governance mechanisms of that country. The discussion starts with the review of hard laws relevant for listed banks, such as the Swiss Code of Obligations, Banking Act, Stock Exchange Act and its relevant directives. In addition, cantonal laws on banks are also presented as they are relevant for cantonal banks. Soft laws are also examined. Additionally, the section discusses the Swiss Code of Best Practice for Corporate Governance which is applicable to listed companies. The discussion concludes with the examination of bank regulations and self-regulatory provisions of the Swiss Bankers Association, Federal Banking Commission and the Financial Market Supervisory Authority.

Section 2 presents an examination of influential international corporate governance regulations, laws and guidelines. The section starts with a review of the Basel Committee's recommendations for enhancement of corporate governance in banks. The discussion continues with the examination of corporate governance regulations in the USA, specifically the rules of the New York Stock Exchange and the Sarbanes Oxley Act. The author considers them to be of significant importance as banks today vary in the degree of internationalization and are often cross-listed on more than one exchange. Furthermore, SOX has had a far reaching impact not only on American firms, but also on listed and non-listed foreign companies. Furthermore, the researcher presents significant developments in the corporate governance debate in the UK and Ireland. Even though there appears to be no direct impact on listed banks in Switzerland, Great Britain is a leading exporter of corporate governance concepts to the rest of the world and many of the issues the UK's initiatives end up being debated in the Swiss parliament.

An examination of the fundamental corporate governance theories is presented in **section 3**. The researcher examines legalistic, stakeholder, strategic choice, stewardship and transaction cost theories, before moving on to an in-depth review of the agency

theory and its role in corporate governance of banks. Furthermore, in **section 4**, the researcher reviews the role of shareholders in corporate governance. This is followed by **section 5 and 6** which present an in-depth examination of the literature on the board of directors and their role in the internal corporate governance mechanism, with a special emphasis on listed banks.

Sections 7 and **8** discuss organizational practice and organizational rules. Particular emphasis is placed on the review of written organizational rules and their benefits. In addition, the section examines business codes. Code of conduct is examined in great depth and forms the basis for the discussion of the Internal Guidelines on Corporate Governance. The section also discusses a code's development, implementation and administration processes. **Section 9** concludes with a brief summary of the literature review and research questions.

1.2. Introduction to Corporate Governance of Banks in Switzerland

Internal Guidelines on Corporate Governance require that the board of directors identifies and commits itself to corporate governance principles. Research confirms that organizational guidelines, codes and rules must reflect the legal and industry environment. As a result, the researcher begins to examine the corporate governance landscape in Switzerland making a particular emphasis on listed companies and banks.

Banks are "special" in terms of corporate governance. They differ from other corporations because bank operations are relatively opaque or non-transparent. Financial information about a bank's performance is often more obscure than that of other companies. Outsiders especially have difficulty in accessing governance information and are thus diminished in their ability to monitor the management. Banks also have diversified stakeholders, often including thousands of small-time depositors and investors, community and regulators. Due to such a diffuse ownership, stakeholders have fewer incentives to monitor management. Banks are also highly leveraged increasing their exposure to risks which may spill over to other parts of the economy. Therefore, in comparison with other corporations, banks are heavily regulated. Regulation exists to prevent system wide risks, bank failures and so on.[128]

Swiss corporate governance initiatives came rather late compared to other nations. The moves towards a more market-orientated corporate governance system were made in the 1990s, after numerous bank scandals and liberalization of the financial markets.[129]

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[128] Claessens (n.d).
[129] Mach and David (2004).

Switzerland's corporate governance system can be classified as a continental European "bank-centered" model contrary to the Anglo-Saxon "market-centered" corporate governance system. The bank-centered model implies that "banks play a key role in funding of companies and so may well be able to exercise some control of them via the board structure."[130] Unlike other companies, banks in Switzerland must adopt a two-tier board structure, creating a system of check and balances.[131]

Switzerland's corporate landscape is also characterized by a relatively high concentration of banks and multinational companies while the country's population remains relatively small. This leads to situations where individuals accumulate several board memberships, which has both positive and negative consequences for a company.[132] Furthermore, Switzerland has a high concentration of ownership which is linked to individual, family, or company ownership, where again banks may be significant shareholders of other firms.[133]

On a final note, the Swiss corporate governance landscape is characterized by self-regulation, both voluntary and compulsory. There is very little hard law on corporate governance. Instead, self-regulation is viewed as a good alternative to state regulation.[134] Voluntary self-regulation is recognized as a minimum standard by the Swiss Federal Banking Commission and includes various codes of conduct and guidelines. It is believed that self-regulation fosters greater development of best practice based on set benchmarks rather than blind compliance. This flexibility enables banks to benchmark themselves against banks with higher quality standards, which then drives competition enabling employment and social prosperity.[135]

1.3. Legal System and Corporate Governance

1.3.1. Introduction

The legal system is said to be fundamentally important to the corporate governance mechanism.[136] Particularly the degree to which these "laws protect investor rights and the extent to which those laws are enforced are the most basic determinants of the way in which corporate governance evolves in a country."[137] According to research, the goal

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[130] Mallin (2007, p. 160).
[131] Denis and McConnell (2003, p. 6).
[132] Speck and Tanega (2003, p. 467).
[133] David and Mach (2001, p. 14).
[134] Swiss Federal Banking Commission (2007, p. 6).
[135] IFPM (2009, p. 1).
[136] LaPorta et al. (1998).
[137] Denis and McConnel (2003, p. 5).

of the board of directors is focused on shareholder welfare and is prescribed in a country's laws.[138] As a result, Swiss law makes the board of directors responsible for direction and control of the company and its powers are derived from the shareholders whom they represent.

Law also acts as an enforcement mechanism aimed at improving corporate governance practices of banks. Corporate governance regulation for listed banks operating in Switzerland stems from the following intertwined sources: the Swiss Code of Obligations, Stock Exchange Act and its relevant directives on corporate governance, the Banking Act and Banking Ordinance, cantonal laws on banks, FINMA circulars plus other self-regulatory provisions.[139]

The laws have remained largely unchanged since 1936, however the Swiss Code of Obligations has been amended a number of times from 1968 to 2008. The latest changes were prompted by a desire to improve corporate governance, specifically to enhance transparency, accountability and disclosure, to strengthen shareholder rights and to improve the structure and functioning of the board while attempting to eliminate abuses of power.[140] In addition to hard law, there are also soft laws on corporate governance which consist of the Swiss Code of Best Practices for Corporate Governance and other guidelines from trade organizations and research institutions.

1.3.2. The Swiss Code of Obligations

The Swiss Code of Obligations allows companies to choose their own board structure and to make all the necessary arrangements for the effective and efficient management and control.

Article 716a of the Swiss Code of Obligations (CO) assigns the ultimate direction of the company to the board of directors, which has non-transferable and inalienable duties.

Article 717 of the CO states that the board of directors shall perform their duties with due care and will safeguard the interests of the company.[141]

[138] Denis and McConnel (2003, p. 6).
[139] Haymann (2006, p. 41).
[140] David and Mach (2001, p. 40).
[141] Art. 717 of CO.

According to CO, the board is responsible for:

a) the ultimate management of the company and giving of relevant directives;

b) the establishment of the organization;

c) the structuring of the accounting system and the financial controls and financial planning;

d) the appointment and removal of the persons entrusted with the management and representation of the company;

e) the ultimate supervision of the persons entrusted with the management of the company in particular in view of compliance with the law, the articles of incorporation, regulations and directives;

f) the preparation of the business report, as well as the preparation of the general meeting of shareholders and the implementation of its resolutions; and finally

g) the notification of the judge in the case of over indebtedness.[142]

There is no requirement for firms to have Internal Guidelines on Corporate Governance, but companies must establish clear organization of the company and its bodies. As a result, companies in Switzerland issue organizational regulations which show and direct how its affairs are organized.

1.3.3. Banking Act

Unlike the CO which leaves a great degree of discretion for companies on how they establish own governance structures,[143] banks must follow corporate governance regulations of the Swiss Federal Law on Banks and Savings Banks (Banking Act).[144] For example, banks must provide a "management organization adequate for its business activities" with one body to manage, supervise and control and another body to ensure the effective supervision of the management.[145] The Banking Act imposes a dual board system on banks making it mandatory to separate supervisory and executive functions. The clear separation is aimed at ensuring a system of checks and balances.[146]

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[142] Art. 716a of CO.
[143] Hayek (2003, p. 116).
[144] Art. 1.of Banking Act.
[145] Art. 3 of Banking Act.
[146] Hilb (2008b, p. 35).

The Banking Act includes duties for the board of directors of a bank, such as:

a) reporting to FINMA in case of changes to the bank's organization;

b) duties within a group or a holding company;

c) observing laws and regulations; and

d) continuing education of members of the board.[147]

The Banking Act together with Swiss Federal Ordinance on Banks and Savings Banks (Banking Ordinance) also require that banks "provide a precise definition of the scope of business operations in its articles of association, by-laws and organizational regulations."[148]

1.3.4. The Stock Exchange Act

The Federal Act of 1995 on the Exchange and Securities Trading (SESTA) sets the conditions for the establishment and operation of stock exchanges.[149] As a result, the SIX Swiss Exchange is responsible for issuance of directives on corporate governance for companies listed on the stock exchange. The Stock Exchange Act is designed as a framework law offering a high degree of flexibility and following the tradition of self-regulation. For example, Listing Rules (LR) contain a number of specific provisions when it comes to corporate governance. Furthermore, in order to maintain its listing, a company must engage in regular reporting following applicable standards including reporting on the structure and function of corporate management and governance.[150] The mechanism for these types of disclosure is the annual report; however, companies can also engage in ad-hoc publicity and provide information on management transactions.

1.3.5. Corporate Governance Directive

The Corporate Governance Directive (DCG) first came into force in 2002, but was revised a number of times with the aim to enhance corporate governance and transparency.[151] The DCG requires companies listed on the SIX Swiss Exchange to disclose information on corporate governance measures in their annual reports. While the disclo-

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[147] Müller (2001, p. 22).
[148] Art. 7 of Banking Ordinance.
[149] Art 1. of SESTA.
[150] FINMA (2010).
[151] Art 2. of DCG.

sure of director remuneration is compulsory, the directive takes a “comply or explain” approach to the rest of the corporate governance and control mechanisms.[152]

The DCG applies to companies’ with primary listings; those with secondary listings on the SIX Swiss Exchange do not have to follow it. The following is the scope and extent of the information relating to corporate governance that listed companies must disclose to comply with the DCG:

a) group structure and shareholders;

b) capital structure;

c) board of directors;

d) executive committee;

e) compensation, shareholdings and loans;

f) shareholders' rights;

g) information about the auditors and controllers;

h) shareholder' participation rights and

i) information policy.[153]

In the case of non-compliance with the DCG and with the Listing Rules (LR), the Admission Division and the Sanction Commission of the Exchange may impose sanctions against the issuer in question.[154] For example, Société Bancaire Privée (now Banque Profil de Gestion) was fined by the Sanctions Commission in 2008 for various violations in the listing rules, including poor corporate governance reporting. In addition, in 2010 the Sanction Commission of the SIX Swiss Exchange reprimanded Vontobel Holding Group for poor disclosure of corporate governance information in its annual report. And in 2010, the Sanction Commission ruled that Bank Coop did not sufficiently disclose the criteria on the performance-dependent remuneration of board members and executive directors in the 2008 annual report.[155] Other investigations are still pending such as that on corporate governance disclosure of UBS AG.[156]

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[152] Schweizer, Schneider and Huwyler (2002, p. 1).
[153] Bühler and Schweizer (2002, p. 1000).
[154] Art . 61 para. 1 of LR.
[155] SIX Exchange Regulation (2010c).
[156] SIX Exchange Regulation (2010b).

1.3.6. Laws on Cantonal Banks

Besides federal laws there are cantonal laws which contain requirements for cantonal banks, some of which include detailed provisions on corporate governance e.g. the board and its composition. This is relevant for the study, as some cantonal banks are also listed on the stock exchange.

Cantonal laws on banks mostly refer to capital requirements and state guarantee; however, a number of these laws make detailed specifications as to how the board should manage its affairs. For example, according to the Law on Cantonal Bank of Graubünden, the GKB must explicitly define the organization of the bank and its organs. The bank must have a board of directors, management, and internal and external auditors. The laws points out that the board of directors of GKB is the highest entity in the bank and it shall supervise and control management. The duties and responsibilities of the board are clearly stated and they include election and nomination of members to the board and executive management.[157] The law also includes specific limits on the size of the board, which should consist of seven members, the term in office should not exceed 4 years but re-election is possible. There are also specific provisions on qualification requirements for board members especially when it comes to conflicts of interest. The law states that members of the board of the GKB can not be employees of the bank, nor can they employed as auditors or be active in any other positions at another bank.[158] Duties and responsibilities of the chairman of the board are also included in the law.[159]

Similarly, cantonal law of canton of Basel-Landschaft specifies very detailed provisions for the board of the Basellandschaftliche Kantonalbank. For example, the law states specific requirements for board membership, including qualification requirements for members of the board.[160] The law states that members of the board should have a sound understanding of banking. Furthermore, the law establishes a retirement age for members of the board of directors.[161] The law also defines the responsibilities of the board of directors[162] and refers to the need to establish board committees.[163]

The law on Zuger Kantonalbank also puts legal requirements for board of directors of the ZugerKB. It includes membership requirements for the board and sets a specific

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[157] Art. 13 of GKB Law.
[158] Art. 14 of GKB Law.
[159] Art. 18 of GKB Law.
[160] Art. 9 of BLKB Law.
[161] Art. 10 of BLKB Law.
[162] Art. 11 of BLKB Law.
[163] Art. 12 of BLKB Law.

size for the board e.g. seven members.[164] Article 24 of the law on Zuger KB makes the board of directors responsible for the overall management of the bank, including the responsibility for business policy, election of the chairman, vice-chairman and board secretary, the appointment and the dismissal of members of the directorate. In article 25, the law also states requirements as to the number and arrangement of board meetings and outlines voting arrangements. For example, there is an absolute majority rule for the voting and the chairman's vote counts as two.[165]

On the other hand, the cantonal bank laws of St. Gallen and Bern differ substantially when it comes to corporate governance. Here, laws provide the legal bases for the operation of the cantonal bank, but offer very little detail for the organization, tasks and responsibilities of the board. For example, the Cantonal Bank Law of St. Gallen makes only a small reference to the independence of the board of directors.[166] Similarly, the Law on Public Limited Company BEKB barely concerns itself with board matters.[167]

To conclude, according to the review of cantonal bank laws, there is a high degree of variation when it comes to corporate governance provisions in these laws. They contain no requirements for banks when it comes to issuing Internal Guidelines on Corporate Governance for the board of directors. Because of a high degree of variation and often generalization, they cannot act as substitutes for Internal Guidelines on Corporate Governance.

1.3.7. Swiss Code of Best Practice for Corporate Governance

Swiss Code of Best Practice for Corporate Governance (Swiss Code) is just one element of the legal framework in which listed banks operate. It is a soft law and should not be confused with legal codes nor with international standards or company codes. Switzerland's hard and soft laws on corporate governance were shaped by international laws and guidelines namely the Cadbury Report (1992), the Hampel Report (1998), the Higgs Report (2003) and the Combined Code (2006) in the UK; the KonTrag (1998) in Germany; the Sarbanes-Oxley Act (2002) and NYSE recommendations in the US.[168] Nonetheless, Switzerland has developed its own set of "best practices" that reflects its corporate landscape and the legal system (see Figure 3 on page 32).[169]

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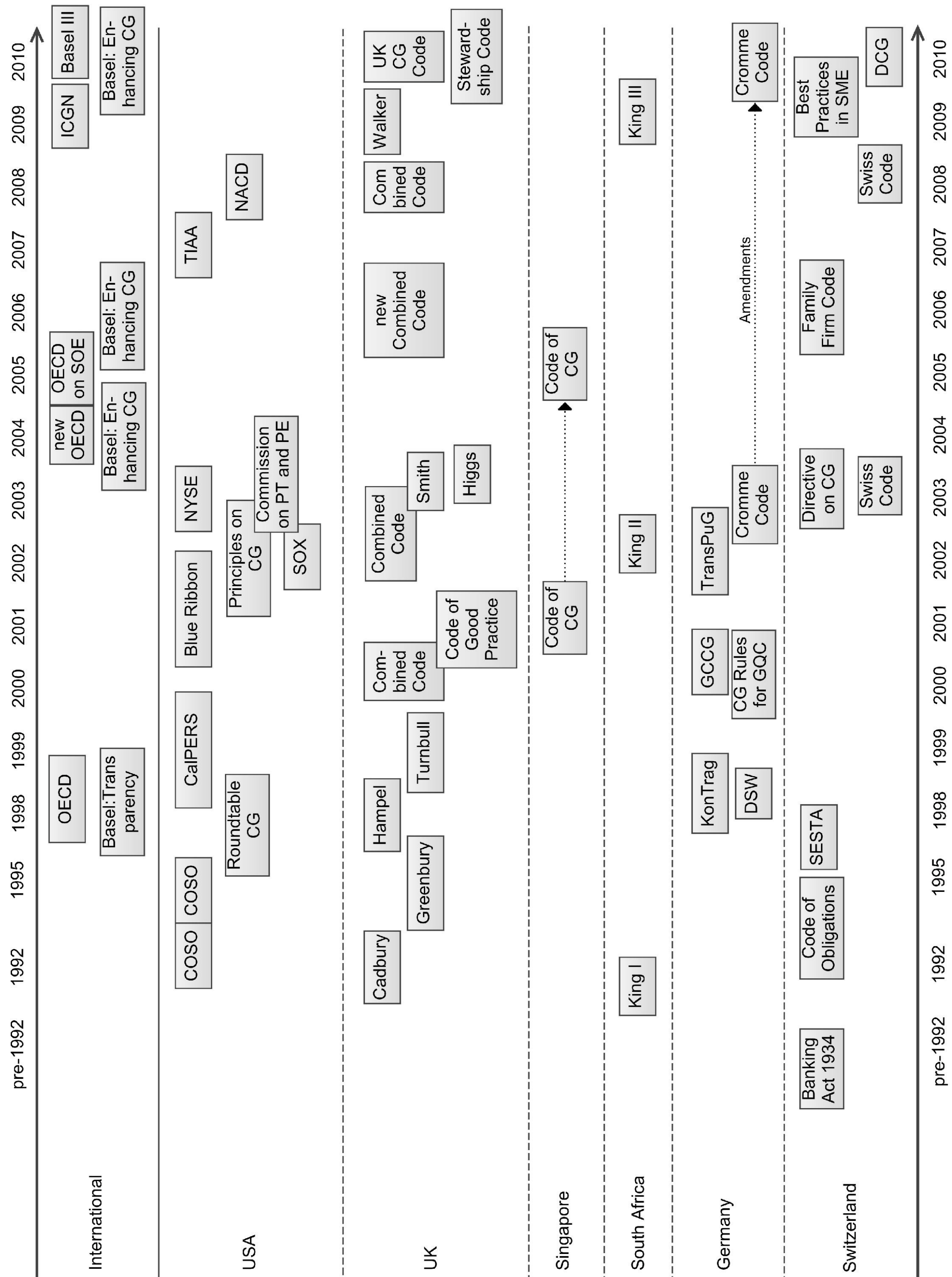
[164] Art. 23 of Zuger KB Law.
[165] Art. 25 of Zuger KB Law.
[166] Art. 5 of SGKB Law.
[167] BEKB Law.
[168] Böckli (2000, p. 134).
[169] Hofstetter (2002, p. 3).

Figure 3: Timeline of the Development of Selected International and National Codes and Laws on Corporate Governance



Source: own development (2010) based on Hilb (2008 p. 28).

The Swiss Code makes presents a full range of guiding principles on corporate governance and these are presented in Table 1 below.

Table 1: Summary of the Swiss Code

Recommendations in the Swiss Code of Best Practice for Corporate Governance
1. Focus on Shareholders
2. Functions of the Board of Directors
3. Board Composition
4. Procedures and Chairmanship of the Board of Directors
5. Conflict of Interest, Independence and Advance Information
6. Chairman of the Board of Directors and CEO: Separation vs. Duality
7. Internal Control System Dealing with Risk and Compliance
8. Committees of the Board of Directors
9. Particular Circumstances
10. Auditing
11. Disclosure

Source: own development based on Economiesuisse (2007).

The Swiss Code is aimed at improving corporate governance and transparency while maintaining decision making capacity and efficiency.[170] It is based on the self-regulation principle and contains thirty non-binding recommendations on corporate governance.[171] The Swiss Code follows the tradition of the "comply or explain" approach,[172] which gives flexibility and freedom for listed companies to choose the best possible approach in devising their corporate governance practices.[173] It is primarily intended for Swiss listed companies, but it can also serve as a guideline for other large, non-listed firms.[174] The Swiss Code is a shareholder oriented code emphasizing the "interests of owners, problems of incomplete information, transparency, accountability, performance-based remuneration, and sustained financial solidity." It works by "control through the market" and organization of the firm such as voting rights, legal responsibilities, reporting system and disclosure and board structure.[175] For example, a

[170] Economiesuisse (2007, p. 6).
[171] Ibid.
[172] Sanwald (2001, p. 260).
[173] Böckli (2004, p. 14).
[174] Hofstetter (2002, p. 62).
[175] Wieland (2006, p. 169).

listed bank should facilitate shareholder's rights by making the annual report and articles of association available to shareholders at any time.

Although the Swiss Code is soft law, it is grounded in hard law (Article 716a of the CO), stating that the board has inalienable and non-transferable duties. The functions of the board of directors are also set in accordance to Article 716a of the CO. Furthermore, the Swiss Code stresses the importance of separation of control by advocating that the board should ensure that management and control functions are allocated appropriately. Separation of management and control is of high relevance for listed and non-traded banks. The following points present key duties and responsibilities of the Swiss board of directors:

1) the strategic direction of a company;
2) the harmonization of strategy and finances;
3) the ultimate direction of the company and the giving of the necessary directives
4) the establishment of the organization;
5) the structuring of the accounting system and of the financial controls and planning;
6) the appointment and removal of the persons entrusted with the management and representation of the company;
7) the ultimate supervision of the persons entrusted with the management, with regard to compliance with the law, the Articles of Association, regulations and directives;
8) the preparation of the annual report and the general shareholder's meeting and implementation of its resolutions;
9) the notification of the court in case of excess of indebtness over assets;
10) The assurance that management and control functions are allocated appropriately;
11) The establishment of organizational regulations.[176]

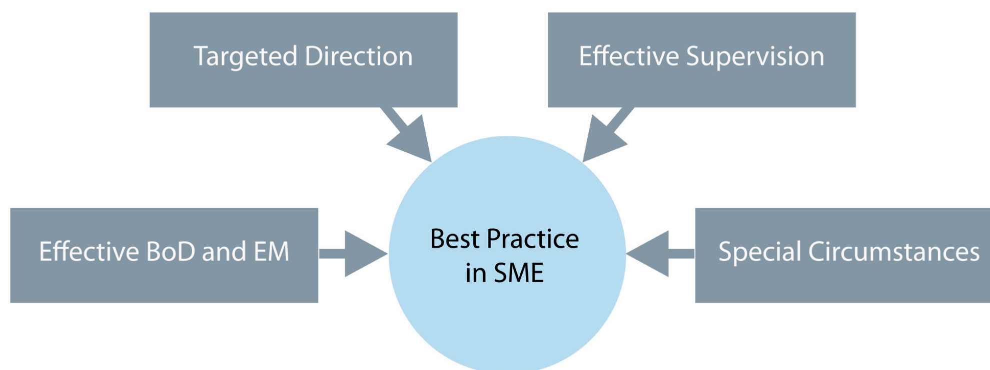
It is important to note that the Swiss Code gives the board of directors a responsibility for the strategic direction of a listed company, specifically referring to the strategic goals, the means of achieving them and the individuals charged with management.[177]

[176] Economiesuisse (2007, p. 10).
[177] Ibid.

1.3.8. Best Practice in Small-and-Medium Sized Enterprises

While the Swiss Code is mostly applicable to larger, listed banks such as UBS AG and Credit Suisse Group, the IFPM Center for Corporate Governance developed a set of recommendations for best practice in corporate governance for Direction and Control of Small and Medium-sized Enterprises which could be true to some of the smaller listed banks. It shifts from the shareholder value maximization to stakeholder value maximization.

Figure 4: Summary of Recommendations for the Direction and Control of SMEs



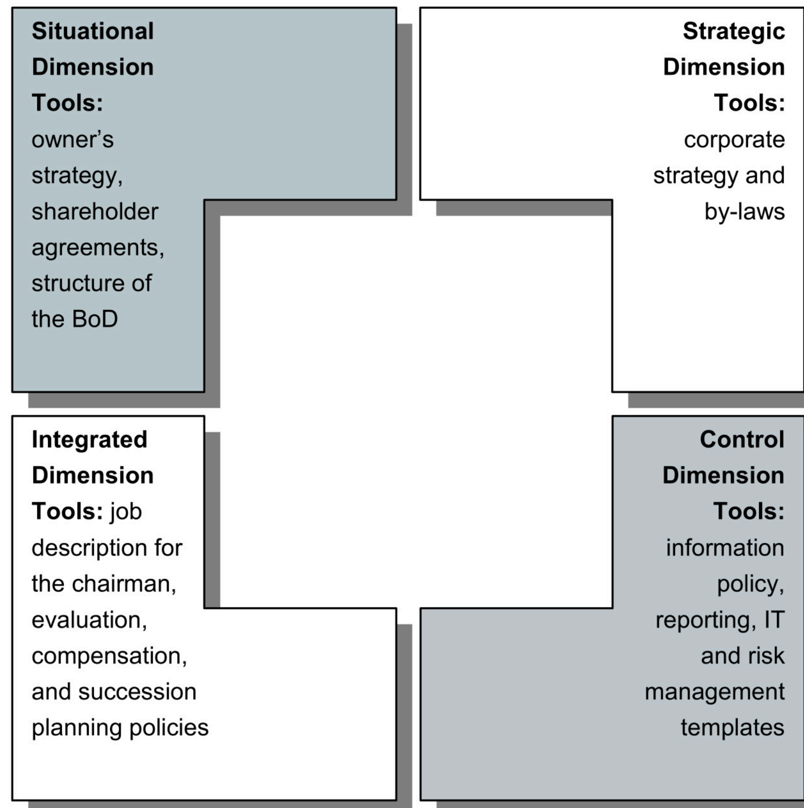
Source: own development based on Binder et al. (2009).

Just like the Swiss Code, the Best Practice in SME sets out the responsibilities and duties of the board of directors, requirements for board members, the structure of the board, conflict of interest, risk management, information and communication responsibilities of the board as well as the remuneration, induction and succession planning at the board. It also puts emphasis on self-assessment of the board and compliance with legal and ethical standards.[178] However, the recommendations are adjusted to fit the needs of smaller enterprises. For example, only two banks in Switzerland are classified as being large (based on assets held) by FINMA. On the other hand, the study follows the SIX Swiss Exchange classification system, according to which there are three large banks. The majority of listed banks in Switzerland are still classified as small- and medium sized enterprises by the SIX Swiss Exchange.

[178] Binder et al. (2009, p. 1).

In addition to the Best Practice in SME recommendations, a number of practical tools and checklists have been developed by the IFPM Center to help SMEs in establishing and effective management and control functions. Figure 5 presents an overview tools which cover situational, strategic, integrated and controlling dimensions.[179]

Figure 5: Corporate Governance Toolkit for SMEs



Source: own development based on IFPM (2010).

1.3.9. Bank Regulation

Besides the hard and soft laws on corporate governance, the researcher examines the nature of bank regulation in Switzerland. The Swiss financial sector is regulated on three levels. Regulation includes various federal laws such as the Banking Act and Bank Ordinances, the Stock Exchange Act, the Law on Financial Market Supervision and many related ordinances. The Swiss Financial Market Supervisory Authority (FINMA) along with the Swiss Federal Banking Commission (SFBC) act as regulatory supervisors of the financial services industry.[180] The SFBC is responsible for the over-all supervision and enforcement measures, while the FINMA ensures that legal and

[179] IFPM (2010).
[180] Swiss Federal Banking Commission (n.d).

regulatory provisions are enacted and upheld.[181] In addition, the Swiss National Bank (SNB) plays a small role in banking regulation, although not a direct one. The SNB is responsible for the overall stability of the financial sector and works closely with the FINMA in supervision of the banks.[182]

FINMA regulates the application of financial market legislation through the issue of circulars. FINMA Circular 08/24 on Supervision and Internal Control is of particular importance as it sets the guidelines for corporate governance for banks and financial institutions.[183] The circular defines the responsibilities of the board which include supervision and control, regulation, establishment, maintenance, monitoring and supervision of internal control functions. The recommendations also include the following:

- Definition of clear levels, rules and responsibilities in the bank,
- Review of internal control, risk management and compliance functions,
- Definition of clear policy on conflicts of interest,
- Establishment of criteria for independence,
- Set qualifications criteria for members of the board,
- Regular meetings in accordance with statutes,
- Committee structure with well-defined tasks and responsibilities.[184]

The Swiss system of supervision also allows for delegation of certain duties to self-regulating organizations such as The Swiss Bankers Association, which issues self-regulatory guidelines to its members with the minimum binding standards. It is quite common for Swiss banks to "draw up binding codes of conduct which define what constitutes good industry practice."[185] One such example is the Agreement on the Swiss Bank's Code of Conduct with Regard to the Exercise of Due Diligence, which is actually monitored by the FINMA ensuring that banks comply with this particular code of conduct. "Compliance with suggested guidelines, on the other hand, is voluntary."[186]

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[181] Art. 7 of FINMASA.
[182] Swiss National Bank (n.d).
[183] Margin 1 of FINMA Circ. 08/24.
[184] FINMA-Circ. 08/24.
[185] Swiss Bankers Association (n.d.).
[186] Ibid.

It is believed to be in the best interest of a bank to set and apply voluntary standards and international standards of best practice.[187] Table 2 includes a selection of guidelines, recommendations and requirements issued by the FINMA and the Swiss Bankers Association.

Table 2: Guidelines and Agreements for Banks and Financial Institutions

Guidelines and Agreements for Banks and Financial Institutions
Minimum standards for remuneration schemes of financial institutions, FINMA-Circ. 10/1, 2010.
Risk diversification within the banking sector, FINMA-Circ. 08/23, 2010
Supervision of the Large Banks, FINMA Circ. 08/9, 2008
Supervision and internal control – banks, FINMA-Circ. 08/24, 2009
Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence, 2008.
Directives on the independence of financial research, 2008.
Guidelines on the simplified prospectus for structured products, 2007.
Agreement of Swiss banks on deposit insurance, 2005.
Guidelines on the handling of dormant accounts, custody accounts and safe-deposit boxes held in Swiss banks, 2000.
Federal act on combating money laundering and terrorist financing in the financial sector, 1997.
Ordinance on the prevention of money laundering and terrorist financing in banking, securities trading and collective investment schemes sectors (AMLO), 2002.

Source: own development based on FINMA (2011) and Swiss Bankers Association (n.d.).

2. Impact of International Developments on Corporate Governance of Listed Banks in Switzerland

2.1. Overview

Corporate governance is of great importance and has significant relevance to banking institutions across the globe and to the international financial system and economy as a whole. Over the years, the Basel Committee on Banking Supervision's main aim has been to "promote the adoption of sound corporate governance practices by banking

[187] Swiss Bankers Association (n.d.).

organizations."[188] The Basel Committee's recommendations are discussed in the study, as "these principles serve as a reference point for the bank's own corporate governance efforts"[189] and have implications for Swiss listed banks. In addition, scandals and failures of banks and financial institutions in the US, the UK, Germany and other countries, have brought a number of regulatory changes to the field of corporate governance since 2000. For example, in the USA, the Security and Exchange Commission (SEC) responded by enacting new acts and regulations aimed to improve accountability and transparency.[190] Similarly, the Financial Reporting Council (FRC) in the UK has revised the Combined Code to address corporate governance failures of banks. Changes in corporate governance recommendations and regulations put listed companies under increasing pressure to show what the board of directors does and it sets the values in a company.[191] As a result, it is important to review international recommendations on corporate governance for banking institutions. It is also valuable to examine national developments across the US, UK and Ireland as these may have an impact on Swiss listed banks. For example, a small number of Swiss banks are already listed on more than one stock exchange. Also cross-border mergers or activities by listed banks may require them to adopt various corporate governance systems. According to one study, when a Swedish company merged with a UK firm to create a new UK domiciled firm, the corporate governance mechanism in the new company was set up in line with the Combined Code. However, certain aspects of the Swedish model were more protective of the shareholders. As a result, the board made greater provisions for non-executive directors in line with the Swedish Code of Corporate Governance.[192] Additionally, certain regulatory developments in one country may have an impact on regulation in another, as was the case with the Sarbanes Oxley Act.

2.2. Basel Committee on Banking Supervision: Enhancing Corporate Governance for Banking Organizations

There are numerous recommendations on corporate governance from various international bodies and groups, such as the OECD and ICGN. However, one particular set of recommendations is especially important for banks. The Basel Committee on Banking Supervision lays down a set of guidelines in order to enhance corporate governance in banking organizations. Although Basel III provides "a comprehensive set of reform

[188] Basel Committee on Banking Supervision (2010a, p. 1).
[189] Ibid.
[190] Kalia and Müller (2007, p. 53).
[191] FRC (2010, p. 1).
[192] Bris and Cabolis (2004, p. 2).

measures to strengthen the regulation, supervision and risk management of the banking sector", it also aims to enhance transparency and disclosure and improve overall governance in the industry.[193] The Basel Committee guidelines of 2006, with revisions in 2010, have been influential in the development of corporate governance practices in banks. According to the Basel Committee, "good governance is essential to achieving and maintaining public trust and confidence in the entire banking system, while poor corporate governance may contribute to bank failures, which can pose significant public costs and consequences due to their potential impact on any applicable deposit insurance systems and the possibility of broader macroeconomic implication."[194]

The Basel Committee governance framework sets out the following principles for good corporate governance. These principles are outlined below:

1. Board members should be qualified for their positions and have clear understanding of their role in corporate governance, and able to exercise sound judgment about the affairs of the bank.

2. Boards of directors should approve and oversee the bank's strategic objectives and corporate values.

3. The board of directors is responsible for its own governance.

4. The board should set and enforce clear lines of responsibility and accountability.

5. The board of directors should ensure that is there is appropriate oversight of risk by senior management consistent with board policy.

6. The board and senior management should effectively utilize the work conducted by the internal audit function, external auditors, and internal control functions.

7. The board should ensure that compensation policies are consistent with the bank's corporate culture, objectives and strategy, and control environment.

8. The bank should be governed in a transparent manner.

9. The board and senior management should understand the bank's operational structure, including where the bank operates.[195]

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[193] Basel Committee on Banking Supervision (2010b, p. 2).
[194] Basel Committee on Banking Supervision (2006, p. 4).
[195] Ibid., p. 10.

Besides the above mentioned corporate governance framework, the Basel Committee also puts significant emphasis on the need to establish clear practices at the board level. According to principle 3 of the Principles for Enhancing Corporate Governance, "the board should have in place the means to ensure that such corporate governance practices are followed and periodically reviewed for improvement" and these "practices help the board to carry out its duties more effectively and send important signals internally and externally of the kind of enterprise the bank aims to be."[196]

The Principles for Enhancing Corporate Governance contain specific recommendations for the organization and functioning of the board. For example,

- Margin 40: the board should maintain and periodically update, organizational rules, by-laws, or other similar documents setting out its organization, rights, responsibilities and key activities.
- Margin 41: the board should structure itself in a way, including size, frequency of meetings and the use of committees, so as to promote efficiency, sufficiently deep review of matters and robust critical challenge and discussion of issues.
- Margin 42: to support board performance, it is good practice for the board to carry out regular assessments of both the board as a whole and of individual board members. The board should also review the effectiveness of its own governance practices and procedures, determine where improvements may be needed, and make any necessary changes.[197]

The internal regulations should cover the board composition and qualifications, chair of the board, board committees and conflict of interest. For example, it is important that each committee has a charter that sets out its mandate, scope and working procedures.

The Basel Committee also sets the requirements for transparency and accountability, requiring banks to disclose material information on their governance structures and policies. In particular, boards of banks must disclose the content of any corporate governance policy and the process by which it is implemented.[198] These provisions are similar to the NYSE Rules and the King III recommendations which require the board of directors to adopt Internal Corporate Governance Guidelines, codes of conduct, and committee charters.

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[196] Basel Committee on Banking Supervision (2006, p. 11).
[197] Basel Committee on Banking Supervision (2010a, p. 11).
[198] Ibid., p. 28.

2.3. Corporate Governance Developments in the USA

2.3.1. Introduction

Unlike other countries, the USA does not have a definitive corporate governance code. Instead there are various state and federal developments, including the Delaware General Corporation Law and the Employee Retirement Income Security Act. However, the most influential rules came directly after financial scandals of Enron and WorldCom. First, the Sarbanes-Oxley Act (SOX) of 2002 aims to strengthen auditor independence and establishes a regulatory body for auditors for US-listed firms. There are also Corporate Governance Listing Standards which are set out in Section 303A of the NYSE Listed Company Manual. Listing Standards aim to strengthen the corporate governance standards for listed companies.[199] The SEC also published the Final Corporate Governance Rules in 2003, which are codified in Section 303A of the NYSE's Listed Company Manual. All of these have ramifications for Swiss banks listed on the New York Stock Exchange and Swiss-based not listed companies.[200]

2.3.2. Sarbanes Oxley Act

It is not a secret that the Sarbanes-Oxley Act has far-reaching effects on non-US companies. SOX also had an impact on corporate governance laws in Switzerland with a number of elements already incorporated in Swiss law and the Swiss Code.[201] For example, SOX had direct influence on articles 728a of the CO and the Swiss Code paragraphs 19 and 23.[202] However, SOX's main aim is to strengthen external auditor independence and the company's audit committee. Non-compliance includes severe penalties of fines and even imprisonment.[203] According to research, the act affects foreign firms' costs of complying with US law and some of the provisions of the Sarbanes Oxley Act may be in direct conflict with laws of other countries.

2.3.3. Final NYSE Corporate Governance Rules

Final NYSE Corporate Governance rules require listed companies to adopt and disclose Internal Corporate Governance Guidelines, charters of the main committees and a code of ethics.[204] These not only apply to American listed companies, but to all foreign companies listed on the NYSE. As a result, UBS AG and Credit Suisse Group must comply with these rules. Both companies have to adhere to stricter independence crite-

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[199] Mallin (2007, p. 41).
[200] Pfyffer (2005) cited in Kalia and Müller (2007, p. 53).
[201] Bertsischer (2007, p. 3).
[202] Pfyffer (2005) cited Kalia and Mueller (2007, p. 54).
[203] Mallin (2007, p. 37).
[204] NYSE (2010).

ria set out by the NYSE. Not only this, but these two banks must develop Internal Guidelines on Corporate Governance that cover a range of corporate governance topics specified by the NYSE. According to Final NYSE Corporate Governance Rules, there are seven universal corporate governance topics that should be part of the Internal Guidelines on Corporate Governance:

- **director qualification standards**: as a minimum, director qualifications should "reflect the "independence requirement set forth in Sections 303A.01 and 303A.02 of NYSE's Listing Manual and should address qualification requirements, including policies limiting the number of boards on which a director may sit, the director tenure, retirement and succession";
- **director responsibilities**: "should clearly express what is expected from a director, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials";
- **director access to management and independent advisors**,
- **director compensation**: "director compensation guidelines should include general principles for determining the form and amount of director compensation (and for reviewing those principles, as appropriate)",
- **director orientation and education**,
- **management succession**: "succession planning should include policies and principles for CEO selection and performance review, as well as policies regarding succession in the event of an emergency or the retirement of the CEO";
- **annual performance evaluation of the board of directors**: "the board should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively."[205]

At the same time the SEC stipulates that there is no single set of Internal Corporate Governance Guidelines which are appropriate for every company. Instead, each company has to develop its own Internal Guidelines and set its own principles. At the end, NYSE Rules stipulate that Internal Guidelines on Corporate Governance, along with

[205] NYSE (2003, p. 14).

the company's code of ethics and various committee charters should be made public i.e. it should be available to shareholders and third parties on the company's website.[206]

2.4. Corporate Governance Developments in the UK and Ireland

2.4.1. Introduction

Even though the provisions of the UK Corporate Governance regulations have no direct impact on Swiss companies, it is important to examine some of the changes in the UK's stance on corporate governance in the aftermath of the financial crisis of 2008. One reason for doing so is that Great Britain is considered to be a lead exporter of corporate governance practices to the rest of the world.[207] For example, the Cadbury Report and consequent UK reports on governance had a significant influence on the development of the Swiss Code of Best Practice in Corporate Governance.[208] Furthermore, some of the practices presented in the UK Code are presently being debated in Swiss Parliament.[209]

2.4.2. Walker Review

Following great pressure from the investors and stakeholders, Sir David Walker was given the task to review of corporate governance practices of banks, and examine the shortcomings in board oversight leading up to the financial crisis of 2008. The Walker Review of 2009 also provided an opportunity for the UK government to examine the entire corporate governance system in the country. As a result of the review, Walker makes a set of far-reaching recommendations, calling for greater effectiveness of risk management at board level of banks and for changes in the remuneration policy; greater balance of skills, experience and independence requirements for board members of banks. The review also addresses the effectiveness of board practices and the performance of audit, risk, remuneration and nomination committees.[210] Some of the more prominent recommendations include annual re-election of directors and the creation of a separate risk committee on the boards of banks. Following recommendations contained in the Walker Report, the FRC brought a number of changes to corporate governance of listed companies.[211]

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[206] NYSE (2003, p. 13).
[207] Cheffins (2000).
[208] Böckli (1998, p.198).
[209] Daeniker, Lambert and Vog (2010, p. 2).
[210] Walker (2009).
[211] FRC (2010, p. 2).

2.4.3. UK Corporate Governance Code

The UK Corporate Governance Code (UK Code) replaces the Combined Code and provides recommendations for best practice in corporate governance for listed companies on the London Stock Exchange. The emphasis of the new code is on leadership, effectiveness and accountability by the board. The UK Code calls for an effective board which provides entrepreneurial leadership whilst ensuring balanced decision making and effective controls in order to manage risks.[212]

Although the UK Code stayed true to the principles of the Combined Code, there are some striking changes. There is now a greater emphasis on the role of the chairman and non-executive directors, a greater role of the board in risk oversight and a provision for external board evaluation.[213] Along with the Walker Review, the Code recommends a separate risk committee for a bank board. It is believed that a separate risk committee is able to provide greater independent review of risk management of a bank. The UK Code also recommends that directors of listed companies be re-elected on an annual basis; the same applies to non-executive directors who have served on the board for longer than nine years. It is recommended that NEDs with tenure of nine years or more would no longer be considered independent. The table 3 on the next page outlines the main principles of the UK Corporate Governance Code.

While most of the code provisions have received positive support from the industry, a few recommendations have proved to be highly controversial. For example, the Institute of Directors (IoD) has expressed skepticism over the usefulness of annual re-election of directors, calling it an unnecessary burden which supports short-termist mentality.[214] Despite this, debates take place in Switzerland whether or not annual re-election is needed. For example, the Federal Council has proposed mandatory annual re-election of directors but the issue is still being disputed in parliament.[215] The UK Code also calls for performance-based pay linked to long-term interests of the company. Following this, executive compensation such as ‘say on pay’ and curbs on bonuses in financial industry are currently under review in the Swiss parliament. FINMA has also issued minimum standards for remuneration schemes for financial institutions.[216]

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[212] FRC (2010, p. 2).
[213] Gillen (2010).
[214] Gray (2010, p. 33).
[215] FRC (2010).
[216] Daeniker, Lambert and Vog (2010, p. 2).

Although, not directly applicable to listed banks on the SIX Swiss Exchange, the examination of UK's corporate governance recommendations is needed to create best practice corporate governance principles in a listed bank. The search for best practice is a necessary step in development of Internal Guidelines on Corporate Governance.

Table 3: The UK Corporate Governance Code

Main Principles of Corporate Governance
Time Commitment: All directors should be able to allocate sufficient time to the company in order to carry out their responsibilities effectively.
The Role of the Board: Every organization should be headed by an effective board which is collectively responsible for the long-term success of the organization.
Risk Management and Internal Control: The board is responsible for determining the nature and extent of the risks and maintains a system of risk management.
Non-Executive Directors: Non-executive directors should challenge and help develop proposals on company strategy.
Evaluation: There should be re-election of directors at regular intervals, and this should be subject to continued satisfactory performance of directors.
Division of Responsibilities: Every organization should have a clear division of responsibilities at its head, between that of running of the board and the business.
Director Development: There should be an induction upon joining the board and board members should regularly update and refresh their skills and knowledge.
Director Access to Information and Support: The board should be provided with information in a timely manner in a sufficient form and of necessary quality.
Chairman: The chairman is responsible for leadership of the board and ensuring its effectiveness.
Board Composition: There should be appropriate balance of skills, experience, independence and knowledge of the company.
Audit: The board should establish formal and transparent arrangements for corporate reporting, risk management and internal control.
Appointment: There should be a formal, rigorous and transparent procedure for the nomination and appointment and of new directors to the board.

Source: own development based on the UK Corporate Governance Code (2010).

2.4.4. Irish Corporate Governance Code for Credit Institutions and Insurance Undertakings

In 2010 Ireland was the first country to reveal a corporate governance code specifically for banks and insurers (Irish Code). Although this new code does not have a direct impact listed banks on the SIX Swiss Exchange, it represents is a significant development in the area of corporate governance in the banking sector. The code's provisions are summarized in Table 4 on page 46.

Table 4: The Irish Code

Main Principles of Corporate Governance	
Board Composition	• Requirement for minimum of five directors or seven for major institutions, • Majority of the board shall be independent NEDs, • Mandatory attendance at meetings except in circumstances beyond control, • Sufficient time to devote to the role of director and associated responsibilities, • Time commitment requirements indicated upon appointment, • Limit the number of outside directorships allowed, • Conflict of interest considerations. • Review of the board membership at least once every three years.
Chairman	• The role of the CEO and the chairman shall be separate, • Qualifications and requirement for comprehensive training, • Annual election or re-appointment of the chairman, • Prior approval by the Central Bank is need prior to taking any other directorships, • An individual who has been the CEO or member of the executive board in the previous 5 years shall not be elected as Chairman; the Chairman must not hold the post of Chairman or CEO at any other financial institution.
Non-Executive Directors	▪ Appropriate qualifications and skills requirements, ▪ Dedicated support and access to separate advice is available and it is part of the normal board process.
Role of the BoD	▪ Role and responsibilities of the board shall be clearly documented, ▪ Nomination and appointment of the CEO, senior management and NEDs, ▪ Annual self-assessment and review, ▪ Succession planning, ▪ Establish a 'conflict of interest' policy for its members. ▪ Annual review of risks, ▪ Establish adequate risk management framework and internal controls systems.
Board Committees	▪ Establish at least a Nomination and/or Remuneration Committee, Audit and/or Risk Committee. ▪ Set qualifications and skills requirements for committee membership and establish terms of reference for the committees which are to be reviewed on the annual basis.

Source: own development based on Central Bank of Ireland (2010, p. 36).

The Irish Code is significant as it is the first attempt by a country's financial regulator to set corporate governance standards specifically for banks and insurers. The statutory code lays out minimum standards for all banks operating in Ireland and even makes additional requirements for major institutions. According to the Irish Code, "the board must define and document the responsibilities of the board of directors, board committees and senior management to ensure that no single person has control of the business."[217] Furthermore, the Irish Central Bank calls for a regular internal review of the governance processes and procedures within the bank. It also emphasizes that "corporate governance structure and policies need to be articulated clearly and communicated to all appropriate staff within the institution."[218]

3. Corporate Governance Theory

3.1. Introduction

In order to establish which corporate governance areas are of high importance for the governance of listed banks and in order to gain a full understanding of the topic, the researcher examines relevant theories, models and concepts on corporate governance.

To begin with, the corporate governance field of research is no longer new and there exist many disciplines that have influenced and contributed to corporate governance. Main contributions to discussion come from legalistic theory, transaction cost theory, strategic choice theory, stakeholder theory, stewardship theory and agency theory.

As a result, the researcher takes on multi-theoretic approach as this allows researcher to recognize the many mechanisms and structures of corporate governance that surrounds a listed bank.[219]

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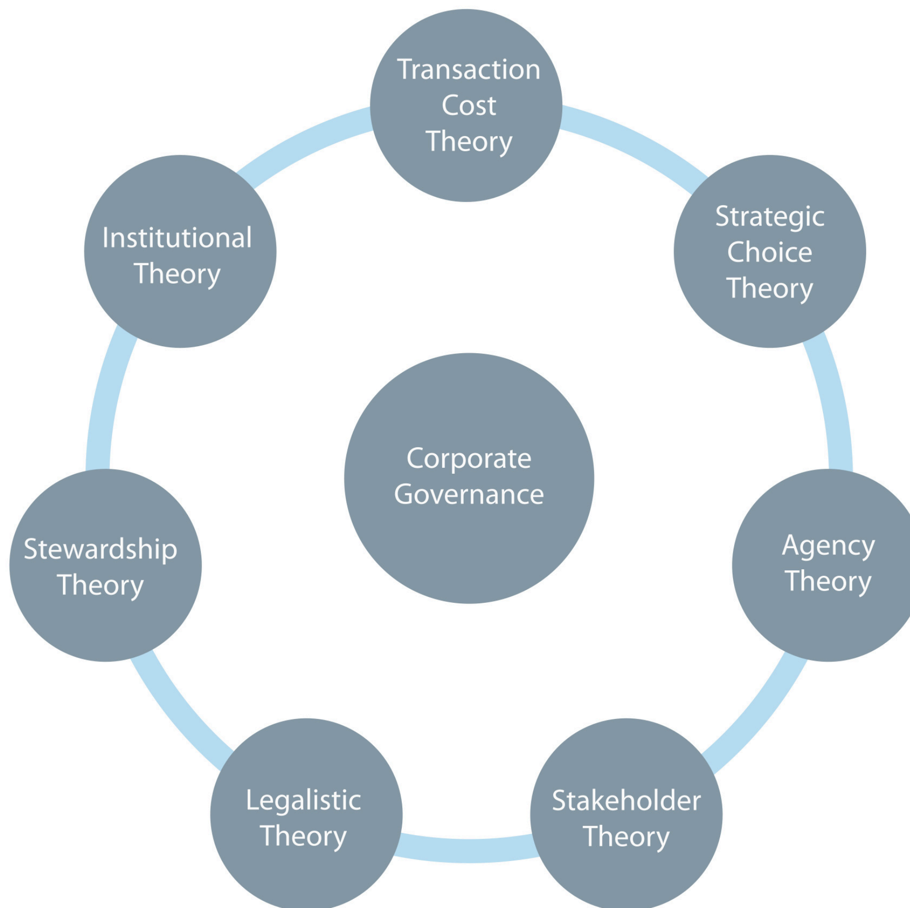
[217] Central Bank of Ireland (2010, p. 12).
[218] Ibid.
[219] Daily, Dalton & Cannella (2003, p. 372).

Figure 6 below presents an overview of various corporate governance theories which can be used to examine corporate governance practices in listed banks.

Figure 6: Corporate Governance Theories



Source: own development based on Mallin (2007).

Legalistic approach to governance is grounded in the law. The theory suggests that the boards "contribute to the performance of their firms by carrying out their legally mandated responsibilities." Law vests considerable powers in directors to enable them to fulfill their roles."[220] To be more specific, legal origins (e.g. common law or civil law) shape corporate law, in particular the extent to which law protects external investors, which in turn influences the financial arrangements in individual firms and affects corporate behavior and performance.[221] The legal system is of importance in the governance mechanism as it relates to the "extent to which the country's laws protect investor rights and the extent to which those laws determine the ways in which corporate governance developed in that country."[222] The Banking Act, the Swiss Code of Obliga-

[220] Ong and Lee (2000, p. 5).
[221] Berglöf and Von Thadden (1999, p. 7).
[222] La Porta et al. (1998).

tions, the Stock Exchange Act and a number of directives from the stock exchange and circulars from FINMA set out the legal framework for corporate governance of listed banks in Switzerland. Compared to other countries, Switzerland has few hard laws when it comes to corporate governance. Instead, there is a strong tradition of self-regulation in the banking industry, both voluntary and compulsory. Although the researcher takes on board the views presented in the legalistic theory, legalistic view offers a very narrow interpretation of the legal duties of the board of directors. For example, while the “de jure” control may indeed lie with the board, “de facto” control may rest with management.[223] As a result, it is necessary to examine other corporate governance theories.

Strategic choice theory states that actions are undertaken by the board of directors to help the firm adapt to its environment. Therefore, the role of board member progresses from the mere performance of legal tasks to those involved with strategy and development. The board of a listed bank is no longer responsible just for control and monitoring of management but also plays an important part in the strategic direction of the bank. This is becoming more and more recognized by Corporate Governance Codes of Best Practice and regulatory frameworks. Today it is widely accepted that the directors’ responsibilities lie with scanning of the environment and securing resources in order to achieve the best strategic outcomes for the company.[224]

Stakeholder theory takes into account a wider group of stakeholders rather than the limited shareholder group which is the focus of the agency theory.[225] According to literature, “corporate governance refers to all of the principles aimed at safeguarding shareholder interests, and protection of the rights and claims of non-financial stakeholders, such as customers, employees, suppliers, and others in the society-at-large who may hold claims against the corporation.”[226] Therefore, shareholders, employees, customers and depositors, suppliers of a listed bank, along with the government and regulators, taxpayers, cantons and the local community all have vested interest in trying to ensure that resources are used to maximum effect. However, according to research, shareholders and stakeholders may favor different corporate governance structures and mechanisms.[227] For example, shareholders of a bank may favor short-term returns, while depositors and regulators have vested interest in a long-term success of the bank

[223] Stiles and Taylor (2001, p. 12).
[224] Ong and Lee (2000, p. 6).
[225] Jensen (2001).
[226] Kose and Senbet (1998, p. 398).
[227] Mallin (2007, p. 16).

and other financial institutions calling for greater monitoring by the board of the executive management. Stakeholders want increased disclosure of board practices to enable greater scrutiny of the bank by external bodies. The financial crisis of 2008- 2009 has highlighted the problem with over-excessive focus on bank shareholders rather than stakeholders.

Another approach in examination of Internal Guidelines on Corporate Governance is to use the **stewardship theory** which states that the CEO is the steward of the company and he has an internal motivation to achieve good corporate performance.[228] Research shows a "strong relationship between the success of the organization and the principal's satisfaction e.g. a manager protects and maximizes shareholders' wealth through firm performance. In doing so, the manager's utility functions are maximized."[229] Therefore, the manager's actions are best facilitated when corporate governance structures give a manager high authority and discretion." Here, researchers argue for CEO duality, where the CEO would perform both functions of the chief executive (management board) and the chairman (supervisory board).[230] However, this is in a direct contradiction to the dominant agency theory perspective and the theory finds little application in listed banks in Switzerland, as the law mandates clear separation of powers between the CEO and the Chairman.

Institutional theory is another way to examine corporate governance practices of listed banks. This theory suggests that a firm's structure is "shaped by responses to formal pressure from other organizations" in order to conform to 'best practices' established by external institutions and pressure arising from the need to reduce uncertainty.[231] Professional pressures may also influence the way employees view certain structures, systems and processes. For example, companies are often quick to adopt codes of ethics and directors' code of conduct or sign up to some professional code in order to show conformity with the best practices or show commitment to self-regulation.

Internal Guidelines on Corporate Governance of listed banks can also been examined through the lens of the **transaction cost theory** which views the firm itself as a governance structure.[232] The theory states that there are economic benefits to the firm itself to undertake transactions internally rather than externally. For example, the costs of

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[228] Donaldson and Davies (1991, p. 51).
[229] Ong and Lee (2000, p. 15).
[230] Donaldson & Davis (1991, p. 59).
[231] DiMaggio and Powell (1983, p. 147).
[232] Williamson (1975).

misaligned actions can be reduced by the choice of internal governance structure.[233] Here, a company has self-interest in defining and setting responsibilities of the board and its members in order to achieve better internal control. The transaction cost and agency theories are also concerned with managerial discretion as both theories assume that managers are opportunists that seek self-interest and are prone to moral hazard. Furthermore, both the agency and the transaction cost theory refer to the board of directors as an instrument of control.[234]

Despite various lenses that have been used to examine corporate governance of listed banks, **agency theory** remains the dominant theory in corporate governance research. The theory identifies an agency relationship where the principal delegates work to the agent. The popularity of the theory stems from the ability to clearly identify the players, where the principal is the owner (shareholder) and the agent is a manager or management. The principal-agency relationship has many problems linked to opportunism or self-interest of the agent.[235] It is generally supported that people are motivated by self-interest and are often unwilling to sacrifice personal interests for the interests of others.[236] Although much of agency theory is set in the context of the separation of ownership and control and predominantly applies to listed firms, recent research now extends agency theory to state-owned enterprises and recently privatized firms,[237] non-for-profit sector[238] and small-medium enterprises.[239] In fact, separation of ownership and control exists in many organizational forms, for example in banks, financial mutuals, cooperatives, and large professional partnerships.[240] However, all of these organizations use a common device e.g. the board of directors, trustees, or managing partners – to accomplish the separation at the top level of the organization.

3.2. Agency Theory in Corporate Governance of Banks

Corporate governance research in the banking sector is frequently formulated around the principal-agent problem. In particular, agency theory is concerned with resolving two problems that occur in agency relationships. "A first agency problem arises when the desires or goals of the principal and agent are in conflict."[241] It is often difficult or

[233] Williamson (1984).
[234] Stiles and Taylor (2001, p. 13).
[235] Mallin (2007, p. 12).
[236] Daily, Dalton and Canella (2003, p. 372).
[237] Dharwadkar, George and Brandes (2000, p. 664).
[238] Olson (2000, p. 280).
[239] De Lema and Durendez (2007, p. 151).
[240] Jensen (1983, p. 328).
[241] Kern (2006, p. 20).

expensive for the principal to verify what the agent is actually doing or that the agent behaves appropriately.[242] This is considered to be quite a big problem in governance of banks, as banking operations are often opaque and difficult to monitor from the outside, i.e. the example of the Madoff Ponzi scheme. The second problem involves attitudes towards risk. The principal and the agent may prefer different actions because of different risk preferences. Literature points to a moral hazard or lack of effort in the part of the agent and adverse selection where the principal misinterprets the ability of the agent.[243] For example, poor risk management and excessive risk taking of boards of banks are considered to be some of the reasons for the financial meltdown in 2008-2009 which resulted in UBS AG posting a write-down of $48.6 billion in 2009.[244]

Information asymmetry is yet another concern in a principle-agent problem because the principal and the agent have access to different levels of information thus putting the principal at a disadvantage.[245] For example, the SIX Swiss Exchange sanctioned Vontobel Holding Group in 2008 for failure to provide a clear explanation for executive remuneration in the annual report. It is believed that this failure prevented investors from obtaining a clear picture of the criteria used to determine the compensations made to directors and management.[246]

Agency theory can also be applied in a variety of macro- and micro-level settings. It allows researchers to examine relationships between regulators, management, company, creditors, and employees. For example, corporate governance in the banking sector presents multiple agency problems at macro- and micro-levels. Agency problems in governance of banks can be classified on the basis of "conflicts between shareholders (principle) and management (principal agency), between stockholders (agents) and bondholders (debt agency), between the private sector (agent) and the public sector (social agency), and even between the agents of the public sector (regulators) and the rest of the society or taxpayers (political agency)."[247]

According to agency theory, the separation of ownership and control lies at the center of a modern corporation.[248] The board of directors is the ultimate internal mechanism for reducing agency costs and aligning the interests of managers with that of the share-

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[242] Kern (2006, p. 20).
[243] Eisenhardt (1989, p. 61).
[244] Strebel and Lu (2010, p. 21).
[245] Mallin (2007, p. 13).
[246] SIX Exchange Regulation (2010a).
[247] Kose & Senbet (1998, p. 375).
[248] Berle and Means (1932).

holders.[249] Research confirms that listed banks can employ various mechanisms to align the interests of principles and agents.[250] First, there must be a separation of the role of the CEO and the chairman in order to minimize conflict of interest.[251] Agency problems can also be minimized when executive compensation is tied to company performance, both short- and long-term.[252] Furthermore, banks can strengthen the governance structures by introducing audits and performance evaluations of the board and management.[253] It is also recommended that non-executive directors are brought in to monitor the CEO and other managers' performance.[254]

On the whole, agency theory provides a sound foundation for governance research of listed banks. This theory is especially well suited to address the multiple facets of the principle-agent problem found in the banking sector. However, it is the combination of various corporate governance theories that best describes the variety of governance mechanisms used to solve agency problems.[255] This multi-theoretic approach provides a more holistic view of corporate governance of listed banks in Switzerland and makes it possible to examine the content of the Internal Guidelines on Corporate Governance as it provides an in-depth view of the role of the board of directors and its tasks and responsibilities in governance of listed banks.

4. The Role of Shareholders in Bank Corporate Governance

As stated above, the defining principle of corporate governance is the implicit contract between shareholders and the firm. The duty of managers is to maximize firm value for shareholders (owners). "The owner (small private shareholders or large institutional investors) should lay down a comprehensive ownership strategy which reflects the ownership interests and is to be periodically reviewed and revised as required. This strategy should comprise of corporate vision, independence or alliance, management structure, growth, financing, risk policy, dividend policy and succession planning."[256]

As a result, shareholders expect the board to run their bank in a way that will encourage short- and long-term growth and profitability. It is believed that directors

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[249] Eisenhardt (1989).
[250] Fama (1980).
[251] Rechner and Dalton (1991, p. 157).
[252] Jensen and Meckling (1976, p. 26).
[253] Fama and Jensen (1983, p. 320).
[254] Baysinger and Hoskisson (1990, p. 84).
[255] Eisenhardt (1989, p. 59).
[256] Müller (2011).

owe a duty of care and loyalty to shareholders.[257] "As investors, shareholders have the final decision within a listed company. They alone are entitled to make decisions with regard to personal matters at the top company level, the final approval of accounts and policy on distribution and shareholder's equity. Shareholders exercise their rights at the AGM and have the right to make motions on items prescribed by the agenda. They may also request information on company matters not included in the agenda, if appropriate, a special audit."[258]

In order to enable shareholders to exercise their rights, the listed bank should facilitate the participation of shareholders at AGM. For example, it is recommended that the board of directors must give advance notice of the date of the next ordinary meeting. At AGM, shareholders can elect members of the board and vote on the proposals of the board of directors of a listed bank. For example, they play an important role in mergers and acquisitions or can block a listed bank's decision.

In order for shareholders to exercise their rights, AGM should enable shareholders to make relevant comments on the agenda items. For example, the "chairman should use his powers to ensure that shareholders exercise their rights. He should conduct the meeting in a balanced and purposeful way. There must be arrangements made to ensure that shareholders' rights to information and inspection are met."[259] For example, shareholders shall be able to submit questions in writing to the board of directors to allow for an appropriate response to be prepared. Furthermore, "the minutes of the board meetings should be made available to the shareholders as soon as possible, but no later three weeks after the meeting's date."[260] The board of directors of a listed bank must make a considerable effort to keep in touch with shareholders and inform then during the course of year about developments in the bank. In addition, the board must ensure equal treatment of shareholders.[261] It is valid to point out that the Swiss Code is a shareholder-oriented code, protecting shareholder rights and ensuring their role in the corporate governance mechanism.

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[257] Macy and O'Hara (2003, p. 91).
[258] Economiesuisse (2007, p. 10).
[259] Ibid., p. 11.
[260] Ibid.
[261] Ibid.

5. Board of Directors

5.1. Introduction

It has already been pointed out that there many facets of corporate governance. Corporate governance can be conceptualized as the relationship among stakeholders in the process of decision making and control over a firm's resources, consisting of management, capital market and labor.[262] According to research, one side of corporate governance is focused on issues of compliance and control, while another is focused on strategy. Corporate governance consists of two layers, an outer (external) layer and an inner (internal) layer. An outer layer is comprised of the organization, capital market and various stakeholders, while the inner layer consists of the board of directors, management and auditors. Each of these levels is an important ingredient in good corporate governance; however, it is the board of directors that is the ultimate internal mechanism that holds all other elements together.[263] Therefore, an effective board is fundamental to the success of a listed bank because it forms an essential link between managers, investors, customers and other stakeholders.[264] The board cannot be effective without a clear mandate, clear definitions of responsibilities and functions. As a result, the researcher will examine theories and models on the board of directors. In the discussion, the researcher will also draw from international and national recommendations for best practice and some of the recent legal and regulatory developments.[265] These are important to understand when developing corporate governance principles for the board of listed banks.

5.2. Tasks and Responsibilities of the Board of Directors

"The board exists primarily to hire, fire, monitor, and compensate management while at the same time aiming to maximize shareholder value."[266]

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[262] Aguilera and Jackson (2003, p. 451).
[263] Böckli (2000, p. 12).
[264] Mallin (2007, p. 124).
[265] Basel Committee on Banking Supervision (2010a).
[266] Ibid.

Table 5 below summarizes basic roles and responsibilities of the board of directors.

Table 5: The Role of the Board of Directors

Roles and Responsibilities
Involvement in Strategy Responsibility for monitoring the health of the firm
Hire, appraise and fire executives
Converse with shareholders/stakeholders
Ensure corporate renewal
Development of corporate vision
Responsibility for ethical framework
Ensure corporate survival
Determine risk position
Lead strategic change
Review social responsibilities
Act as ambassadors for the firm
Understand current and forthcoming legislation

Source: Stiles and Taylor (2001, p. 39).

It is interesting to note that the board's function and role today go beyond the legally mandated direction and control functions, and they extend to critical advisory function on strategy to top management.[267]

Although the functions of the board have grown substantially over the last decades, boards of directors have three distinct roles that are still relevant today: strategic, controlling and institutional roles.[268]

The strategic function of the board has become increasingly emphasized not only by the boards themselves, but also in the legal structures and corporate governance guidelines. Many of the listed banks in Switzerland even have a separate strategy committee to review strategy proposals and to make recommendations to the entire board. According to literature, the board does not necessarily formulate strategy, but instead it is directly involved in strategic formulation. In other words, the board sets the corporate direction. Similarly, the board plays an important role in the setting of the company

[267] Coles, Daniel and Naveen (2008, p. 229).
[268] Stiles and Taylor (2001, p. 20).

vision and mission.[269] According to research, the board ensures that the company stays focused on the strategic framework and that the management sticks to the agreed strategy. Furthermore, the strategic role of the board can be separated into a gate-keeping role, a confidence building role and a selection of chief executive role.[270]

The controlling function of the board has long been prescribed in the law and it includes matters such as monitoring of top management, including risk management and auditing functions, as well as internal control, communication and evaluation of top management.[271] Internal control and risk management are separate terms, but internal control is often used as an umbrella term to cover risk management. Regardless of the responsibilities risk management may place on managers, the ultimate responsibility lies with the board of directors. The board of director's risk management function includes "identification, measurement, monitoring, controlling or mitigating, and reporting on risk exposures" and assurance that risk management function has "adequate resources necessary to assess risk, including personnel, access to information technology systems, department resources and support and access to internal information."[272] Part of internal control and risk management is the responsibility of the board of directors in establishing efficient and effective organization of the bank, including providing clear definition and scope of own functions and responsibilities.

The institutional function of the board reflects the board's role in maintaining the relationship with the shareholders, as well as the responsibility for formulating contacts with external environment, such as regulators, labor and professional bodies. Furthermore, the institutional role of the board involves securing critical resources.[273]

While strategic, controlling and functional roles are universal and are prescribed in law, the way in which the board carries out its duties should reflect individual needs of a company and shareholders.[274] They must also reflect the nature of the banking sector. For example, FINMA Circular 08/24 sets out special duties and responsibilities of the board of directors, which includes responsibilities for supervision and internal control, control of the environment, implementation and supervision of internal audit among many others.

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[269] Stiles and Taylor (2001, p. 39).
[270] Ibid.
[271] Hilb (2008b, p. 157).
[272] Basel Committee on Banking Supervision (2010a, p.18).
[273] Stiles and Taylor (2001, p. 86).
[274] Cadbury (2002, p. 17).

5.3. Structure of the Board of Directors

While there are many different recommendations as to the kind of structure a board of directors should adopt, most research is largely consistent about the structure of top management and the composition of the board.

Similarly to other European countries, Switzerland has a unitary board system, which is characterized by one single board consisting of both executive and non-executive directors. "The unitary board is responsible for all aspects of the company's activities, where all directors are working to achieve the same objectives."[275] In practice, board and management in Swiss companies are clearly separated, with the involvement of non-executive directors[276] and through various board committees.[277] Although the Swiss Code of Obligations does not impose any particular board structure on companies, this flexible system is not applicable to banks.[278]

The Banking Act of 1934 requires that banks (listed and private) have a clear separation between management and the board, making it mandatory for banks to adopt a two-tier structure. "Two-tier boards consist of a managing board, composed of executives of the firm, and a supervisory board."[279] No single individual is allowed to be a member of both boards within the same bank at the same time. "The supervisory board oversees the direction of the business whilst the management board is responsible for the running of the business. Since members of one board cannot be members of another, there is a clear distinction between management and control."[280] Although there is the advantage of 'checks and balances', this separation can lead to power struggles which may be detrimental to the firm. Supervisory boards are criticized by being purely administrative, meeting only because the law requires it.[281] Some of the other disadvantages of the dual system include limited knowledge and limited objectivity of the supervisory boards.[282] The two-tier board system is often criticized as being too rigid.[283] Nonetheless, the dual board structure allows for the cleanest separation of the board's roles, thus allowing for the greater ability to monitor management. Organizational regulations help a bank in Switzerland to establish a clear separation of authori-

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[275] Mallin (2007, p. 94).
[276] Bettschart and Tschanz (2008, p. 80).
[277] Adams and Fereira (2007, p. 235).
[278] Böckli, Huguenin and Dessemontet (2004).
[279] Denis and McConnell (2003, p. 6).
[280] Mallin (2007, p. 122).
[281] Hilb (2008b, p. 35).
[282] Böckli (2004).
[283] Böckli (1999, p. 6).

ties. However, there still are instances of breaches with regard to the division of powers between the board of directors and executive board. For example, in 2008 the Sanction Commission of the SIX Swiss Exchange "established minor breaches with regard to the division of powers between the board of directors and the executive board" in a case of Vontobel Holding.[284]

5.4. Composition of the Board of Directors

5.4.1. Introduction

Organizational regulations help listed banks to ensure that the board is structured and set up in such a way as to maintain clear separation of powers. However, it is still up to the individual listed bank to decide how to structure the board including the size of the board, number of non-executive directors and their experience and skills. Still, board composition should reflect the nature of the banking industry, the bank's complexity, the competitive environment, and the regulatory and legal environment. The boards of listed banks should not only explicitly state the reasons for the chosen structure, but also establish clear guidance for the composition of the board of directors, including its size and the required skills and competencies from their directors.

5.4.2. Size of the Board of Directors

Choosing the size of its board in is an important decision for the listed bank. The board should be of an appropriate size in order to deliver good performance.[285] According to research, a typical board should be composed of eight to sixteen directors. Compared to European or American counterparts, Swiss companies have smaller boards with an average of nine members.[286] Larger, more mature companies tend toward the higher end of the range, while smaller companies tend toward the lower end. For example, research shows that large banks, due to their complex organizational structures and operations, generally have larger than normal boards. As a result, they often face difficulties in logistics as well as decision making. Although large boards can be managed effectively, it requires careful planning through committee structure.

The appropriate size of a board of a bank depends on the complexity of the bank, but most boards should have no more than 10-12 members, or fewer for smaller institutions.[287] Larger boards benefit from greater breadth of expertise which allows the board

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[284] SIX Exchange Regulation (2010b).
[285] Baysinger and Butler (1985, p. 120).
[286] De Andres, Azofra and Lopez (2005, p. 202).
[287] Sherwin (2003, p. 22).

to deal more effectively with issues confronting the business,[288] while smaller boards benefit from faster decision making. On the other hand, "boards with too many members have problems of coordination, control and flexibility in decision making"[289] and often give excessive control to the CEO, which may not be beneficial for a listed bank in the long run.[290] Research also suggests a negative impact of the board size on a firm's performance as larger boards may suffer from poorer coordination, lack of involvement, communication and flexibility.[291] Still, the inclusion of more directors benefits the monitoring and advisory functions, improves governance and raises returns. Larger boards offer an advantage when it comes to skills and expertise as the pool of directors increases.[292] In contrast, smaller boards tend to be more involved and focused, making it is easier to build trust and work collaboratively, but they may not offer sufficient breadth of expertise and can often be dominated by a strong personality.[293] However, "there is a limit beyond which the coordination, control, and decision-making problems outweigh the benefits."[294] Research states that board performance diminishes significantly when the size of the board reaches nineteen directors. Thus, the boards of directors of listed banks must understand that there is "a trade-off between advantages (monitoring and advising) and disadvantages (control and coordination) when it comes to board size."[295] Also, in order to avoid a deadlock, it is recommended that the board has an odd number of directors.[296]

The dominant belief of 'one-size-fits-all' and the notion of small board sizes are often criticized by research as the nature of the banking industry must be taken into account, as well as the functions of the board and the number and types of the committees must be considered when determining the appropriate size.[297] It is clear that the size of the board represents an important element in the effectiveness of the work done by the board of directors. As a result, the board should determine the appropriate size for itself and the reasons for a particular size when discussing corporate governance principles.

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[288] Colley et al. (2005, p. 20).
[289] Yermack (1996).
[290] Eisenberg, Sundgren and Wells (1998).
[291] De Andres, Azofra and Lopez (2005, p. 202).
[292] Colley et al. (2005, p. 21).
[293] Ibid.
[294] De Andres, Azofra and Lopez (2005, p. 202).
[295] De Andres and Vallelado (2008, p. 2577).
[296] Pedergnana, Müller and Piazza (2009, p. 938).
[297] De Andres and Vallelado (2008, p. 2578).

5.4.3. Executive and Non-Executive Directors

5.4.3.1. Role of Non-Executive Directors

According to literature, the board should comprise of executive and non-executive directors.[298] It is generally agreed that companies should have a mix of insiders and outsiders on the board, plus a component of instrumental directors. This combination represents an appropriate board structure for most corporations. Legal frameworks and codes of best practices also maintain the position that the majority of the board of directors should be composed of non-executive directors, however, the exact composition is contingent upon organizational and environmental factors and it varies from industry to industry.[299] Due to special requirements for separation of management and control that is placed on banks by the Banking Act and FINMA, the board of directors in listed banks in Switzerland should consist only of non-executive directors.

NEDs provide accountability in the boardroom. They support executives in their leadership of the business and monitor and control the conduct of management. They act as counterweights to executive directors ensuring that an individual group or a person can not unduly influence the board’s decisions. NEDs also contribute to the overall leadership and development of the bank.[300] They act as defenders of shareholder interests and they may promote the development of ethical codes of conduct.[301]

However, in order for the NEDs to give advice and scrutinize reports, they must rely on information which at times may be difficult to gather.[302] Non-executive directors depend on the chairman and the executive directors to provide necessary and appropriate information without which the NEDs can not perform their functions effectively.[303] Therefore, it is important that the board of directors of a listed bank informs the NEDs or their responsibilities and rights.

According to research, the board's effectiveness depends not only on the number of the NEDs, but on the behavioral dynamics of a board and the interpersonal and group relationships between executive and non-executive directors.[304] Each of the directors has an important and distinct role to play in the corporate governance of a listed bank. It appears to be that a well-balanced membership of the board of directors is essential in

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[298] Hilb (2008b, p. 59).
[299] Baysinger and Butler (1985, p 121).
[300] Mallin (2007, p. 132).
[301] Rodriguez-Dominguez, Gallego-Alvarez and Garcia-Sanchez (2009, p. 197).
[302] Adams and Ferreira (2007, p. 219).
[303] Ibid.
[304] Roberts, McNulty and Stiles (2005, p. S15).

ensuring the health of the company.[305] As a result, it is important that directors are independent and free of conflict of interest, that they are well qualified for the jobs that they are hired to perform and that they are committed to their tasks and responsibilities.

5.4.3.2. Independence

Director independence is stressed over and over again in academic literature. Independence exists when there are no relationships or circumstances that might affect the director's judgment.[306] Independence is typically defined in law and listing rules and is one of the topics which must be clearly defined by the board of a listed bank. On the whole, the independence of directors remains more loosely defined in Switzerland. According to the Swiss Code, independent non-executive directors are those that never held an executive management post or they were not in the executive post in the last three years.[307] When it comes to committee membership, the Swiss Code offers much more concrete recommendations which are similar to those of the UK.[308]

Furthermore, there are two types of individuals that can be found under the heading of a non-executive director: "those who are genuinely independent of the company; and those who are not independence due to the fact that they are former executives or are closely related to the managing director, chairman or other senior executive, or they are a supplier of key services to the listed bank e.g. insurance broker."[309] However, independence should not compromise expertise and it is just as relevant to have qualified NEDs on the board of a listed bank. It is quite possible that a retired executive director of one bank can in the future provide valuable input at another bank.[310] What is also important is that non-executive directors in listed banks have "independence of mind and spirit, of character and judgment."[311]

[305] Economiesuisse (2007, p. 13).
[306] Mallin (2007, p. 133).
[307] Economiesuisse (2007, p. 16).
[308] Daeniker, Lambert and Vog (2010, p. 3).
[309] Higgs (2002, p. 7).
[310] Pedergnana, Müller and Piazza (2009, p. 931).
[311] Walker (2009, p. 41).

Table 6 presents independence criteria for the members of the board Swiss listed companies and bank boards.

Table 6: Independence Criteria for Directors in the Swiss Listed Companies and Banks

Independence Criteria	
For Listed Companies in	**For Banks in Switzerland**
Clauses with regards to Independence of directors:	A member is considered to be independent if:
• Majority of the BoD should be composed of members who do not perform any line management function within the company • Members of the BoD should be persons with the abilities necessary to ensure an independent decision-making process in a critical exchange of ideas with the EM Rules on independence for committee members: • Independent members are those that have never or were more than three years ago a member of the EM and who have no or comparatively minor business relations with the company. • If there a cross membership, the independence of the respective member should be examined case by case.	• a director is not active in any other function in the institution and has not been active there in the last two years; • a director has not been employed within the last two years in any audit function, • a director has not maintained business relations with the institution which may lead to a conflict of interest, and • a director is not a qualified participant of the institution and does not represent such a participant". Members elected by cantons are considered independent if: • If they are not part of the cantonal or any other administration and do not receive any instructions with regard to their activity in the BoD from their elective body. • At least one third of the members of the BoD should fulfill these independence criteria.

Source: own development based on Swiss Code (2007) and FINMA Circular 08/24.

It has been suggested that more needs to be done to strengthen the definition of independence for non-executive directors and that independence criteria for board committees should even be more stringent.[312] However, due to a high proportion of large multinational companies in Switzerland and a limited number of qualified directors, it is difficult to create a requirement of total independence as this would create an immedi-

[312] Speck and Tanega (2005, p. 477).

ate shortage of qualified NEDs. Nonetheless, FINMA provides its own definition of independence, it applies to banks in Switzerland and the criteria are much more concrete. For example, in Circ. 08/24 it states that "members of the board of directors should structure their personal and business relations so as to avoid possible conflicts of interest with the institution. In banks, at least one third of the board of directors should consist of members who meet the criteria on independence.[313]

While board independence is not an end in itself, it leads to a better functioning board and greater shareholder value.[314] For example, an independent board has fewer conflicts of interest when monitoring the executive management. They are able to challenge, question and probe management, while at the same are able to discuss, test, inform, debate and explore a range of issues affecting a listed bank.[315]

Conflict of interest and independence of members of the board in banking industry has been highlighted by the international community. For example, the Basel Committee recommends that the board of a bank must have "a formal written conflicts of interest policy and an objective compliance process for implementing the policy, which states:

1) a member's duty to avoid to the extent possible activities that could create conflicts of interest or the appearance of conflicts of interest;
2) a review or approval process for members to follow before they engage in certain activities (such as serving on another board) so as to ensure that such activity will not create a conflict of interest;
3) a member's duty to disclose any matter that may result, or has already resulted, in a conflict of interest;
4) a member's responsibility to abstain from voting on any matter where the member may have a conflict of interest or where the member's objectivity or ability to properly fulfill duties to the bank may be otherwise compromised;
5) adequate procedures for transactions with related parties to be made on an arms-length basis; and
6) way in which the board will deal with any non-compliance with the policy."[316]

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[313] Margin 18 of FINMA Circ. 08/24.
[314] Jayne and Rollo (2007, p. 58).
[315] Roberts, McNulty and Stiles (2005, p. S13).
[316] Basel Committee on Banking Supervision (2010a, p. 12).

It is clear that the board of a listed bank should set out clear definitions on director independence and procedures on how it deals with conflicts of interests. Although FINMA and cantonal laws already define independence criteria, it is still important to reinforce these positions in the Internal Guidelines as it is believed that all institutions are prone to conflicts of interest. It is important to communicate the conflict of interest policy to members of the board so they fully understand what is meant by independence. Also, the board should offer guidance to members of the board regarding notifications and voting procedures when a conflict of interest arises. It should also be made clear that the decision whether or not to exclude the director rests with the whole board.[317]

5.4.3.3. Skills and Competencies

The skills and competence levels of the non-executive directors on the board of a listed bank represent an important topic for discussion at board levels. It is clear that the board of a listed bank is responsible for selecting its members provided they meet clear and established criteria and are able to contribute in the boardroom. According to research and recommendations from major international governance codes, the majority of board members of a bank should be independent, experienced members with diversified professional experience.[318]

Non-executive directors that have the right level of expertise are able to enhance the quality of strategic decisions of the board of directors. Qualifications for bank board members should include experience in economics, business, finance and other areas in order to perform board functions effectively.[319] Research shows that insufficient knowledge on the board limits its ability to contribute and monitor executives. For example, when examining the reasons behind failures of banks in the UK, the Turner Review of 2009 found that too many board members of the UK banks lacked sufficient expertise and know-how.[320] Academic research also points to the fact that banks often have not enough board members with sufficient levels of expertise relevant to the company's core operations.[321] Besides, directors may lack fundamental business skills

[317] Pedergnana, Müller and Piazza (2009, p. 928).
[318] Basel Committee on Banking Supervision (2010a).
[319] Böckli (1999, p. 7).
[320] Turner (2009, p. 91).
[321] Schwartz, Dunfree and Kline (2005, p. 86).

and capability to control key risk factors.[322] As a result, these insufficiencies prevent the NEDs from fulfilling their job tasks in a professional way.[323]

Nonetheless, non-executive directors add value to the listed bank by bringing expertise and knowledge of a particular functional area or a technical process, their reputation and their ability to have insight and ask searching questions. Areas of competence must be subject-specific in order to fulfill the intended strategic and controlling functions.[324] It is recommended that NEDs that serve on boards of listed banks must have substantial financial experience in order to be able to make insightful contributions to board discussions. It is expected that NEDs are able to challenge the executive management and that they contribute commonsense. Non-executives bring along the informed detachment alongside sound financial, commercial and industry experience. As a result, qualified and skilled NEDs act as counterweight to what can otherwise become executive or board "groupthink."[325]

NEDs also serve as members of audit, remuneration and nomination committees. Therefore, they should have relevant experience, competencies and skills when it comes to committee membership. For example, it is recommended that non-executives on the audit committee (or at least one of the NEDs) should have audit experience.[326]

Sadly, concerns are still being raised over the technical skill and expertise of NEDs serving on committees of boards at banks, specifically to the extent whether committees have sufficient people with the required technical skills. Therefore, it is recommended that boards of banks have to improve the way in which they select non-executive directors in terms of skill and time commitment.[327] However, some of the listed banks, e.g. listed cantonal banks, are often limited in the choice of non-executive directors, as cantonal authorities require that board members are drawn from the respective cantons and from wide selection of industries. The appointments to the board of a listed cantonal bank might also be politically influenced.[328] This can be quite problematic as board members of a listed bank must have strong financial expertise, risk management and audit experience in order to effectively perform their duties.

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322 Ingley and Van der Walt (2008, p. 66).
323 Hilb (2008b, p. 158).
324 Ibid., p. 82.
325 Walker (2009, p. 97).
326 Von der Crone and Roth (2003, p. 135).
327 Turner (2009, p. 93).
328 Pedergnana, Müller and Piazza (2009, p. 926).

5.4.3.4. Interlocking Relationships

Not only do directors suffer from conflict of interest, but non-independent directors may also lack the time necessary to perform the job. Although research does not state how many other non-executive directorships an individual is allowed to hold, it does agree that directors with too many directorships may lack time and commitment.[329] For example, due to the complexity of banking operations, time requirements for directors serving in audit committees of banks may be substantially higher that those of other companies.

Busy directors can also hurt firm performance. Firms with boards where the majority of non-executive directors "hold three or more directorships have weaker corporate governance, lower market to book ratios and weaker profitability."[330] Others, in contrast, argue that multiple directorships may be perfectively feasible as it depends on the time that the individual has available. Still, multiple directorships can lead to the problem of interlocking relationships, which might compromise independence.[331] "Multiple directorships adversely impact board committee memberships and thereby dilute board members' ability to add value through monitoring and advisory services." [332] This is a substantial problem in Swiss companies, as multiple directorships are prevalent. As a result, Internal Guidelines on Corporate Governance can help the board to establish maximum limit of outside directorships and set time requirements for all directors.

5.5. Director Access to Information

While one of the important components in the corporate governance mechanism is the involvement of non-executive directors, the value of their contributions depends on the quality of information they are presented with.

Information asymmetry is a significant problem between executive and non-executive members.[333] While management develops an intimate knowledge of the bank, non-executive directors are faced with a disadvantage as they rely on management to provide them with necessary and appropriate information.[334] It is a fact that NEDs are of-

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[329] Ruigrok, Peck and Keller (2006, p. 1207).
[330] Fich and Shivdasani (2006).
[331] Mallin (2007, p. 133).
[332] Ruigrok, Peck and Keller (2006).
[333] Hooghiemstra and van Manen (2004, p. 317).
[334] Hendry and Kiel (2004, p. 502).

ten limited in their ability to monitor and provide advice as they depend on the CEO with respect to the information they need in order to perform their tasks.[335]

Because banking operations are already opaque in nature, it makes it even more difficult for outsiders to monitor bank's activities. Thus, provision of timely, accurate, reliable and appropriate information to members of the board is highly important. The chairman of a bank can request the attendance of management members to the BoD meeting in order to provide particular insights into the operations of a bank. It is also recommended that non-executive directors are allowed access to third party expertise and access to employees in order to gain a deeper understanding of the bank's activities and operations. However, the chairman is not the only one who is responsible that directors have access to all the necessary information that they need.[336] This responsibility is shared with the company secretary who also has an important role in the provision of information to non-executive directors.[337] In turn, NEDs themselves have responsibility in proving constructive feedback to the chairman if the information they have received is not sufficient, not timely or inappropriate. This information can later be used as part of the annual evaluation of the bank board and its performance.[338]

Therefore, it is imperative that the board of directors reviews the provisions with regards to director access to information and provides clear guidance as to how information should flow between the executive and non-executive directors and how NEDs can request information during and outside meetings.

5.6. Chairman

5.6.1. Tasks and Responsibilities of the Chairman

The chairman is an important figure in corporate governance, especially when it comes to governance of listed banks. Both the chairman and the CEO have a responsibility to ensure that the bank is working to a strategy which is understood inside and outside the company. However, the chairman is responsible for leading the board, while the CEO is responsible for leading the company's management.[339]

The board of a listed bank should establish clear distinction of responsibilities between the CEO and the chairman. While the chairman is responsible for seeing that the bank

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[335] Lorsch (1995, p. 111).
[336] Mallin (2007, p. 126).
[337] Higgs (2003, p. 50).
[338] Ibid., p. 51.
[339] Crawford (2007, p. 2).

has an identifiable sense of purpose and that this purpose is regularly reviewed, he is also responsible for the work of the board of directors. It is the job of the chairman to get the best out of the members of the board.[340] To be specific, "the chairman is responsible for the running of the board and for ensuring that the board meets frequently, that directors have access to all the information they need to make an informed contribution at board meetings."[341] This is why the board of directors appoints the chairman to the chair and it is the one responsibility which they cannot share or delegate.[342] Key roles and responsibilities of the chairman are presented in Table 7.

Table 7: Summary of Chairman's Responsibilities

Chairman's Roles and Responsibilities
Conduct the BoD in the company's interest
Ensure that board meetings are run efficiently and effectively
Ensure that all directors have access to relevant and timely information
Set the agenda and exercise the degree of control to complete the board agenda
Ensure the effective functioning of board committees
Selection and choice of chief executive
Succession planning
Represent the board between meetings to CEO and executive management
Composition of the board and the way in which it operates
Represent the company externally to shareholders, media and financial institutions

Source: own development based on Cadbury (2002) and Economiesuisse (2007).

However, legislation tends to be primarily directed at directors. The chairman has no legal position. For example, chairmen are barely even mentioned in the Swiss Code of Obligations. Nonetheless, there is an admission that the chairman plays an important role in governance mechanisms. Recent changes in the UK Corporate Governance Code put greater emphasis on the role of the chairman. Continuity, skill and competence of the chairman are vital to the contribution which boards make to their banks. Chairmanship requires a person to have a strategic sense, the ability to analyze the competitive environment and the capacity to stand back from the daily business.[343] There is now greater demand for the independence of the chairman. As a result, members of the board of a listed bank must determine what kind of a chairman they need.

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[340] Cadbury (1992, p. 78).
[341] Mallin (2007, p. 126).
[342] Cadbury (2002, p. 33).
[343] Ibid., p. 126.

5.6.2. Independence

The Banking Act technically prevents situations of **CEO-Chairman duality** because banks are required to adopt a two-tier board structure, with a separate management and supervisory board.[344] According to law, the CEO can not at the same time be the chairman of the bank. However, while situations of CEO-Chairman duality are prohibited, it is still possible for the CEO-Chairman duality to take place through bank holding companies. For example, Oswald Grübel, the CEO of Credit Suisse Group (CSG) from 2003 to 2007, also held the post of chairman at Winterthur Group, an insurance arm of CSG, from 2005.[345]

CEO-Chairman duality represents bad corporate governance and most academic literature criticizes it.[346] It gives management the "de facto" control and limits independent control and transparency.[347] CEO-Chairman duality concentrates power in hands of the management and leads to an unrestricted authority of the CEO.[348] For example, CEO-Chairman duality can severely limit the directors' access to information. It is the chairman who provides access to and controls the flow of information in the board.[349] He or she is the only board member who has direct and unlimited access to any information and documents. The CEO, on the other hand, may hide or limit access to it. Research shows that the non-executive directors' inability to access all the necessary information results in poor risk management at the board of directors of banking institutions.[350] It is crucial that that NEDs get complete information in a timely manner[351] in order to effectively monitor and control management. Since situations of CEO-Chairman duality often prevent free and complete flow of information, the board of directors of a listed bank must lay down clear rules and prevent the CEO from becoming the chairman of a company through a bank holding company structure, as it represents bad corporate governance.

Another governance problem occurring in listed banks is the **automatic appointment of the CEO to the post of the chairman** or a director upon retirement. Unlike the CEO-Chairman duality which is not allowed under the Banking Act, it is quite common that Swiss companies promote the CEO to the position of the chairman upon retire-

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[344] Art. 7 of Banking Act.
[345] Credit Suisse (2005).
[346] Von der Crone (2002, p. 5).
[347] Hofstetter (2002, p. 37).
[348] Böckli (2002, p. 7).
[349] Müller (2008, p. 19).
[350] Turner (2009).
[351] Von der Crone (2002, p. 9).

ment.[352] This type of succession planning is an inherent problem in Switzerland as there are simply not enough qualified people available. It is also part of the tradition and is frequently an automatic and natural process in many companies.[353] For example, Herbert Scheidt, the former CEO of Vontobel Group, stepped down in 2010 and was subsequently elected to the post of the chairman of the board in 2011.[354] HSBC also has a long-standing history of promoting the CEO to the post of a chair upon retirement. When Mr. Geoghegan, the CEO, was not asked to become the chairman, he even threatened to resign."[355]

In some instances the promotion of the CEO to the post of a chairman can lead to abuse of power (moral hazard).[356] For example, when UBS's Marcel Ospel left the CEO position, he became the chairman when his predecessor Alex Krauer retired at the age of 70.[357] It is widely agreed that Marcel Ospel was a competent banker, yet, he made many strategic and operational decisions without even consulting the board, for example, when he plunged to support the failing Swissair. While Arnold Luqman was the chief executive at the time, many now say that the CEO was only a notional director and was not really in charge of anything. Marcel Ospel ran the bank by concentrating the power in his hands. [358]

A "retired CEO as a chairman" can lead to a negative impact on board strategic decision making and may reduce the ability of the board to monitor management.[359] Continuing the previous example, UBS was practically run by a trio of former executives in the run up to the financial crisis. The trio was comprised of Marcel Ospel, Stephen Haeringer, a former deputy CEO and the vice-chairman of the board and Marco Suter, a Chief Credit Officer and vice chairman with special focus on credit risk.[360] The chairman ran the bank through the Chairman's Office making not only strategic but also risk management decisions.[361] This contrasts strongly with the notion that the chairman should be capable of leading the board and not running the bank.[362]

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[352] Böckli (2002, p. 8).
[353] Böckli (2000, p. 138).
[354] Neue Zürcher Zeitung (2010b).
[355] Farrell (2010).
[356] Baliga et al. (1996, p. 51).
[357] Waelchli (2008, p. 9).
[358] Dey (2008).
[359] Ruigrok, Peck and Keller (2006, p. 24).
[360] UBS (2003).
[361] Dey (2008).
[362] Stadler (2009, p. 2).

Research shows that investors show preference for an independent chairman. An independent chairman is part of good corporate governance, as he or she can promote cultural change at the board. On the other hand, supporters of 'the promotion from the CEO to the Chair' practice argue that separation of the two roles is often a costly and difficult process. Thus, a way to reduce the costs and loss of knowledge is to keep the former CEO in the position of chairman indefinitely. For example, one study found when the CEO succeeds to the chair's post, the performance of the firm is better than for firms where the CEO left the company.[363] In situations when the CEO becomes the chairman, it creates continuity for the firm.[364] While a bank retains specialized knowledge regarding strategic challenges and opportunities and brings additional value to the chairman's job, this automatic succession ultimately causes conflicts of interest and often concentrates power in the hands of the chairman. The promotion of the CEO to the post of the chairman or even to a post of a non-executive director is a corporate governance problem as it may hinder the new CEO in making changes to the bank. The CEO becomes the CEO in name only.

In accordance with Art 716a of the CO, the most important and non-transferable functions of the board of directors are to determine and monitor strategy. Thus, the chairman's role is to initiate strategic thinking and give impetus to change.[365] 'Passing the baton' practice can often be an interim process by allowing the old CEO to pass relevant information to the new CEO during the probationary period.[366] Beyond this, a former CEO on the board of a bank exerts too much influence and undermines the ability of the board to monitor and supervise the management.

A non-independent chairman also presents a corporate governance problem. For example, Josef Meier, executive board member of Credit Suisse, is also the chairman of the board of NAB, a daughter company of CS.[367] According to FINMA requirements on independence, Mr. Meier can no longer considered to be independent. It is a problem when a former director or an existing director becomes a member of the board. While the knowledge and experience of may be useful for other banks, retaining the CEO or an executive director as a non-executive director or the chairman causes conflicts of

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[363] Brickley et al. (1997, p. 205).
[364] Von der Crone (2002, p. 8).
[365] Hilb (2008b, p. 100).
[366] Brickley et al. (1997, p. 194).
[367] Neue Aaraguer Bank (2011).

interest and diminishes his/her ability to monitor management. In situations like this, the chairman and a director are no longer independent.[368]

Furthermore, the depth and range of the responsibilities require significant level of skill from the chairman, but also sufficient **time commitment** is needed to perform the duties effectively. However, studies on Swiss companies show too many chairmen in Switzerland accumulate too many board memberships.[369] This is problematic for the chairman of major banks as they are expected to "commit a substantial proportion of his or her time, probably at least around two-thirds, to the business of the bank. In the event of need, the bank chairmanship role would have priority over any other business commitment. Depending on the balance and nature of their business, the required time commitment should be proportionately less for the chairman of a less complex or smaller bank."[370]

Still, a bank should establish clear rules when it comes to the responsibilities of the chairman, skills and independence and time commitment requirements. The board's corporate governance principles should be such so as to prevent situations in which the CEO becomes the chairman of the board of the listed bank. Furthermore, corporate governance principles should ensure that independence rules prevent executive managers from taking on membership of the board of directors of the same bank at the same time or immediately after retirement from the executive post.

5.7. Vice Chairman and Senior Independent Director

A vice chairman or a senior independent director (SID) shares the work which falls to the head of the bank. They should be selected from the pool of non-executive directors and should be independent, free of conflict of interest. In their vice chairman role, they often chair the remuneration committee and lead over matters such as the chairman's succession. They play an important role in facilitating the work of other non-executive directors, enabling them to discuss openly concerns about the workings of the board. According to literature, a vice chairman provides an important point of contact in absence of the chairman.[371]

Senior independent directors are much more common in American and UK boards. It is more common to find a vice chairman on the boards of listed banks in Switzerland.

[368] Basel Committee on Banking Supervision (2010a, p.10).
[369] Heidrick and Struggles International (2009).
[370] Walker (2009, p. 52).
[371] Cadbury (2002, p. 123).

SIDs (or lead directors) are also expected to ease tensions and to "take initiative in discussion with the chairman or other board members if the board is not functioning effectively or when the chairman is unable (or unwilling) to effectively appropriate change."[372] A senior independent director is also useful in situations when the CEO and the chairman find each other at odds. Here, the SID must provide an alternative view or solution thus avoiding win/loose situations. A SID is also expected to complete periodic performance appraisals of the bank's chairman, a job that requires collection and collation of views of other non-executive directors. This is quite crucial as open and constructive feedback is useful in improving the overall performance of the board. A senior independent director should also make him- or herself available to major shareholders when necessary.[373]

Based on the review of annual reports of listed banks, only a handful of boards had a senior independent director. For example, the board of Julius Bär has a lead director.[374] Some go even further; the board of the UBS has both posts that of the SID and that of an independent vice chairman.[375] While UBS does a good job at outlining the responsibilities and expectations of its vice chairman and the SID, other listed banks only briefly mention the existence of the vice chairman and do not attempt to offer a great amount of detail when it comes to tasks and responsibilities of the vice chairman. Table 8 on the next page presents an overview of the role and expectations of the posts of the vice chairman and the SID.

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[372] Walker (2010, p. 55).
[373] Cadbury (2002, p. 125).
[374] Julius Bär (2011).
[375] UBS (2009b, p. 52).

Table 8: Role Profile and Expectations of the Vice Chairman and the SID

Role and Expectations	
Vice Chairman is required to:	**Senior Independent Director is required to:**
• lead the Board of Directors in the absence of the Chairman; • provide support and advice to the Chairman; • undertake such specific additional duties or functions as the Board may entrust to him from time to time.	• create an appropriate information flow and communication system among the independent Board members; • collect and relay any issues or concerns of independent Board members to the Chairman; • facilitate communication between shareholders and independent Board members; • be available to shareholders if they wish to conduct discussions with an independent Board member; • act as a point of contact for shareholders and stakeholders with concerns that have not been resolved or are not appropriately raised through the normal channels; • handle communication on behalf of the independent Board members.

Source: own development based on UBS (2010).

The ability to define and clearly communicate tasks and responsibilities of the vice chairman and senior independent director in the Internal Guidelines will enable these individuals to effectively perform their rules, which at times may involve sensitive issues.[376]

5.8. Board Committees

5.8.1. Overview of Committees of the Board of Directors

According to FINMA Circular 08/24, the board of directors must have a clear committee structure. The Basel Committee's Principles on Enhancing Corporate Governance, Final NYSE Corporate Governance Rules, KING III report and the Central Bank of Ireland also recommended that the board of directors must establish committee charters or write down the terms of references for each of the standing committees.

Committees are important. They perform defined tasks and can provide better focus on the issue at hand. Committees can carry out an in-depth analysis of specific business or

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[376] Walker (2009, p. 56).

personal matters. Also, they help the board to exercise its supervisory function. Committees comprise mostly of non-executive directors and as a result committees increase objectivity of the board.[377] However, committees should not make the final decisions, but should investigate an issue and report to the board on their activities and findings. It is important to remember that the overall responsibility for duties delegated to the committees remains with the board of directors.[378]

The Swiss Code recommends that the board of directors of a listed company have at least an audit committee, a compensation committee and a nomination committee. These recommendations are similar to those made by Cadbury and Higgs reports.[379] It is now also recommended that a board of a bank should establish a separate risk committee.[380] From time to time, the board may also wish to have ad-hoc or working committees. Ad-hoc committees are designated to complete or oversee a particular task. They are often temporary and once the task is complete, working committees are no longer required. At the end, the board of directors of a listed bank is free to establish as many committees as it wishes. According to literature, there is evidence that listed banks in Switzerland have the recommended audit, compensation and nomination committees. However, there is also evidence that listed banks have other standing committees such as a corporate social responsibility, chairman's and nominating, governance, strategy, board and credit committees. For example, Banque Cantonale Vaudoise has a combined audit and risk committee, a combined remuneration and nomination committee, and an innovation and opportunities committee and other ad-hoc committees.[381] While audit, risk, remuneration and nomination committees are part of good governance, experience shows that a chairman's Committee, with the combined risk and audit functions, may be detrimental to the effective functioning of the board.[382]

There is evidence that board of directors vary significantly in the number and type of committees they establish. Not only this, but committee names vary greatly. From the standard description it is not always clear what is the scope of committee responsibilities. As a result, international best practice and empirical studies recommend that the board of directors establishes work methods for each committee[383] and writes guide-

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[377] Charkham (2005).
[378] Economiesuisse (2007, p. 16).
[379] Stiles and Taylor (2001, p. 86).
[380] Walker (2009).
[381] Banque Cantonale Vaudoise (2010).
[382] Dey (2008).
[383] Sec. 3.4.3 of DCG.

lines for the committees informing members of the board, management and other stakeholders which committees have which tasks and authorities.[384]

5.8.2. Audit Committee

The board of directors is responsible for the bank's system of internal control. Internal control is a process involving a control of environment and activities of the company, risk assessment, information and communication, and monitoring. It also consists of the policies, processes, tasks and behaviors that "will provide assurance regarding the achievement of corporate objectives in: (1) the effectiveness and efficiency of operations, (2) the reliability of financial reporting, and (3) compliance with applicable laws and regulations."[385] The Swiss Code of Best Practice in Corporate Governance recommends the company should set up an internal audit function which should report to the audit committee or to the chairman of the board.[386]

FINMA also requires that a financial institution, of a certain size and complexity, sets up an audit committee. To be exact, banks that have a balance sheet of over 5 million Swiss Francs or those that are listed on the exchange must set up an audit committee. If the financial institution or a bank does not have an audit committee, then two independent members of the board must perform these duties. This must also be explained in the annual report.[387] In addition, cross-listed Swiss banks must adhere to audit requirements of other countries e.g. banks listed on the NYSE must be in compliance with the Sarbanes Oxley Act. According to the SOX, an audit committee provides independent oversight into bank's accounting and financial reporting, and the internal and external audits. The mandate may also cover areas of governance, ethics, internal controls, and compensatory reviews, board of directors and top executive performance, protection of employees raising concerns about serious accounting or auditing irregularities.[388] In addition, an audit committee includes selection, appointment and setting of remuneration of the external audit firm; assurance that the external audit firm is independent; establishment of the scope, and review of the results, of the annual external audit.[389]

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[384] Margin 31 of FINMA Circ. 08/24.
[385] Eisenberg (1997, p. 237).
[386] Economiesuisse (2007, p. 15).
[387] FINMA-Circ. 08/24.
[388] Sarbanes Oxley Toolkit (2002).
[389] SEC (2007).

The following table summarizes key tasks and responsibilities of the audit committee of listed firms in Switzerland.

Table 9: Tasks and Responsibilities of the Audit Committee

Audit Committee – Tasks and Responsibilities
Evaluate the effectiveness of the external audit
Assess risk management within the organization
Examine the adequacy of internal control system
Evaluate the effectiveness of the internal audit
Assess financial and other reports
Check the independence of the external auditors
Check the independence and resources of the internal audit
Evaluate and ensure the quality of accounting principles
Evaluate the effectiveness of the compliance systems
Secure the coordination between internal and external audit
Check the compensation to external auditors

Source: Canepa and Ruigrok (2005, p. 14).

The quality of an audit committee encompasses three dimensions: size, independence, and expertise. For example, chairmen of banking institutions declare that the quality of an audit committee is highly dependent upon the independence of its members.[390] When it comes to size and independence, an audit committee should consist of at least three members, all of which should be independent of management and should fulfill criteria set by law. Specifically, no committee member may serve on an audit committee of another listed company without approval from the board of directors. Last but not least, the majority of committee members should have financial expertise acquired through education and experience. Committee members should also be proficient in risk management and in corporate governance matters.[391] In addition, margin 38 of FINMA Circular 08/24 it states that audit committee members must have sound knowledge and experience of finance and accounting.

In some cases, in order to improve audit committee quality, it is recommended that an audit committee should consist solely of non-executive directors as they are important in reducing agency costs.[392] While international recommendations confirm the need for

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[390] Verschoor (1993, p. 59).
[391] Economiesuisse (2007, p. 16).
[392] Xie, Davidson and DaDalt (2001, p. 8).

greater presence of non-executives, critiques argue that too many outsiders can have a negative impact on performance as NEDs may not be as involved in the company as executive directors.[393] Generally, non-executives have a much greater difficulty detecting and realizing problems. In addition, "independence" does not necessarily mean "independent at heart" because it is common practice for audit committee members to be nominated by insiders.[394] However, margins 38 and 40 of the FINMA Circular 08/24 place greater requirements for independence on audit committee members and stipulates that a chairman should not be on the audit committee to ensure complete independence of the committee.[395]

According to research, many audit committee members of listed companies in Switzerland serve on multiple boards. While this may be helpful in distributing audit committee expertise and innovative practices leading to improvement of quality, it may also have a negative impact on committee performance.[396] It must be pointed out that membership on the audit committee may require quite substantial time commitments, especially in larger listed banks. Thus, multiple directorships are inadvisable.

Furthermore, many audit committees in banks are also responsible for overseeing risk management.[397] Therefore, the skills sets of NEDs should not only encompass financial expertise but should also cover enterprise-wide issues, making it possible for non-executive directors to review financial and risk management systems.[398] Thus, it is imperative that the committee members have sufficient capabilities and skill needed to carry out the relevant committee functions with regards to identifying and managing enterprise-wide risk.[399] However, recent reports and research on banking industry call for a separation of risk and audit functions. Research suggests that banks must have a separate risk committee as audit focuses on the past, while risk focuses on the future.[400]

5.8.3. Risk Committee

A risk committee is becoming increasingly commonplace on boards of directors across the globe. Its functions include "oversight of senior management's activities in managing credit, market, liquidity, operational, compliance, reputational and other risks of the

[393] Kuschnik (2008 p. 72).
[394] Ibid., p. 92.
[395] Margin 30 of FINMA-Circ. 08/24.
[396] Canepa and Ruigrok (2005, p. 12).
[397] Spira and Bender (2004, p. 493).
[398] McNulty et al. (2003, p. 38).
[399] Canepa and Ruigrok (2005, p. 14).
[400] Walker (2009).

bank."[401] Although the Swiss Code does not recommend a separate risk committee, some of the listed banks in Switzerland already have separate risk committees, e.g. UBS, Credit Suisse and the Swiss National Bank. For example, at SNB risk committee comprises of three members of the Bank Council.[402] On the other hand, other listed banks combine the functions of audit and risk. For example, VP Bank AG[403] and Liechtensteinische Landesbank AG[404] have a combined audit and risk committee. Others include audit or risk management function in the responsibilities of the Chairman's Committee.

Still, it is advisable that a listed bank or a financial institution has a separate risk committee.[405] A risk committee is better geared at bringing attention to risk issues at the board level. Separation of audit and risk functions brings benefits because, as stated before, an audit committee tends focus on the past, while the risk committee looks for the future.

According to research, "a risk committee should have a responsibility for oversight." It should also "advice the board on the firm's current risk exposures and future risk strategy, including capital and liquidity management."[406] For example, a risk committee should be involved in discussions over major structural changes in a firm such as a merger or a disposal. It is also a matter of good practice for a risk committee to carry out a due diligence appraisal focusing on risks and the implications for the firm's risk appetite.[407] In addition, a risk committee of a listed bank in Switzerland must monitor enterprise-wide risk. It should also set the overall risk policy, risk appetite and risk boundaries of the listed bank.[408] A separate risk committee is also better geared for examining of "how the actual risk appetite is assessed over time, covering both banking and trading book exposures and the effectiveness of the risk management process over such exposures."[409] Also, FINMA states that a separate risk committee supports the assessment of the different risks which a large bank is exposed to.[410]

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[401] Basel (2006, p. 8).
[402] Swiss National Bank (n.d).
[403] VP Bank (2009, p. 54).
[404] Liechtensteinische Landesbank AG (2009, p. 63).
[405] Walker (2009).
[406] Blum (2009).
[407] Ibid.
[408] Pedergnana, Müller and Piazza (2009, p. 923).
[409] Walker (2009).
[410] FINMA Circ. 10/1.

However, a risk committee should not make decisions with regards to risk, but should present its recommendations to the board of directors and the whole board must make a decision. This was not the case in the UBS when Marcel Ospel was the chairman. It is believed that the over-involvement and lack of independence of the chairman's committee has led to the bank's overexposure to the sub-prime mortgage crisis.[411]

The skills of risk committee members are very important. A risk committee should, like the audit committee, be chaired by a non-executive director and the majority of members should be non-executive directors. Its members should comprehend the risks involved in banking, and this necessitates quite a high level of financial expertise and the ability to seek external professional advice where necessary.[412] It is important that a member of a risk committee is capable of making an independent picture of the risk situation for him or herself.

Finally, the "risk committee should have an appropriate overlap with the audit committee, in particular involving participation by the chairman of the audit committee. The precise allocation of responsibilities between the two committees will be decided by individual boards but this should err on the side of overlap rather than underlap on questions as critical as the capability of the executive team to manage and control risks within the agreed parameters."[413]

To maintain an effective and efficient risk management, boards of listed banks must determine whether a separate risk committee is needed. If so, the board must clearly define its functions and responsibilities, its membership, frequency of meetings, its mandate and whether and how external advice will be taken.[414]

5.8.4. Remuneration Committee

The topic of remuneration came into the spotlight during the financial crisis. For example, the experience of the financial crisis has shown that remuneration schemes play an important role in the risk management in financial institutions. As a result, FINMA Circular 2010/1 on remuneration schemes gives greater responsibility on boards of directors for the remuneration policy of the entire financial institution. The board of directors is now responsible for the remuneration policy of the entire financial institution and will have to publish a remuneration report.

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[411] Stadler (2009).
[412] Mallin (2007, p. 131).
[413] Walker (2009, p. 96).
[414] Ibid., p. 105.

The Swiss Code recommends that a remuneration committee is set up to provide "an oversight of the remuneration of top management and other key personnel, ensuring that compensation is consistent with the bank's culture, objectives, strategy and its control environment."[415] Research also highlights that a remuneration committee plays a much more advanced part in the corporate governance structure of a company because the remit of a remuneration committee covers the over-arching principles and parameters of the remuneration policy on a bank-wide basis.[416]

FINMA Circular 2010/1 makes it clear that the board and the remuneration committee members have to "deal with schemes that are becoming more and more intricate."[417] There is a great demand to align executive compensation policy with company performance and objectives as well as the need comply with regulatory provisions[418] and to develop remuneration schemes that include long-term perspectives.[419]

As a result, members of the remuneration committee are required to make extensive time commitments. Many remuneration committees meet more frequently than audit committees, although current pressures on the latter may lead them to meet more frequently. There is also a great need for members to master complex information. For example, committee members must have the necessary skills in order to read final financial statements as these drive the level of an annual performance award.[420] Members of a remuneration committee should have a sufficient understanding of a bank's approach to pay and employment conditions to ensure that it is adopting a coherent approach to remuneration in respect of all employees.[421] Members of the remuneration committee should comprise of a majority of non-executive directors. However, it is possible for remuneration consultants to attend meetings when required.[422]

In Swiss listed banks, a remuneration committee is often combined with the nomination committee, as the functions can overlap. In cases like this, it is especially important that the board of directors explains its committee structure and includes basic information with regards to remit, composition, skills and time commitment required for committee membership.

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[415] Basel Committee on Banking Supervision (2006, p. 8).
[416] Walker (2009, p.109).
[417] Spira and Bender (2004, p. 494).
[418] Ibid.
[419] Carson (2002, p.14).
[420] Spira and Bender (2004, p. 494).
[421] Walker (2009, p. 110).
[422] Spira and Bender (2004, p. 495).

5.8.5. Nomination Committee

The Swiss Code recommends the board of directors of listed companies appoint a nomination committee. Research suggests that a nomination committee is often formed for reasons of board efficiency and in order to mitigate some of the agency costs.[423] The committee provides an assessment of board effectiveness and directs the process of board renewal. Furthermore, the committee is responsible for the evaluation of the existent balance of skills, knowledge and expertise of members of the board.[424]

Although the nomination committee holds an overall responsibility for searching and identifying candidates for future posts, it acts along with the board on developing succession plans for the bank. As part of succession planning, the committee's role is to note challenges that may come up and identify possible gaps in skills and know-how that would need to be filled with new appointments. Succession planning should not be underestimated and thus should be planned quite early and carefully.[425] The nomination committee may also carry functions of the governance committee. As a result, the nomination committee may be involved in internal corporate governance matters such as drafting a code of ethics and/or a code of conduct, and in development of corporate governance policy and communication of it to shareholders.[426]

Care and attention should be given to the responsibilities, remit, and processes of the nomination committee at a bank. While many listed banks have a separate nomination and compensation committee, research supports that it may be useful to have an integrated committee which unites nomination and remuneration of the board and top management. If a bank wants to keep the nomination and compensation committees separate, it is suggested that the same members be nominated to each committee.[427] Similar to other committees, a majority of the nomination committee should be comprised of independent non-executive.[428] The chair may be the chairman of the bank or an independent non-executive director. The committee should be independent from political pressures and should search and identify best possible candidates for future posts at the bank, something which is not always the case in listed cantonal banks.[429]

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[423] Carson (2002, p.13).
[424] Basel Committee on Banking Supervision (2006, p. 8).
[425] IFPM (2009, p. 8).
[426] Rezaee (2007, p. 144).
[427] Hilb (2008b, p. 97).
[428] Mallin (2007, p. 130).
[429] Pedergnana, Müller and Piazza (2009).

5.8.6. Other Standing and Ad-Hoc Committees

Besides the recommended audit, nomination, remuneration and risk committees, boards of listed banks may have various other standing and ad-hoc committees.

According to Basel Committee on Banking Supervision, it is common for banks to have a "nominating, human resources and governance committee" and/or an "ethics and compliance committee", which tend to deal with nominations, corporate governance and compliance matters in a bank.[430] For example, Credit Suisse has the Chairman's and Governance Committee (CGC), which combines advisory, governance and nominating functions. Specifically, the committee meets in preparation for board meetings. It is also responsible for evaluation of the independence of board members. The CGC identifies, recruits and nominates members to the board and supervises annual assessment of the chairman, the CEO and executive management. In addition, the CGC is responsible for the development and revision process of the bank's Corporate Governance Guidelines. It also carries out a periodic review of other governance documents within the bank to ensure that they are up-to-date and complete. However, the committee does not make decisions in isolation, but rather reports the findings to the whole board for final decision.[431]

Some banks also have a separate credit committee with deals with loan decisions to clients. This practice is particularly common in cantonal banks, many of which are listed on the SIX Swiss Exchange. The credit committee is often called a bank, board or an executive committee. This committee typically combines strategy and risk functions and may also include some of the operational decisions such as loan decisions. For example, the Appenzeller Kantonalbank (APPKB) has a bank committee which monitors the bank's compliance with regulatory and statutory rules. Its remit also includes credit decisions to large clients.[432] Basellandschaftliche Kantonalbank (BLKB) also has an executive committee which "possesses the highest level of credit-signing" by making loan decisions, including decisions on operational activities, specifically credit loans, credit loans which may affect reputation of the bank, and changes in variable interest rate of mortgages. Additionally, the BLKB's executive committee reviews corporate policy and strategy of the bank on behalf of the board.[433]

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[430] Basel Committee on Banking Supervision (2010a, p. 12).
[431] Credit Suisse (2010).
[432] Appenzeller Kantonalbank (2009, p. 19).
[433] Basellandschaftliche Kantonalbank (2005, p. 5).

Strategy committees are also frequent. For example, the strategy committee of Banque Cantonale Vaudoise (BCV) was established in 2009 to review bank's strategy and to ensure that a bank remains a customer-oriented bank. Also, the committee oversees the information technology strategy of the bank.[434] On the other hand, the strategy committee of the LLB is responsible for clarification and development of strategy for private banking in the Swiss market.[435] The strategy committee of the GKB deals with strategic and organizational issues, including enterprise wide compensation and human resources policy. Furthermore, this committee carries out an external environment analysis needed for development of bank's strategy, sets guidelines for the overall strategy planning at the bank and handles the overall remuneration policy and regulatory questions.[436]

While many of listed banks have good committee structures, some committees and their responsibilities pose concern for corporate governance. For example, prior to the financial crisis of 2008-2009, the board of directors of UBS had a Chairman's Office, a committee chaired by the chairman Marcel Ospel. The committee's responsibilities included many of the strategic, risk and operational decisions and on many of occasions the committee made decisions without consulting the whole board. Membership of the committee was limited to three people. While this committee has now been dismantled, it is important to point out the associated corporate governance problems.[437]

Committees should deal with a specific task but should not be involved in operational decisions as this responsibility lies with the executive management.[438] Although the duty of the board is to provide ultimate management of a bank, it does not mean it should micro-manage. The role of the board is to monitor and supervise executive management and not act as management. Thus, operational decisions, especially those dealing with credit loans, should be outside the domain of the board. The board can then veto a particular loan decision proposed by management, if the board feels the loan carries too much financial or reputation risk. In addition, while the board provides strategic direction to the bank,[439] its committees should not make strategy decisions nor should they make decisions over risk without consulting the whole board.

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[434] Banque Cantonale Vaudoise (2010).
[435] Liechtensteinische Landesbank (2009, p. 8).
[436] Graubündner Kantonalbank (2009, p. 52).
[437] Stadler (2009).
[438] Pedergnana, Müller and Piazza (2009, p. 927).
[439] Hilb (2008a, p. 9).

To conclude, board committees are an important part of good governance, however, practice shows that not all listed banks adhere to the recommendations of the Swiss Code of Best Practice. It is recommended that listed banks have a separate audit, nomination and remuneration committees and it is also advisable that large listed banks have separate risk committees. Instead of various standing committees on information technology, strategy and CSR, a board of directors should form ad-hoc or working group committees as they are better geared at examining a particular issue over a fixed period of time. It is also easier to dismantle a working group.

6. Special Responsibilities of the Board of Directors

6.1. Director Compensation

In section 5.8.4, the researcher established that the board of directors holds the overall responsibility for setting the appropriate level of compensation for top management and establishing of the overall compensation principles in a listed bank.[440] According to FINMA Circular 2010/1, the board is also responsible for reporting on the remuneration policy. In developing director compensation, the board must develop a remuneration policy and design pay packages that are aligned with the performance of a listed bank.

Research shows that executive compensation is part of the agency problem because present day pay packages tend to promote excessive risk taking and favor short-term financial achievements. At the same time, pay arrangements exist to remedy agency problems. By giving the board a final say on executive and employee compensation, a listed bank ensures that the designed compensation schedules and policies provide managers with sufficient and appropriate incentives to maximize shareholder value. The remuneration policy should take into consideration employment conditions and also adopt a coherent and consistent approach to remuneration in respect of all employees and not just executives.[441] While it is generally agreed that pay packages should be attractive enough to draw qualified managers to the bank, managers should be paid for their performance.

Despite a significant degree of variation in director compensation practices from one listed bank to another, basic components are universal. They include a base salary, an annual bonus tied to performance, stock options, and long-term incentive plans. In ad-

[440] FINMA Circ. 10/1.
[441] Bebchuk and Fried (2003, p. 73).

dition, executive directors also receive special benefits as part of their pay package including life insurance and supplemental executive retirement plans.[442]

However, the level of compensation and the extent of pay for performance for CEOs and other senior managers of listed banks have been controversial for some time.[443] Although it is recognized that banks need to attract talented people, there was considerable public outcry when UBS paid huge bonuses to its key staff despite massive losses in 2009. Pay culture of banks is not only under public scrutiny, but lawmakers in Switzerland are discussing new salary rules aimed at capping pay and giving shareholders say on pay.[444] Remuneration in banks is now also under regulatory supervision of FINMA.[445] In addition, FINMA Circular 2010/1 demands greater transparency from the banks and requires that a remuneration report is published. While compliance with requirements in the circular is only mandatory for the largest banks in Switzerland, FINMA reserves the right to oversee and inspect remuneration schemes of other banks.

Consequently, it is clear the board of directors plays an important role in the remuneration in a listed bank. It is important that a board of directors establishes how it approves compensation and benefits principles, including the way in which it sets performance objectives and reviews individual performance of its directors, how it reviews compensation risk and sets the overall compensation policy of a bank. These aspects must be clearly communicated not only to the shareholders, but the board should also develop internal guidance to members of the board as to how decision making over compensation takes place and who makes decisions on compensation in the bank.

6.2. Succession Planning

Succession planning is one of the most important elements for the success of any company. For example, the SEC in 2009 issued guidelines for listed companies in an effort to elevate succession planning to the top of board agenda. Succession planning is no longer considered part of ordinary business; instead it is a fundamental duty of the board of directors. It is part of a larger risk-management picture with serious repercussions if not handled correctly.[446]

The Walker Review emphasized the importance of succession planning in banks and financial institutions. For example, a board of a listed bank must ensure that the bank

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[442] Murphy (1998, p. 5).
[443] Core, Holthausen and Larcker (1999, p. 372).
[444] Mijuk and Lucchetti (2010).
[445] Para. 1 of FINMA Circ. 2010/1.
[446] Griesedick (2010).

has adequate arrangements in place to ensure smooth succession planning.[447] Succession planning should not be underestimated and should be planned quite early and carefully.[448] Research recommends that the board of directors takes on the following responsibilities when it comes to succession planning:

a) Selection, recruitment and training of a successor,

b) Development of a vision or strategic plan for the bank after succession,

c) Definition of the role(s) of a departing incumbent, and

d) Communication of the succession decision and policies to key stakeholders.[449]

As stated earlier, the responsibility for the succession planning belongs to the nomination committee. This committee is responsible for noting challenges and identifying future needs of the listed bank so it as to successfully fill gaps in skills and knowledge with new appointments. Although the nomination committee directs the process of renewing and replacing board members – the overall succession planning in a listed bank is a responsibility for the entire board.

According to research, there is a connection between shareholder wealth and the initiation and the outcome of the succession process in a listed company. The selection of the successor is of great importance because he or she will determine the bank's strategic direction and performance. While failure in succession planning may have a negative impact on the bank, smooth leadership transition reduces investor's uncertainties about the bank's future.[450]

However, banks do not always have clear succession plans. Banks also often fail to clearly communicate how the board carries out succession planning. For example, investors called the succession planning at the HSBC 'a shambles', arguing that the process was not carefully thought through. HSBC was also criticized by investors for failing to appoint an independent chairman.[451] According to the Organizational Regulations of UBS, the responsibility for succession planning lies with the Governance and Nominating Committee. The GNC is also responsible for planning and managing succession planning of committees. However, organizational regulations do not provide

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[447] Walker (2009, p. 163).
[448] IFPM (2009, p. 8).
[449] Sharma, Chrisman and Chu (2003, p. 2).
[450] Shen and Cannella (2003, p. 196).
[451] Farrell (2010).

details as to the maximum terms in office, term limits or director retirement.[452] On the other hand, most cantonal banks do a good job at discussing the terms in office, but offer no explanations for internal regulations.

Listed banks also suffer from other succession-linked problems. Long terms in office are said to diminish director independence. As a result, the international community recommends that those directors who serve on the board for more than nine years should no longer be considered independent.[453] However, members of the board at the St. Galler Kantonalbank (SGKB) are elected for a term of three years and can be re-elected to up to four times. This means that it is possible to serve on the board of SGKB up to a maximum of 15 years.[454] The Swiss Federal Council wants to propose that members of board of directors are re-elected on an annual basis.

The financial crisis of 2008-2009 has highlighted yet another problem in succession planning. In an attempt to distance itself from the problems of the past, many listed banks have "cleaned up" their boards by replacing not only the CEO and the chairman but often many of non-executive directors. This is not just a one time only event, but in three or four years from now a listed bank would have to put its entire board for re-election once again. While in theory this may be a good idea, in reality this practice can lead to a knowledge vacuum in the board of directors of a listed bank. One solution is to carry out gradual re-election of board members. The DCG even states that the board must disclose the election procedure including whether or not there is a staggered or total renewal. It also recommends that the board limits the terms of office for members of the board.[455] This will enable a bank to maintain the relevant know-how and make it possible to gradually transfer knowledge. Furthermore, researchers recommend that succession plans must include death or injury provisions.[456] For example, Rolf Jetzer, a non-executive director of Julius Bär and the chairman of Swiss International Airlines died unexpectedly in September 2010.[457] Situations like this may create vacuum at the executive level and shake investor confidence.

Therefore, boards of directors of listed banks must carefully consider succession planning principles, including the election procedure, maximum terms of office, retirement and so on.

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[452] UBS (2009b, p. 38).
[453] FRC (2010).
[454] Pedergnana, Müller and Piazza (2009, p. 930).
[455] Sec. 3.3.1 of DCG.
[456] Pedergnana, Müller and Piazza (2009, p. 930).
[457] Neue Zürcher Zeitung (2010a).

6.3. Director Education and Training

Continuing education and lifelong learning are critical for directors due to a fast changing market place.[458] The banking industry is changing vary rapidly and directors need to be able to understand industry and regulatory challenges. Members of the board should have up-to-date skills in order to effectively carry out risk management, audit and controlling functions. According to the Basel Committee's Principles for Enhancing Corporate Governance, the board should also have a clear understanding of their role in corporate governance. Research shows that there is a relationship between director training and education and the transfer of best-practice in corporate governance to the boardroom which leads to enhanced perceptions of the company and market institutions.[459]

As a result, it is recommended that the board of directors of a listed bank develops a clear policy concerning director education. In doing so, a listed bank needs to consider varied backgrounds, qualifications and experience of board members. The board should encourage and provide additional education opportunities for directors on an ongoing basis in order to enable them to better perform their duties and recognize and act appropriately with issues that arise.[460]

Director education is especially important for those directors that have no previous board experience.[461] The board of directors should ensure that newly elected members receive appropriate induction and that board members receive further training with respect to their responsibilities.[462] It is advised that each of the non-executive directors of listed banks should be provided with a personalized induction, training and development sessions as well as some internal and external training on corporate governance and various aspects of the banking business.[463]

Director education should be focused on real and practical issues.[464] Boards of financial institutions should provide thematic knowledge and development sessions on a regular basis in order to increase director knowledge of the bank and its activities. It is the chairman's job to ensure that directors continually update skills and knowledge and that

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[458] Saucier (2001, p. 16).
[459] Walker (2009, p. 43).
[460] Business Round Table (2005, p. 27).
[461] Higgs (2003, p. 23).
[462] Economiesuisse (2007, p. 13).
[463] Walker (2009, p. 43).
[464] Saucier (2001, p. 13).

the required resources for development are available to board members.[465] According to the Basel Committee, director education is not just a responsibility but also the right of members of the board.

While boards report on director education in annual reports and in the organizational regulations, the area remains largely marginalized and vague in many of the organizational regulations of banks. However, there are some good examples. Zürcher Kantonalbank requires that members of the board undertake education and training at least three days per year.[466] The Organization Regulations of UBS AG gives the responsibility for board education to the Governance and Nominating Committee. The GNC "ensures the establishment of an induction program for new board members and ongoing training and education program for existing board and committee members."[467] This responsibility is shared with the chairman of the board, who "provides an annual seminar aimed at updating the board on strategy of the bank and provides in-depth orientation on selected business activities."[468] However, director education is barely mentioned in corporate governance report of the SGKB[469] and does not feature at all in the organizational regulations of Sarasin or Vontobel.

Still, board education is one of the important topics in corporate governance and should be addressed by the board of directors in a listed bank. The board should have a clear set policies and procedures on education, training and development.[470] While the board reports of such provisions in the annual report, it may also be valuable to provide internal guidance to members of the board on available provisions on education and set and communicate expectations from board members when it comes to continuing education.

6.4. Performance Evaluation and Self-Assessment

A board of a listed bank must carry out regular self-assessment and, on a regular basis, should evaluate bank's CEO and the chairman.[471] "The board of a bank should periodically review the effectiveness of its own governance practices and procedures in order to determine if improvements are needed."[472] While the Swiss Code and international

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[465] FRC (2010, p. 18).
[466] Pedergnana, Müller and Piazza (2009, p. 938).
[467] UBS (2009b, p. 38).
[468] UBS (2009b, p. 49).
[469] St. Galler Kantonalbank (2009, p. 77).
[470] Hartmann (2008, p. 30).
[471] Ingley and Van der Walt (2002, p. 164).
[472] Basel Committee on Banking Supervision (2010a, p. 11).

recommendations emphasize the importance of performance evaluation and self-assessment, they leave it up to individual boards to determine the exact practice, goals and outcomes.

Nonetheless, in carrying out performance evaluation, the board must agree and define how it evaluates its own effectiveness. There are various methods which range from performance evaluation which assesses board function and process, board size and composition, director independence and competence, board and CEO performance, to evaluation of the level and appropriateness of the remuneration, training and development.[473]

In banks in "which self-assessments are institutionalized, board members meet – usually on an annual basis – to question their own performance and to identify improvement potential regarding, for example, the quality of discussions at board meetings, support provided to the executive management, interaction within the board and the management", and so on.[474] Board self-assessment is part of the internal control and risk management which is needed in order to assess objectivity and work procedures.[475] Evaluation and self-assessment also encourages greater openness between board members, the CEO and other senior management.[476] However, "the effectiveness of the evaluation very much depends on how the board structures the evaluation process"[477] which typically includes setting objectives and collecting and disseminating of information about the board's activities. At the end of the process, board members can judge how close they came to meeting their objectives while also examining the adequacy of the resources available to them over the year.[478]

Self-evaluation is not an easy issue because board members must make judgments and decisions about themselves and about existing corporate governance practices. As a result, self-evaluation remains problematic due to the fact that boards of directors tend to be "more lenient, less variable, more biased, and show less agreement with the judgment of others."[479] It is now recommended that the board of directors in a bank should combine self-evaluation with an external evaluation to ensure un-biased and constructive assessment. For example, the use of external facilitators is considered to

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[473] Ingley and Van der Walt (2002, p. 168).
[474] Schmid and Brauer (2006, p.12).
[475] FINMA-Circ. 08/24.
[476] Conger, Finegold and Lawler (1998, p. 138).
[477] Ibid., p. 142.
[478] Ibid., p. 143.
[404] Carcio (2004, p. 100).

be a best practice in corporate governance as it improves objectivity of the process.[480] FRC makes a recommendation that the board should involve an external facilitator in the evaluation process at least every three years.[481]

However, despite the emphasis on board and director appraisals in the corporate governance literature and codes of best practice, it seems that boards of listed banks have been slow to adopt such recommendations. For example, the Walker Review found that listed banks and other financial institutions in the UK still lack the necessary processes when it comes to board self-evaluation and assessment.[482] Yet, there is evidence that board appraisals are on the increase.[483] For example, in Switzerland, board evaluation is a growing practice with up to 20% of companies performing evaluations on regular basis.[484]

It is not enough to simply report on the evaluation process and its outcomes to the shareholders;[485] the board of directors in a listed bank must develop and write down principles and rules concerning evaluation and self-appraisal. The board must understand not only the process, but it should also understand the importance of self-evaluation and assessment.[486] It is a good practice to engage members of the board in self-evaluation as it allows the board to think about how it carries out its work and to make improvements.[487]

6.5. Information Security and Confidentiality

Information security is of strategic importance to a bank and the protection of bank's information is part of good corporate governance. Corporate governance relies on internal controls and internal controls, in turn, rely on information security.[488] Information security is also part of the overall risk management in a bank and should be addressed at both operational and strategic levels.

According to Article 47 of the Federal Act on Banks and Savings Banks, "anyone acting in his/her capacity as a member of a banking body is not permitted to divulge information entrusted to him/her or which he/she has been apprised because of his or her

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[480] Basel Committee on Banking Supervision (2010a, p. 11).
[481] FRC (2009, p. 22).
[482] Walker (2009, p. 55).
[483] Ingley and Van der Walt (2002, p. 164).
[484] Albert-Roulhac (2008, p. 289).
[485] Walker (2009, p. 180).
[486] Pedergnana, Müller and Piazza (2009, p. 939).
[487] Behan (2004, p. 1).
[488] Von Solms (2001, p. 215).

position."[489] According to Article 162 of the Criminal Code, all board members have an obligation of confidentiality. This obligation continues even after the retirement of a board member from the bank in order to safeguard interests of a bank.[490]

Research points out that banks are exposed to a number of threats in information security and these are increasing due to growth in the use of information technology, outsourcing of customer care centers and employee mobility. Most information security threats occur as a result of human failings rather than deliberate action. For example, a study finds that carelessness, laziness, forgetfulness, and other non-intentional loss of sensitive data account for over 42% of information security threats.[491] Therefore, information security matters should not only be addressed at the operational levels of a bank, but also at strategic levels. And while it is generally accepted that information security is handled with great care at operational level in a bank, it is not clear how this is done at strategic level.[492]

As a result, the board of a listed bank should have clear rules and policies as to how it handles sensitive and confidential information. It is perfectly acceptable to have general statements on information and confidentiality such as "directors must maintain confidentiality of information entrusted to them and this includes all non-public information that might be of use to competitors, or harmful to the bank or its customers."[493] It is also good Corporate Governance to have clear rules and policies for board members on information security and confidentiality. For example, one study suggests that a bank board must have a clear policy on information security and provide clear provisions on how an individual board member of a listed bank (a) works with email and treats email security, (b) uses confidential documents outside the bank, (c) takes care of documentation while traveling abroad. Researchers also suggest that the board is responsible for confidential information in case of death of or incapacity of director.[494]

While many banks already include guidelines on confidentiality and information security in the organizational regulations, the scope of the coverage is not always comprehensive. For example, Article 28 of the Organizational Regulations of the Zürcher Kantonalbank only states that the bank acts according to Article 47 of the Banking Act

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489 Swiss Banker's Association (2010).
490 Müller (2001, p. 16).
491 FineExtra.com (2010).
492 Pedergnana, Müller and Piazza (2009).
493 Credit Suisse (2006, p. 8).
494 Pedergnana, Müller and Piazza (2009, p. 942).

and respects banking secrecy.[495] Credit Suisse also emphasizes confidentiality in its code of conduct and in the Corporate Governance Guidelines. It states that 'the company uses suitable methods to control and monitor the internal and external transfer of confidential and sensitive information whenever possible."[496]

In addition, a bank's code of conduct depends on the existence of an effective ethics compliance program, which relies on an established and effective reporting system where employees report violations.[497] As a result, there is a need to establish whistleblowing schemes which may infringe upon requirements of confidentiality and bank secrecy. However, whistleblowing "provides an opportunity for the employees to voice their concerns on any aspect of work without fear of victimization, subsequent discrimination or disadvantage" and "provides avenues for employees to raise their concerns internally and receive feedback on any action taken" and makes it possible for the employees "to take actions further if they are dissatisfied with the response."[498] For example, the whistleblowing process at Credit Suisse is subject to supervision by the Audit Committee of the board of directors. Credit Suisse believes that whistleblowing helps to protect the bank's reputation and integrity. "It encourages employees to report violations of laws, rules, regulations or the code of conduct internally. In the case of alleged violations by the CEO or senior financial officers reports should be made to the General Counsel or to the board of directors."[499] However, Switzerland's "corporate governance rules only very generally and vaguely require that the board of directors take appropriate measures to ensure the company's compliance with the law, but do not specifically call for a whistleblowing scheme."[500] In addition, unlike the US and other foreign countries' whistle blowing schemes, Swiss employment law does yet not protect whistleblowers. However, the federal government presented a consultation paper in 2008 that would make it possible for an employee to report abuses by his own employer without violating his duty of loyalty. Still, "employees are subject to far-reaching confidentiality obligations which prohibit them from informing third parties of anything that could hurt the reputation of their employer, even if true."[501]

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[495] Zürcher Kantonalbank (2004, p. 12).
[496] Credit Suisse (2008, p. 3).
[497] Treviño, Weaver and Gibson (1999, p. 131).
[498] City of London (2011).
[499] Credit Suisse (2011).
[500] International Law Office (2008).
[501] Ibid.

Confidentiality, secrecy and whistleblowing are all elements of good conduct and therefore have an impact on corporate governance in a listed bank. They are part of "duty of care" and "duty of loyalty" aspects and must be addressed by the board of directors in its corporate governance and conduct principles.

6.6. Conduct

Ethical conduct remains an important precursor to good corporate governance. The board of directors is responsible for culture and conduct in a listed bank. Ethical values span across many areas, but generally include "duty of loyalty", "duty of care", "duty to formulate the ultimate goal", "openness of direction" (e.g. transparency) and "duty to give account for all actions taken" (e.g. accountability).[502] Ethical behavior also covers honesty, integrity, responsibility, fairness, and citizenship.[503] For example, "the bank's corporate values should recognize the critical importance of timely and frank discussion and elevation of problems to higher levels within the organization. Employees should be encouraged and able to communicate, with protection from reprisal, legitimate concerns about illegal, unethical or questionable practices."[504]

International recommendations state that "the board should take a lead in establishing the tone at the top and setting professional standards and corporate values that promote integrity for itself, senior management and other employees" and "should ensure that appropriate steps are taken to communicate throughout the bank the corporate values, professional standards or codes of conduct it sets, together with supporting policies and procedures."[505]

It is widely accepted that companies need a code of conduct. One study found that the existing of a code of conduct alone prevents unethical practices. A code of conduct also helps to articulate acceptable and unacceptable behaviors.[506] A code of conduct is discussed in greater depth in Section 7.

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[502] Siebens (2002, p. 112).
[503] Schwartz, Dunfree and Kline (2005, p. 90).
[504] Basel Committee on Banking Supervision (2010a, p. 9).
[505] Ibid., p. 8.
[506] Ibid.

7. Internal Guidelines on Corporate Governance

7.1. Introduction

A code of conduct, code of ethics, organizational regulations, charters, guidelines, and other corporate documents and policies have long been a feature of corporate life and are important tools that organizations possess.[507] Although the international community now recommends that banks need to set organizational and other internal regulations, there are no studies that examine the Internal Guidelines on Corporate Governance. As a result, the researcher starts by examining literature on organizational practice, organizational rules and business codes such as the code of ethics and a code of conduct.

7.2. Organizational Practice and Rules

The debate as to the value of various organizational codes and policy documents, and ultimately the value of the Internal Guidelines on Corporate Governance can be examined through the theory of organizations, which includes theories of organizational practices, rules, rule making and rule following.[508]

Organizational practice can be described in terms of actions, routines and procedures and it represents ways in which organizational functions are carried out.[509] Organizational practice is also referred to as 'genes' of the organization implying tacit rather than explicit nature of organizational practices.[510] Organizational practice contains strategic elements because formalized and internalized rules and procedures help to promote desirable behavior in a company.[511]

Organizational practices consist of sets of unwritten and written rules of how an organization conducts itself. Rules "may consist of explicit or implicit norms, regulations and expectations that regulate the behavior of individuals within the firm."[512] Rules help to routinize organizational activities and set authority parameters within the organization.[513] According to research, corporate governance is also based on clear structures, strategies and rules. Corporate governance practices are formalized and internalized by a listed bank in the form of by-laws, organizational regulations, minutes and

[507] Cleek and Leonard (1998, p. 627).
[508] March, Schultz and Zhou (2000, p. 942).
[509] March and Simon (1958).
[510] Nelson and Winter (1982).
[511] Kostova (1999, p. 310).
[512] March, Schultz and Zhou (2000, p. 942).
[513] Ibid.

other internal documents.[514] A board of directors in a listed bank must establish how it organizes itself and how it conducts its corporate governance responsibilities.[515] For example, the board of directors in a listed bank may have a code of conduct or a code of ethics, committee charters, communication and remuneration policies, organizational regulations and Internal Guidelines on Corporate Governance. Together these formalized practices represent and shape a bank's corporate governance.

However, organizational rules differ by the degree of formalization which refers to either written or unwritten rules, where written rules are impersonal, codified, explicit, and readily available and unwritten rules are implicit, informal and may not be easily discerned by those outside the firm. Organizational rules can also be distinguished by a degree of depth which relates to either functional or broad rules. Functional rules include meeting requirements, quorum and voting procedures and so on, while broad rules may deal with wide concepts such as ethical conduct and corporate social responsibility.[516]

Research shows that codified formal procedures and policies are more useful as they help a bank to discuss, debate, to clarify and to commit to a set practice and operations. On the other hand, rules also have a negative side. Research suggests that written rules can create additional rules and this only adds bureaucracy. For example, "mechanic" rules add no real value but rather impede action and decision making.[517] However, much of the effectiveness of today's organizations is credited to their ability to create and implement codes that define corporate practices, reflect experiences, guide organizational and employee behavior and symbolize organizational commitments.[518] Written documents are fundamental to a listed bank's corporate governance foundation because written rules carry not only an expression of commitment on behalf of a board to good corporate governance, but also describe ways in which this commitment will be met.[519]

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[514] Müller (2011).
[515] Basel Committee on Banking Supervision (2010a, p. 10).
[516] March, Schultz and Zhou (2000, p. 942).
[517] Basel Committee on Banking Supervision (2010a, p. 11).
[518] March, Schultz and Zhou (2000, p. 9).
[519] Gallinger (2008, p. 22).

7.3. Written Organizational Rules and Codes

Despite the rather implicit and tacit nature of organizational practice, companies find it beneficial to transform organizational practices into codified and explicit written documents and business codes. The term "code of business" is a general term and it typically implies a code or an internal document that is developed by and for a given company. The notion of ''business'' also implies that the code applies to those who represent the company.[520]

Business codes can be "divided into five main types: company codes, trade association codes, multi-stakeholder codes, model codes and inter-governmental codes."[521] Furthermore, codes can be classified into "three categories: internal, or those formulated for internal purposes, and external or those developed for external purposes in response to outside pressures." There are also third party codes, which are developed by "an external group and adopted by multiple firms. Third party codes often serve as framework for action rather than define a set of mandatory rules of behavior."[522]

Contrary to external and third party codes, internal company codes contain both open guidelines about desirable behavior (value orientation) and closed guidelines pointing at prohibited behavior (compliance orientation). For example, value oriented codes focus on issues such as ethics and sustainability. Guidelines that emphasize values have shown to have more desirable and long-lasting impacts on employee conduct. On the other hand, compliance orientated codes deal mainly with issues such as money laundering, fraud or insider trading. Compliance oriented codes aim to show how a company complies with a specific law or a regulation. Compliance oriented guidelines tend to emphasize rules, focus on monitoring of behavior and provide disciplinary actions.[523]

Furthermore, all company codes can be sub-divided into three broad categories: codes that address problems of moral hazard, codes that define norms of behavior and codes that deal with issues that are of public interest.[524]

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[520] Kaptein and Schwarz (2008, p. 113).
[521] International Labour Organization (n.d.).
[522] Wright and Rwabizambuga (2006, p. 93).
[523] Paine (1994, p. 106).
[524] Jamal and Bowie (1995, p. 704).

7.4. Benefits of Codified Organizational Practices

7.4.1. Clarity and Reduced Ambiguity

Clear, codified, written rules provide an advantage over unwritten ones. Written rules offer stability and continuity while still allowing for adequate operational flexibility.[525] Organizations that set clear rules often appear to be more stable, competitive and accountable compared to the ones that do not have clear and established guidelines for behavior. On the other hand, lack of clear and written policies in a listed bank can lead to ambiguity.[526] Ambiguity leads to the "presence of multiple interpretations of the same fact and makes it impossible to reduce this multiplicity into a single dominant interpretation."[527] Ambiguity results in conflicts in goals and leads to misinterpretation of tasks making it difficult for players to perform expected duties effectively.[528] As a result, there is a lack of focus in decision making. Research shows that ambiguity leads to a loss of efficiency in management and control. Whereas explicit tasks and responsibilities of the board of directors make it easier to implement controlling and reporting functions leading to improved strategic leadership.[529]

While no organizational rule is perfect in practice, companies may develop written organizational rules in order to safeguard themselves against arbitrariness.[530] Unclear or ambiguous rules may also lead individuals to experience anxiety and the inability to solve problems in an effective manner.[531] Furthermore, unclear distribution of decision making and tasks can lead to a negative impact on performance of employees due to stress. Therefore, by discussing and writing down corporate governance practices, the board of a listed bank can clarify responsibilities and expectations of board members and in doing so, the board can minimize role conflict, reduce ambiguity and improve decision making.

Clear, written codes and rules can reduce the cost of misaligned actions by informing relevant parties of a choice of governance mechanism.[532] For example, if the board of directors discusses its approach to corporate governance and writes the agreed principles down, members of the board may become more aware of corporate governance

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[525] Volberga (1998, p. 190).
[526] March, Schulz and Zhou (2000, p. 22).
[527] Iandoli and Zollo (2008, p. 66).
[528] March and Olsen (1979, p. 12).
[529] Müller (2011).
[530] Sison (2006, p. 85).
[531] Rizzo, House and Lirtzman (1970, p. 160).
[532] Williamson (1984).

issues that matter to the listed bank. In turn, this will ensure that members of the board take all necessary steps to adhere to set corporate governance principles and commit themselves to best practice.

7.4.2. Risk Management and Internal Control

Organizational rules are part of the formal structure that defines stable patterns of relationship and activities in a company. As conscious and rational efforts rules enable a bank to organize intelligently, offering improved coordination and communication throughout an organization. By defining duties and responsibilities of the board, defining the tasks of its committees and providing the basis of control, the board can reduce uncertainties in the decision making and improve processes at the board.[533]

As a result, organizational rules form part of the operational risk management in a listed bank. Operational risk arises from the people, systems and processes through which a bank operates.[534] The internal processes of a listed bank include all procedures and the embedded internal controls.[535] Lack of clear written internal practices or weak internal rules can result in weaker internal controls. For example, if the board does not have clearly defined processes, the board will be weak in its ability to monitor and control management which will increase operational risk.[536]

7.4.3. Enhanced Values and Conduct

Research shows that organizational rules can reinforce and communicate a company's commitment to ethical values. For example, values refer to goals, ideals, norms, standards, and moral principles. Values are part of a complex phenomenon called organizational culture, which consists of "the pattern of basic assumptions that the group discovered and developed in an attempt to cope with its problems of external adaptation and internal integration."[537] Values refer to a mode of conduct of all members in an organization and they help to guide an organization's members towards uniformity in behavior.

Ethical conduct, as a value system, remains an important precursor to good corporate governance in the banking sector. Upholding of moral and ethical standards in a listed bank is the most important responsibility of the board of directors.[538] Research shows

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[533] Zhou (1993, p. 1136).
[534] Basel Committee on Banking Supervision (2004, p. 137).
[535] Van den Brink (2002, p. 2).
[536] Basel Committee on Banking Supervision (2010a).
[537] Schein (1986, p. 30).
[538] Heidrick and Struggles International (2004).

that the board of directors plays a key role in setting the ethical tone of a bank, not only by its own actions, but also in appointing and overseeing key executives and consequently the management in general.[539] As a result, by acting consistently in their moral responsibility, the board can instill ethical values throughout the bank.[540] However, it is hard to observe ethical values directly. Instead, it is possible to examine the conduct of a bank by interviewing key members of the board or one can examine the content of artifacts such as internal documents, policies, charters and guidelines.[541]

An organizational value system may change and evolve over time, with changes in leadership or pressures from the outside. Core organizational values are also in need of constant reinforcement within a listed bank. For example, ethical values can be communicated internally through an associated organizational structure, hero and reward symbolism and other internal policies.[542] The board of directors can enhance the value system in a listed bank by discussing its own ethical and corporate governance behavior. For example, by developing internal regulations on corporate governance, the board of directors in a listed bank is forced to examine its own behavior and determine if the existing standards appropriate and if they are in line with internal standards. Debating ethics, conduct and corporate governance at the highest level in a bank can only lead to enhanced corporate governance. High ethical standards are in the long term interests of any bank as a means to make it credible and trustworthy. It is important that they are represented by explicit guidelines and norms of behavior as well as the means to achieve these goals.[543]

7.4.4. Communication and Continuity

A codified and explicit set of rules make it easier and more efficient to communicate internal procedures and practices.[544] Organizational rules routinize acquisition of knowledge making it more cost effective to communicate existing or desired corporate governance practices from one board to the next.[545] While tacit knowledge provides the glue and integrating mechanism in learning, explicit knowledge supplies the building blocks for the learning process. Explicit knowledge is easily transmitted[546] from one member of an organization to another as it already embedded in standardized proce-

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[539] Brenner and Molander (1977, p. 56).
[540] Dunfee (1999, p. 144).
[541] Schein (1984, p. 3).
[542] Glastetter and Kleiner (1989).
[543] Wiener (1988, p. 537).
[544] Grant (1996, p. 114).
[545] Cowan and Forray (1997, p. 595).
[546] Nonaka and Takeuchi (1995).

dures.[547] As a result, the board of directors can ensure continuity of good corporate governance practices in a listed bank.

Each board of directors is unique in terms of board structure, process, culture and life cycle; and these have significant effects on the way in which the board of a listed bank functions in the long-run. Even the most experienced members of the board can benefit from learning about specific corporate governance principles and practices in that bank. To help directors learn, members of the board undergo an induction, which is essential for new board members if they want to maximize their contribution to the board and board committees.[548] Organizational rules form part of the induction process and make it easy for new directors to obtain knowledge about the bank, its rules, regulations, structure of the board, internal processes and principles of corporate governance. Organizational rules on corporate governance may assist in setting of expectations from directors upon appointment;[549] they may also help to reinforce the rights of directors and shareholders. Distribution of organizational rules during the induction helps to promote best practice in corporate governance because self-study is said to give individuals greater ownership over the learning process. Research shows that employees develop a better understanding of the communicated principles if they are given an opportunity to study and read documents by themselves.[550]

Organizational rules also play a role in continuing training and development of existing directors. Director education and training is especially important in the banking sector, as there are frequent changes in the market and regulatory environments. Also, a board that has an understanding of its roles, tasks and duties and is willing to learn and change represents good corporate governance practice.[551] First, organizational rules often require that members of an organization take part in the development process, either through direct participation and discussion or through a consultation process. This ensures that the desired principles are accepted by all employees. By engaging members of the board in the development of the Internal Guidelines on Corporate Governance, the board can embed good corporate governance practice. This process works best when supported by written documentation and follow-up training. Second, any development or amendment of organizational rules is usually followed by training and education sessions, which once again help to embed desired best practice.

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[547] Nelson and Winter (1982).
[548] Long (2008, p. 41).
[549] Meighan (2000, p. 28).
[550] Gallinger (2008, p. 14).
[551] Garrett (2003, p. 174).

To conclude, organizational rules provide a cost effective way for a board to communicate their processes and procedures. Furthermore, written documents and policies limit information loss and make it easier to develop and embed desired standards.[552]

7.4.5. Enhanced Transparency

While listed banks may be hesitant to develop Internal Guidelines on Corporate Governance and Organizational Regulations, organizational rules can help a listed bank to enhance transparency if they are disclosed. By doing so, a listed bank can appease regulators, improve its relationship with shareholders and enhance corporate reputation.

Transparency is referred to as the public disclosure of reliable and timely information which makes it possible for relevant parties and stakeholders to make accurate assessment of a bank's operation and performance. Companies engage in two types of disclosure, ritual and opportunistic. Ritual disclosure is described as a tendency toward uncritical observance of prescribed norms and it is focused compliance, while opportunistic disclosure is referred to as a tendency to seek firm-specific advantage in the disclosure of information. For example, a bank may engage in voluntary disclosure in order to improve ratings, reduce insurance premiums, improve relationship with customers and investors and show the board's commitment to ethical conduct. Research shows that voluntary forms of disclosure may also give companies a competitive advantage. However, disclosure of corporate information is also said to be linked with the size of the firm, its performance and ownership structure.[553]

For example, listed companies must make a number of compulsory disclosures to show that their processes, operations and practices are in accordance with the prescribed and/or agreed set of norms. The Corporate Governance Directive of the SIX Swiss Exchange requires all listed companies to disclose information on corporate governance in annual reports. Non-compliance with disclosure requirements can lead to judiciary pursuits and penal consequences on management level and result in a loss of market confidence and clients, whereas compliance with disclosure rules can reduce borrowing costs and bring greater investor confidence.[554] Compulsory disclosure can also help a listed bank to defend itself by showing that they have exercised 'due diligence' by having the appropriate mechanisms in place.[555] However, research shows that banks vary in quality of information they disclose. For example, the Admission Division and the

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[552] Cowan and Forray (1997, p. 597).
[553] Labelle (2002, p. 28).
[554] El Kharbili et al. (2008, p. 3).
[555] Parker (2002, p. 16).

Sanction Commission of the SIX Swiss Exchange issued a number of investigations into disclosure practices of some of the listed banks in 2008-2010.

Researchers also question the value of disclosure in annual reports. For example, it is not clear how investors gain valuable information from a typical 200 page annual report. Research shows that too much information can actually overload the reader and diminishes an investor's ability to comprehend the information contained in the document. As a result, investors rely on ratings agencies to provide statistics and ratings. It may be more beneficial if corporate governance disclosures were more targeted and would only cover what is really important. Still, all corporate disclosures should be comprehensive, relevant, timely, reliable, comparable and material.[556]

7.4.6. Reputation

Written organizational rules such as a code of ethics and other corporate policy documents have long been used by firms in order maintain, build or rebuild corporate reputation.[557] If disclosed, they service as means of communication to parties inside and outside the listed bank.[558] Studies show that by making corporate governance processes more transparent, a bank can gain benefits in a form of better corporate reputation.[559]

Internal regulations with a focus on corporate governance allow the board of a listed bank to express its approach to corporate governance while strengthening the character and identity of the bank in the minds of their shareholders, employees and a wider public.[560] For example, investors are already sensitive to the quality of annual reports.[561]

Corporate documents, business codes and organizational rules are symbols that represent a bank's commitment to good and ethical conduct.[562] Better corporate reputation can lead to improved ratings, reduced insurance premiums and improved relationship with stakeholders.[563] According to a resource-based view, firms with valuable assets possess a competitive advantage and may earn superior financial profit and returns. Therefore, intangible assets such as good reputation are critical in terms of their value potential. There is a positive link between a firm's reputation and its performance.[564]

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[556] Basel Committee on Banking Supervision (1998, p. 15).
[557] Cheeseman (2010).
[558] El Kharbili et al. (2008, p. 10).
[559] Basel Committee on Banking Supervision (1998).
[560] Cadbury (2002, p. 17).
[561] Shleifer and Vishny (1997, p. 749).
[562] March, Schulz and Zhou (2000, p. 11).
[563] Müller (2011).
[564] Roberts and Dowling (2002, p. 1077).

Disclosure of internal regulations and rules helps the board of directors to legitimize the bank. Organizational legitimacy is referred to as "a generalized perception or assumption that the actions of a firm are desirable, proper, and appropriate within some socially constructed system of norms, values, beliefs, and definitions."[565] Legitimacy is closely linked to reputation, which is an intangible asset, making it difficult for other firms to imitate. Corporate reputation is an essential element in maintaining attractive investment climate by assuring stakeholders that the firm operates responsibly.[566] Not only this, but disclosure can also re-confirm the bank's commitment to corporate governance and gives an opportunity for the board of directors to show that the developed standards are in compliance with applicable laws and regulations and are in line with international recommendations.

7.5. Internal Organizational Rules and Corporate Governance

7.5.1. Organizational Regulations

According to article 626 of the CO, an organization must establish articles of association which should contain information on the governing bodies. In line with article 716a of the CO, an organization must establish rules concerning its board of directors and establish organizational regulations.[567] Based on article 3 of the Banking Act, the board of directors in a bank must accurately describe the scope of business and establish an organization which corresponds to the activities of the bank.[568] A clear definition of tasks and responsibilities of the board are also part of the internal control system required by the Financial Market Supervisory Authority.[569] In paragraph 11 of the Swiss Code, it is recommended that the board of directors lays down the powers and responsibilities of the persons in charge of managing the business. Not only this, but organizational regulations must provide clear definition and scope of such responsibilities.[570]

Organizational Regulations define the organization, responsibilities and authority of the executive bodies or spheres within a company such as the board of directors, its chairmanship and board committees, the chief executive officer as well as the executive management of the company and its subsidiaries and divisions, and internal audit functions. However, OR are generally concerned with the overall operation of the organiza-

[565] Suchman (1995, p. 574).
[566] Ljubojevic and Ljubojevic (2008, p. 227).
[567] Becchio et al. (1996, p. 16).
[568] Müller (2001, p. 6).
[569] Margin 2 of FINMA-Circ. 08/24.
[570] Economiesuisse (2007, p. 12).

tion, setting out the form, manner or procedure in which a company should run, including information regarding bank competencies.[571] Although Organizational Regulations contain some provisions on corporate governance, the section remains rather limited in scope and has a different purpose. OR's primary concern is not with corporate governance, but with the organization of a bank. As a result, OR is too general as they do not exclusively focus on the values of governance in the bank. Table 10 below summarizes key components of organizational regulations.

Table 10: Template of Organizational Regulations

Organizational Regulations
References to laws and regulation (i.e. CO and statutes).
Functions, powers, responsibilities, organization and representation of the various governing bodies (the BoD, chairman, directors, board secretary, board committees and management).
Functions chart.
Establishment of the board (mandatory appointment of the chairman and board secretary).
Regulations for management such as frequency of meetings, convening of process, agenda, quorum.
Possibility of members of the executive board to act in an advisory capacity, participate in board meetings and reporting.
Organization of reporting (frequency and targets).

Source: Felder (2002, p. 1008).

7.5.2. Internal Guidelines on Corporate Governance

Internal Guidelines on Corporate Governance are a set of principles, guidelines and rules for the board of directors aimed at improving corporate governance practices in a company. It consists of agreed rules and practices on all corporate governance matters. Internal Guidelines is a tangible document, or part of another document, that describes principles and responsibilities of the board of directors and its committees[572] and sets out a policy of conduct on corporate governance in a listed bank. It is important to note that the Internal Guidelines on Corporate Governance are written by the board of directors for the board.

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[571] Müller (2001, p. 6).
[572] Bogaert and Peeters (2005, p. 60).

Internal Guidelines provide a framework for effective and efficient corporate governance in a listed bank. In line with the international standards, development of Internal Guidelines on Corporate Governance enables the board to "appropriate governance practices for its own work and have in place the means to ensure such practices are followed and periodically reviewed for improvement."[573]

Internal Guidelines on Corporate Governance are required by the Final NYSE Corporate Governance Rules, King III report and other regulatory bodies. It is recommended that Internal Guidelines contain the following universal corporate governance principles:

a) director qualification standards,

b) director independence criteria,

c) director and chairman responsibilities,

d) director access to management and independent advisors,

e) director compensation guidelines and overall board compensation principles,

f) succession policies and principles including performance review, and

g) director education and self-assessment provisions,[574]

In addition, there are also recommendations that the board of directors must set and disclose board committee structure, mandates and composition.[575] Furthermore, the board may find it valuable to include the following areas for inclusion of the Internal Guidelines on Corporate Governance:

a) meeting procedures and attendance,

b) agenda, meetings and quorum requirements, and

c) evaluation and approval procedures for the charter.[576]

Despite the universality of corporate governance principles, there are no Internal Guidelines on Corporate Governance which would be applicable to all listed banks. It is important that Internal Guidelines are specific to the bank and represent the bank and

[573] Basel Committee on Banking Supervision (2010a, p. 10).
[574] NYSE (2003, p. 14).
[575] Basel Committee on Banking Supervision (2010a, p. 11).
[576] Institute of Directors in South Africa (2009b, p. 4).

its board.[577] Internal Guidelines on Corporate Governance should represent sound governance principles which would help the board to carry out its duties more effectively. The development of the Internal Guidelines provides an opportunity for the board of directors of a listed bank to scrutinize its behavior and improve and reinforce best governance practices.

Compared to organizational regulations, Internal Guidelines on Corporate Governance provide a focus on corporate governance matters within a bank. They offer guidance to members of the board and as a result they help to promote effective functioning of the board and its committees and establish clear expectations and standards as to how the board should perform its functions. On the other hand, OR is focused on defining the organization, as well as responsibilities and authorities of all executive bodies. OR is concerned with the organization of the bank, while Internal Guidelines on Corporate Governance is focused on governance and the value of governance.

The decision to develop Internal Guidelines on Corporate Governance is just a starting point in the process. "The board should identify what value will the board, the company and stakeholders gain from Internal Guidelines. Only then can the board create individualized Internal Guidelines that are meaningful, and therefore more efficient in maximizing board capabilities, focus and overall effectiveness."[578]

7.5.3. Code of Conduct

One of the most commonly used documents, which contains a bank's rules on responsible behavior, is a code of conduct (also known as a code of ethics). The concept of code of conduct is not legally defined in law and is purely voluntary in Switzerland. A code of conduct is referred to a "company's policy statements that define ethical standards for their conduct." A code of conduct is also a means by which a "company states the way in which it intends to do business with their suppliers, customers, and shareholders."[579] Research shows that organizations need to have a code of conduct, this holds especially true for larger organizations and for those that have a substantial number of stakeholders such as banks.[580]

A code of conduct can take on many forms. For example, a bank may choose to have a "compliance code, which gives guidance to employees and prohibits certain kinds of conduct" or a bank may choose to develop "a corporate credo code, which shows

[577] NYSE (2003, p. 14).
[578] Johnson (1997, p. 5).
[579] International Labour Organization (n.d.).
[580] Kaptein and Wempe (1998, p. 856).

commitment to values and objectives" or a code may present "management philosophy statements, which provide formal articulation of the company's or CEO's way of doing business."[581]

"A written code has the potential to increase consciousness with respect to the moral aspects of the undertaken activities (orientation function). It can also set a minimum amount of expectations which are valid for everyone (committing function) and creates a system of checks and balances because employees can force each other to live up to the code (internally correcting function)."[582] The code can also "increase the legitimacy of the firm, as it enlarges the trust of stakeholders and creates a system of checks and balances since stakeholders can direct the firm to abide by the code."[583]

Although a code of conduct serves a different purpose and does not focus on corporate governance matters, it is a formalized, explicit document that requires a listed bank to set up a formal development and approval process.

Regardless of the type of a code or a guideline a listed bank may choose to develop, the following range of issues should be considered:

a) what practices should be included,

b) who should be involved in the development,

c) how should the code's content be organized,

d) what training is available and what kinds of education needs to be provided,

e) how will the code be administered and reinforced.[584]

To summarize, the effectiveness of a code depends on the creation process, distribution, implementation and follow-up.[585] Since there is no literature on the development of the Internal Guidelines on Corporate Governance, the researcher examines development, creation, implementation and administration processes for a code of conduct.

581 International Labour Organization (n.d.).
582 Kaptein and Wempe (1998, p. 857).
583 Ibid., p. 865.
584 Ibid., p. 867.
585 Ibid., p. 868.

8. Development, Implementation and Administration of Internal Organizational Rules

8.1. Development Process

A code by itself means nothing; development and implementation are just as important if an organization wants to have a working code. However, development and creation of a code "does not mean a separation from the past, but an improvement from what already exists unconsciously or is sometimes under-developed."[586] According to literature, the development of a code may be met by "we already know this, the code contains nothing new" reaction, this is not necessarily negative because it is a sign that a code reflects an existing situation.[587]

Consequently, there are a number of recommendations for the development process which includes the following elements:

- **Get support from the board of directors:** the board of directors must understand the need for the code and be committed to monitoring its effectiveness.[588]

- **Find a champion:** the champion can be the CEO or the chairman. It is also a good practice to form a separate committee that would focus on the development of a code or to assign the responsibility to an existing committee (for example audit or risk committee).[589]

- **Identify objectives:** it is important to identify and clarify the organization's approach to corporate governance, ethics and conduct and then to set the objectives for the document.

- **Research:** it is not enough to simply endorse an external standard or copy a code from another organization. It is important that a listed bank finds out as much about the topic and identifies issues which are in need of attention and improvement. It may be valuable to "survey and interview representatives from a variety of industries regarding best practices."[590] This gives the board "a great deal of perspective about its own governance philosophies and meth-

[586] Kaptein and Wempe (1998, p. 863).
[587] Ibid.
[588] Institute of Business Ethics (2003).
[589] Myers (2003, p. 183).
[590] Johnson (1997, p. 6).

ods, and helps to generate ideas for improvement."[591] In this stage, it is useful to include all stakeholders in the development process. For example, it may be useful to carry out a formal survey with members of the board in order to identify which corporate governance areas they think are relevant, need improvement or represent the bank and its values.[592]

- **Consider external standards and best practice:** a company must find out find out how other companies in the same sector approach conduct, ethics and governance. This will help the firm to understand what is required for an effective policy or code and will enable the firm to establish how it will embed the code into practice.
- **Monitoring:** monitoring and reinforcement of the code must be considered prior to the development of a code.
- **Test it:** it may be useful to gather feedback on the draft version of the code.
- **Review:** an organization must plan how it will carry out the review process and how it will account for changes in the business environment, strategy, stakeholder concerns, new standards and strengths and weakness.[593]

8.2. Creation Process

The creation process of a code involves making decisions as to the objectives of the code, the speed of delivery and the level of employee involvement in the code creation process.

- **Code objectives**: There may be different objectives, many of which are interconnected, as to why a listed bank may enact a code.[594] These may include:
    a) protect its reputation or image,
    b) establish behavioral expectations for employees,
    c) demonstrate corporate citizenship,
    d) allow employees to know their rights,
    e) due to legal requirements.[595]

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[591] Johnson (1997, p. 6).
[592] Ibid.
[593] Institute of Business Ethics (2003).
[594] Gaumnitz and Lere (2002, p. 7).

- **Speed of development**: research shows that organizations may favor a speedy introduction of the code of conduct. However, if speed is the only consideration, an organization may have problems with the code in the future. For example, speed often relates to a single decision maker. This decision maker may or may not have the sufficient knowledge as to the exact nature of the problem(s) facing the various parts of an organization and the solutions that have already been developed to deal with them. Money, time requirements, labor commitment also impact the speed of development.[596]

- **Employee Involvement**: It is important that a code is seen as a collective property. The development of the code must be supported by each employee (or board member in the case of director code of conduct).[597] One way to achieve this is to involve board members in the development process. For example, research shows that employees have a legitimate right to take part in the process that will affect them.[598] Employee participation can increase the chances that the content of the code is relevant and realistic. The involvement in the development process does not necessary mean direct involvement, but there should be a reasonable opportunity for those who are interested to comment on the code.[599] There should be "open exchange of ideas throughout the drafting" of the Internal Guidelines.[600] While consensus is not possible, realistic or necessary, there must be on-going dialogue and members of the board should also be able to openly challenge proposals.[601] It is important is that the process of the code development is made clear to everyone. However, according to research there is no relationship between employee involvement and code effectiveness.[602]

8.3. Content Decisions Process

Content decisions for the code of conduct cover both the subject of the message and the delivery of that message. The subject of the message may include propositions of what is right and what is wrong, while delivery of the message refers to the clarity in which the message is presented and the length of a code. However, it should not be assumed

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[595] Schwartz (2004, p. 331).
[596] Kaptein and Wempe (1998, p. 858).
[597] Ibid., p. 863.
[598] Schwartz (2002, p. 32).
[599] Ibid., p. 38.
[600] Johnson (1997, p. 6).
[601] Ibid.
[602] Schwartz (2004, p. 332).

that a code should cover all intended practices and behaviors. Codes are living documents. They evolve over time and they must be re-designed and re-implemented.[603] While there is no single way to develop the content of a code, the following points highlight a number of dilemmas in the code development:

- **Length:** research states that the "length of the code of conduct may have an impact on its effectiveness. Having a relatively short code may increase the likelihood of changing the decision makers' perception."[604] On the other hand, a long code may "reduce the likelihood that the decision maker is aware of a specific code position. For example, even if individuals have read the code, long codes reduce the likelihood that individuals will retain enough of the guidance provided."[605] Retention of the guidance is important as the position in the code can affect the action of the decision maker.

- **Tone:** a code can have a negative or a positive formulation of principles. A positive formulation makes it clear which choices individuals or an organization should make, what the body or an individual stands for and what they aim to achieve. Positive formulation is more appropriate for guidance, whereas a negative formulation makes it explicit what employees should definitely not do. As a result, negative formulation may lead to a feeling of threat and insecurity. Research states that negative formulations of a code do not provide any insight into what individuals should do instead. However, empirical research is split on this point.[606]

- **Rules versus guidelines:** a clear and finely outlined policy is needed when an organization's stakeholders have substantial interests, i.e. employee and depositors' well-being and overall economic stability. The advantage of using rules is that everyone can check what must or must not be done. Rules guarantee conformity and clarity. Clarity is required when it becomes necessary to fulfill responsibilities and when sanctions may need to be imposed. However, prescribed rules may also have a negative impact as they reduce the ownership of individual's responsibility. As a result, research recommends that a code is formulated not only of obligations, but contains the rights of employees.[607]

[603] Kaptein and Wempe (1998, p. 868).
[604] Gaumnitz and Lere (2002, p. 11).
[605] Ibid.
[606] Kaptein and Wempe (1998, p. 859).
[607] Ibid.

Another study confirms that guidelines should include both the responsibilities of members of the board, but also their rights as these contain more positive intonations.[608]

- **Actual versus moral orientation:** research recommends that a code should correspond as much as possible to concrete problems encountered by the bank and its board. Employees and members of the board often know what is acceptable or not, therefore guidelines are not meant to lecture employees what is appropriate or not but should provide standards which should be achieved.[609]

- **Realistic goals:** an over-idealistic code can lead to the code being seen as a collection of empty promises which only exist for the sake of appearance. A code must not distance itself too far from reality. A code should be "actual" focusing on topics which are current. At the same time, a code should not have to be re-written too frequently.[610]

- **Detailed versus concise:** it is important that the code should contain clear messages. However, to increase the clarity, code needs to be as detailed as possible. Research states that it is impossible to include all variables into a single code. It is important that the code remains usable and manageable. It should not be a law book, but a guide book. For example, one study found that by increasing the clarity of the code, comprehension of the content increases. The greater the clarity, the greater the likelihood that the decision maker will change his or her behavior and select an action desired by the code.[611] For example, it is believed that members of the board have an intuition when it comes to the conflict of interest, however if the definition of independence is not precise, individual interpretations may not correspond with the intention of the code developers. However, a listed bank may have its own particular way of handling conflict of interests.[612] Statement such as "free from conflict of interest" may represent different positions in a different bank. As a result, it is beneficial for the code to be as detailed as possible but without compromising the comprehension.

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[608] Johnson (1997, p. 6).
[609] Ibid.
[610] Ibid.
[611] Ibid.
[612] Gaumnitz and Lere (2002, p. 11).

- **Concrete versus general:** when the code contains explicit statements, such as a specific retirement age or a number of allowed directorships, it is likely that only the explicit statements will be taken into consideration and others will be ignored. However, general statements such as "we strive for the highest degree of integrity" offer little footing for the employees. If a code only addresses a narrow set of issues and/or only sets out rules with which the employees are expected to comply, it is unlikely that the code will be effective.[613]

Table 11 below presents avenues for improvement of the effectiveness of a code by examining and carefully drafting of the content.

Table 11: Avenues for Improving Code Effectiveness through Code Content

Avenue for Improvement		Action	Goal
Subject of Message	Pervasiveness of belief	Select positions that need to be included	Information content
	Experience and position of decision maker	Select issues that reflect the experience of decision makers	Relevance
	Nature of decisions faced	Select issues that address decisions made by the decision makers	Applicability
Delivery of Message	Clarity	Precisely state code position	Comprehension
	Length	Present issues in a relatively short code	Awareness

Source: Gaumnitz and Lere (2002, p. 12).

[613] Kaptein and Wempe (1998, p. 859).

8.4. Implementation Process

The effectiveness of a code depends on the implementation. A code must be institutionalized and rooted in the structure and culture of a bank, organization, body or team. The implementation process includes the following considerations:

- **Distribution:** literature suggests that whenever possible a code should be widely distributed. This means that a code should be available to everyone within the company. It should also be fully disclosed to shareholders and other stakeholders.[614] Although disclosure is deemed to be important, there are different levels of disclosure that a listed bank should consider: full disclosure on the website, private disclosure to shareholders and investors, private disclosure to regulators, internal disclosure within a listed bank, internal disclosure at board/senior management level. For example, it is recommended that a code should be communicated to suppliers and customers and be mentioned in the annual report. Research also suggests that it may be useful to make the code available to employees prior to the commencement of their employment, just in case an employee would not be able to “live with” some provisions of the code. However, research is inconclusive on this point as some argue that there is no benefit in distributing the code prior to employment as there is a minimal chance an employee would read it.[615]

- **Sign-off process:** researchers agree that in order for the code to be effective, it must be accompanied by a sign-off process. The sign-off process ensures that employees acknowledge that they have read, understood and would comply with the code and its provisions. Empirical studies show that the sign-off process increases awareness and provides an incentive for an employee to read the document. However, the sign-off process may also signal a lack of trust, excessive paternalism and possible punishment. If a company chooses to employ a sign-off process, it needs to be designed in such a way as to promote awareness, rather than to emphasize negative outcomes.[616]

- **Training and communication:** There is a consensus in literature that without training, codes remain ineffective in influencing behavior. For example, if an organization wants its code to be applied and embedded in the internal proce-

[614] Schwartz (2002, p. 38).
[615] Schwartz (2004, p. 332).
[616] Ibid.

dures, it should use the code as a parting point.[617] Training and awareness programs make it possible for the code to be embedded in the organization.[618] Training is especially important during the initial implantation of the code because it helps an organization to explain provisions contained in the code, its usefulness and importance the company attaches to the code. While it is common to conduct training as part of an induction, it is also important that training is offered to other employees. Research states that training offered should be sufficient and relevant.[619] Popular approaches to ethics and conduct training include presentation of rules and guidelines contained in the code and show examples of responsible behavior and practices. Companies also use checklists in an effort to develop higher levels of understanding of corporate governance and ethics principles.[620] Face-to-face training is also popular as it gives an opportunity for employees to discuss relevant issues.[621] It is important to emphasize that training is not just a one-off event, but a continuous process.[622] However, too much training can be de-motivating. Empirical studies show that a written document is all that is needed. Nonetheless, the overwhelming opinion is that training and educational sessions are necessary in order for the code to be accepted by all employees.[623]

- **Reinforcement:** regular reinforcement of the code of conduct is also needed because it allows "employees to perceive the seriousness and importance their company places on compliance with the code."[624] Without regular reinforcement, the written document is in danger of becoming obsolete and disregarded. There is a "need for constant education, re-education, awareness, and examples" that would build the base for appropriate conduct and practices."[625]

- **Testing:** empirical studies suggest testing employees on the content of the code. However, there is also evidence that employees dislike tests and would prefer not to be tested on the code. Example, employees find testing practices patronizing and wasteful. It is also not clear how testing relates to the actual

617 Nifhof et al. (2003, p. 68).
618 Webley and Werner (2008, p. 411).
619 Schwartz (2002, p. 38).
620 Lewis et al. (2007, p. 75).
621 Yahr, Bryan and Schimmel (2009, p.6).
622 Webley and Werner (2008, p. 411).
623 Yahr, Bryan and Schimmel (2009, p.6).
624 Schwartz (2004, p. 334).
625 Ibid.

behavior. While testing of regular bank employees may indeed be a frequent practice, it is not common for banks to test senior management or members of the board on the content of a code of conduct. It is also not clear how testing relates to the actual behavior.[626]

8.5. Administration Process

Creation and implementation of a code creates a number of critical obligations when it comes to the administration of the code. The obligations revolve around enforcement, monitoring, and internal controls.[627]

- **Enforcement***:* companies should enforce the codes in a consistent and fair manner. It is expected that a listed bank indicates in the content of a code, if and how the code will be enforced.[628]

- **Monitoring:** companies set up periodic audits to determine if employees understand and abide by the code. A code monitoring process is part of an effective compliance and risk management, which ensures that corporate policies, programs, structures, systems and objectives continue to remain in alignment with the company's code of conduct.[629]

- **Effective controls and compliance:** The effectiveness of any business code lies in the ability of the organization to ensure compliance with its provisions. Organizational controls contain both formal and informal elements. For example, informal controls include self-control and social norms, while formal controls come in form of rules and procedures.[630] Although social controls are important, formal controls are better geared at informing employees and building expectations about appropriate conduct and behavior. Formal controls include ethical compliance programs which contain: a) a code of conduct and/or other policies, b) committees charged with developing conduct policies or investigating and adjudicating policy violations, c) communication and training programs, d) reporting and whistleblowing, and e) disciplinary procedures aimed at addressing inappropriate behavior."[631] When it comes to conduct, companies "must take reasonable steps to achieve compliance through audits, monitoring

[626] Schwartz (2004, p. 334).
[627] Schwartz (2002, p. 39).
[628] Ibid.
[629] Ibid., p. 36.
[630] Cassell, Johnson and Smith (1997, p. 1089).
[631] Weaver, Treviño and Cochran (1999, p. 41).

process, and a system where employees can report criminal misconduct without fear of retribution."[632] However, despite a range of initiatives, research studies find that most compliance programs offer little more than "window dressing" in order to gain favorable reputation.[633] They tend to be "marginalized and disconnected from real expectations and norms" and do little in changing behavior. However, to create employee commitment to shared values, a code must be supported by training and effective leadership at the top. It should also be actively reinforced and promoted.[634]

9. Conclusion

By carrying out an in-depth review of law and literature on corporate governance of banks, especially for listed banks, in Switzerland, the researcher concludes that there are no formal requirements for listed banks to have Internal Guidelines on Corporate Governance. However, in accordance with the law, the board of directors of a listed bank must lay down the powers and responsibilities of the persons in charge of managing the bank. Banks must have organizational regulations which provide clear definition and scope of these responsibilities and powers.[635] Organizational regulations already contain many corporate governance principles of the board of directors, however, they are different as they are primarily concerned with the separation of duties between the board and the executive management and ensure that the bank is sufficiently organized. Internal Guidelines on Corporate Governance provide a much sharper focus on corporate governance. They offer guidance to the board of directors on corporate governance matters important to the bank and they help to ensure that the board of directors of a listed bank is committed to agreed corporate governance principles.

According literature, there is evidence that listed banks need Internal Guidelines on Corporate Governance.[636] Internal Guidelines on Corporate Governance, organizational regulations, by-laws, code of conduct/ethics and other policies with links to corporate governance are all part of a corporate governance framework which exists in a listed bank.

Internal Guidelines on Corporate Governance, as a stand-alone or as part of organizational regulations, have the potential to improve the board of directors of a listed bank's

[632] Paine (1994, p. 109).
[633] McKendall, DeMarr and Jones-Rikkers (2002, p. 381).
[634] Snell and Herndon (2004, p. 77).
[635] Economiesuisse (2007, p. 12).
[636] Basel Committee on Banking Supervision (2010a).

corporate governance practices by facilitating the debate on the importance of corporate governance at the board level.

Just like other codified corporate documents and organizational rules, Internal Guidelines offer benefits for listed banks that enact them:

- They can help the board of directors of a listed bank to improve its ability to efficiently and effectively carry out its oversight, strategy, risk management and control functions.[637] For example, clear and explicit rules help to reduce ambiguity, minimize misinterpretation, and clarify expectations and responsibilities of directors. Clear rules also reduce leadership effort and duplication.[638]

- They are part of a bank's risk management.[639] For example, clear procedures and embedded internal controls reduce governance and operational risks which arise from the people, systems and processes through which a bank operates. Clear rules, procedures and processes are part of risk management and good governance, which are essential for corporate governance in a listed bank.[640]

- They promote corporate governance values in a listed bank. The initiation and development process forces the board to re-examine its existing practices. The board would then need to determine and define what is important. Development is also supported by training and discussion, which promote bank-wide discussion on the value of corporate governance, ethics and conduct.[641] Regularly updated corporate documents, guidelines and procedures aid the board of directors and help to reinforce corporate governance standards and expectations among board members.[642]

- They can improve transparency through greater level of disclosure. Increased disclosure is said to strengthen shareholder rights[643] and increase investor understanding of a bank's activities.[644] Disclosure of corporate governance information makes it easier for investors to make investment decisions.[645] In ad-

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[637] Johnson (1997, p. 5).
[638] Müller (2011).
[639] Coles, Daniel and Naveen (2008, p. 229).
[640] Basel Committee on Banking Supervision (2004, p. 137).
[641] Nijhof et al. (2003, p. 66).
[642] Institute of Directors in South Africa (2009a, p. 51).
[643] Basel Committee for Banking Supervision (1998).
[644] OECD (2004, p. 22).
[645] Basel Committee for Banking Supervision (1998).

dition, investors often link good board practices with better performance and show willingness to pay a premium for a well-governed company.[646]

- They promote the development of a favorable corporate reputation. Similar to a code of conduct, Internal Guidelines on Corporate Governance can be used as a tool to promote the corporate image.[647] It signals to customers, shareholders, future employees and even community groups and regulators that a listed bank is legitimate. For example, research states that an overall value of a firm is often linked to a perception of its corporate governance practices.[648]

- They show compliance with relevant regulations and show that corporate governance practices are in line with international standards. For example, regulators are calling for greater disclosure of corporate governance practices in the banking sector.[649] Empirical studies show that a firm that has a code of conduct can better appease regulatory bodies.[650]

- They help the board to communicate desired behavior and corporate governance principles. For example, a written document makes it easier and more cost effective to transfer knowledge about corporate governance practices and values between incumbent and new board members. Therefore, promoting continuity of good practice. Well drafted guidelines are useful in overcoming obstacles such as directors' interests, problems with board composition, succession planning, and director education among others.[651]

The development of an Internal Guideline on Corporate Governance requires a formal process and involves the entire board. It resembles closely the development, content decisions, and implementation and administration processes of a code of conduct. The process of changing and updating corporate governance principles within the board is not an easy one as it forces the board to re-evaluate the way it functions and determine what is appropriate in today's marketplace.[652] It is also not a one-time event, but a continuous process of design, implementation, and administration.

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[646] McKinsey & Company (2000).
[647] Labelle (2002, p. 12).
[648] Monks (2002, p. 118).
[649] Nordberg (2007, p. 13).
[650] Wright and Rwabizambuga (2006, p. 92).
[651] Waddock (2002, p. 217).
[652] March, Schulz and Zhou (2000, p. 22).

The following points highlight the matters which should be undertaken by a listed bank when developing robust and effective Internal Guidelines on Corporate Governance:

- **Initiation and development:** sets the scene for all other decisions. It lays down clear grounds for the initiative and development of the Internal Guidelines and requires clear leadership and championship of the development process as well as understanding of corporate governance problems inherent in a bank and the industry as a whole.

- **Content Decisions**: a listed bank must make a number of content decisions. For example, the decisions should cover the desired objectives, length, tone and scope of the Internal Guidelines. The board of directors of a listed bank should consider the universal corporate governance and bank specific areas while developing the content. While some boards may also include conduct and ethics content such as fairness, loyalty and due diligence, the researcher believes that these areas are much more appropriate for a separate code of conduct, especially if a bank already has a separate code of conduct. Laws, regulations and international recommendations make the board of directors responsible for risk management and internal control. These areas are believed to be important and should be covered as part of the main duties and responsibilities of the board of directors. The board should also not forget about the role of shareholders and other stakeholders in the governance of a listed bank.

- **Implementation process:** it is not enough to simply implement Internal Guidelines, the board has to consider how the Internal Guidelines will be distributed, determine if there should be a sign-off process and ensure that there is sufficient and relevant training and reinforcement. There is evidence that business codes need to be supported not only by the initial training session, but companies need to provide follow-up training in order to maximize the impact of the codes on the behavior and conduct of corporate members.[653]

- **Administration process:** monitoring, enforcement and reinforcement are part of the administration process of the Internal Guidelines. These elements help to pave the way for review and evaluation of the effectiveness of the Internal Guidelines.

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[653] Schwartz (2002, p. 38).

Table 12 presents a list of areas that a bank may cover in its Internal Guidelines.

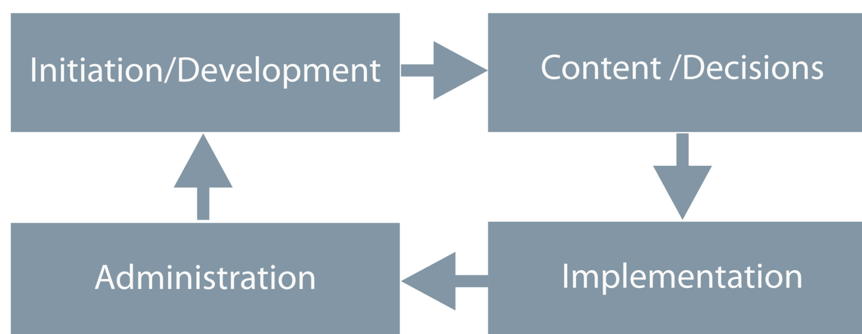
Table 12: Conceptualization of Content Areas

Content of the Internal Guidelines on Corporate Governance for Listed Banks
Duties and responsibilities of the board and its directors;
Board composition and skills requirements for members of the board;
Definitions and criteria for independence of directors, the chairman and committee members;
Duties and responsibilities of the chairman;
Board committees;
Rights of directors (access to information and access to directors, etc.)
Succession planning;
Director compensation;
Board self-assessment and performance evaluation;
Board education and training;
Confidentiality and conduct;
Rights of shareholders and stakeholders;
Rules of Procedure for the BoD e.g. meetings, quorum, minutes;
Rules of Procedure for the Internal Guidelines e.g. responsibility, revision, monitoring.

Source: own development.

Figure 7 below presents the conceptualization of the development process for the Internal Guidelines on Corporate Governance in a listed bank, which consists of the initiation and development process, content decisions process, implementation process and administration process.

Figure 7: Development of the Internal Guidelines on Corporate Governance



Source: own development based on Kaptein and Wempe (1998).

The empirical study aims to explain and empirically test the conceptualizations stated above. In order to meet the aims and objectives discussed in section 1.4, the empirical study attempts to provide answers to the following questions:

- How wide-spread is the use of Internal Guidelines on Corporate Governance in listed banks in Switzerland?
- What are the benefits of Internal Guidelines on Corporate Governance?
- What are the content decisions and how should the Internal Guidelines be structured?
- How do listed banks develop, implement and administer Internal Guidelines?

The ultimate aim of the study is to provide a set of recommendations for the board of directors of listed banks in Switzerland as to whether or not they should develop Internal Guidelines on Corporate Governance and present a framework for initiation, content development, implementation and administration of the Internal Guidelines.

Part III: Empirical Study

1. Overview of the Empirical Study

Part III presents the discussion of the methodology used to achieve the stated research objectives and to answer the research questions and presents research findings.

The author first presents empirical research aims and questions in **section 2** and then goes on to discuss the research methodology and design in **section 3**. The choice of methodology is supposed to be fit for purpose.[654] It enables the researcher to plan and critically examine the logic, composition and protocols of various research methods, to evaluate the performance of individual techniques, and to estimate the likelihood of particular research designs to contribute to knowledge.[655] Research design is discussed in detail in **sections 3.1** to **3.3.**

This is followed by a detailed presentation of the research procedure, including a discussion on the specific research tools in **section 3.4**. Research methods have an influence on subsequent research activities such as sample selection and data collection.[656] They offer logic or ways of reasoning to arrive at solutions; they act as rules for communication, enabling the researcher to explain how the findings are achieved and make it possible to evaluate research findings.[657] **Section 3.5** and **3.6** present a discussion of limitations of the research tools used and data analysis techniques, respectively. Additionally, **section 3.7** sets out an in-depth discussion of quality measures in research which include issues of validity, replicability and reliability, and generalizeability.

Sections 4 present analysis of empirical data. The empirical study structure follows concurrent data analysis, where no single method is dominant. Just like with data collection, the researcher proceeds to analyze data in a parallel manner.[658] However, quantitative and qualitative data analyses are initially presented in separate sections, and afterwards, the researcher combines the interpretations in order to provide a comprehensive view of the research problem.[659] **Section 5** contains a discussion of the results of the data analysis and revisits the research questions.

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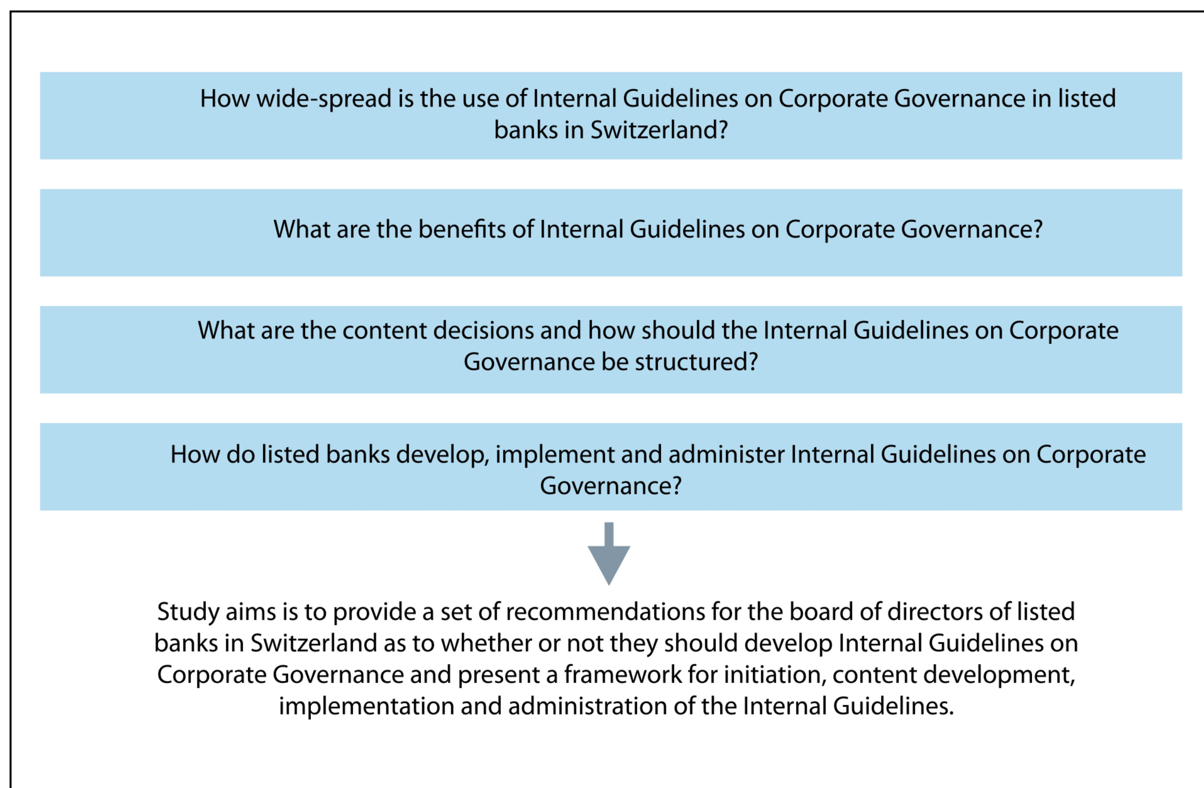
[654] Easton (n.d., p. 433).
[655] Krippendorf (2004, p. xx).
[656] Ghauri and Grønhaug (2005, p. 57).
[657] Ibid., p. 40.
[658] Creswell et al. (2002, p. 210).
[659] Creswell (2003, p. 217).

2. Empirical Research Objectives

After review of existing literature on the topic and the development of the theoretical framework, the researcher has identified a number of research questions that need to be answered. By doing so, the researcher hopes to contribute to theory and to provide practical understanding concerning the use of Internal Guidelines on Corporate Governance among listed banks in Switzerland. Because the phenomenon of the Internal Guidelines on Corporate Governance has not yet been studied, the researcher carries out an exploratory descriptive study.

The empirical study aims to show how listed banks in Switzerland develop, implement, and administer Internal Guidelines on Corporate Governance, what is the structure of the Internal Guidelines and aims to identify specific content areas and determine the benefits of the Internal Guidelines. Figure 8 presents research questions and the main aim of the study.

Figure 8: Research Aim and Questions



Source: own development.

3. Research Methodology and Design

3.1. Research Design

The researcher carries out an exploratory descriptive research because the phenomenon of Internal Guidelines on Corporate Governance, especially in the case of listed banks, has not been addressed in literature. This ultimately influences the choice of a research design and specific research methods. "Research design is an overall plan for relating the conceptual research problem to relevant and practical empirical research."[660] It provides an outline or a framework for data collection and its analysis. Research design does not only reveal what type of research the researcher plans to carry out (e.g. exploratory, descriptive or casual), but it forms part of the overall research strategy and clarifies the priorities of the researcher.[661] It ensures that the evidence provided answers set research questions as unambiguously as possible.[662] In order to examine the Internal Guidelines on Corporate Governance among listed banks in Switzerland, the researcher uses a multi-methodological design, which allows the use of both qualitative and quantitative[663] research tools in a single study and makes it possible to explore the phenomenon of the Internal Guidelines on Corporate Governance in depth.

3.2. Mixed Method Research Design

While it seems possible to carry out research on Internal Guidelines on Corporate Governance using a single method research design, it is more advantageous to use multiple methods, because it provides a better and wider understanding of the topic in question.[664] Mixed method research design is appropriate for studying corporate governance and similar topics.[665] It is also well suited for topics which are sensitive (e.g. corporate

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660 Ghauri and Grønhaug (2005, p. 64).

661 Ibid., 56.

662 De Vaus (2001, p. 9).

663 Quantitative research enables researchers to ascertain relationship among variables, qualitative research consists of interpretive practices that help to explain matters in greater depth (Denzin and Lincoln, 1994 p. 3). Qualitative research (e.g. use of interviews) makes it possible to gain a deeper understanding of the issues involved (Johl and Renganathan, 2010, p. 43).

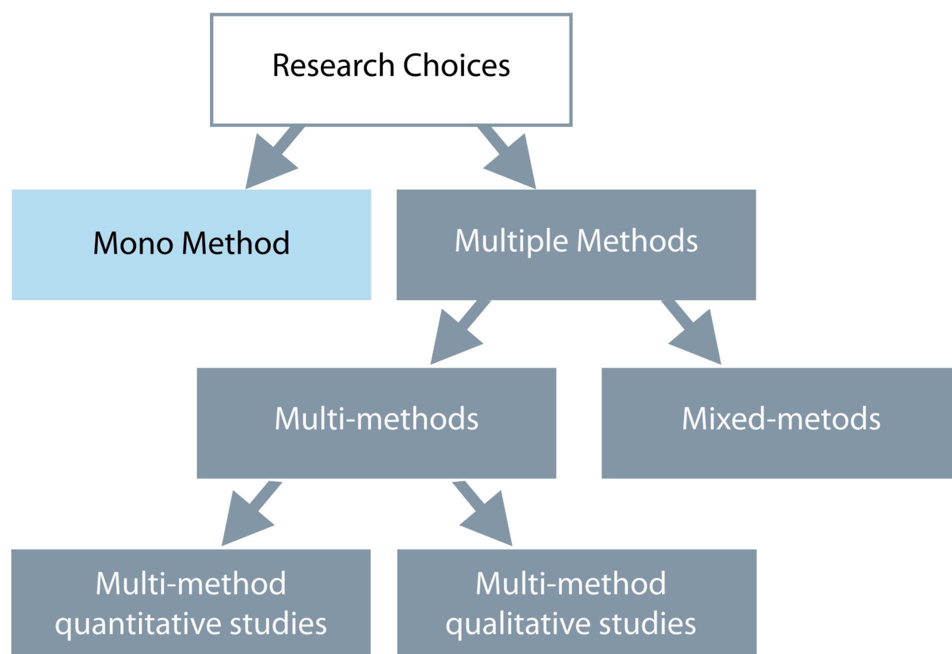
664 Stiles (2001).

665 Mixed-method design allows researchers to combine qualitative and quantitative techniques, methods and approaches. This offers an expansive view of the research topic (Johnson and Onwuegbuzie, 2004, p. 17) and makes it possible to understand all of the associated complexities (Syed, Mingers and Murray, 2009, p. 73). The practice of combining quantitative and qualitative techniques in a single study is quite common and a widely accepted method in business and management studies (Saunders, Lewis and Thornhill, 2009, p. 154).

governance of banks is currently under media and regulatory spotlight), as it is easier to gain access to relevant information and gain multiple perspectives on the topic.[666]

While some researchers criticize mixed-method research, combining qualitative and quantitative methods in a single study enhances confidence in the research findings and enables data to be examined for associations.[667] It also adds rigor, breadth, complexity and richness to the findings.[668]

Figure 9: Research Choices



Source: Saunders, Lewis, Thornhill (2009, p. 154).

[666] Bryman and Bell (2003 p. 647).
[667] Ibid., p. 55.
[668] Flick (2002, p. 444).

Therefore, by combining semi-structured interviews, a questionnaire and document sources into a single study, the researcher gains greater insight into the topic and enhances academic rigor. Specific techniques used in the study will be discussed in greater depth in Section 3.4.

Table 13: Mixed Method Research

Quantitative, Qualitative and Mixed Methods Procedures		
Quantitative Research Methods	**Qualitative Research Methods**	**Mixed Methods Research Methods**
Predetermined Instrument based questions Performance data Statistical Analysis	Emerging methods Open-ended questions Interview data Observation data Document data Text analysis	Both predetermined and emerging methods Both open-and closed-ended questions Multiple forms of data drawing on all possibilities Statistical text analysis

Source: Creswell (2003, p. 16).

3.3. Limitations of a Mixed-Method Research Design

3.3.1. Method Specific Limitations

While there are advantages in using a mixed-method research design, there are also limitations. First, the researcher presents limitations specific to the mixed-method research design, and then presents limitations due to resource constraints, especially those relating to access to data. Research bias is also discussed.

The mixed-method design offers a middle ground for the researcher in studying the Internal Guidelines on Corporate Governance of listed banks in Switzerland because it makes it possible to get around the traditional limitations in research.[669] Critics say that mixed-method research offers high practical relevance but offers very little academic rigor, which is required in today's management science research.[670] Any scientific undertaking must be "fully accountable to data collection, analysis, and interpretative methodologies."[671] For example, combination of various methods allows a wide range of data to be collected, but it is not always clear how researchers should interpret it. Others also state that the mixed-method research helps to hide weaknesses in the

[669] Johnson and Onwuegbuzie (2004, p. 19).
[670] Pihlström (2005, p. 94).
[671] Onwuegbuzie and Teddlie (2003, p. 354).

study.[672] However, a mixed-method research design can also enhance academic rigor.[673] In research, rigor is maintained by adherence to the assumptions, strategies, appropriateness and adequacy of data.[674]

To enhance rigor, the researcher will use triangulation to cross-validate the findings.[675] For example, triangulation makes it possible to describe and formalize the relationship between qualitative and quantitative research.[676] Limitations of each of the research techniques used in the study of the Internal Guidelines on Corporate Governance of listed banks in Switzerland are discussed later in section 3.4.4.

3.3.2. Access and Resource Constraints Limitations

Gaining access to the field is considered crucial in ensuring success of any research. In the aftermath of the financial crisis of 2008-2009, corporate governance of banks has become a very sensitive topic. Furthermore, the researcher experienced some difficulties in getting access to Internal Guidelines on Corporate Governance and Organizational Regulations because many of the boards of directors consider these documents to be confidential. While the researcher was able to obtain copies of the Internal Guidelines on Corporate Governance from most of the listed banks that took part in the study, in a few instances it was impossible to gain access to these documents.

The fact that the researcher did not have prior relationships with interview participants made it difficult to get commitments to interviews. While this was perceived to be a great challenge, prior contact with respondents may not always lead to frank and open answers.[677]

Additionally, members of the board, especially chairmen, and heads of regulatory bodies have very busy schedules. In some instances, this meant that interviews took place over the telephone rather than face-to-face.

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[672] Johnson and Onwuegbuzie (2004, p. 21).

[673] A mixed-method research design is subject to the same validity and reliability rules as pure quantitative or qualitative research. If diverse research methods bring similar results, then they increase the validity of the research findings. If there is lack of agreement in findings it does not mean that there is invalid measurement, but instead it provides insights into different dimensions of the phenomenon in question (Hunter and Brewer, 2003, p. 582).

[674] Morse (2003, p. 190).

[675] Stange et a. (1994, p. 278).

[676] Triangulation technique is common in business research as it allows researchers to cancel out the limitations of one method by the use of another method. It makes it possible to cross-check findings (Bryman and Bell, 2003, p. 59).

[677] Johl and Renganathan (2010, p. 49).

Questionnaires were sent to residential addresses of non-executive directors and while this increased the likelihood that the questionnaire will be answered by a non-executive director him- or herself, the researcher was unable to find addresses for all of board members. This may have contributed to the self-selection bias. At the same time, the researcher chose to distribute questionnaires to NEDs that reside in Switzerland as it was not possible to find residential addresses for those that live abroad.

Time and money acted as obvious constraints as interviews took place at bank head-quarters across cities in Switzerland and Liechtenstein. For similar reasons, question-naires were sent only to those members of the board that that reside in Switzerland.

3.3.3. Researcher Bias

By using a mixed-method research design, the researcher wanted to draw on the strengths of different approaches. However, each of the research tools brings an associ-ated research bias with it. Since all research involves a degree of summarizing and fil-tering, these processes increase the risk of bias. Although research bias is a common in all research, the researcher followed a number of recommendations in order to mini-mize research bias in the study of the Internal Guidelines on Corporate Governance of listed banks.

One way to improve understanding of findings is to have an inside knowledge of the company or business sector. While this improves the understanding of the viewpoints, it introduces further personal bias because the researcher may develop strong opinions prior to the start of the research.[678] This is not the case in this study, as the researcher had no prior employment or connections with banking or the financial service industry. However, during the financial crisis of 2008-2009, banks have received vast of amounts of publicity, and not always positive. To ensure objectivity, the researcher car-ried out a thorough analysis of existing literate on corporate governance of banks. Af-terwards, the researcher used the theoretical framework when developing the question-naire and interview schedules. In the end, these steps helped to have a complete view of the topic and made it possible to interpret the viewpoints of the participants without bringing prior private opinion on the topic.[679]

It is also advised that that data is collected simultaneously rather than sequentially. Simultaneous, or concurrent, data collection improves objectivity, as findings of one method cannot influence another. For example, questionnaire responses could have an

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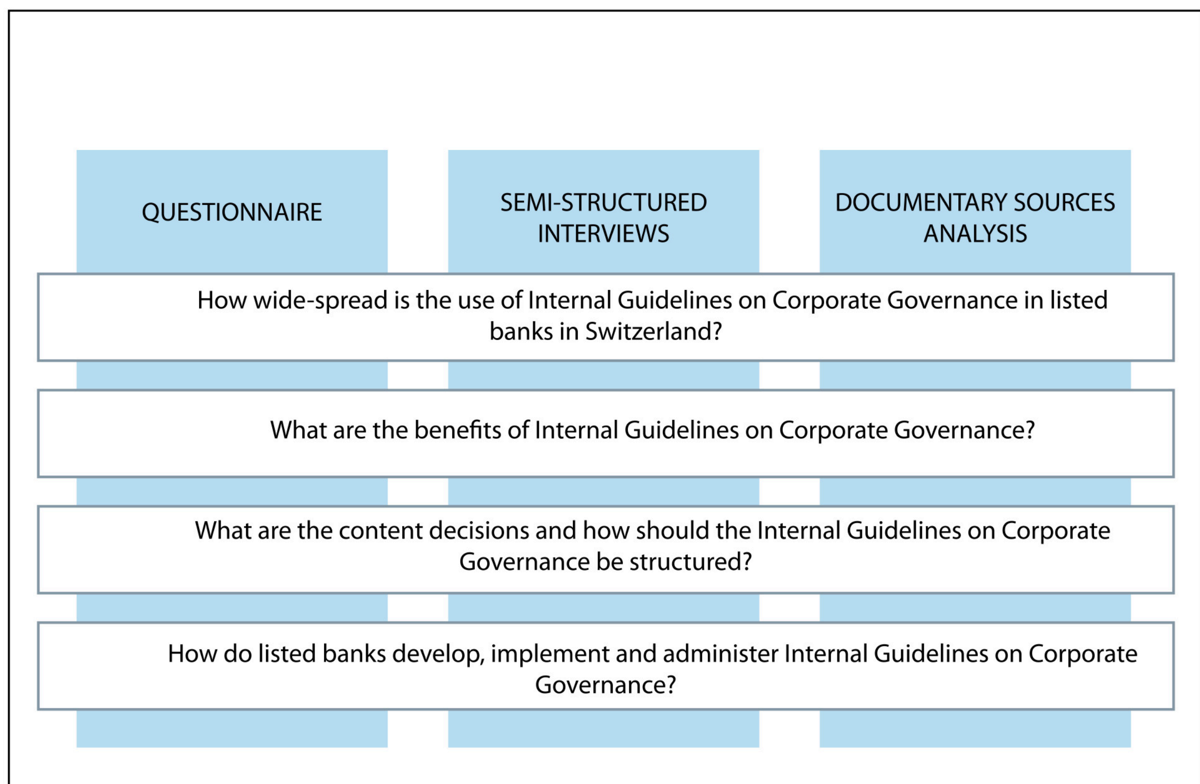
[678] Mertens (2003, p. 141).
[679] Creswell (2003, p. 217).

influence on the framing of interview questions.[680] Therefore, the researcher decided to carry out interviews at the same time as questionnaire results were collected. The researcher also transcribed and made summary statements of interviews soon after they were completed. This was done to preserve the integrity of the conversation and to keep the conversation in the context of the surroundings.

3.4. Research Procedure

This section discusses research techniques used to collect and analyze data. The researcher uses three separate research tools for data collection.

Figure 10: Summary of the Research Procedure



Source: own development.

A survey method is used in order to ascertain the existence of Internal Guidelines on Corporate Governance among listed banks, their value and development, implementation and administration process while interviews make it possible to clarify matters and examine issues in greater depth. Questionnaires and interviews were supported by the content analysis of documentary sources i.e. Internal Guidelines on Corporate Governance, which the researcher obtained during the interview meetings or were subsequently downloaded from listed banks' websites. The researcher believes that each of the

[680] Creswell (2003, p. 217).

research techniques used compliments each other.[681] By combining a survey technique with qualitative interviews, and conducting of the content analysis, the researcher hopes to gain in-depth understanding of the phenomenon in question.[682]

3.4.1. Survey Method

A self-administered questionnaire is a typical data collection tool in survey method research.[683] The aim of the questionnaire is to get answers from non-executive directors on a number of questions concerning Internal Guidelines on Corporate Governance such as:

a) whether the board had established Internal Guidelines on Corporate Governance or not,

b) identify the value and benefits of the Internal Corporate Governance,

c) examine development, implementation and administration processes, and

d) identify what can be done to improve existing Internal Guidelines on Corporate Governance.

The researcher chose to collect data from the non-executive directors as they share the responsibility for corporate governance along with the chairman of the board and executive management. It was felt that non-executive directors would offer insight into the existing practice. In order to understand the benefits of the Internal Guidelines, development, implementation and administration processes, data needed to be collected directly from corporate governance participants e.g. members of the board.[684] The researcher also made the assumption that for the Internal Guidelines on Corporate Governance to have some benefits for the board of directors, members of the board, at the least, should be aware of their existence and have some familiarity with the document.[685]

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[681] Flick (2002, p. 443).
[682] Denzin and Lincoln (1994, p. 5).
[683] Self-administered questionnaire is one of the most frequently used methods of data collection in business and management research. It offers a number of advantages such as confidentiality; it minimizes interview bias, and ensures a good response rate. Self-administered questionnaires are also easy to administer (Oppenheim, 2005, p. 112).
[684] Stiles (2001, p. 631).
[685] Schwartz (2001, p. 252).

3.4.1.1. Sampling

Gaining access to non-executive directors was one of the major concerns in conducting this research. It was vital to ensure that the sampling frame was as large and as representative as possible. A list of banks and banking institutions listed on the SIX Swiss Exchange was generated in November 2010. Banks and banking institutions were identified from the Swiss Performance Index (SPI), which comprises of SIX Swiss Exchange traded securities of companies that are domiciled in Switzerland or the Principality of Liechtenstein.[686] By using the Industry Classification Benchmark (ICB), firms listed in under the 8300 SPI Sector index were identified as banks. Furthermore the list was cross-checked manually to ensure that the list includes banks and banking institutions with a primary listing. A total of 29 banks were identified, including the Swiss National Bank. The population also included three of the largest banks in Switzerland in terms of assets held (UBS AG and Credit Suisse Group, and Julius Bär); two banks which are domiciled in Liechtenstein, eleven cantonal banks and the rest were small to medium-sized banks.

There is an advantage in selecting listed banks for the study because listed companies are under a mandatory obligation to disclose information on corporate governance, including information on the composition and membership of the board of directors. The names of non-executive directors were easily obtained from *moneyhouse*, a commercial company register. This information was then cross-checked against information on the board of directors published on the banks' websites or in annual reports. A total of 235 directors were identified. Information from *moneyhouse* also made it possible to establish the place of residence of non-executive directors.

The researcher decided to send questionnaires by post to residential addresses of the NEDs in order to improve the rate of response and to avoid situations in which a questionnaire was answered by members of the investor relations department or by other employees in the bank. Based on the information generated, the researcher decided to exclude non-executive directors domiciled outside Switzerland because the researcher felt that it would not be possible to find residential addresses of those directors that live abroad. After a list of non-executives was compiled, the researcher carried out manual searches for addresses using online telephone directories, such as *tel.search and local.ch.* If NEDs were unlisted in the telephone directory, their names were automatically excluded from the sample. Although the researcher considered sending questionnaires to unlisted NEDS to headquarters of banks, it was felt that it was unlikely to

[686] SIX Swiss Exchange (2011).

generate a response in time as non-executive directors do no have permanent presence at headquarters. Non-executive directors of the Swiss National Bank were also excluded from the sample due to directorship positions in cantonal banks. This was done to ensure that the NEDs do not participate twice in the survey. As a result, a total of 151 questionnaires were sent to non-executive directors in December 2010.

In order to improve the response rate and generate interest in the study, a letter was sent along with the questionnaire, outlining the purpose of the study as well as definitions of the Internal Guidelines on Corporate Governance. In addition, the researcher noted in the letter that the board of directors that do not have written Internal Guidelines on Corporate Governance should also take part in the questionnaire and that their response is just as valuable.

Each respondent was assured of complete anonymity and confidentiality. A follow-up letter was sent to the addresses that did not respond four weeks after the original mailing. As a result, an overall response rate of 23% (n=34) was achieved, which is low but is consistent with expectations.

3.4.1.2. Questionnaire Design

A combination of dichotomous, multiple choice, checklist and Likert-type scale formats were used in the questionnaire. When developing Likert-scale questions, the author used a five-point scale rather than a traditional seven point scale.[687] The researcher has chosen not to randomize questions, but to preserve themes in the questionnaire so as to ensure a logical flow of the questions (e.g. benefits, development, implementation, administration and improvements).[688] A skip sequences was included in order to ensure that all NEDs were able to respond. For example, at the start of the questionnaire, NEDs were asked if their board had Internal Guidelines on Corporate Governance. If the answer was negative, they were directed to specific questions at the end of the questionnaire. These questions asked whether they were considering the introduction of the Internal Guidelines on Corporate Governance and if there were any specific reasons for not having such Internal Guidelines. The researcher thought that it was important to identify those listed banks that did not have Internal Guidelines in place while still providing a reason for directors of those banks to participate in the research.

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[687] Increasing of the scale from five to seven items may lessen the usage of an ‘uncertain’ category. Limiting the number of items or choices reduces complexity, fatigue and boredom (Mattel and Jacoby, 1972, p. 508).

[688] Rotation and randomization of questions minimizes early-item influence problem, which improves reliability of research findings (Crano and Brewer, 2001, p. 280).

If NEDs answered that they had Internal Guidelines on Corporate Governance, they were prompted to answer a series of questions relating the benefits of having the guidelines and the process of their development and implementation. The list of questions was formulated from a review of the relevant literature and from an analysis of a number of Internal Guidelines that were available during the preparation for the research. All respondents regardless of whether they had Internal Guidelines in place or not were invited to include any other comments related to the topic at the end of the questionnaire.[689]

In order to reduce the complexity of the questionnaire and to increase the likelihood of response, the majority of questions in the questionnaire are closed-ended. The use of close-ended questions also improves comparability of answers.[690]

Furthermore, the questionnaire was piloted during the development process before the final version was sent to the non-executive directors. Pilot respondents (one ex-CEO of a bank, two compliance and risk officers and two academics) were asked to complete the questionnaire and then provide feedback and comment on whether they had experienced any difficulties in interpreting the questions.[691] The responses and feedback of the pre-test were then taken into account when preparing the final questionnaire and a letter that accompanied the questionnaire.

The final questionnaire was subsequently sent to the non-executive directors of the publicly listed banks in Switzerland.

3.4.2. Interviews

In order to gain in-depth understanding of the topic, the author carried out semi-structured interviews with the chairmen of the board or board secretaries.[692] In addition, response from regulatory bodies was also sought. While chairmen are the most senior members of the board, the board secretaries were deemed to be just as knowl-

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[689] O'Dwyer and Madden (2006, p. 222).

[690] Bryman and Bell (2003, p. 260).

[691] The use of pilots is recommended in academic research. A pilot can establish respondents' interest and identify ambiguities in questions which make it difficult for respondents to provide answers. It can also help to improve flow and order of questions and skip patters (Brace, 2008, p. 174).

[692] The use of interviews as a research tool is common in business research. Interviews enable researchers to obtain greater insight of the topic. Semi-structured interviews allow for greater flexibility compared to a structured interview formats. Semi-structured interview technique makes it possible to frame questions during the interview and allows for follow-up questions. As a result, data is said to be much richer compared to quantitative research tools. Semi-structured interviews rely on the interview schedule which helps the researcher to focus the interview process, while at the same time allows the researcher to pick up additional questions as matters arise (Bryman and Bell, 2003, p. 647).

edgeable and perhaps more objective as they are not members of the board.[693] In general, the interviewees were identified based on their expertise and the ability to offer insight on the topic.

By employing a semi-structured interview technique, the researcher prompts participants to reveal their perceptions on a wide range of issues concerning corporate governance, the role of board of directors in governance of a listed bank and issues surrounding Internal Guidelines on Corporate Governance.

In preparation for interviews, the research developed three interview schedules, one for chairmen and board secretaries and two separate ones for the regulators (see Appendix 8). The schedule was drawn from an analysis of existing literature. The interview schedule covered a range of topics including the rationale for development of Internal Guidelines on Corporate Governance and benefits of the Internal Guidelines. Also, specific questions were asked concerning the development, implementation and administration of the Internal Guidelines. The interview schedule included specific questions concerning the content of the Internal Guidelines and it was piloted with compliance officers and academics to ensure that questions are clear.

Semi-structured interviews were carried out from December 2010 to May 2011. Primarily, interviews took place face-to-face; however, in two instances interviews were conducted over the telephone due to very busy schedules of interview participants. All interviews lasted between 35 minutes and one hour.

The sampling frame consisted of the 29 listed banks, as discussed in detail in 3.4.1.1, and three regulatory bodies (SIX Swiss Exchange, FINMA and FMA).

Participants were contacted by either phone or email. In many instances, a letter was sent along with a summary of the study to the potential candidate in order to secure an interview.

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[693] Stiles (2001, p. 633).

A total of 13 interviews were carried out with chairmen, board secretaries, and members of regulatory bodies. In one of the interviews, both the chairman and the board secretary were present. In another instance, both the board secretary and head of compliance were present. However, the total number of interviews corresponds to the actual number of interview sessions with banks and regulators rather than the number of interview participants.

Table 14: Interviews: Breakdown by Type

Respondent Type	**Number**
Chairman	4
Board Secretary	6
Regulator	3
Total	**13**

Source: own development.

The author also wanted to get a diverse range of listed banks in the sample, so as to ensure that the population is well represented. Two large banks, one bank domiciled outside Switzerland (foreign bank), four cantonal banks and 3 small-and-medium sized banks took part in the interview. The size of the bank was determined from the listing profile on the SIX Stock Exchange. As mentioned earlier, interviews were also carried out with the regulators as they are a major stakeholder group when it comes to corporate governance of listed banks. A full list of interview participants can found in Appendix 5.

Table 15: Interviews: Breakdown by Bank/Organization

Banks/Organizations	**Number**
Large	2
Foreign	1
Cantonal Banks	4
Small and Medium Size Banks	3
Regulators	3
Total	**13**

Source: own development.

The researcher recorded all but two interviews because the participants did not give permission to be recorded. In addition, the researcher took some limited notes which were then used for follow up questions at the end of the interview. Interviews were then transcribed. In the case where a recording could not be made, the researcher took detailed notes.

3.4.3. Documentary Sources

Researchers often relied on secondary data research tools. Written documents, such as Internal Guidelines on Corporate Governance, organizational regulations, annual reports, press releases, and other policy documents are important sources of data and provide both qualitative and quantitative input. Documentary sources could be analyzed quantitatively and qualitatively. In addition, they can be used to triangulate findings.[694]

While annual reports and press releases were widely available on bank's websites, the researcher was able to obtain copies of Internal Guidelines on Corporate Governance during the interview process. In most cases, interview participants were happy to provide the researcher with the copy of the document along with some other complimentary documents. On one occasion, the researcher was unable to get a copy of the document due to confidentiality and privacy concerns of the interview participant. In other instances, a copy was already available on the bank's website. However, access to an organization's records was not easy due to the presence of gatekeepers (i.e. chairmen of the board and secretaries) who felt that these documents were confidential and private.[695] The researcher has examined and analyzed a total of 12 Internal Guidelines on Corporate Governance (either as stand-alone document or as part of organizational regulations). In cases where organizational regulations were used, the researcher examined the section of the document which contained corporate governance principles for the board and its committees.

Examination of the existing Internal Guidelines is very useful as it enabled the researcher to identify patterns and similarities in the content, and assess the overall usefulness and quality of the documents.[696]

3.4.4. Limitations of Research Tools

As with any research work, the methods employed in this study have a number of limitations that are worth mentioning. For example, quantitative questionnaires alone do not provide the richness and complexity of the data that is needed to understand the reasons for adoption and perceived benefits of the Internal Guidelines on Corporate Governance. The researcher minimized this shortcoming by complementing the re-

[694] Saunders, Lewis and Thornhill (2003, p. 191).
[695] Ibid.
[696] Studies that examine the quality of codes of ethics, codes of conduct and annual reports rely on documentary source analysis. This technique allows researcher to examine and evaluate the content against the established theoretical framework (Singh, 2006, p. 21).

search by using semi-structured interviews and documentary sources. Semi-structured interviews are also said to have problems when it comes to replication and researcher bias. However, by combining multiple research tools the researcher can be more confident with the results.[697]

Because there are no previous studies that examine the Internal Guidelines on Corporate Governance of listed banks, the researcher could not fall back on past research findings and methods. In order to ensure that each element of the study was covered, the researcher carried out a very broad review of literature in order to create a pool of questions for the questionnaire and the interview. Furthermore, when developing the questionnaire, the researcher wanted to make sure that each content area was covered in sufficient depth. The pilot included a greater number of items, which was later reduced based on feedback.[698]

Additionally, the researcher used a combination of dichotomous, multiple choice, checklist and Likert-type formats in the questionnaire. However, checklist and scales are problematic as they are more prone to response biases than formats that require a response to every item.[699] When developing Likert-scale questions, the researcher chose not to include a 'no opinion' category on the scale in order to force responses into an "agree" or "disagree" option. Nonetheless, this approach may cause difficulties for some respondents. In addition, pilot respondents felt that a seven-point scale made it too difficult and time consuming; as a result the scale was reduced to five points.[700]

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[697] Triangulation enriches the explanation of the research problem and offers a degree of comprehensiveness to the study (Jick, 1979, p. 608).

[698] When developing multiple choice or Likert-type questions, it is recommended that the proportion of items devoted to each content area is represented by the sufficient number of items and questions (Bryman and Bell, 2003, p. 165).

[699] Clark and Watson (1995, p. 312).

[700] Respondents may use the middle position on the scale as an 'uncertain' category. In order to minimize the usage of 'uncertain' category, it is recommended to use a balanced six-point scale rather than a traditional five-point scale or to increase the scale from five to seven categories. Larger scales increase fatigue and boredom of the respondents (Mattel and Jacoby, 1972, p. 506).

3.5. Data Analysis

3.5.1. Questionnaire

A total of 151 questionnaires were sent out, however, two questionnaires were returned as non-deliverable (n=149). At the end of four weeks, the researcher received a total of 34 completed questionnaires. However, 2 were dismissed from the analysis due to missing data (valid response of 21.5%). Subsequently, 32 valid questionnaires were used for analysis (see Table 16 below).

Table 16: Survey Response

	Number	Percent
Questionnaires sent	151	100%
Non-deliverable questionnaires	2	1.3%
Completed questionnaires received	34	22.8%
Invalid due to missing fields	2	1.3%
Valid questionnaires	32	21.5%

Source: own development.

Prior to analysis, the researcher had to code responses into variables. In case of dichotomous questions, responses are coded as "1=Yes" and "0=No". Data from multiple choice questions (i.e. question 4) was coded into nominal variables and a number from 1 to 5 was assigned to each response choice. Likert scale questions (question 3 and 6) are coded as follows: "1=strongly agree", "2=agree", "3=neither agree nor disagree", "4=disagree" and "5=strongly disagree".

In addition, two extra variables were created to provide description of respondents. The first one identified the respondent by the type of a bank. This information was derived from the response envelopes which were used to send the questionnaires back. The following classifications were applied: "1=large/international", "2=small and medium sized/private", "3=cantonal", and "4=foreign". In addition, question 9 was re-coded into the number of committees for easier presentation of data.

Once all data were coded, they were entered into an SPSS spreadsheet for analysis. To start with, the researcher calculated descriptive statistics for all of the questions.[701]

[701] It is commonplace to present mean and standard deviation, which are the most common measures of central tendency, but tend to be less suitable for the interpretation of nominal variables (questions 1, 2, 4, 5, 7, 8 and 9) and ordinal variables (questions 3 and 6). Mode and median were also calculated; these are more suitable for nominal and ordinal variables, respectively (Bradley, 2010, p. 264).

Kolmogorov-Smirnov Test and Shapiro Wilk tests were also done to see if data is normally distributed. Results and descriptive statistics can been seen in Appendix 10.

The researcher also calculated frequency distributions for each question as this method of data analysis provides a simple and easy way to summarize data and interpret it at later stage. Frequency distributions are useful for both nominal and ordinal variables.[702]

3.5.2. Interviews

Analysis of qualitative interviews is predominantly an inductive process, involving interactive, "back-and-forth process between data collection and data analysis."[703] Prior to analysis, the names of interview participants were removed from transcripts in order to ensure anonymity and confidentiality of the interview participants. As a result, interview findings are presented in a summative format.

Interview transcripts and notes were reviewed sentence by sentence in order to identify important words, phrases, sentences and concepts and determine recurrence. This made it possible to generate related categories and identify themes.[704] The theoretical framework proved helpful in establishing provisional categories, i.e. clarity of tasks, compliance, transparency, development, administration and so on. The employed categorization process is a popular method with qualitative but also quantitative analysis of interviews because it makes it possible to build associations, establish patterns and offer explanations which would later be used to provide recommendations for listed banks.[705] Many researchers also prefer to quantify the results by creating frequency counts as it is said to provide rigor in management research.[706] Because interview analysis is an iterative process, the researcher had to go back-and-forth between transcripts in order to redefine, revise, merge or amend categories. As a result, it was possible for

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[702] Bryman and Bell (2003, p. 385).

[703] Teddlie and Tashakori (2009, p. 44).

[704] According to grounded theory, interview analysis consists of two steps - unitizing and categorizing. This process stems from generation of themes and identification of recurrent messages, which may require a systematic comparison of concepts to generate categories (Glaser and Strauss, 1967).

[705] Coding and categorization process used in interview analysis is closely related pattern matching and explanation building techniques associated with case study research (Stake, 1995, p. 32). Pattern matching is a technique which allows the researcher to compare an empirical pattern to a predicted one, making it possible to test for relationships among concepts. However, explanation building technique is more appropriate for the examination of facts and comparison of discoveries against rival propositions (Yin, 1994, p. 22).

[706] Huberman and Miles (2002, p. 261).

the researcher to combine qualitative results with quantitative ones in this study. This method is said to increase the validity of the research.[707]

In carrying out interview analysis, the researcher hoped to explore the topic of the Internal Guidelines on Corporate Governance in-depth and to build rich explanations concerning benefits and development process of the Internal Guidelines on Corporate Governance. For example, generated categories were used to structure interview findings, but also to provide an in-depth discussion of the development, implementation and administration process.

Unless noted otherwise, the researcher based the analysis on 10 interviews conducted with chairmen and board secretaries. The researcher will explicitly point out if all thirteen interviews are used in discussion of a concept.

3.5.3. Documentary Sources

The researcher used a content analysis technique to examine the content of the Internal Guidelines on Corporate Governance of listed banks in Switzerland. This approach gave the researcher flexibility, while providing for transparency in the analysis.[708] Content analysis also helps to generate new insights and enables greater understanding of the particular phenomena.[709] It makes it possible to get both qualitative and quantitative interpretations of data, taking into consideration the issues of validity and reliability[710] and objectivity and inter-subjectivity.[711]

Content analysis may also include the analysis of the frequency of mention of the items within the document and the amount of space devoted to each item. However, the amount of space devoted to an item in Internal Guidelines may not necessarily correlate with the importance that the company attaches to it. For example, the space devoted to a topic could well be a feature of the difficulty in expressing the concept. Some of the most central concepts, for example, director independence and conflict of interest and confidentiality can be expressed easily while others cannot e.g. ethics.[712]

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[707] Snow and Thomas (1994).
[708] Bryman and Bell (2003, p. 318).
[709] Content analysis is a common research technique in management science research (Mayring, 2000). It makes it possible to make replicable and valid inferences from texts and provides for critical evaluation of documents (Krippendorf, 2004, p. 18).
[710] Woelfel and Fink (1980).
[711] Neuendorf (2002, p. 47).
[712] Wood (2000, p. 288).

Still, the researcher decided not to rely purely on quantitative analysis and instead examine the Internal Guidelines for the existence of certain phrases, concepts and themes. In doing so, the researcher aims to create knowledge inductively through categorization, coding, delineation of categories and building of connections.[713]

The researcher carried out a computer-aided conceptual content analysis of the Internal Guidelines on Corporate Governance. To save time and get better presentation of findings, NVivo Version 8 was used to reduce the content into manageable content categories. At a later stage, data was managed in Excel in order to analyze and interpret key messages. Because items contained in the Internal Guidelines may contain implicit and explicit meanings, the researcher made sure to define key terms before starting the analysis. For example, studies on codes of conduct tend to focus on three distinct areas during the analysis such as: (a) what are the specific issues that the code addresses, (b) authority or what makes the code morally necessary or legitimate, and (c) administration and compliance procedures.[714]

Based on the theoretical framework, the researcher focuses on the following areas while carrying out the content analysis:

a) objectives and purpose,

b) legitimacy,

c) content specific issues, and

d) review and amendment (development and administration).

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[713] Boeije (2002, p. 393).
[714] Singh (2006, p. 21).

3.6. Quality Measures of the Research Design

3.6.1. Reliability and Replication

One of the major goals in academic research is to ensure that the study can be repeated by other researchers.[715] However, it is exceedingly difficult to replicate studies which use a mixed-method design.[716] In order to guarantee both reliability and replicability it is vital that researchers spell out his or her procedures in great detail.[717]

First, the researcher must ensure that interview schedule, questionnaire design and the classification procedures used in content analysis are in line with the theoretical framework, research objectives and questions and methodology. The researcher must also clearly explain data analysis procedures.

Second, the researcher considered different aspects and components of corporate governance (with relevance to listed banks) and identified concepts that are appropriate for development of organization rules. In doing so, the researcher was able to devise ways to measure and examine the phenomenon of Internal Guidelines on Corporate Governance. For example, during the questionnaire development the researcher made sure that a single concept is represented by more than one variable.

Third, the researcher kept a log when conducting interviews, which included summary statements about interviews and contained records of documents received during or after the interview. This also helped in preparing for the subsequent analysis process and ensured that all information was treated systematically.

3.6.2. Validity

A research study should also conform to requirements of validity. Validity is concerned with the integrity of conclusions that are generated from the research.[718] Validity is a complex matter in a mixed method research, because it combines quality measures of both qualitative and quantitative research methods.

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[715] Reliability is concerned with the question of whether the results of the study are repeatable (Bryman and Bell, 2003, p. 40). Reliability also means consistency of measures (Ibid., p. 163). The idea of reliability is very close to another criterion of research – replicability, which is one of the central elements scientific progress, but tends to be overlooked by management researchers as it is a nearly impossible task to replicate studies (Jick, 1979, p. 609).

[716] Jick (1979, p. 609).

[717] Bryman and Bell (2003, p. 40).

[718] Validity is derived from the “appropriateness, thoroughness and effectiveness with which the methods are applied and the care given to thorough examination of the evidence” (Bazeley, 2002, p. 149).

Mixed-method researchers refer to inference quality when discussing validity e.g. the degree to which interpretations and conclusions can be made on the basis of the results obtained and whether or not professional standards for rigor and trustworthiness are met.[719] Internal validity also relates to whether or not there is a good match between observations and theoretical ideas i.e. factual accuracy. Before deciding on the research method and research tools, the researcher examined research choices of past studies on corporate governance and code of conduct. This helped the researcher to carefully design the chosen research procedure and re-confirm that the chosen methods are appropriate when studying Internal Guidelines on Corporate Governance.

To ensure internal validity of findings from semi-structured interviews, the researcher described how the interpretations were produced, making visible what was done. This enhances transparency in the research process by making primary data available to other researchers. Factual accuracy was also maintained by making recordings of interviews whenever possible. Interviews were then transcribed in full and, on average, contained 5.5. pages. Making transcriptions of conversations and recording summary information about the interviews helped the researcher to ensure that there is a correct understanding of meanings attached to words used by the interview participants.[720]

Respondent validation is also useful for improving internal validity. However, in this study access to respondents was already restricted and as a result the researcher was unable to ask interview participants to comment back on the conversations. Instead, the researcher relied heavily on triangulation.[721]

The researcher also provided rich descriptions in the discussion of findings in order to convey intended messages as accurately as possible. Generally, rich descriptions help readers to get a better feel for the study enabling sharing of experience between the researcher and the reader. The researcher also chose to present negative or contradicting information because it adds to the credibility of data analysis.[722]

Research must also concern itself with construct validity. To do so, the researcher prepared and presented a theoretical framework covering a wide range of topics on corporate governance and organizational rules. The researcher then developed constructs

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[719] Huberman and Miles (2002, p. 261).
[720] Onwuegbuzie and Teddlie (2003, p. 354).
[721] Bryman and Bell (2003, p. 411).
[722] Creswell (2003, p. 196).

based on this framework. Each of the research instruments was also carefully designed and tested prior to start of data collection.[723]

Research must further maintain external validity or generalizeability, which is accomplished by ensuring that the sample size is sufficient and that it is representative of the population, making research findings extendable to the rest of the population.[724] Sample size problems are often associated with qualitative research studies, because they often rely on small number of interviews or cases. For example, there are only 29 listed banks in Switzerland. While the sample may actually be large, the researcher will still be left with 8-12 responses. As a result, the researcher wanted to make sure that the sample is representative and includes large listed banks, small-and medium sized and cantonal listed banks and those that are domiciled outside Switzerland. Similar sampling considerations were extended to the questionnaire. At the end, the researcher was also able improve generalizeability by combining various research methods into a single study.[725]

4. Research Findings

4.1. Questionnaire

4.1.1. Introduction

This section presents the frequency distribution and selected descriptive statistics of the questionnaire respondents of surveyed listed banks. Full summary of descriptive statistics including mean, standard deviation, median and mode can be found in Appendix 9. Normality tests can be found in Appendix 10 and frequency distributions of for all variables are presented in Appendix 11.

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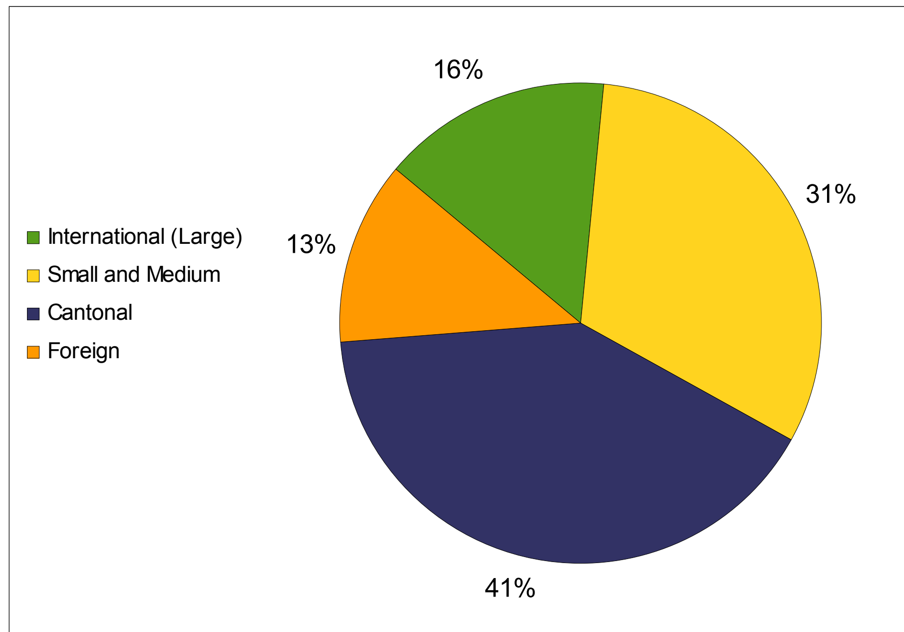
[723] Construct validity refers to the ability of the researcher to develop sufficient set of factors or constructs that are needed to measure concepts in the study. It is most associated with quantitative research methods rather than with qualitative ones (Bryman and Bell, 2003, p. 165).

[724] Generalizeability is concerned with the question of whether the results of the study can be generalized with specific research context (Bryman and Bell, 2003, p. 42). Generalizeability is enhanced if research findings can extend beyond time, settings and contexts (Onwuegbuzie and Teddlie, 2003, p. 354).

[725] Triangulated data from semi-structured interviews, questionnaire and documentary sources was used to study the roles of the board of directors. This was said to improve richness of findings and to make them generalizeable outside the context of the study (Stiles, 2001, p. 631).

Figure 11 below presents the actual response to the questionnaire based on the type of the listed bank. According to analysis, 44% of responses come from listed cantonal banks, 31% from small-and medium-sized listed banks, 13% each from large (international) and foreign banks. Mean is 2.56 and mode is 3. Data is not normally distributed, with p=0.00.

Figure 11: Response by Type of a Listed Bank



Source: own development. Response (n=32).

It is possible to conclude that the response is representative. Based on the information available on the SIX Swiss Exchange and research carried out for the preparation of the study, the researcher determined that there are 3 large (international) banks, 13 small and medium sized banks (3 of which are foreign banks) and 11 cantonal banks. Table 17 presents a comparison between the actual responses to the questionnaire compared with actual company listings on the SIX Swiss Exchange.

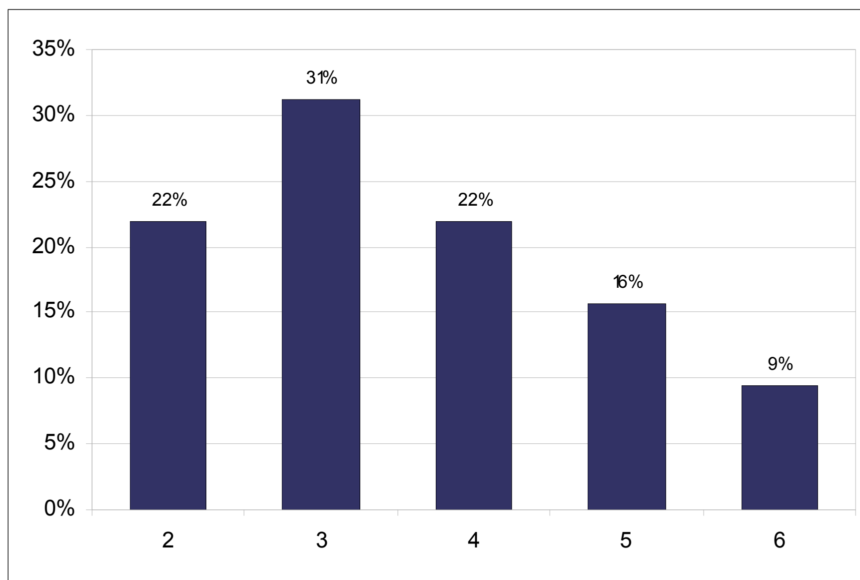
Table 17: Type of a Listed Bank: Actual Response Compared to Complete Listing

		Actual Response		SIX Swiss Exchange Listing	
		Frequency	Percent	Frequency	Percent
Valid	International (Large)	5	15.6	3	11.1
	Small and Medium	10	31.3	10	37.0
	Cantonal	13	40.6	11	40.7
	Foreign	4	12.5	3	11.1
	Total	32	100.0	27	100.0

Source: own development. Response (n=32).

Furthermore, the researcher felt it is appropriate to describe the data based on the number and types of committees because it relates to the complexity of organization of a listed bank. On average, listed banks have 3 committees (mode is 3.0 while mean is 3.59 and standard deviation is 1.27). 31% of listed banks have three committees, while a further 22% have four board committees. Additionally, 16% of the respondents have stated that there are five committees on the board of directors and 9% even have six. On the other hand, a large number of the banks have only two committees on the board (22%). Figure 12 below presents details of frequency distributions.

Figure 12: Number of Committees: Frequency Distribution

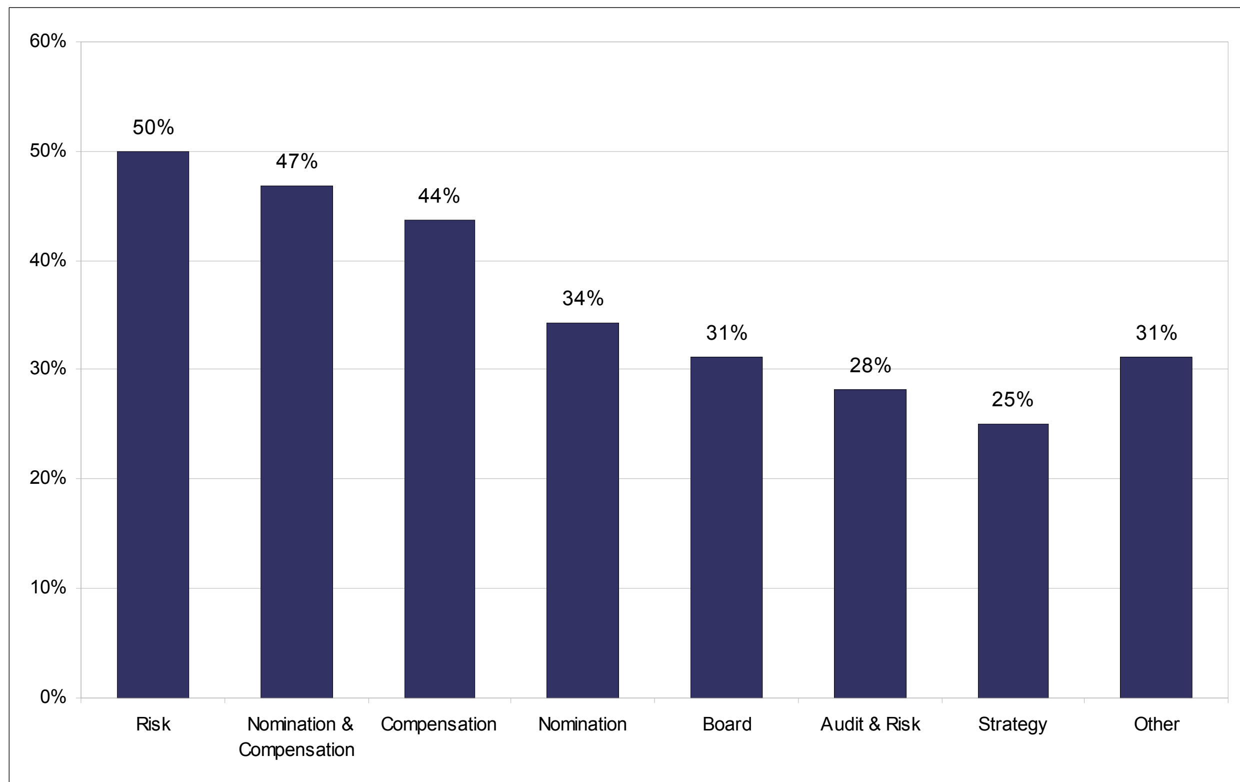


Source: own development. Response (n=32).

Respondents were asked to state what types of committees their banks have. According to questionnaire response, 75% of respondents have stated that their banks have the recommended audit committee and another 50% of respondents stated that there is a risk committee on the board. 28% of respondents replied that their board directors have a combined audit and risk committee. Further, 47% of respondents said that there is a combined nomination and compensation committee, compared to 44% that have a separate compensation committee and 34% that have a separate nomination committee. 31% of respondents stated that there is a board committee, while 25% of respondents have stated there is a strategy committee on the board. Moreover, 31% of the respondents have selected "other" in relation of a type of a committee that their board has (this includes Innovation, Chairman's and Governance, Corporate Social Responsibility).

Analysis of data gives the mean of 3.61 and standard deviation of 0.230. Mode is at 3.0. Data is not normally distributed, with p=0.00 (see Figure 13 on the next page).

Figure 13: Committee Structure



Source: own development. Response (n=32).

4.1.2. Internal Guidelines on Corporate Governance

An overwhelming majority or 97% of respondents have stated that their banks have Internal Guidelines on Corporate Governance (n=31). Mean and standard deviation are 0.97 and 1.77 respectively, while median is 1.0, data is not normally distributed with p=0.00. If the answer to the question was negative, respondents were given an opportunity to explain their answer at the end of the questionnaire. The reason why one respondent stated that his bank does not have Internal Guidelines on Corporate Governance is explained by 100% ownership of the bank by a large bank holding company (i.e. subsidiary). As a result, the board uses the Internal Guidelines of the parent company. However, the respondent felt it was important to inform the researcher that the board has Internal Guidelines for an Audit & Risk Committee.

Table 18: Frequency Distribution: Internal Guidelines on Corporate Governance

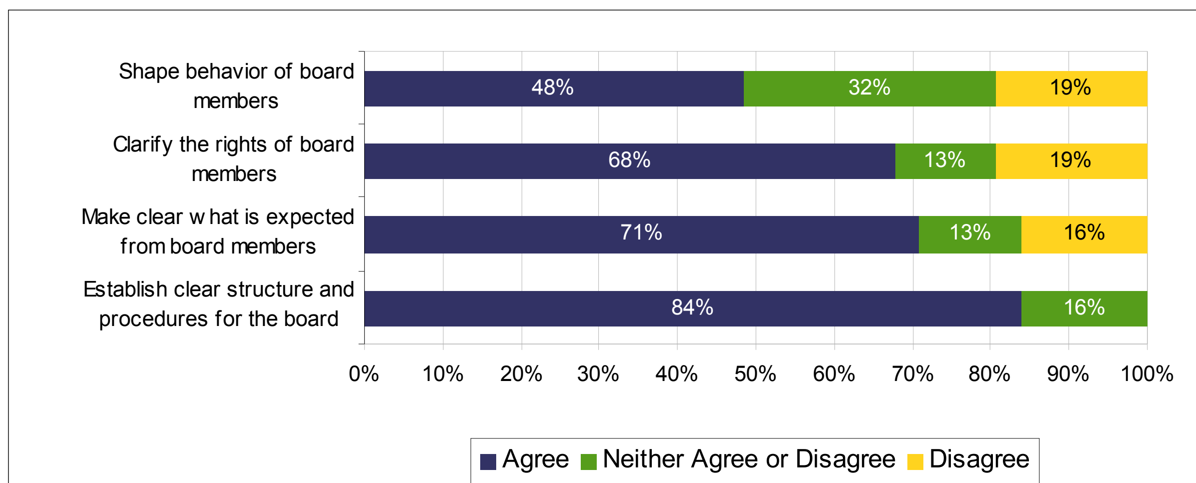
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	1	3.1	3.1	3.1
	Yes	31	96.9	96.9	100.0
	Total	32	100.0	100.0	

Source: own development. Response (n=32).

4.1.3. Purpose of the Internal Guidelines on Corporate Governance

A majority of the respondents or 94% agree that the purpose of the Internal Guidelines on Corporate Governance is to clarify responsibilities of board members. In addition, 84% of the respondents also agree that Internal Guidelines on Corporate Governance establish clear structure and procedures for the board of directors. Furthermore, 71% of respondents agree that the Internal Guidelines make clear what is expected from board members and 68% agree that they clarify the rights of board members. However, only 48% of the respondents agree with the statement that Internal Guidelines on Corporate Governance can shape behavior of board members, a further 19% disagree with the statement and 32% take a middle position. While the statements may seem similar, the researcher wants to examine multiple aspects of the concept. Frequency distributions can be found in a graphic format in Figure 14.

Figure 14: Purpose of Internal Guidelines on Corporate Governance

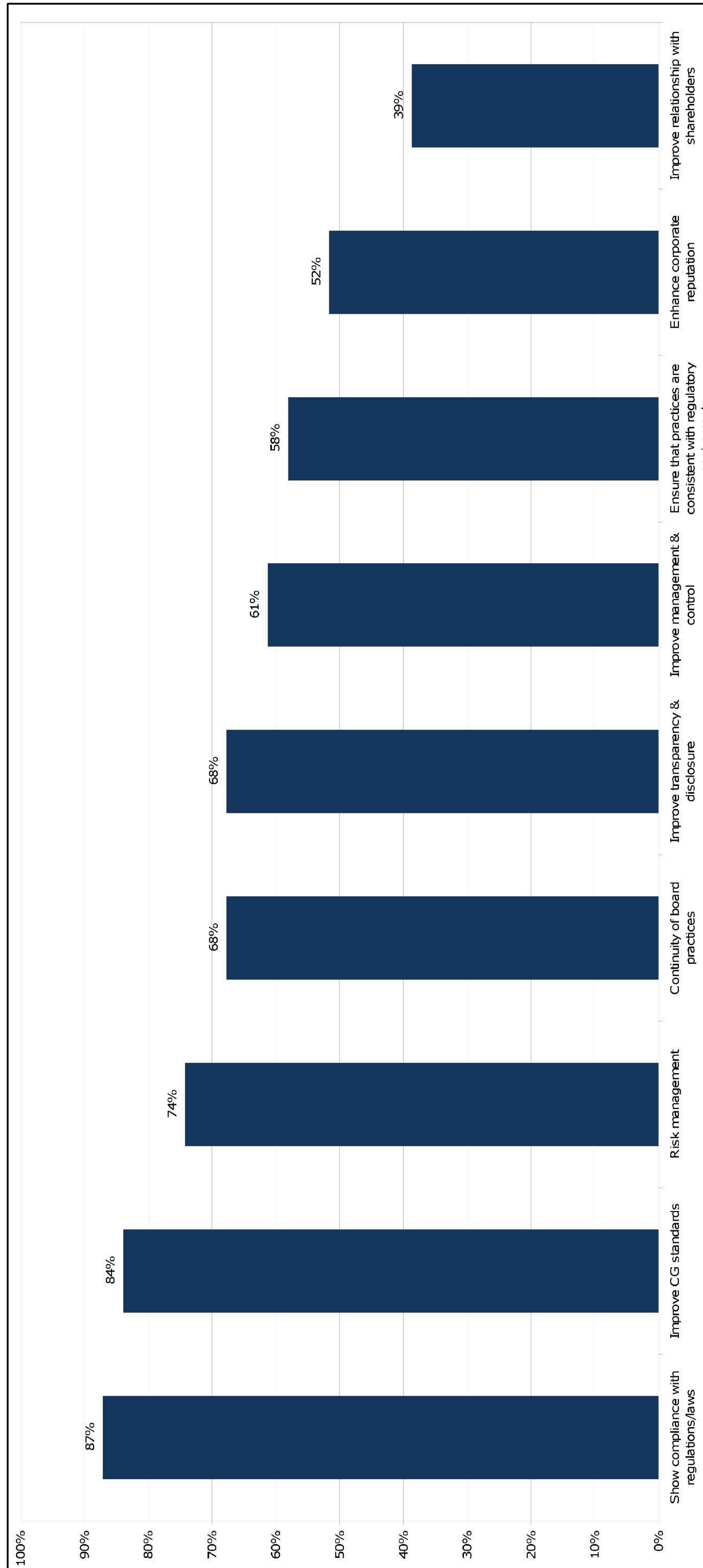


Source: own development. Response (n=32).

4.1.4. Perceived Benefits of Internal Guidelines

Figure 15 (see next page) presents frequency distributions regarding non-executive directors' perception of the benefits of the Internal Guidelines on Corporate Governance. According to questionnaire results, 68% of the respondents stated that Internal Guidelines on Corporate Governance improve transparency and disclosure of the listed bank (mean 0.68, st. dev. is 0.48, mode is 1). At the same time, 52% of the respondents said that Internal Guidelines on Corporate Governance can enhance corporate reputation (mean is 0.52, st. dev. is 0.51, mode 1) and only 39% stated that they improve relationship with shareholders (mean is 0.39, st. dev. 5, mode is 0).

Figure 15: Perceived Benefits



Source: own development. Response (n=32).

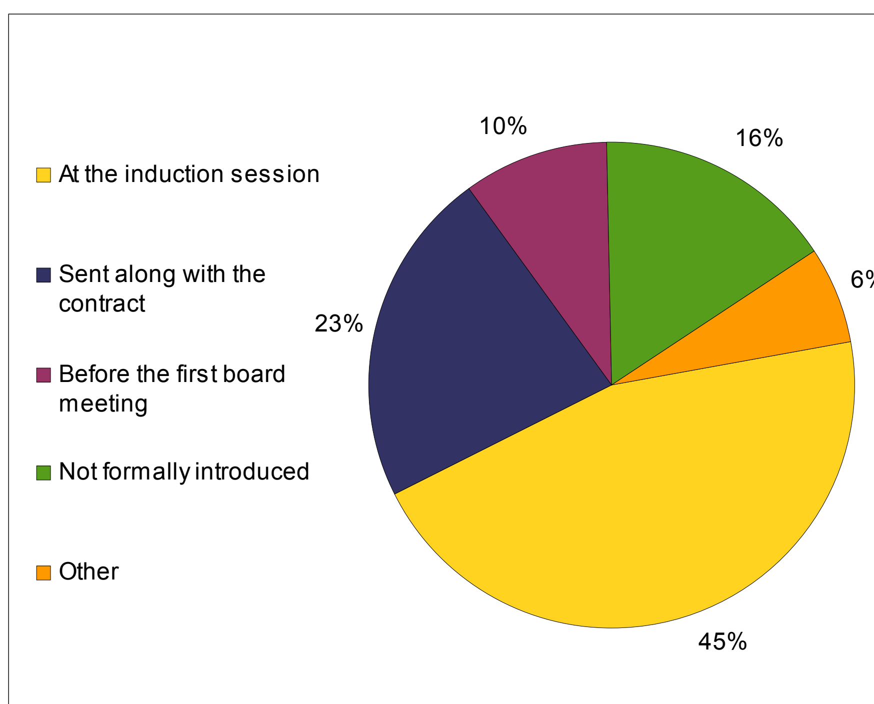
In addition, the respondents were asked to state their opinions on how Internal Guidelines on Corporate Governance deal with compliance. For example, 87% of the respondents said that Internal Guidelines show that the listed bank is compliant with laws and regulations (mean is 0.87, st. dev. 0.34, mode is 1). A further 84% of the respondents said that the Internal Guidelines improve corporate governance standards in the bank (mean is 0.84, st. dev. is 0.37, mode is 1) and 58% of the respondents state that the Internal Guidelines ensure that corporate governance practices are in line with industry and regulatory requirements (mean is 0.58, st. dev. is .50, mode is 1).

Additionally, 74% of the respondents stated that Internal Guidelines are part of risk management (mean is 0.74, st. dev. is 0.45, mode is 1) and 61% of the respondents said that the Internal Guidelines improve overall management and control by the board (mean is 0.61, st. dev. 0.5, mode is 1). A further 68% of the respondents thought that Internal Guidelines ensure continuity of board practices (mean is 0.68, st. dev. 48 and mode is 1).

4.1.5. Distribution

Figure 16 shows the frequency distribution for the way in which the Internal Guidelines on Corporate Governance are first made available to members of the board.

Figure 16: Initial Distribution of the Internal Guidelines



Source: own development. Response (n=32).

A large majority of respondents (45%) have stated that Internal Guidelines on Corporate Governance were first distributed during an induction session. A further 23% of the respondents have stated that the Internal Guidelines are first sent to new members of the board along with their contracts. Another 16% of the respondents have stated that the Internal Guidelines on Corporate Governance are not formally introduced to them and 10% of the respondents stated that the Internal Guidelines are distributed for the first time during the first meeting (mean 2.39 and standard deviation is 1.20, mode is 2.0, no normal distribution of data, p=0.00).

4.1.6. Administration of Internal Guidelines

When asked whether or not non-executive directors are aware of sanctions or penalties for non-compliance with the Internal Guidelines on Corporate Governance. Only 32% of the respondents have stated that they are aware of sanctions or penalties for non-compliance, while 68% stated the opposite. Median is 0.0, while mean is 0.33 and standard deviation is 0.48, data is not normally distributed, p=0.00. Table 19 below presents frequency distributions concerning the non-executive directors' awareness of sanctions for non-compliance with the provisions in the Internal Guidelines on Corporate Governance.

Table 19: Frequency Distribution: Sanctions for Non-Compliance

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	21	65.6	67.7	67.7
	Yes	10	31.3	32.3	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Source: own development. Response (n=32).

When asked whether there is a test on the content of the Internal Guidelines on Corporate Governance, 94% of respondents have stated that they are not presently being tested on the content, while 6% have stated that they are. Median is 0.0 and mean and standard deviation is 0.06 and 0.25 respectively, data is not normally distributed, p=0.00. Frequency distributions are presented in Table 20 on the next page.

Table 20: Frequency Distribution: Testing on the Content

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	29	90.6	93.5	93.5
	Yes	2	6.3	6.5	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Source: own development. Response (n=32).

4.1.7. Rules and Procedures for Committees

An overwhelming majority of the respondents (97%) have stated that the Internal Guidelines on Corporate Governance include rules and procedures for each of the committees. Mode is 1.0 and mean and standard deviation is 0.97 and 0.180 respectively, data are not normally distributed, p=0.00. Detailed data are presented in Table 21 below.

Table 21: Frequency Distribution: Rules and Procedures for Committees

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	1	3.1	3.2	3.2
	Yes	30	93.8	96.8	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Source: own development. Response (n=32).

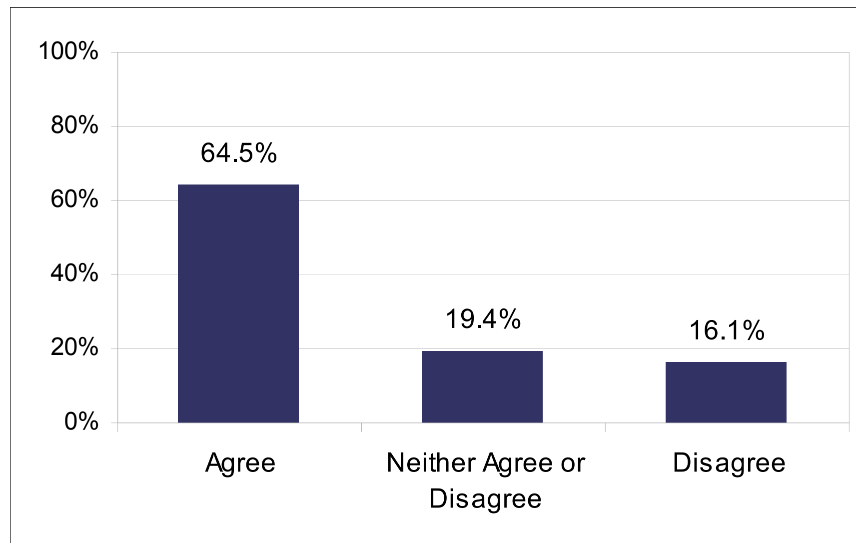
4.1.8. Development, Implementation and Administration

4.1.8.1. Development of the Internal Guidelines on Corporate Governance

The involvement of board members is an important aspect in the development process.[726] Respondents were asked to state whether they agree or disagree that the direct involvement of board members is important when developing Internal Guidelines on Corporate Governance. 65% of the respondents have agreed that the direct involvement is important, while 16% disagreed with the statement. Mean and standard deviation are 1.52 and 0.76 respectively, while median is 1.0, data are not normally distributed. Figure 17 on the next page presents graphical representation of frequency distributions.

[726] Schwartz (2002, p. 37).

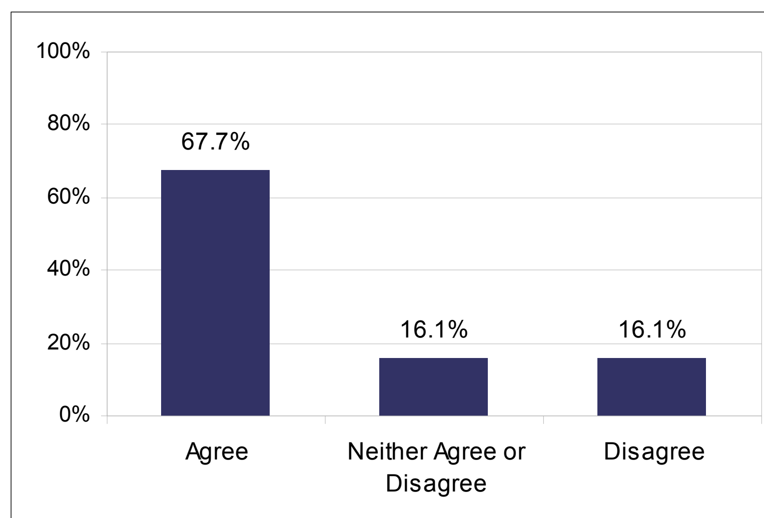
Figure 17: Direct Involvement of Board Members in the Development



Source: own development. Response (n=32).

The involvement does not have not have to be direct, but instead, there should exist a reasonable opportunity to ask questions and comment on a draft.[727] For example, 67% of the respondents agree that the ability to discuss and ask questions during the development of the Internal Guidelines on Corporate Governance is important while 16% of the respondents disagree with the statement. Descriptive statistics can be found in Appendix 9, while Figure 18 presents graphic representation of the frequency distributions.

Figure 18: Ability to Discuss and Ask Questions during the Development



Source: own development. Response (n=32).

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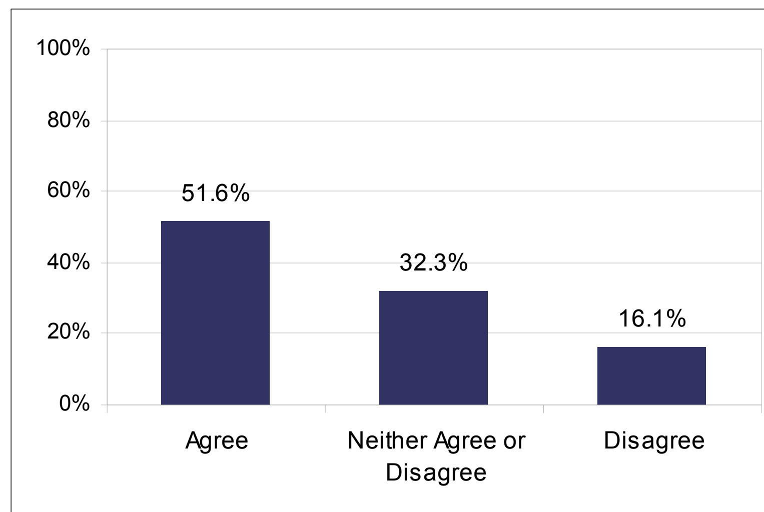
[727] Schwartz (2002, p. 37).

4.1.8.2. Implementation of the Internal Guidelines on Corporate Governance

According to literature, implementation should be supported by sufficient training and support by the organization.[728] When asked whether training sessions at the time of the implementation of the Internal Guidelines on Corporate Governance are important, 52% of the respondents have agreed with the statement. On the other hand, more than 30% of the respondents have taken a neutral position and a further 16% disagreed.

Descriptive statistics can be found in Appendix 9 while Figure 19 (next page) presents the frequency distributions for the question.

Figure 19: Training Sessions at the Time of Implementation



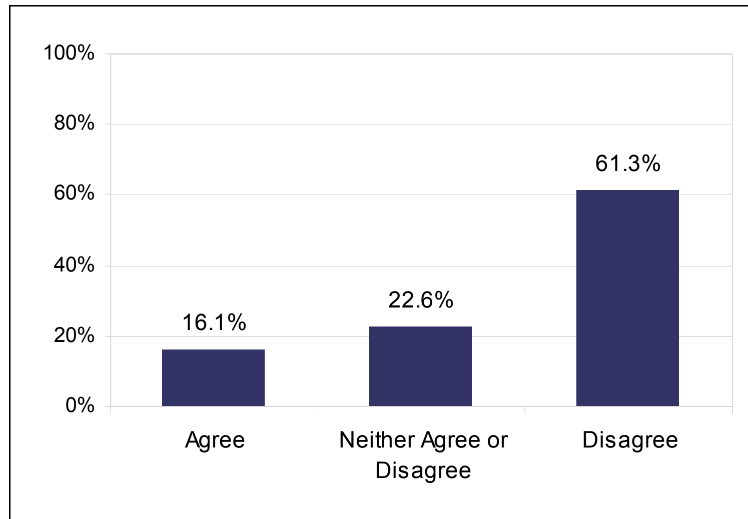
Source: own development. Response (n=32).

61% of the respondents disagreed that a sign-off process is important for the implementation of the Internal Guidelines on Corporate Governance and a further 22% took a neutral position. Only 16% of the respondents have agreed that sign-off process is important for implementation of the Internal Guidelines.

This is consistent with literature which states that a sign-off process is unpopular with employees.[729] Descriptive statistics can be found in Appendix 9, while Figure 20 on the next page presents the frequency distributions.

[728] Schwartz (2002, p. 37).
[729] Schwartz (2004, p. 332).

Figure 20: Sign-off Process

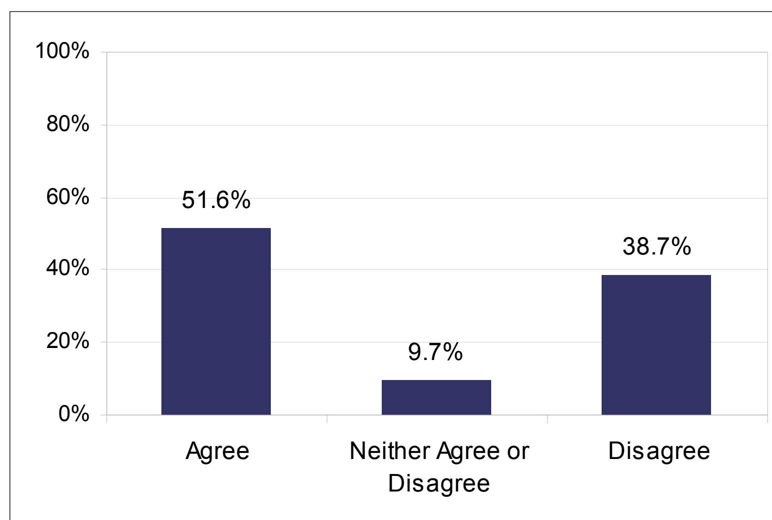


Source: own development. Response (n=32).

The way in which the code or corporate policy is distributed is also important in successful implementation of the code. According to literature, a company can not be held accountable unless the code is available to outside stakeholders.[730]

Respondents were asked whether they agree or disagree that disclosure of the Internal Guidelines on the website is important. 52% of the respondents have agreed with the statement, while 39% disagreed with the statement. Descriptive statistics can be found in Appendix 9 while Figure 21 on next page presents the frequency distributions.

Figure 21: Disclosure on the Website

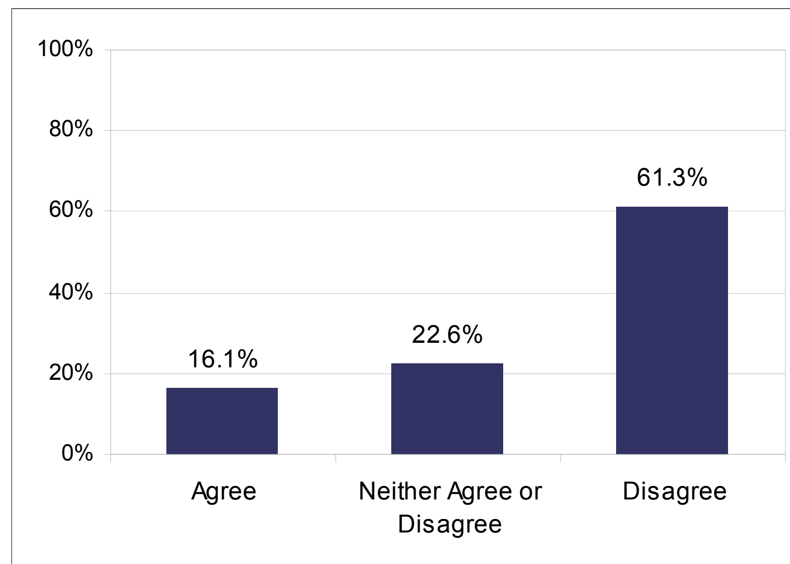


Source: own development. Response (n=32).

[730] Schwartz (2002, p. 34).

Also, respondents were asked to state whether they agree or disagree to making Internal Guidelines available before each meeting. 61% have disagreed with the statement, while only 16% agreed. Additionally, 23% have taken a neutral position. Descriptive statistics can be found in Appendix 9 while Figure 22 below presents the frequency distributions.

Figure 22: Making the Internal Guidelines on Corporate Governance Available Before a Meeting



Source: own development. Response (n=32).

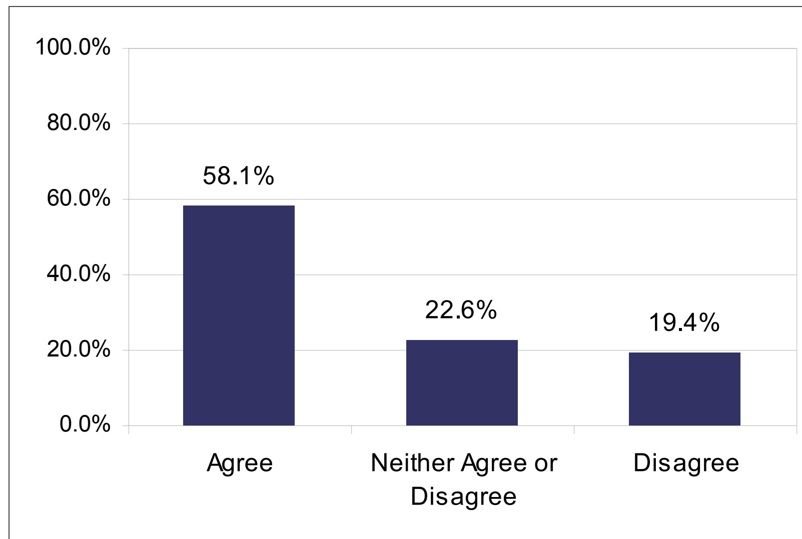
4.1.8.3. Administration of the Internal Guidelines on Corporate Governance

Literature suggests that a company should be responsible for providing training on any corporate policy document to ensure that employees understand the content and understand how the provisions contained in the code apply to them.[731]

Therefore, the respondents were asked if regular training and education about the Internal Guidelines on Corporate Governance is important. 58% of respondents agree that regular education and training are important, while 19% disagree with the statement. Figure 23 on the next page presents the frequency distributions.

[731] Schwartz (2002, p. 34).

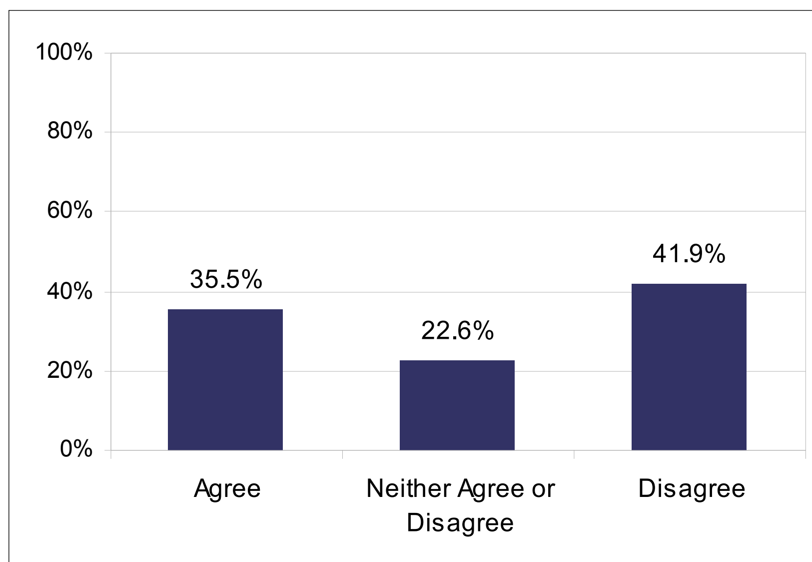
Figure 23: Regular Training and Education



Source: own development. Response (n=32).

On the other hand, only 35% of the respondents agree that regular communication about the Internal Guidelines via corporate communication channels is important, while 42% of the respondents disagree with the statement and 23% take a neutral position. Figure 24 on the next page presents the frequency distributions.

Figure 24: Regular Communication via Corporate Communication Channels



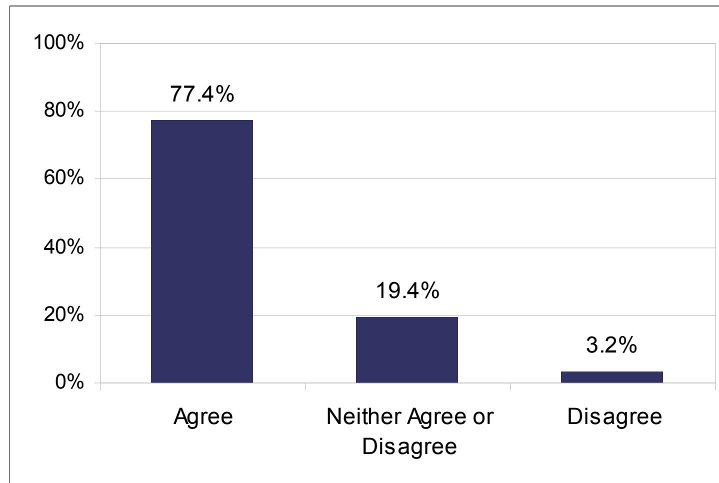
Source: own development. Response (n=32).

An organization needs to ensure that employees abide by the code and its provisions. This is done through enforcement and monitoring of the code.[732] In accordance with findings, 77% of the respondents have stated that they agree that monitoring and en-

[732] Schwartz (2002, p. 36).

forcement of the Internal Guidelines on Corporate Governance is important, while only 3% disagreed with the statement and 20% took a neutral position on this point. Figure 25 presents the frequency distributions.

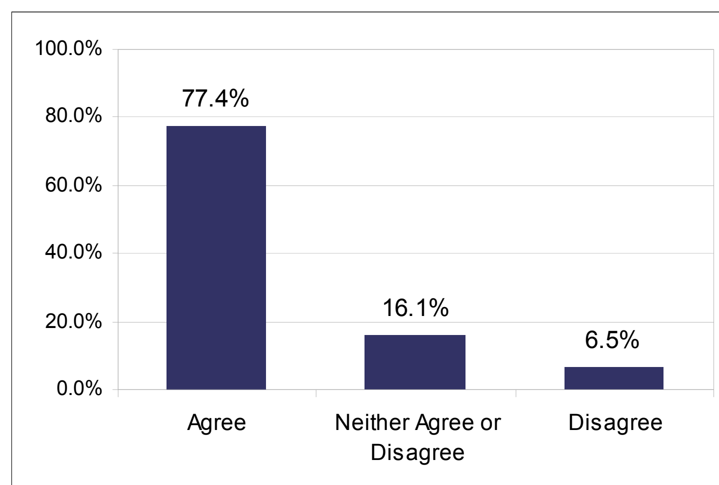
Figure 25: Monitoring and Enforcement of the Internal Guidelines



Source: own development. Response (n=32).

Respondents were also asked to state whether they agree or disagree that an annual review of the Internal Guidelines is important. According to data, 77% of the respondents have agreed with the statement, while only 7% disagree with it and 16% of the respondents took a neutral position. Descriptive statistics are as follows: mean is 2.45, standard deviation 0.77 and median is 1.0, data are not normally distributed (see Appendix 9). Figure 26 on the next page presents the frequency distributions for the annual review of the Internal Guidelines on Corporate Governance.

Figure 26: Annual Review



Source: own development. Response (n=32).

4.1.9. Conclusion

According to questionnaire results, there is evidence that listed banks in Switzerland have internal regulations for the board of directors on corporate governance. Respondents support that the purpose of the Internal Guidelines is to establish clear structure and procedures for the board, to clarify rights of board members and to set clear expectations for members of the board. Additionally, respondents recognize the value of the Internal Guidelines in improving corporate governance at the board level of a listed bank. For example, empirical findings show that Internal Guidelines ensure that the board is compliant with applicable laws and regulations and can improve corporate governance standards in a bank. There is also support that Internal Guidelines improve transparency, show a bank's compliance with laws and regulations and enhance corporate reputation. Furthermore, empirical findings suggest that there are risk management and controlling benefits when it comes to Internal Guidelines. Internal Guidelines can also improve continuity in board practices. However, empirical findings do not show a strong connection between Internal Guidelines and the improvement of a relationship with shareholders (only 39% support this statement). Also, less than half of the respondents thought that Internal Guidelines can shape behavior of board members.

According to findings, Internal Guidelines are mostly distributed to new members of the board during the induction (45%) or they were sent along with the "contract" (23%). However, there is also evidence that Internal Guidelines are not formally introduced to members of the board (6%).

Overall, there appears to be very little formalization when it comes to the administration of the Internal Guidelines. For example, only a small number of the respondents are aware of sanctions or penalties for non-compliance (31%) and there is no evidence that members of the board are being tested on the content and the principles contained in the Internal Guidelines (7%).

According to findings, listed banks have on average of three committees and an overwhelming majority has stated that Internal Guidelines contain specific rules and regulations for standing committees (97%).

Respondents have also identified a number of factors which may be important in the development, implementation and administration of the Internal Guidelines. For example, direct involvement of members of the board and the ability to discuss and ask questions during the development is seen as important.

Training sessions at the time of implementation received marginal support from non-executive directors (52%). On the other hand, respondents felt that regular education

and training are more important (58%) for the administration of the Internal Guidelines, while regular communication about Internal Guidelines via corporate communication channels was not (36%).

Additionally, just over half of the respondents felt that it is important to disclose Internal Guidelines on the website (52%). According to literature, a company can not be held accountable unless the document in question is available to the outside stakeholders, such as customers, regulators or the public in general and one way of doing so is making a copy of the document available on the company's website.[733] Still, respondents felt that it is not useful to make the Internal Guidelines available for each meeting (16%).

Respondents did not support the sign-off process (16%) and this is in line with existing literature, which states that employees do not favor sign-off.[734]

Monitoring and enforcement of the Internal Guidelines was deemed important (77%), and respondents also felt that there is a need for annual review of the Internal Guidelines (77%).

4.2. Semi-Structured Interviews

4.2.1. Introduction

There is already clear evidence that boards of directors of listed banks in Switzerland have Internal Guidelines on Corporate Governance. However, according to interviews this is not is not necessarily a standalone document. Instead, Internal Guidelines on Corporate Governance are frequently found as part of the organizational or business regulations. Interview participants have signaled that this is required by the Financial Market Supervisory Authority for all banking institutions in Switzerland (with similar requirements in Liechtenstein).

According to interview results, Internal Guidelines on Corporate Governance are not a new phenomenon. Interview participants have stressed that it is not a new practice that the board of directors have adopted in the aftermath of the financial crisis of 2008-2009. Instead, interview participants have made it clear that Internal Guidelines on Corporate Governance have "always been" there. However, Internal Guidelines have been updated and amended over the years to keep up with regulatory developments and changes in duties and responsibilities of board members. For example, interview partic-

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[733] Schwartz (2002, p. 34).
[734] Schwartz (2004, p. 332).

ipants have stated that the board of directors enacted organizational regulations in accordance with Article 716 of the CO and FINMA Circular 08/24. However, they have highlighted that there is no ‘standard’ as to what the corporate governance section should contain. When asked whether or not Internal Guidelines should be required by law, interview results suggest that listed banks must want to adhere to best practice standards and should want to improve own corporate governance practices based on international and national recommendations of best practice rather than relying on laws and regulations. It is suggested that listed banks should lead the way and not wait for regulations to “catch up”.

According to interview data, the boards of directors of listed banks vary in their understanding and interpretation of what constitutes as the Internal Guidelines. For example, during interviews, participants have used use different names when speaking about Internal Guidelines on Corporate Governance e.g. Bank Council Guidelines, Board of Directors Regulations, Internal Regulations, Board of Directors Guidelines, Corporate Governance Principles, Internal Corporate Governance Guidelines, Organization and Management Regulations, Organizational Regulations and so on. As a result, there appears to be not only a name difference, but also considerable variation in the understanding of what constitutes Internal Guidelines, but also the precise definition, scope and purpose of such document.

Interview participants stated that Internal Guidelines on Corporate Governance set duties and responsibilities of the board as a whole, chairman, non-executive directors and the board committees. What is clear from the interviews is that Internal Guidelines on Corporate Governance lay out duties of members of the board in order to inform board members of what is expected of them and what is expected of members who sit on specific committees. Interview participants have also expressed opinions that Internal Guidelines help to establish relevant authorities and clarify decision making authorities. On the whole, interview participants also thought that Internal Guidelines ensure clear separation of duties between the board of directors and the management board. For example, it was mentioned that delineation of responsibilities guarantees a system of checks and balances that was set up by the Banking Law of 1934.

Furthermore, interview results show that Internal Guidelines on Corporate Governance contain principles of how the board of directors is organized within a bank. Interview data suggests that Internal Guidelines should be specific to the bank and its board of directors. It should not be a copy of someone else’s and it should contain additional duties, tasks and responsibilities that laws require.

One interview participant has explicitly stated that Internal Guidelines on Corporate Governance should be guidelines for the board of directors. He emphasized that Internal Guidelines should provide guiding principles for the board of directors. Internal Guidelines should contain corporate governance principles that members of the board want to promote and adhere to. Interview findings suggest that it is important that Internal Guidelines are not just another set of formal rules that directors have to follow, but guidelines need to ensure that members of the board follow the spirit of corporate governance that is contained in the document.

Furthermore, when asked whether or not it would be beneficial to see a sample or "best practice" example, there was a positive response. Interviewees felt that it would be a good idea to see what other listed banks are doing and to see what constitutes best practice. However, there were warnings that this will prevent innovation in corporate governance at the board level as it would be too easy to rely on a standard.

Overwhelmingly, interview respondents raised concerns that there is already a myriad of regulations when it comes to corporate governance. As a result, they would not favor yet another layer of bureaucracy. The majority of participants have stated that they already have committee charters, codes of conduct or ethics, policies on remuneration, succession and information. However, a small number of interview participants felt for as long as Internal Guidelines are principle-based, they are in favor of such document. Two interview participants also added that it would be beneficial to have a single document where members of the board can find all that is relevant rather than having to rely on multiple policies and documents. It was explained that the board has many internal documents, which get reviewed and amended at different times and that often it is not clear which policy is new or old. On the other hand, while others thought that it did not matter whether or not corporate governance principles were contained in a separate document, but what matters is that the board has written corporate governance principles.

4.2.2. Benefits of Internal Guidelines on Corporate Governance

4.2.2.1. Introduction

The value and the importance of the Internal Guidelines on Corporate Governance are widely recognized by the interview participants. What is interesting to note is that while majority of interview participants agree that Internal Guidelines are important, they do so for different reasons. Table 22 on the next page summarizes the interview responses. According to interviews, benefits range from clarifying tasks and responsibilities to aiding in succession planning and building reputational benefits.

Table 22: Benefits of the Internal Guidelines on Corporate Governance

Interview Responses	**Frequency**
Clarify processes/establish decision making authority	10
Clear separation of tasks and responsibilities	9
Part of risk management	6
Promotes reputation	5
Brings shareholder value	4
Communication of expectations	3
Establishes clear competencies	3
Part of transparency	3
Promotes best practice	3
Reinforces corporate governance values	3
Better internal control	3
Shows compliance	3
Establishes a single framework/standard approach	2
Continuity in practices at the board level	1
Total	**56**

Source: own development. Interviews (n=10). Multiple responses allowed.

4.2.2.2. Clear Tasks and Responsibilities

The emphasis is really in building clarity and proving a corporate governance framework for the board of directors. Interview participants have stressed that Internal Guidelines are needed in order to clarify tasks and responsibilities of the board and its various members. On the whole, interview participants thought that Internal Guidelines thought that it is important to make it clear who is responsible for what, how the board participates in corporate governance of a listed bank and what competencies should members of the board have in order to effectively carry out their responsibilities. Internal Guidelines can also clarify various processes of the board, such as meeting arrangements, voting procedures, access to information, decision making and so on.

Six out of ten interview participants have explicitly referred to Internal Guidelines in a context of risk management and efficient system of internal control. For example, it was stated that the ability of a listed bank to clearly convey to board members what they are responsible for reduces governance and reputational risks. Furthermore, interview participants state that it is only possible to manage risks if the board establishes clear processes. These processes must be communicated to ensure that the assigned responsibilities of board members are taken with due diligence. Literature on corporate

governance supports the notion that there is a link between formal corporate governance structures and management of financial, operational and reputational risks.[735]

Internal control is essential for banks, and risk and internal control are interconnected in corporate governance of listed banks. Effective internal control promotes compliance with applicable laws and regulations.[736] Therefore, it comes with no surprise that the "possibility to control" was discussed by a large number of interview participants. Participants also thought that it was possible to have greater or "more controls" if there are written rules for the board of directors. For example, the researcher frequently heard statements such as "if you don't know who is responsible, you can not control it", "you can not correct things if something goes wrong" and "if something does go wrong you have to find out where a mistake was made and why."

Interview data also suggests that Internal Guidelines promote the board's ability to communicate its approach to corporate governance among board members. The ultimate result is that board members can perform their duties with greater care and precision.

4.2.3. Benefits of Disclosure

Because the operations of banks and banking institutions are often more opaque than those of other companies, regulatory bodies and investors place emphasis on increasing corporate governance disclosure requirements of banks. According to interview responses, the status quo position of the SIX Swiss Exchange is that disclosure is beneficial because it empowers investors to make own informed judgments regarding the traded security. Interview data shows that disclosure and greater transparency help paint a picture of a listed bank with greater clarity. Interview results also show that public companies should be much more transparent than non-listed, private firms. While mandatory disclosure is required by law, organizations may also engage in voluntary disclosure in an attempt to seek firm-specific advantage.[737]

However, interview participants also thought that disclosure of too much information can actually be dangerous, due to information overload, as it can take attention away from what is essential. Interview participants believe that banks should not disclose everything, only what is relevant. It also became evident that it is not always easy to strike a good balance when it comes to disclosure. The researcher was told that provid-

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[735] Basel Committee on Banking Supervision (2004, p. 137).
[736] Eisenberg (1997, p. 237).
[737] Labelle (2002, p. 28).

ing too much detail does not make a bank more transparent. A number of interview participants also pointed out that people always think that lack of transparency means you want to hide something; however this is not a correct assumption. It is actually easier to hide information with increased transparency.

Interview results show that transparency is very important for corporate governance. Participants generally agree that disclosure of Internal Guidelines would be beneficial. For example, the board of a listed bank may find it useful to show how it deals with executive compensation including its approach to pay-for-performance and bonuses. While this information is contained to a degree in the annual report, examination of the actual guidance that members of the board get on a particular topic may appease regulators. Specifically, interview participants stated that disclosure of Internal Guidelines can show to the outside world that the bank is compliant with applicable laws and regulations and that it adheres to good corporate governance practice.

Interview participants add that there are reputation benefits when it comes to disclosure of Internal Guidelines on Corporate Governance. For example, one participant states Internal Guidelines make it possible for the board to show that it is compliant with all corporate governance laws, regulations, recommendations and standards. In addition, participants add that Internal Guidelines on Corporate Governance can show shareholders, customers, and regulators how the board works, how it makes decisions, how it oversees management and decides on strategy.

Interview participants make a number of strong statements connecting Internal Guidelines with reputational benefits. For example, participants state that Internal Guidelines "are like a visiting card" and "if you have a good one, it is something you should be proud of"; they "represent the bank's guarantee for money" and "show that the bank has a meaning." Furthermore, interview participants believe that Internal Guidelines can bring back the trust especially in banking and financial sectors.

One interview participant questioned the value of corporate governance disclosure in an annual report. The participant states that it is unreasonable to expect investors to read and comprehend over 200 pages of text. However, by looking at the Internal Guidelines on Corporate Governance, one would be able to see who has the responsibility in a bank. An investor would then be able to judge whether the board is strong or weak and may make a decision to buy based on the information provided in the Internal Guidelines. Another participant adds that just by looking at who decides on director compensation gives a clear picture of the board of directors and how it operates.

Interview data shows that there are different levels of disclosure. For example, listed banks already make private disclosure of organizational regulations, and Internal Guidelines contained in these regulation, to FINMA. Participants state that it is important to make full disclosures to regulators because it helps them to understand how the bank deals with risks.

A small number of interview participants believe that full disclosure of Internal Guidelines to shareholders is necessary because shareholders participate in the corporate governance of a bank by voting, rejecting and approving board membership and proposals made by the board. As a result, Internal Guidelines help shareholders to understand how a bank operates. However, such views are not widespread among interview participants.

Instead, interview participants do not see much value in making full public disclosure of the Internal Guidelines on Corporate Governance. Many of the interview participants felt that there is already "sufficient disclosure" by their bank and additional disclosure bears "no value" and "no interest to anyone". Many argue that most of the content of the Internal Guidelines is of "no interest shareholders" as they contain items which are "not important" for shareholders to know. Other participants add that most of the content of the Internal Guidelines is already in the annual report, thus there is no reason to disclose the actual Internal Guidelines. Interview participants also express concern that organizational regulations and Internal Guidelines are confidential and secret. They believe that for shareholders it is sufficient if they know that such internal regulations exist, but they should not know precisely what is going on at the board. Three interview participants have also stated that while Internal Guidelines are not secret, they are not for the marketplace. They fear that making full disclosure of the Internal Guidelines on Corporate Governance on the website makes it too easy for competitors to copy the content. Hence, two participants acknowledge that at times it would be good to see how other banks approach corporate governance. They also confirm that many listed banks still see organizational regulations and Internal Guidelines as confidential documents, but this is due to the tradition rather than the actual concerns for secrecy. It is interesting to note that full disclosure is thought to impede innovation in corporate governance practices at the board level because listed banks would be able to easily copy guidelines of others rather than to develop their own sets of corporate governance principles.

In addition, a number of participants mention that the risk profile of their bank does not merit total public disclosure. They state that full disclosure may only be beneficial for larger, international banks. However, this point of view is not widely supported. For example, interview data shows that full disclosure may actually be beneficial for cantonal banks.

To summarize, interview participants give the following reasons for non-disclosure of the Internal Guidelines on Corporate Governance:

a) no interest to shareholders,

b) too general,

c) too detailed and simply mirror the law,

a) secret,

b) can be easily copied by competitors once disclosed, and

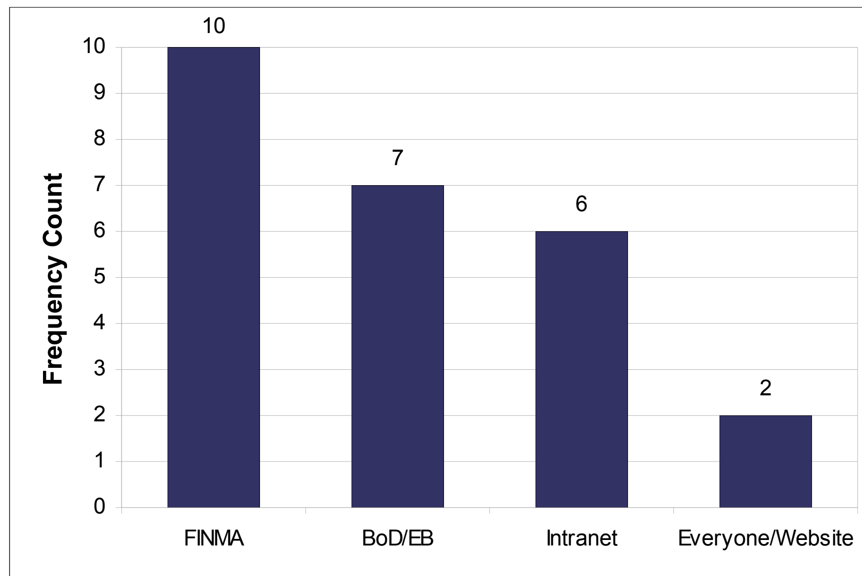
c) already partially disclosed in the annual report.

While full disclosure is not common, interview findings show that Internal Guidelines are readily available on the Intranet with 6 out 10 respondents making a statement that it is important that employees understand how the board of directors works. Additionally, all 10 interview participants stated that Internal Guidelines are available to FINMA as it must approve organizational regulations.

According to interviews there seem to be no “strategic secrets” in the Internal Guidelines and organizational regulations. In principle, interview participants support full or at least partial disclosure already. Interviews results suggest that Internal Guidelines show the overall philosophy of the bank when it comes to corporate governance. As a result, disclosure of Internal Guidelines has the potential to enhance transparency, improve reputation and show compliance. However, the actual practice differs with only two interview participants stating that their board of directors publishes the Internal Guidelines on the website of the bank.

Figure 27 summarizes the levels of disclosure by listed banks when it comes to the Internal Guidelines on Corporate Governance.

Figure 27: Disclosure of the Internal Guidelines on Corporate Governance



Source: own development. Interviews (n=10). Multiple responses allowed.

4.2.4. Corporate Governance Values

Interview participants state that members of the board must live by the agreed corporate governance principles and not only speak of them. Responses show that by engaging non-executives in the development, revision and amendment process there is greater motivation to follow corporate governance principles set in the Internal Guidelines. For example, participants state that discussion of corporate governance principles at the board level is important, but is also important to get the board committed to writing down corporate governance principles that board wants to adopt. According to interviews, it seems clear that there is a greater chance that these corporate governance values get engrained in the culture of the board. As a result, the board's commitment to governance becomes more sustained and credible.

Additionally, interview participants state that the highest level of management must make statements concerning corporate governance. However, by simply writing down the rules and guidelines, there is a danger in believing that everything is good. Participants suggest that a document containing Internal Guidelines on Corporate Governance is only a starting point and not a goal. For example, one can spend a lot of time developing Internal Guidelines, but in the end members of the board can ignore the guidance they contain. Interview data suggests that for the Internal Guidelines on Corporate

Governance to be effective, the board must reinforce the value of corporate governance through regular review of the actual governance practices in the bank.

Participants also suggest that development of Internal Guidelines promotes desired behavior and provides an opportunity to open a dialogue on the value of good conduct in a bank. Literature supports this notion that values can be embedded with the help of corporate documents.[738]

4.2.5. Communication and Continuity of Practice

Interview results show that a written policy for the board is useful, because it provides continuity in corporate governance practices at the board level. According to interviews, continuity is especially important for the board of directors of a listed cantonal bank. For example, one participant suggests that changes in cantonal laws may have a dramatic impact on the board of directors; Internal Guidelines would provide the necessary stability and ensure continuity in corporate governance standards of the bank.

Interviews responses also suggest that members of the board wish to be "closer to the troops" in the aftermath of the financial crisis of 2008-2009. They want to take part in credit decisions, whereas prior to the crisis, the board was only involved in the setting of the risk strategy of a listed bank. One interview participant points out that today the risk committee wants to be involved in nearly all day-to-day risk management functions, and as a result there is over-involvement of board members in the operations of the bank. Interview responses suggest that Internal Guidelines provide guidance to members of the board when it comes to their responsibilities and decision making authorities, making it possible to stay true to existing best practice.

Two of the interview participants also suggested that Internal Guidelines help to communicate corporate governance principles to new board members. This is also supported by literature that states that a codified and explicit set of rules for the board of directors can make it easier to transfer knowledge, making it more cost effective and more efficient compared to un-written rules.[739]

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[738] Glastetter and Kleiner (1989).
[739] Grant (1996, p. 114).

4.2.6. Development Process

4.2.6.1. Introduction

According to code of conduct research, organizations must plan how they will review the code or corporate policy document and how they will account for changes in the business environment, strategy, stakeholder concerns, new standards and strengths and weaknesses.[740] A typical development process includes identification of leaders and key players, decisions over director involvement, identification of drivers for development and amendment plus time frames for revision.

4.2.6.2. Functional Leaders

Interview responses suggest that it is not too important to know who makes the initial proposal for the Internal Guidelines, but what is important is that there is a specific person within the board of directors who is given the responsibility for development, implementation and administration of the Internal Guidelines. Six Interview participants state that this responsibility should lie either with "one of the directors" and "preferably, this person should be a corporate governance specialist within the board."

Another three interview participants add that the responsibility for development and review of the Internal Guidelines on Corporate Governance lies within a board committee. Interview participants refer to the following specific committees: Governance & Nominating Committee, Audit & Risk Committee and Audit Committee. The interview participant explains that the committee, which consists of three people, is responsible for the review processes and, if necessary, makes recommendations for amendments to the whole board. Another participant states that the responsibility for the Internal Guidelines is shared between the Chief Financial Officer and the board secretary, who comprise a special project team that leads the process and then makes recommendations to the entire board.

According to interviews, the board secretary tends to play an important role in the initiation and development process. For example, the board secretary initiatives and leads the processes that support Internal Guidelines on Corporate Governance. He or she is the expert on all corporate governance issues. It is also common to involve the chairman of the board in the development of corporate governance principles of a bank.

[740] Institute of Business Ethics (2003).

4.2.6.3. Ownership and Non-executive Directors

There is an overwhelming agreement that Internal Guidelines on Corporate Governance must be a collective effort. According to existing literature, the development of a code must be supported by each employee.[741]

Nine interview participants state that participation of all board members is important in the development and amendment of the Internal Guidelines. However, participants are quick to point out that this does not always have to be direct participation, but rather there should be the opportunity to get involved in the process.[742] On the other hand, research also states that there must be active open discussion of corporate governance areas that matter.[743]

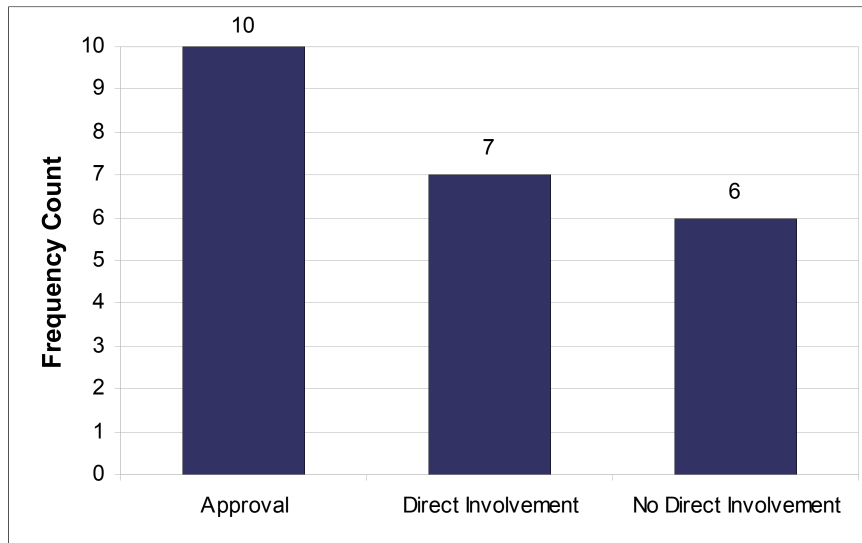
Interview responses suggest that the board is consulted on the subject matter and the members of the board are given the opportunity to provide feedback on the developments and amendments. Participants highlight that amendments to the Internal Guidelines must always be approved by the entire board. Interview responses also suggest that members of the board are motivated if they are given a chance to participate. For example, one participant states that involvement helps members of the board to support the proposed values and principles.

However, there are some exceptions. One interview participant explains that non-executive directors in his bank are not interested in the development and amendment process. He states that the responsibility for Internal Guidelines lies with the head of legal and compliance and adds that it is their job to come up with ideas for the Internal Guidelines. The reason for the non-involvement in this particular case is explained by the majority ownership of the share capital by another bank and, as a result, corporate governance is dominated by the owner.

[741] Kaptein and Wempe (1998, p. 863).
[742] Ibid.
[743] Johnson (1997, p. 6).

Figure 28 below presents the level of involvement of the non-executive directors in the development and revision of the Internal Guidelines on Corporate Governance.

Figure 28: Involvement of the Non-Executive Directors in the Development Process



Source: own development. Interviews (n=10).

On the whole, interview findings show that the involvement of the board in the development and revision/amendment process is very important because it creates an opportunity to create board ownership and makes it easier for members of the board to accept guidance outlined in the Internal Guidelines on Corporate Governance.

4.2.6.4. Key Players in the Development Process

Interviews show that, from time to time, there may be other parties involved in the development or amendment of the Internal Guidelines on Corporate Governance. Literature states on this point that it is not good if the board simply endorses a standard approach. Instead, various stakeholders need to be consulted in order to have a relevant and effective code.[744] For example, interview responses show that, depending on the subject, it may be appropriate to seek help from legal and compliance departments in order to ensure compliance with applicable laws and regulations. Interview participants also suggest that it may be necessary to get endorsement and support from the executive management especially if there are topics in the Internal Guidelines that concerns the executive board.

[744] Institute of Business Ethics (2003).

In addition, interview participants state that internal and external auditor may also be involved in the process. For example, one board uses external auditors to help to perform evaluation and self-assessment. At the end of the process, external auditors not only give suggestions of how certain board practices can be improved, but they also examine the Internal Guidelines to see whether or not amendments should be made and make recommendations as to what these amendments should be. According to interviews, it may also be necessary to engage external law firms or consultants. However, this does not have to be continuous and direct involvement, but the board may find it useful to invite feedback from various parties. This is supported by literature that states that involvement of multiple parties increases the chance that the content is relevant and realistic.[745]

It has been suggested that the degree of involvement may depend on whether the board carries out a "normal revision" or is doing a "drastic overhaul" of the Internal Guidelines. For example, one participant points out that the board thought it was important to involve a number of external law firms from the UK and Switzerland after the financial crisis of 2008-2009. The board also invited a number of corporate governance specialists who helped to examine best practices from around the world and only then the board set out to write its own guidelines on corporate governance. These statements are supported by literature that states that a single decision maker may lack sufficient knowledge on the topic, as a result a company needs involve various parties in order to find out which topics are relevant and to determine what international best practice has to say on the topic.[746]

Furthermore, interviews suggest that the board of directors of a listed bank may find it useful to examine Internal Guidelines of other banks. In addition, "best practice recommendations" as to what areas are to be included in the Internal Guidelines are welcome.

[745] Schwartz (2002, p. 38).
[746] Institute of Business Ethics (2003).

Table 23 below presents a list of players in the development, revision and amendment process. It is worth to note that the numbers in the table does not refer to the degree of involvement.

Table 23: Key Players in the Development/Amendment Process

Interview Responses	Frequency
Board committee	5
Executive board	5
Board secretary	3
CEO	3
CFO	2
External experts/advisors	2
Legal & Compliance department	2
Chairman	1
Vice chairman	1
Total	**24**

Source: own development. Interviews (n=10). Multiple responses allowed.

4.2.6.5. Drivers for Revision and Amendment

As mentioned earlier, interviews suggest that reasons for amendment or change are important as they influence the degree to which changes will be made and the depth of involvement of various entities within or outside a listed bank.

According to interview responses, the board is driven by multiple factors when reviewing Internal Guidelines on Corporate Governance. In general, boards of directors of listed banks amend Internal Guidelines only as a response to changes in regulations (from the canton or FINMA) and changes in the organization, do so in search for best practice or it becomes necessary to amend the content based on the outcomes of self-assessment. Drivers for changes and amendment to the Internal Guidelines are summarized in Table 24 below.

Table 24: Drivers for Amendment and Change of the Internal Guidelines

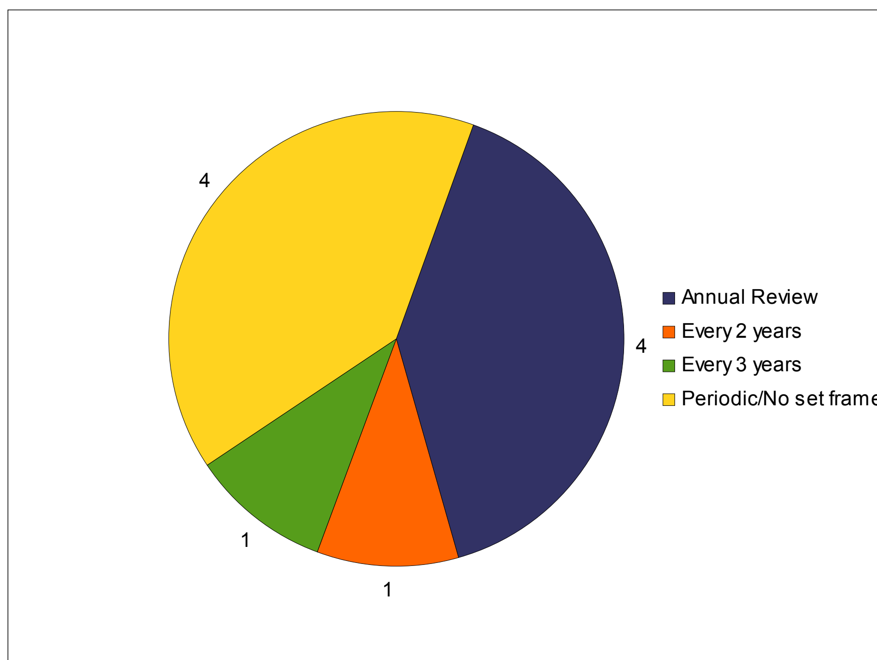
Interview Responses	Frequency
Regulatory changes	10
Changes in the organization	5
Recommendations from an external auditor	4
Recommendations from internal audit/compliance	3
Outcomes of self-assessment	2
Search of best practice	2
Total	**26**

Source: own development. Interviews (n=10). Multiple responses allowed.

4.2.6.6. Review Time Frame

According to interview responses, there is a high degree of variability when it comes to the frequency of revision of the Internal Guidelines on Corporate Governance by the board of directors in a listed bank. There is an even split between those boards that undertake an annual review and those that have periodic review with no set time frame. Other participants state that they review Internal Guidelines every two-to-three years. Figure 29 below presents overview of revision time frame of the Internal Guidelines.

Figure 29: Review of the Internal Guidelines on Corporate Governance



Source: own development. Interviews (n=10).

Four of the interview participants responded that there is a need for annual review. They explain that an annual revision is needed in order to see if the guidance contained in the Internal Guidelines is still up-to-date and if it is still relevant. However, interview participants are quick to comment that this does not mean that revision always lead to changes in the document. One participant adds that the board has made the decision not to make changes every 2-3 years because changes may disrupt the way in which the board works. He explains that there has to be sufficient time between changes so members of the board and executive management understand the issues contained in the internal regulations. He later points out that it is one thing to write down the content; it is another to ensure that everyone is aware and understands what is written in the Internal Guidelines.

Two interview participants state that the reasons why they only review the Internal Guidelines every 2 to 3 years are that revision is only necessary when there are changes

in laws and regulations. One interview participant notes that the board makes amendments only if there are major changes in regulations because they do not want to submit organizational regulations to regulators too frequently.

Furthermore, four interview participants state that there is a regular review of the Internal Guidelines, but there is no set time frame. They explain that revision takes place from time to time. The exact time is determined if there are significant changes in regulatory and legal requirements for listed banks.

To conclude, it is evident that there is a high degree of formalization of the review process in four of the listed banks that took part in the interviews. It is also clear that while there is identification of what triggers the revision and amendment, not all listed banks have established formal time frames for the review of their Internal Guidelines on Corporate Governance.

4.2.7. Content Decisions

4.2.7.1. Principle vs. Rule Based

Theory points out that any corporate policy document should be "actual" and they should guide behavior rather than guarantee conformity. In addition, existing literature suggests that the company needs to decide whether to adopt a principle-based or a rule-based approach to the Internal Guidelines on Corporate Governance.[747]

Findings show that 4 out of 10 interview participants (regulators excluded) would like the Internal Guidelines to be principle-based, while another four would like them to be more rule-based. Others favor a mix between principle and rule-based approaches. Table 25 below presents the frequency counts for content based decisions.

Table 25: Principle vs. Rules Based Content

Interview Responses	**Frequency**
Principle-based	4
Rule-based	4
Mixed	2
Total	**10**

Source: own development. Interviews (n=10).

[747] Kaptein and Wempe (1998, p. 859).

Interview participants explain that rule based guidelines are not beneficial as they make corporate governance a box-ticking exercise. They point out that flexibility is important, as it is not possible to regulate all aspects of corporate governance. Interview participants also state that having many rules may give a false impression that everything is good. Putting too much detail and too many rules may obscure the big picture. One interview participant adds that principles are better understood, whereas rules would make corporate governance too rigid and gives an impression to board members that they are not trusted.

Six out of ten interview participants think that principles make it easier to express some aspects of corporate governance. For example, one participant explains that independence is personal independence; it is not something you can describe and put on paper.

However, four out of ten participants state that principle-based guidelines may not provide sufficient clarity and thus there is no real value in just principle-based guidelines. They believe that Internal Guidelines should contain simple provisions, basic and concrete rules for the board of directors. It is not necessary to write down big words like ethics and values, instead the board needs to know the board selection process, specific provisions on how members of the board should deal with conflict of interest situations, how they should vote and how meetings take place.

Interviews suggest that boards favor a “less is more” approach when it comes to the content of the Internal Guidelines on Corporate Governance. It is important that only the most essential points are written down and monitored. At the end, interview findings indicate that it is up to the board to decide whether they would like to have a more principle-based or a more rule-based approach to the content of the Internal Guidelines on Corporate Governance. This decision depends on objectives of the guidelines. For example, interview participants remark that detailed and concrete Internal Guidelines give greater control, while principle based guidelines establishing values and promote the spirit of the Internal Guidelines.

4.2.7.2. Content Areas

According to literature, the code should correspond as much as possible to the concrete problems encountered by the organization and the code should represent all norms or all areas which are necessary for the employees to carry out their jobs.[748]

[748] Kaptein and Wempe (1998, p. 859).

According to interview findings, corporate governance in Switzerland has evolved in the last 20 years. Interview responses suggest that the role of the board has developed from the simple function of control to that of strategy formulation, risk and reputation management. In doing so, the board maintains the interests of the shareholders. Changes in regulations also meant that the board of a listed bank is much more professional today than it ever was. Consequently, participants feel that Internal Guidelines should contain basic duties and responsibilities of the board.

Interview data shows that there are a number of corporate governance areas that need to be addressed by listed banks' boards. For example, boards must do more to emphasize board composition and required qualifications. According to interviews, individual competencies of members of the board are very important. Two interview participants maintain that non-executive directors are not always qualified, lacking financial and banking backgrounds. As a result, NEDs do not understand the business and rely too much on the information presented by the compliance department and executives. Interviews show that the boards of listed banks must establish and communicate the selection process for the board.

The interview participants have also argued that boards of listed banks should do more to ensure clear separation of duties and responsibilities between the board of directors and the executive management. Two interview participants highlight that post-crisis risk committees get involved too much in day-to-day risk management, which actually belongs to the domain of the senior management of the bank.

Furthermore, interview participants refer to conflict of interest issues. For example, one interview participant expresses concern that too often there is lack of independence from political parties or cantonal administration in listed cantonal banks.

Interview participants also feel that remuneration of the board of directors and of executive management is one of "problematic areas" in listed bank, but they are quick to point out that it is not a problem that exists in their own bank. Nonetheless, one respondent states that by establishing who decides on the compensation gives a clear picture about the strength of the board of directors. It should be made clear for members of the board that it is the board that has the ultimate responsibility for the remuneration policy in a listed bank.

Interview participants have also stated that content should administrative and procedural guidelines for the board such as the number and frequency of meetings, voting and quorum requirements and so on.

It is important to point out that on the whole, interview participants think that it is the totality of the Internal Guidelines on Corporate Governance that is important. Most interview participants had struggled to identify specific areas, but instead suggested that all topics of corporate governance are important. Interview results indicate that listed banks should follow international and national recommendations for banking institutions on best practice in corporate governance such as those stated in the "Principles for Enhancing Corporate Governance" of the Basel Committee on Banking Supervision. To conclude, according to one interview participant, the effectiveness of the guidelines lies with their ability to address a wide range of issues relevant to the bank.

Table 26 below presents a list of corporate governance areas that interview participants thought should be included in the Internal Guidelines on Corporate Governance. Content decisions will be discussed in greater detail in section 4.3.

Table 26: Content Areas

Interview Responses	Frequency
Conflict of interest/independence criteria	9
Board duties and responsibilities	8
Meetings and agenda	6
Committees (structure, duties, membership)	5
Voting	5
Decision making/authority	5
Nomination and election	4
Board composition	3
Board membership qualifications	3
Minutes	3
Access to information	3
Remuneration principles	3
Board membership	1
Total	**58**

Source: own development. Interviews (n=13). Multiple responses allowed.

4.2.8. Implementation and Administration

4.2.8.1. Distribution

Interview participants suggest that because members of the board are already involved in the development and approval process, distribution is only relevant in the context of new members of the board.

There is an overwhelming consistency among interview participants when it comes to the distribution of the Internal Guidelines. Data shows that listed banks distribute Internal Guidelines to new board members at the start of their 'employment' (n=10).

The reason for doing so is that board members have the possibility to read the Internal Guidelines upon appointment. One interview participant explains that it is expected that newly appointed members of the board read the distributed documents well before a first meeting. This gives them an opportunity to ask questions about corporate governance principles and procedures at the start of their term in office.

On the other hand, another interview participant places little faith in the familiarity of the non-executive directors with the content of the Internal Guidelines on Corporate Governance prior to a first meeting. He states that there is an assumption that directors would not read the document prior to a first meeting and that it is unlikely that they would remember information contained in the document. It is not expected that members of the board know by heart the content of the Internal Guidelines on Corporate Governance; instead members of the board rely on the secretary of the board to ensure that the process is understood. This is in line with literature, which states that there may be a benefit for distributing the code to employees prior to the start of employment; however, it is unlikely that employees would read the code.[749]

In addition, only one interview participant discussed the value of a sign-off. He argues that a sign-off is needed because it makes board members acknowledge that they have read, understood and will adhere to the guidelines and rules contained in the Internal Guidelines. Other participants did not see any benefit in the sign-off (n=9). They claim that the benefit of the Internal Guidelines lies not with whether directors have read the document or not, but with whether or not they understand and support the principles contained in Internal Guidelines. Evidence is in line with research, which says that a sign-off may also signal lack of trust.[750]

4.2.8.2. Communication and Reinforcement

Interviews participants note that there are regular education and training sessions for members of the board (n=9), however, the center of attention of such training is not necessarily focused on corporate governance or the Internal Guidelines on Corporate Governance. Instead, formal training mostly concentrates on getting new board members to become familiar with the bank rather than with corporate governance. One participant comments that short presentations on relevant issues, such as corporate governance, capital adequacy, remuneration and cross-border banking are planned, but due to a full agenda, these presentations often get cut out.

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[749] Schwartz (2004, p. 332).
[750] Ibid.

It is important to note that many interview participants explicitly questioned the value of formal education or information sessions when it comes to the Internal Guidelines on Corporate Governance (n=7). According to one interview, if the content of a training session is too formal then it would be too boring for directors. It is also suggested that introduction sessions are not obligatory; instead new members of the board can speak with the CFO regarding corporate governance processes.

Only two interview participants comment that Internal Guidelines on Corporate Governance are formally discussed during the induction. According to one interview, induction covers the bank's approach to corporate governance and Internal Guidelines on Corporate Governance are explicitly introduced along with the whole regulatory framework. This is especially important if new directors join from outside the financial services industry.

However, the remainder of interview participants (n=8) state that there is no formal induction for the board, the board relies on the informal processes, where depending on the situation or a degree of knowledge of a newly appointed director, he or she can meet with other board members of management to see how the board works. Interview participants highlight that the Internal Guidelines are introduced during the induction, but these discussions are informal. For example, participants point out that those new board members can sit down with the chairman and secretary of the board and together they go over all internal documents. However, the depth of introduction to corporate governance depends on the familiarity of the board member with the bank, financial services industry and corporate governance practices and regulations in the banking sector.

According to interviews, the responsibility for communication about Internal Guidelines falls on the chairman of the board or the board secretary. One interview participant explicitly states that the chairman of the board and board secretary are the ones who must introduce and explain to new directors how the board works. This rather informal way gives plenty of opportunity for new members to ask questions and discuss internal corporate governance principles and procedures.

Also, one participant suggests that it is not enough to have Internal Guidelines on Corporate Governance; corporate governance should be continuously discussed at the board level. However, he goes on to add that this does not mean that the board has to attend classes but everyone on the board should be familiar with the Internal Guidelines and should understand the bank's approach to corporate governance. He also mentions that a committee or a person responsible for the Internal Guidelines on

Corporate Governance must go over the document with other members of the board, make a presentation and explain what the bank's position on corporate governance is and why it is important.

4.2.8.3. Enforcement and Monitoring

The decision to create and implement Internal Guidelines on Corporate Governance creates a series of obligations for the listed bank in terms of the administration of the Internal Guidelines. These obligations revolve around enforcement and monitoring such as how do board members live up to the standards presented in the Internal Guidelines and if there is a system for monitoring compliance.[751]

According to interviews, it is important that members of the board adhere to the provisions contained in the Internal Guidelines (n=7). Still, the practice of administering the Internal Guidelines appears to be implicit rather than explicit in nature. For example, three participants state that it is expected that members follow Internal Guidelines. One interview participant explains that during the preparation for the meeting, the secretary for the board and the chairman go over the organizational regulations and Internal Guidelines to determine who should be making a decision on one topic or another.

On the whole, interview participants are consistent in stating that the responsibility for compliance lies with the chairman of the board and the board secretary. However, the process remains rather informal. For example, one participant explains that if a member of the board misses too many meetings, then he or she would be asked to leave the board. Only one out of 10 participants confirmed that it is the job of the compliance department to monitor compliance with the Internal Guidelines.

According to another interview, the ultimate responsibility lies with members of the board. He explains that integrity of board members is very important for corporate governance; as it is not easy to control the controller. Instead, members of the board should have values which support corporate governance.

Interview data also shows that the board should define someone who would be in charge of the Internal Guidelines. That person should have to make a report once pear year and suggest changes if necessary. Furthermore, according to five participants, the board entrusts this task to a committee rather than to a single individual. A committee is

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[751] Schwartz (2002, p. 39).

then charged with the responsibility for maintaining Internal Guidelines, ensuring that they are up-to-date and are still applicable to the situation in the bank.

4.2.8.4. Testing

While testing members of the board has been suggested by some of the interview participants, they were not too serious in making these comments. For example, two participants comment that board members could be required to take a test, however both are quick to add that this would not be too popular with directors. Another participant states that testing is not necessary, because if the directors of the bank need to be tested, then they are in the wrong bank. If members of the board violate the rules, they would be asked to leave the board. The same participant adds that the board leads by example and as a result there is no need for tests. Nine participants (eight of which represent banks and one represents a regulator) have expressed a similar point of view that testing should not be required. This is in line with literature which shows employees dislike tests; they find them patronizing and wasteful.[752]

4.2.8.5. Self-Assessment

It was suggested by two interview participants that self-assessment is one of the ways in which the board monitors compliance and checks if the provisions of the Internal Guidelines are still up-to-day and relevant. One more participant affirms that there may be actions taken as a result of the self-assessment, and sometimes, this may lead to amendment of the Internal Guidelines on Corporate Governance. However, there is no evidence that other listed banks have a formal link between board evaluation and self-evaluation and the Internal Guidelines.

4.2.9. Conclusion

While listed banks use different names for Internal Guidelines on Corporate Governance, interview findings show that listed banks have internal regulations on corporate governance for the board of directors. A number of interview participants have highlighted that the board has too many internal and external regulations; as a result there is a belief that listed banks need to lead and develop Internal Guidelines without waiting for regulations.

While a small number of the respondents stated that they would favor pulling various documents together into Internal Guidelines on Corporate Governance, others did not think it matters whether or not corporate governance principles were in a separate

[752] Schwartz (2004, p. 334).

document or part of existing organizational regulations. However, there was an overwhelming agreement that the board needs to have guidelines on corporate governance that cover the corporate governance principles of a listed bank, as well as define tasks and responsibilities of the board and its committees. Literature supports the notion that internal rules are part of the formal structure that defines patters of relationship in the organization.[753]

By clarifying responsibilities, the board can reduce ambiguity and remove misunderstanding. Internal Guidelines help to ensure that the board does not get involved in operational decisions which belong to executive management. The board also makes certain that corporate governance practices are compliant with applicable laws and regulations[754] and that there exist formal ways to control governance and reputational risks. There is some evidence that the Internal Guidelines also offer a benefit of continuity as they ensure that corporate governance standards are maintained by the board, especially in situations where there are frequent changes in regulation or when there are drastic changes in the external environment.[755]

Literature supports the notion that there is a clear value in disclosing Internal Guidelines to shareholders because they help shareholders to understand how the bank works, however the actual level of disclosure is very limited. Nonetheless, direct reputational benefits are mentioned by five of the interview participants and there is recognition that disclosure has value. For example, interview participants confirm that there is a need to disclose Internal Guidelines to bank employees and to FINMA.

Understanding how the board develops, implements and administers the guidelines is also important. Findings suggest that boards vary in the degree of the formalization in the development, implementation and the administration process the Internal Guidelines on Corporate Governance. While some have a very clear process, others lack any formal means for effectively administrating the internal guidelines. If a corporate policy document is to have any effect at all, there needs to be a champion that initiates and leads the development.[756] Interview data shows that this responsibility lies either with a specific committee, project team, or the chairman of the board or the board secretary.

Findings show that board members have a chance to discuss and openly challenge the content of the Internal Guidelines. Other parties may also be involved in the develop-

[753] Zhou (1993, p. 1136).
[754] Eisenberg (1997, p. 237).
[755] Cowan and Forray (1997, p. 597).
[756] Myers (2003 p. 183).

ment, if necessary. Literature supports that open discussion of desired corporate governance principles is important.[757] Studies on the code of conduct also state that various stakeholders need to be consulted in the development process in order to have a relevant and effective code.[758] Study findings also indicate that from time to time, boards of listed banks would like to see Internal Guidelines of other listed banks and banking institutions in order to see corporate governance principles of others. However, findings suggest that there are risks involved when it comes to full public disclosure as it makes it too easy for others to copy the Internal Guidelines. On the other hand, having access to a sample may be helpful in showing what is considered to be best practice.

According to interviews, there are multiple factors that influence when the board reviews Internal Guidelines on Corporate Governance and that there is a high degree of variability in the revision time frame. There is an even split between those boards that undertake an annual review and those that have periodic review with no set time frame.

The development process also includes content specific decisions. For example, many interview participants favor general, principle versus specific rule-based approach to the content, with some favoring a mix between two approaches. This is consistent with literature, which states that specific and concrete codes increase comprehensiveness but reduce usability and make it difficult to administer.[759] A code should also correspond as much as possible to the concrete problems encountered by the organization[760] and be consistent with the values of the board of directors.[761] Interview results illustrate that problematic areas include board composition and competencies of non-executive directors, over-involvement in operational decisions, remuneration and conflict of interest problems. Findings show that the board should also include administrative and procedural guidelines for the board such as the number and frequency of meetings. Furthermore, content should follow international and national best practices in corporate governance and should reflect the banking industry. Interview participants did not think that conduct related content should be contained in the Internal Guidelines, as the concepts of ethical conduct are too obvious and general. Also, many listed banks already have a separate code of conduct. It is up to the board of listed banks to decide which corporate governance principles should be included in the Internal Guidelines.[762]

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[757] Johnson (1997, p. 6).
[758] Institute of Business Ethics (2003).
[759] Gaumnitz and Lere (2002, p. 11).
[760] Kaptein and Wempe (1998, p. 859).
[761] Johnson (1997, p. 5).
[762] Ibid.

The decision to create and implement Internal Guidelines on Corporate Governance creates a series of obligations for a listed bank. These obligations include reinforcement, enforcement and monitoring of the code.[763] For example, training and communication are very important for the effectiveness of the code.[764] However, findings show that there is little or no formal training on Internal Guidelines and/or corporate governance. Instead, the board relies on the chairman or company secretary to explain how the board works and go over the Internal Guidelines.

Findings also seem to assert that a “sign-off process” and “testing” on the content of the Internal Guidelines is unpopular and is not needed as members the board have direct involvement during development. This is not surprising as existing literature is split over these issues, with some researchers advocating in favor of a “sign-off” and “testing” and others believe there is no real value in this.[765]

Findings support that in order live up to the standards presented in the Internal Guidelines, the board needs to have a system for monitoring compliance.[766] Literature is in favor of periodic audits; however, it appears that a vast majority of listed banks do not have a formal procedure in place for monitoring code effectiveness and that there is no clear administration process, which is a clear weakness.

4.3. Documentary Sources

4.3.1. Introduction

In this section the researcher presents the content analysis of the Internal Guidelines on Corporate Governance, which were obtained immediately at or after the interview with the chairmen or board secretaries or were obtained from the banks’ websites. As mentioned in section 3.5.3, in case Internal Guidelines were part of organizational regulations, the researcher examined only the portion of the document which contained corporate governance related information for the board and its committees. For a complete list of documents analyzed please see Appendix 6.

Empirical data shows that on average, Internal Guidelines consist of 6.8 pages, with a range between 4 and 12. It is important to note the length of the Internal Guidelines, since earlier studies found that length may have an impact of the effectiveness of the

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[763] Schwartz (2002, p. 39).
[764] Webley and Werner (2008, p. 411).
[765] Schwartz (2004, p. 332).
[766] Schwartz (2002, p. 39).

document. For example, long codes reduce information retention as a result of information overload, while short codes have greater impact on perception and adoption.[767]

Analysis of content shows that overall, Internal Guidelines on Corporate Governance have a positive formulation, with over 80% of content focusing on what directors should do rather what they should not do. Nonetheless, Internal Guidelines also frame a few subjects negatively e.g. confidentiality and conflict of interest.

Internal Guidelines contain a mix between principle-based, general statements and rule-based, concrete statements. For example, two thirds of Internal Guidelines specify retirement age and number of terms a member of the board can serve on the board, the way in which voting takes place and how a member of the board can request a meeting or put an item on the agenda, minutes and approval procedures, requests for information access, and the number of committee members. Internal Guidelines also list numerous tasks and responsibilities for the board and its committees. On average, Internal Guidelines contain 6 responsibilities and tasks for the chairman of the board and 10 for the entire board. However, in the various Internal Guidelines examined here, they range from 3 to 9 for the chairman and from 4 to 110 for the board as a whole.

Content analysis shows that Internal Guidelines contain many specific tasks and responsibilities, provisions, definitions and guidelines, but it is it important to note that it is generally possible to cover all corporate governance topics in a single document. To determine the comprehensiveness of the Internal Guidelines, the researcher counted the number of headings and pages. On average, Internal Guidelines contain 14 headings. However, the researcher felt that a quantitative approach alone was not sufficient. As a result, the researcher examines content areas of the Internal Guidelines against the established theoretical framework.

The analysis is structured in such a way as to reflect the organization and structure of the examined Internal Guidelines, which was established in the theoretical framework. The author starts with a discussion of the purpose and legal basis of the Internal Guidelines, which is then followed by a section on board membership, responsibilities and rights of the directors, shareholder rights, meetings and minutes, director access to information, chairman and vice chairman, board committees, succession planning and compensation guidelines, director education and self-assessment provisions conflict of interest and conduct, and revisions and amendment and entry into force.

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[767] Gaumnitz and Lere (2002, p. 11).

4.3.2. Purpose and Legitimacy

A purpose statement or aims statement sets out the rationale for the Internal Guidelines or internal regulations. 10 out of 12 internal board documents examined present the purpose in the document. For example, these purpose statements contain references to functions, duties, powers and authorities of the board of directors (n=9) and that of board committees (n=3). The preamble of one internal regulation announces that the guidelines provide an "effective and efficient corporate governance structure for the group," they "supplement rules contained in laws and regulations" and "define functions, responsibilities and authorities with applicable corporate governance practice."[768] Also, Credit Suisse writes that their Corporate Governance Guidelines "summarize certain principles promoting the appropriate functioning of the board of directors and its committees and ensures the effective and efficient governance of the group."[769]

While statements on definition of functions and duties are common place, only a few Internal Guidelines make explicit references to corporate governance and conduct (n=4) and even fewer explicitly mention "effectiveness and efficiency" in conjunction "corporate governance" (n=2). For example, sections 7 and 8 of the Corporate Governance Guidelines of Credit Suisse refers to "ethical principles that govern the code of conduct of the board of directors" and "effective governance" respectively. Additionally, Article 2 of the Organizational and Business Regulations of the SGKB expresses that the instructions "set the general guidelines on conduct of the board of directors". Organizational Regulations of UBS AG also make a statement on ethics and values i.e. "[we] are proud of [our] values, uphold levels of business ethics and personal integrity."[770]

A very small number of Internal Guidelines explicitly mention transparency and disclosure (n=2). In the preamble of the Organizational Regulations of UBS it states that "in the interest of transparency, organizational regulations and annexes are published on the website." In point 2 of its Corporate Governance Guidelines, Credit Suisse states that internal guidelines, committee charters, "organizational regulations and articles of association are available on the website". While only two make explicit statements about transparency, 5 out of 12 Internal Guidelines analyzed are actually available on the Internet (either in a stand-alone format or as part of organizational regulations). Two of the Internal Guidelines belong to large listed banks (i.e. UBS and Credit

[768] Organizational Regulations of UBS AG (2010).
[769] Corporate Governance Guidelines of Credit Suisse Group (2006).
[770] Organizational Regulations of UBS AG (2010).

Suisse), two belong to small-medium sized banks and one is from a listed cantonal bank. Additionally, two Internal Guidelines analyzed explicitly state in the document that they are for internal use only.

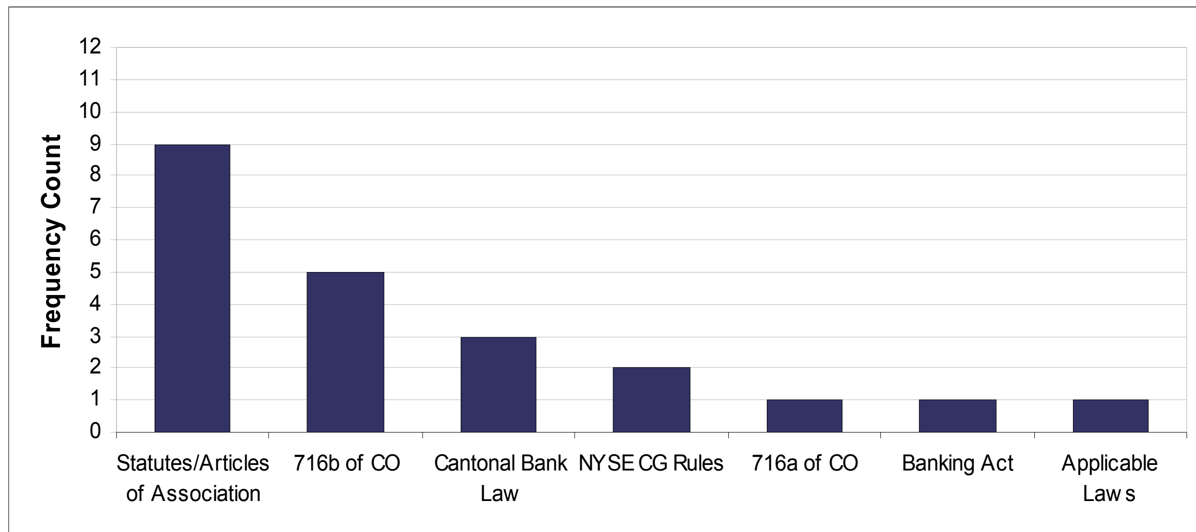
Literature suggests that Internal Guidelines on Corporate Governance must have a strong shareholder orientation.[771] While it is common to find references to shareholders in either the board tasks or responsibilities section, when discussing election of board members, or in the context of the AGM, only a couple of Internal Guidelines go beyond the norm and contain explicit, multiple references to shareholders and shareholder value (n=2). For example, section 5.3 of the Organizational Regulations of UBS declares that board of directors is responsible for "delivering sustainable shareholder value within a framework of prudent and effective controls" and the board has "obligations to shareholders." And again in section 26.1 of the Organizational Regulations of UBS, it remarks that the board carries out its duties with "due care … to safeguard and further the interests of UBS and of all of its shareholders." Similarly, section 4.2 of Corporate Governance Guidelines of Credit Suisse notes that "BoD compensation should be partly paid in … shares in order to align the directors' interests with those of shareholders." While few banks do mention shareholders in the Internal Guidelines, stakeholders are completely neglected. Content analysis of 12 Internal Guidelines shows that not a single Internal Guideline makes any reference to customers, employees or other parties. This is a considerable weakness, as modern corporate governance must take a much wider approach and take into consideration not only the goals of the shareholders (owners), but also of its customers, employees and wider society.

The purpose statement is closely followed by references to laws and regulations. By doing so, Internal Guidelines establish legitimacy or a legal basis and framework for the internal regulations.[772] For example, 11 out of 12 Internal Guidelines on Corporate Governance make explicit references to laws and regulations. Specifically, Internal Guidelines refer to Article 716a of the CO (n=1) and Article 716b (n=5). 9 documents make direct references to Articles of Association or Statutes and 3 documents refer to cantonal laws on banks. 2 Internal Guidelines also refer to NYSE Corporate Governance Rules; references to legal and regulatory requirements are mentioned when listed banks in Switzerland have listings on other exchanges. On another hand, one document does not cite any laws or regulations at all, while another one states that the Internal Guidelines are framed within applicable laws and regulations and group policies but

[771] Johnson (1997, p. 5).
[772] Suchman (1995, p. 574).

the document does not refer to any specific laws or regulations. Figure 30 below presents an overview of frequency counts for legal basis of the Internal Guidelines on Corporate Governance.

Figure 30: Legal Basis



Source: own development. (n=12).

4.3.3. Board Membership and Composition

All here examined Internal Guidelines on Corporate Governance contain guidelines and information on board membership and composition (n=12). However, the depth and the range of information differ considerably. For example, some Internal Guidelines specify how members are elected to the board (n=8). Half of the Internal Guidelines also define and refer to the independence of members of the board (n=6). One further document states that a member of the board is no longer considered independent if he is a member of national parliament or administration. The same document also adds that no member of the executive board can be a member of the board of directors at the same time. According to section 1.2 of the Corporate Governance Guideline of Credit Suisse, "when evaluating candidates the [committee] considers whether the individual holds any other mandates that would lead to conflicts of interest."

A number of Internal Guidelines also contain very concrete and specific rules for terms of office (n=7), age limit and retirement (n=7), and size of the board (n=2) and there is also an explanation for desired size of the board (n=1).

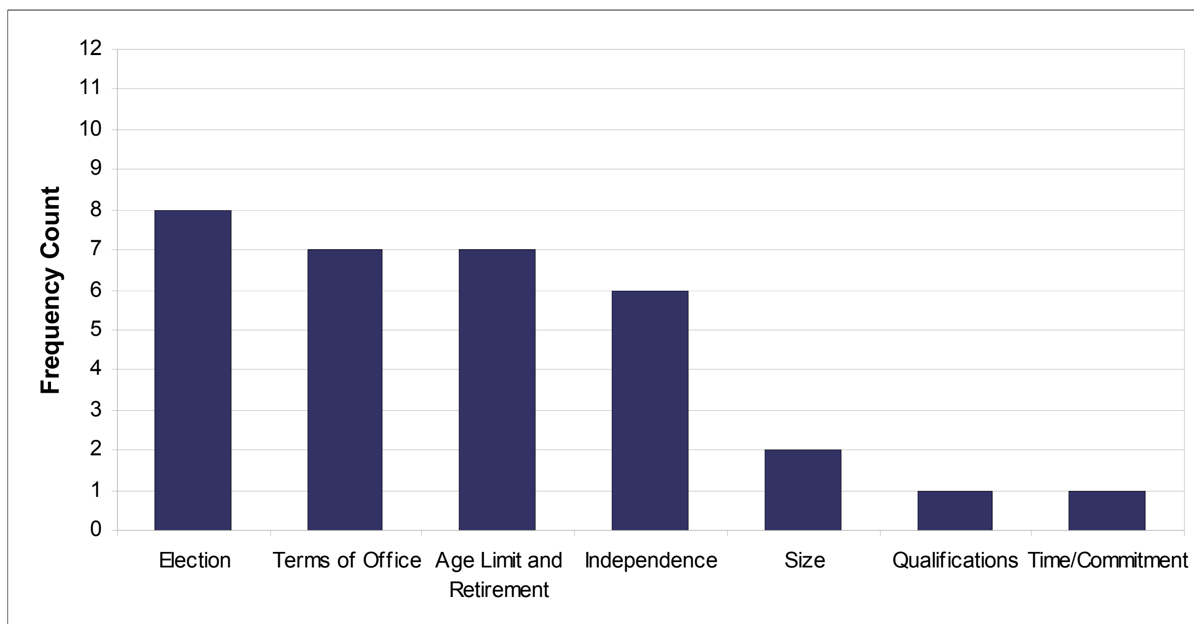
However, some important topics seem to be left out from most of the Internal Guidelines. For example, information on the director selection process is not widely found in the analyzed documents (n=1). Only one document explains the selection process. For example in section 1.2 of the Corporate Governance Guidelines of Credit Suisse it

maintains that "the Chairman's and Governance Committee is responsible for selecting BoD member nominees to be proposed to the AGM for election" and "the CGC establishes criteria for BoD membership, which reflect requirements of applicable laws and regulations and take into consideration such factors as it deems appropriate."

On the whole, Internal Guidelines do not convey information with regards to the overall qualifications of board members and again only one Internal Guideline provides information on this point (n=1). For example, evaluation criteria "may include independence, diversity, age, skills, management experience in business and other organizations of comparable size, the extent to which the candidate and his experience compliments or supports the BoD or its committee."[773]

In addition, a majority of the Internal Guidelines do not contain any references to "expectations from the directors." Only one document refers to time requirements and the desired levels of commitment from the members of the board. According to a section titled "director responsibilities", "[the committee, during selection process] makes an assessment as to whether the nominee has the capacity to devote the necessary time to appropriately discharge the responsibilities as a member of the BoD."[774] Figure 31 on the next page presents details of frequency counts of the analysis of board membership.

Figure 31: Board Membership and Composition



Source: own development. (n=12).

[773] Sec. 1.2 of Corporate Governance Guidelines of Credit Suisse AG (2006).
[774] Sec. 2 of Corporate Governance Guidelines of Credit Suisse AG (2006).

4.3.4. Independence and Conflict of Interest

A large majority of the Internal Guidelines include either principle-based or specific guidelines on conflict of interest, independence and contain procedural matters with regards to conflict of interest. To be exact, 7 out of 12 Internal Guidelines contain very general statements when it comes to conflict of interest. For example, "the board members and executives arrange their personal and business affairs so as to avoid as much as possible a conflict of interest"[775] and "directors must avoid any conflicts of interest and the appearance of such conflicts."[776] On the other hand, 4 documents have much more specific and detailed definitions of what constitutes conflict of interest. According to Article 21 of the Organizational and Business Regulations of the BLKB, a member of the board can not derive work from the bank or from a daughter company. Additionally, Rules of Procedure of the LLB, a member of the board of directors can not be considered independent if he or she is a member of national parliament or administration." Organizational and Business Regulations of the SGKB also state that "conflict of interest is regulated by the Swiss Banking Commission Circular 06/06 (now FINMA Circ. 08/24)."

9 out of 12 documents contain procedural measures on how to deal with conflicts of interest. Directors are asked not to "not participate", "to abstain", "to inform", "to notify", and "to leave" if they are conflicted. To be more specific, the following wording is used: "members of the board shall not participate in discussion and decision making and the person with a conflict has the right to statement before leaving the discussion,"[777] "shall notify the chairman" and "the [board's] decision should reflect the intensity of the conflict of interests."[778] Internal Guidelines provide guidance as to what members of the board should do if they are conflicted "abstain from voting and discussion if conflict of interest exists,"[779] "shall abstain from participating in any discussion and decisions."[780]

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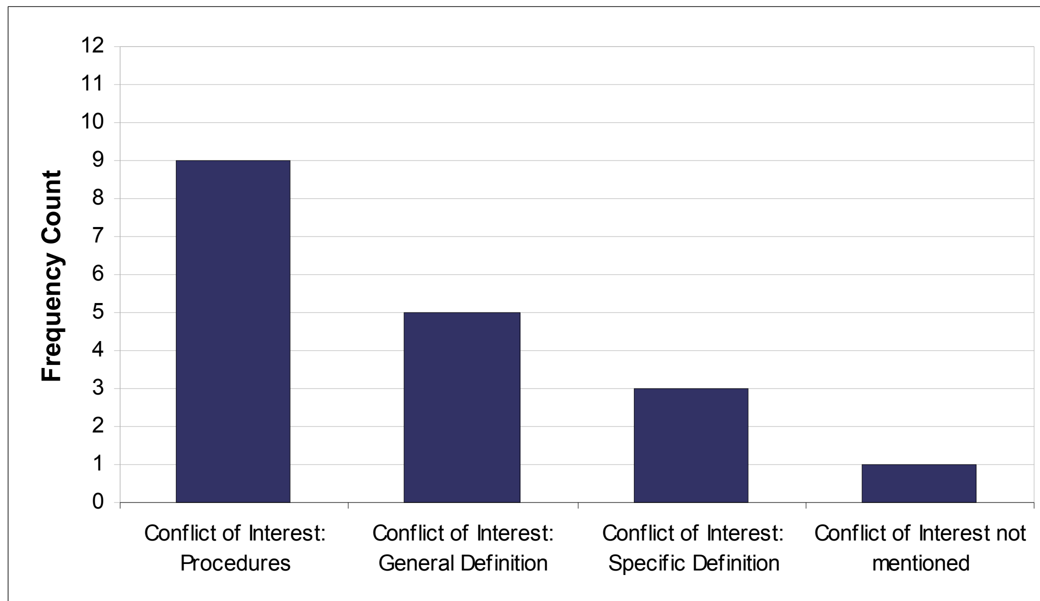
[775] Sec. 26.2 of Organizational Regulations of UBS AG (2010).
[776] Sec. 1.3 of Corporate Governance Guidelines of Credit Suisse AG (2006).
[777] Sec. 26.2 of Organizational Regulations of UBS AG (2010).
[778] Sec. 9.2 of Organizational Regulations of Vontobel Holding AG (2011).
[779] Art. 1 of Business and Organizational Regulations of Bank Sarasin and Cie AG (2008).
[780] Sec. 1.3 of Corporate Governance Guidelines of Credit Suisse Group (2006).

However, one of the Internal Guidelines examined does not contain any reference to independence, conflict of interest nor does it have procedures on how to deal with such conflicts. Figure 32 below presents frequency counts for conflict of interest.

Figure 32: Independence and Conflict of Interest



Source: own development. (n=12).

4.3.5. Tasks and Responsibilities

4.3.5.1. Board of Directors

All of the Internal Guidelines have a section titled "tasks and responsibilities". However, only 11 out 12 Internal Guidelines contain explicit board responsibilities and tasks. On average, there are 12 specific tasks and responsibilities, with 21 being the maximum and 4 being the minimum number. In addition, 3 documents contain a detailed annex with decision making and authorities for the board of directors and the executive management, ensuring clear separation of duties (these contain between 57 and 110 subheadings for responsibilities and decision making authorities of the board of directors).

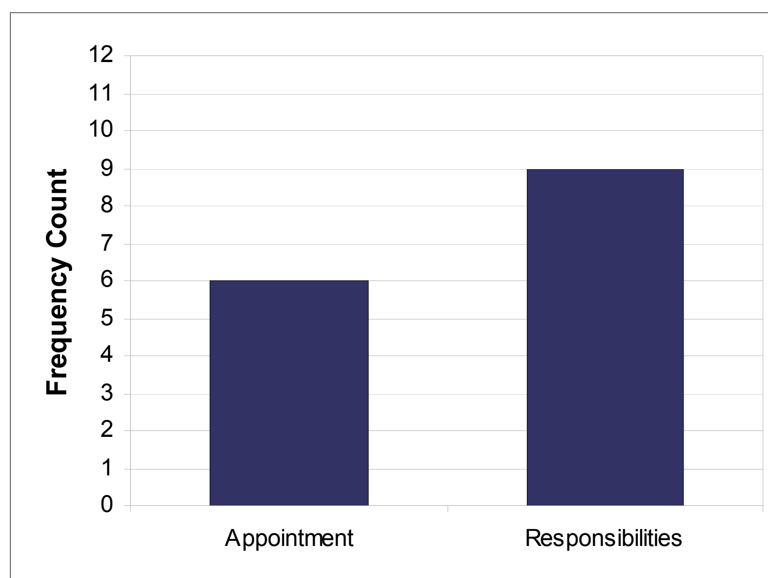
Tasks and responsibilities include words such as "ultimate responsibility", "success", "non-transferable duties", "overall direction supervision and control", "responsibility for strategy", "risk policy", "corporate policy", "nomination and succession planning", "design and implementation of compensation policy", "compliance with applicable laws", "internal audit", "annual assessment of achievements and functions", sustainable shareholder value" and many others.

Generally, the section is very comprehensive and contains much more detail with the lists of tasks often going beyond the applicable laws. However, one Internal Guideline does not explicitly state responsibilities of the board of directors, but instead refers to a cantonal bank law.

4.3.5.2. Chairman

All of the Internal Guidelines contain guidelines on the chairman of the board of directors (n=12). Figure 33 shows that the section can be broken down into appointment (n=6) and responsibilities (n=9) of the chairman of the board.

Figure 33: Chairman Appointment and Responsibilities



Source: own development. (n=12).

Appointment section is very straightforward and is similar in wording across all of the Internal Guidelines; it contains words such as “appointment”, “election” and “AGM.” In all cases, it is the board of directors that appoints or elects the chairman. On the other hand, there is much greater diversity in the way in which tasks and responsibilities of the chairman are presented. For example, Internal Guidelines contain anywhere between 3 and 9 major responsibilities for chairman.

Table 27 can be found on the next page and it presents a summary of all the responsibilities contained in the Internal Guidelines on Corporate Governance and the frequency of their occurrence.

Table 27: Summary of Tasks and Responsibilities of the Chairman

Tasks and Responsibilities of the Chairman	Frequency
Presides over the AGM	7
Leads board of directors meetings	7
Supports the CEO in sharing of business objectives	6
Facilitations information flow and access to information	5
Inspects minutes of the committees	5
Primary contact with executive management	5
Coordinates the work of the BoD and committees	5
Represents the bank to external parties (customers, investors, stakeholders and	4
Ensures effective communication with shareholders	2
Requests attendance of other parties	2
Board composition	1
Chairs a specific committee/s	1
Corporate Governance	1
Ensures that board members are knowledgeable about the bank	1
Remuneration	1
Administrative supervision of internal audit	1
Responsibility for Annual Report	1
Total	**55**

Source: own development. (n=12).

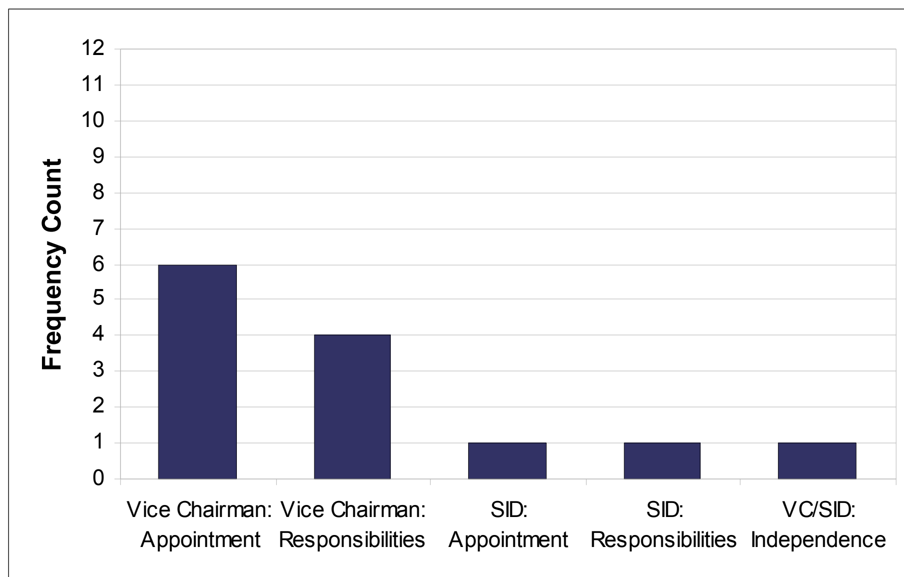
4.3.5.3. Vice Chairman and Senior Independent Director

While every Internal Guideline contains a separate and a rather large section on the post of the chairman, just over a half include a separate section and/or provisions for the vice chairman (n=6). In all instances, there is a single bullet point or a single sentence on the topic. For example, Article 10 of the Business Regulations of the BKB states that the “vice chairman is elected at AGM along with the chairman and members of committees.” A similar statement appears in section 1.1 of the Corporate Governance Guidelines of Credit Suisse. On the other hand, only a small number of Internal Guidelines contain detailed tasks and responsibilities of a vice chairman (n=4), which by en large refer to a responsibility for leadership of board meetings in absence of the chairman.

Only one Internal Guideline contains information about the position and responsibilities of the Senior Independent Director and explicitly refers to independence of the vice chairman and the SID.[781] See Figure 34 on next page for summary of the analysis.

[781] Sec. 11 of Organizational Regulations of UBS AG (2010).

Figure 34: Vice Chairman and SID

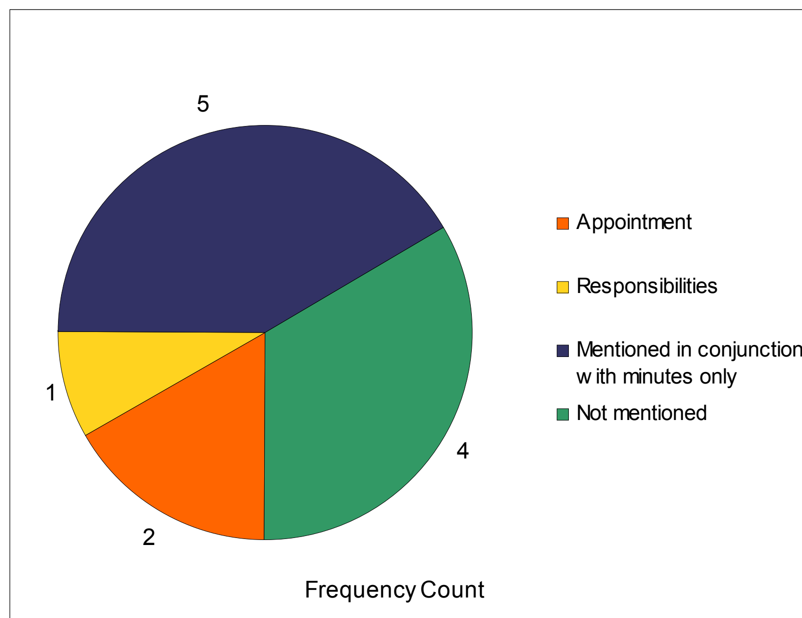


Source: own development. (n=12).

4.3.5.4. Secretary of the Board

According to analysis, 3 out of 12 documents include explicit guidelines for the board secretary. Figure 35 presents a summary of points on the post of the secretary of the board.

Figure 35: Secretary of the Board



Source: own development. (n=12).

Two Internal Guidelines contain information concerning the appointment of the secretary to the board and only one explicitly states functions, responsibilities and duties of the board secretary. For example, in 12.2 of the Organizational Regulations of UBS it states that the "[board] secretary keeps the board minutes and committee minutes and assists the board, the chairman, the vice chairman, the SID and committees in coordinating and fulfilling their duties and assignments." According to section 12.4 of the same document, the board secretary is also "responsible for keeping official documents including their certification." A good number of Internal Guidelines mention the board secretary in conjunction with minutes of the board of directors (n=5), while the rest make no references to the post (n=4).

4.3.6. Universal Principles of Corporate Governance

4.3.6.1. Director Access to Information and Third Parties

Analysis shows that 5 out of 12 Internal Guidelines explicitly declare board members' right to information and access to management and third parties. For example, "any member of the board of directors shall be entitled to request information on any matter relating to the holding company or the Group from the other members of the board or the CEO at meetings of the board of directors."[782] Furthermore, another internal regulation states that "the board of directors can visit any part of the business in order to gain insight and learn about the organization."[783] In section 3 of the Corporate Governance Guidelines of Credit Suisse, it also says that "committees are entitled to engage independent legal, financial or other advisers as they deem appropriate without consulting or obtaining the approval of any officer of the Group with respect to any matters subject to their respective authority."

4.3.6.2. Compensation

Only 2 out of 12 Internal Guidelines on Corporate Governance have a separate section on compensation, while the rest refer to compensation as part of the board responsibilities and tasks or in information about committee functions (see Figure 36). For example, one of the Internal Guidelines refers to management compensation and states the overall rules for compensation. According to section 4.1 of the Corporate Governance Guidelines of Credit Suisse, "upon recommendation by the [compensation committee] the BoD approves the Group's compensation principles" and the board "approves amendments to existing or the establishment of new management and employee com-

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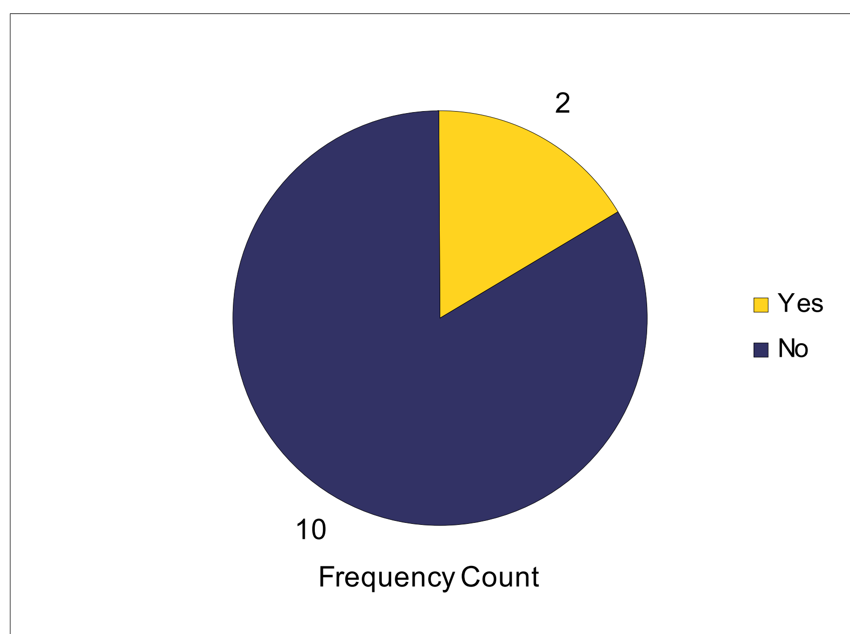
782 Sec. 2.7 of Organisational Regulations of Vontobel AG (2011).

783 Para. 7 no. 1 of Organisation and Business Regulations of the BLKB (2008).

pensation plans." The same section also includes statements on compensation policy principles e.g. "[Credit Suisse Group] is committed to employing compensation principles that reward excellence, encourage personal contribution and professional growth, retain talent and align the employee's values with the Group's core ethical and performance values as stated in the Code of Conduct thus creating shareholder value." In addition, section 4.2 of the Corporate Governance Guidelines of Credit Suisse states that "the compensation committee proposes individual compensation for BoD members to the BoD for approval" and "when discussing the proposals, the BoD member concerned shall abstain from the decision." Corporate Governance Guidelines of Credit Suisse also suggest that compensation shall be competitive and consistent with market practices.[784] On the other hand, another guideline states that the compensation of board members is based on the number of tasks they undertake as well as the number of committee memberships; however, no details are given as to the specific principles or procedures.

Figure 36: Compensation Principles



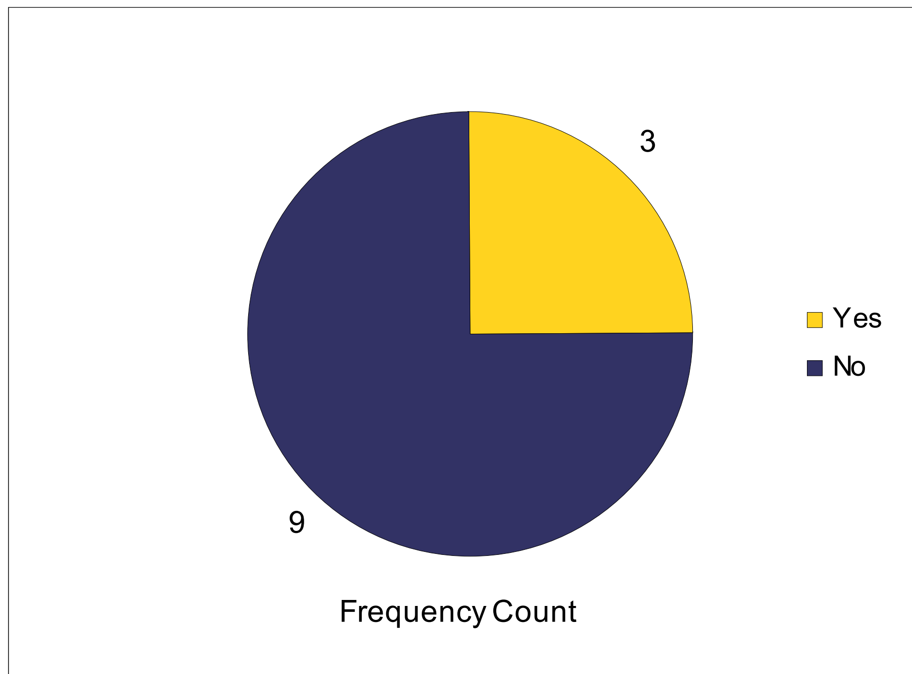
Source: own development. (n=12).

[784] Sec. 4.2 of Corporate Governance Guidelines of Credit Suisse (2006).

4.3.6.3. Succession Planning

Findings show that 3 out of 12 Internal Guidelines contain a separate section on succession planning (see Figure 37).

Figure 37: Succession Planning



Source: own development. (n=12).

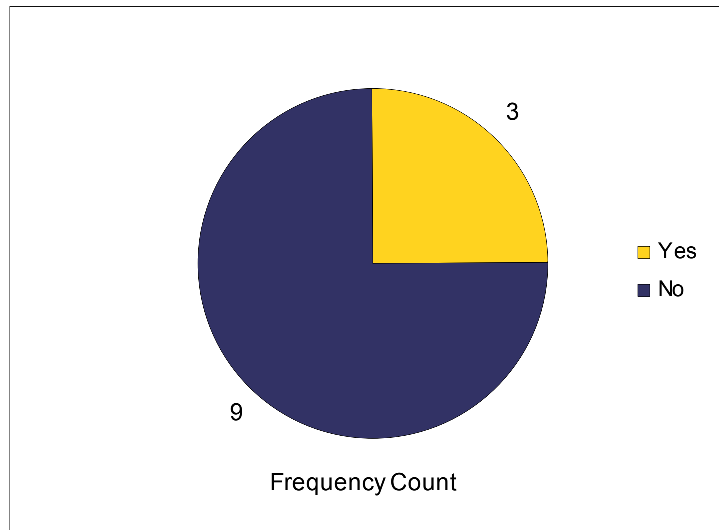
Information on succession planning concerns the executive management and the board itself. For example, one document suggests that the board meets once per year to discuss succession planning of the executive board, while another notes that the board is responsible for its own succession. For example, "the CGC periodically reviews the chairman and the CEO and management succession planning and makes recommendations to the BoD."[785]

[785] Sec. 6 of Corporate Governance Guidelines of Credit Suisse (2006).

4.3.6.4. Director Orientation and Education

According to analysis, only 3 Internal Guidelines on Corporate Governance have a separate section on director education (see Figure 38).

Figure 38: Director Orientation and Education



Source: own development. (n=12).

As a result, there seems to be a significant difference in a degree of importance a bank attaches to director education. For example, the Corporate Governance Guidelines of Credit Suisse dedicate three full paragraphs (or 14 lines) to director education and training. In section 5 it says that "new directors shall participate in an orientation program", "the program shall be tailored to the respective director and appropriately consider his professional background" and the new director training should include the following specific areas "legal and management structure, corporate governance, legal and regulatory framework and the code of conduct, goals and strategic business plans, capital management and risk management framework of the Group."[786] Additionally, the document contains information on continuing education such as periodic strategic workshops and regular presentations by executive members in order to support and familiarize members of the board with developments in the financial industry. The importance of director education is emphasized by statements of commitment, for example "the BoD further encourages all directors to participate in continuing education programs."[787] In contrast, two other Internal Guidelines do not allocate the same amount of lines to director education and information is not contained in explicit sec-

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[786] Sec. 5 of Corporate Governance Guidelines of Credit Suisse AG (2006).
[787] Ibid.

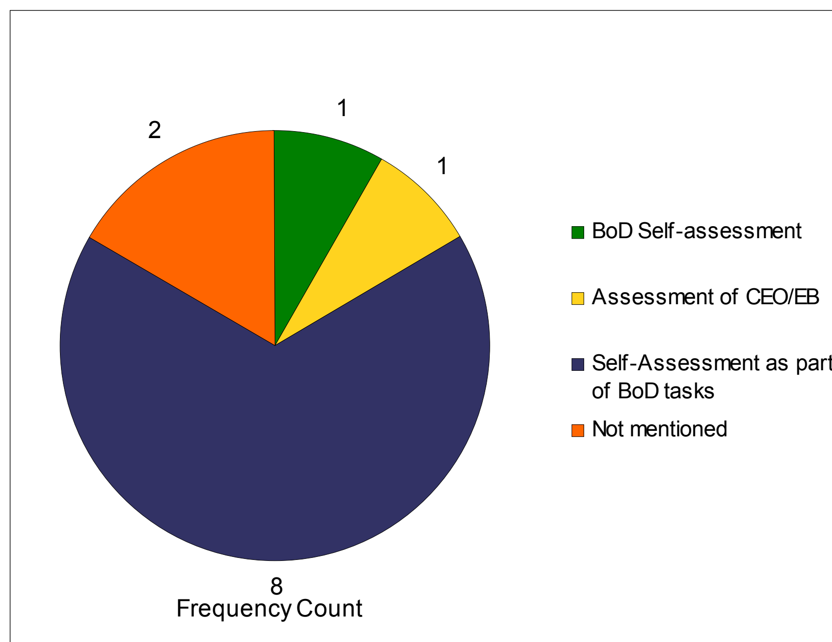
tions. For example, BKLB only mentions what directors should do and provides a brief explanation as to why education is important e.g. "the board of directors must visit three members of the executive management at least four times per year in order to obtain relevant knowledge."[788]

A few other Internal Guidelines only mention board education in either tasks or responsibilities of the board or as part of committee responsibilities. In these instances, director education is represented by a single bullet point or a single line. For example, under the heading of Governance and Nominating Committee's Responsibilities and Authorities of UBS AG it is remarked that the committee "ensures the establishment of a satisfactory induction program for new board members and a satisfactory ongoing training and education program for existing members."[789]

4.3.6.5. Board Assessment and Evaluation

The general responsibility for self-assessment and evaluation is often mentioned as part of board tasks and responsibilities (n=8). Figure 39 below presents frequency counts for the type ad number of references on self-assessment and performance evaluation.

Figure 39: Board Assessment and Evaluation



Source: own development. (n=12).

[788] Para. 6 no. 1 of Organizational and Business Regulations of the BLKB (2008).
[789] Annex C of Organizational Regulations of UBS AG (2010).

For example, section 3 of the Organizational and Business Regulations of the NAB lists the responsibility for self-assessment as one of the board tasks. However, only 2 out of 12 Internal Guidelines explicitly bring up self-assessment: one Internal Guideline speaks about board self-assessment and explains the process (n=1) and the other one only refers to the assessment of the executive board (n=1). In the first instance, the document contains information as to how often evaluation takes place, who is involved in the evaluation process and what happens as a result of self-assessment.[790] According to sections 9.1 and 9.2 of the Organizational Regulations of UBS, the board reviews its own performance as well as the performance of each of the committees and the chairman. This is done "at least annually" and based on "annual performance evaluation, the board considers whether any changes should be made to the membership of the board or the committees."[791] In the second instance, Credit Suisse makes a direct statement on self-assessment of the executive board in section 6 of the Corporate Governance Guidelines. It states that "the Chairman's and Governance Committee or the BoD performs an annual performance assessment of the CEO and the executive board. The results serve as a basis for review and assessment of compensation proposals for the executive board in the course of the annual bonus process."[792] However, the annual performance and board self-assessment is not mentioned in detail in the Internal Guidelines, but rather these topics are noted in the Chairman's and Governance Committee Charter which is also available on the website.[793]

4.3.7. Board Committees

4.3.7.1. Committee Appointment

Internal Guidelines also include regulations and rules for board committees. For example, 9 out of 12 Internal Guidelines contain guidelines for the appointment of committees to the board, while one document refers to the appointment indirectly in the section on tasks and responsibilities for the board. Appointment to a committee or election to a committee is typically conveyed in a single sentence. For example, according to section 13.1 of the Organizational Guidelines of UBS, it is the board that appoints committee members and respective committee chairpersons. Additionally, Internal Guidelines may state that the "board delegates responsibilities and authorities to the committees."[794] However, only 2 Internal Guidelines specify the duration of appoint-

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[790] Sec. 9.2 of Organizational Regulations of UBS AG (2010).
[791] Ibid.
[792] Sec. 6 of Corporate Governance Guidelines of Credit Suisse (2010).
[793] Credit Suisse (2011).
[794] Sec. 13.1 of Organizational Regulations of UBS AG (2010).

ment (i.e. terms of office) and state whether or not re-appointment is possible and why. For example, section 2.2 of the Corporate Governance Guidelines of Credit Suisse Group AG says that the board appoints committee members for a period of one year and "re-appointment is possible and desirable to foster the development of specific knowledge of the business, continuity and efficiency of the committee's work."

4.3.7.2. Committee Structure and Membership

Findings show that committee structure is well established in 10 out of 12 Internal Guidelines. A few even make explicit comments that there are "regular committees" and "ac-hoc committees" (n=3). This is typically followed by a complete list of all standing committees.

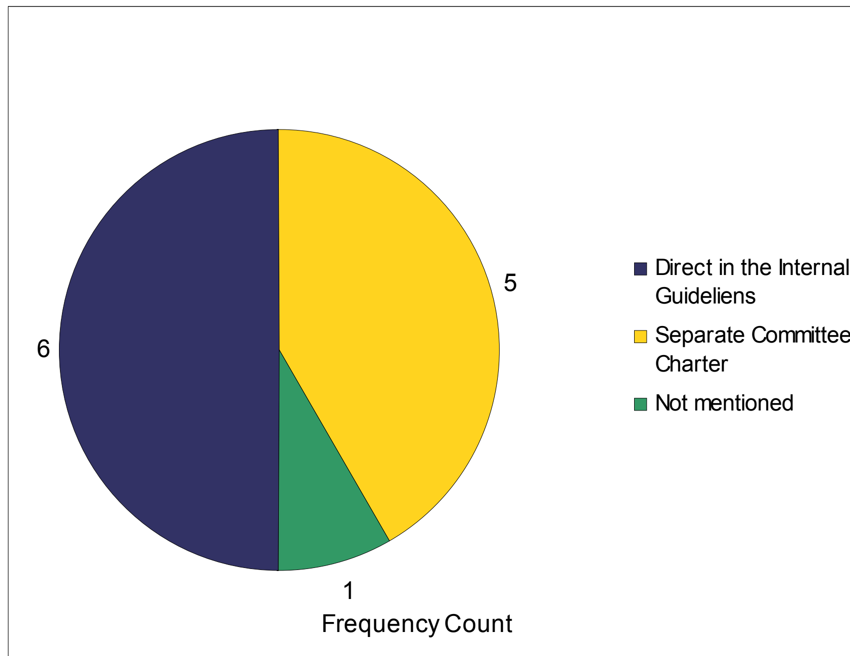
Internal Guidelines also set out committee membership criteria, such as the number of committee members and qualifications and/or skills of committee members. For example, 7 out of 12 Internal Guidelines specify how many members a committee should have. Typically, when speaking about membership numbers, the following keywords are used "at least", "no more than half of the board of directors" and "minimum". In addition, a few Internal Guidelines limit committee membership. According to Article 9 of the Business and Organizational Regulations of the SGKB the "chairman can not be a member of an audit committee."

While the majority of the Internal Guidelines include specific statements on qualifications and skills of members of committees (n=7), only a few contain guidelines for independence (n=3). When it comes to qualifications and skills, Internal Guidelines contain these keywords: "experience in areas of finance", "corporate governance", "risk control", "necessary knowledge to fulfill duties", "adequately skilled and experienced to assume responsibilities", and "relevant knowledge." Analysis makes it clear that some Internal Guidelines set very specific skills while others do not; however, guidelines on the independence of committee members tend to be more specific. For example, section 2.5 of the Organization Regulations of UBS includes "special independence criteria for audit committee." Similarly, another two Internal Guidelines state that the majority of committee members should meet the independence criteria set out in FINMA Circular 08/24."

4.3.7.3. Responsibilities and Authorities

11 out of 12 Internal Guidelines on Corporate Governance contain duties and responsibilities of the established committees, yet the format varies considerably.

Figure 40: Responsibilities and Authorities of Committees



Source: own development. (n=12).

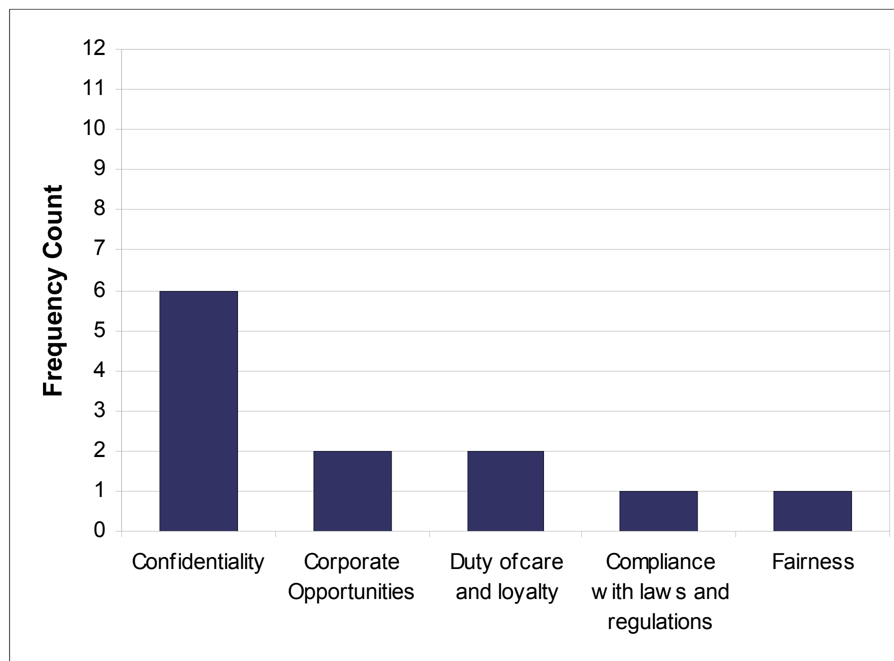
For example, detailed responsibilities may not be mentioned directly in the Internal Guidelines but are found the committee charters (n=5). On the other hand, committee responsibilities are typically included in the main body of the Internal Guidelines (n=6) (see Figure 40 on the previous page). For example, according to point 2.2 of the Corporate Governance Guidelines of Credit Suisse Group "each of the committees has its own charter, which sets the purpose, goals and responsibilities of the committees as well as qualifications for committee membership, meetings and reporting to the board of directors."

4.3.8. Conduct

According to research, a number of Internal Guidelines on Corporate Governance contain conduct statements, which are similar to those typically found in the code of conduct. For example, conduct statements include "duty of care", "duty of loyalty", "fairness", "duty of confidentiality", "compliance with laws and regulations", and "corporate opportunities".

Figure 41 below presents frequency counts for statements on conduct found in the Internal Guidelines on Corporate Governance.

Figure 41: Statements on Conduct



Source: own development. (n=12).

Duty of care and loyalty is considered in 2 out 12 Internal Guidelines. Section 26.1 of the Organizational Regulations of UBS AG states that "each board member and all executives are under a duty to carry out their responsibilities with due care and to safeguard and further the interests of UBS and of all its shareholders." Corporate Governance Guidelines of Credit Suisse contain a similar statement concerning loyalty. "Directors owe a duty to the group to advance its legitimate interests when the opportunity to do so arises."[795]

Statements on *confidentiality* are found more frequently in the Internal Guidelines than other code of conduct areas (n=6). They contain both general, principle-based statements and very specific, concrete provisions. For example, Corporate Governance Guidelines of Credit Suisse provide a definition of what constitutes confidential information e.g. "confidential information includes all non-public information that might be of use to competitors, or harmful to the Group or its customers if disclosed." On the other hand, section 26.5 of Organizational Regulations of UBS states that "a member of the board keeps all information …, which he has learned during the performance of

[795] Annex of the Corporate Governance Guidelines of Credit Suisse (2006).

his duties, strictly confidential at all times." Additionally, statements on confidentiality include references to applicable laws and bank secrecy such as bank customer confidentiality, banking secrecy, business secrecy, the prevention of market abuse and so on. Furthermore, Internal Guidelines include special procedural provisions with regards to confidentiality. For example, one Internal Guideline specifies that members of the board are required to confirm that they are familiar with the content and the meaning of bank secrecy and confidentiality and "the obligation and duty continues even after the term of office of the board member has expired for as long as the relevant information remains confidential."[796]

One of the Internal Guidelines has a separate heading on *compliance with laws and regulations*. Specifically, it states that directors should obey all applicable laws, rules and regulations in "both in letter and in spirit" and this forms the foundation of the "ethical standards" at the bank.[797]

Statements on *fairness* are found in one of the Internal Guidelines on Corporate Governance. For example, "each director should endeavor to deal fairly with the Group's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice."[798]

Additionally, two Internal Guidelines contain information on *corporate opportunities* (n=2). For example, "directors are prohibited from taking for themselves personally opportunities or potential opportunities that are discovered through the use of corporate property, information or position without the consent of BoD" [799] and "if a board member becomes aware of the fact that he may receive a financial or non-financial benefit other than any salary, remuneration or other benefit from UBS, as a result of his employment with UBS, that person must promptly inform the board."[800]

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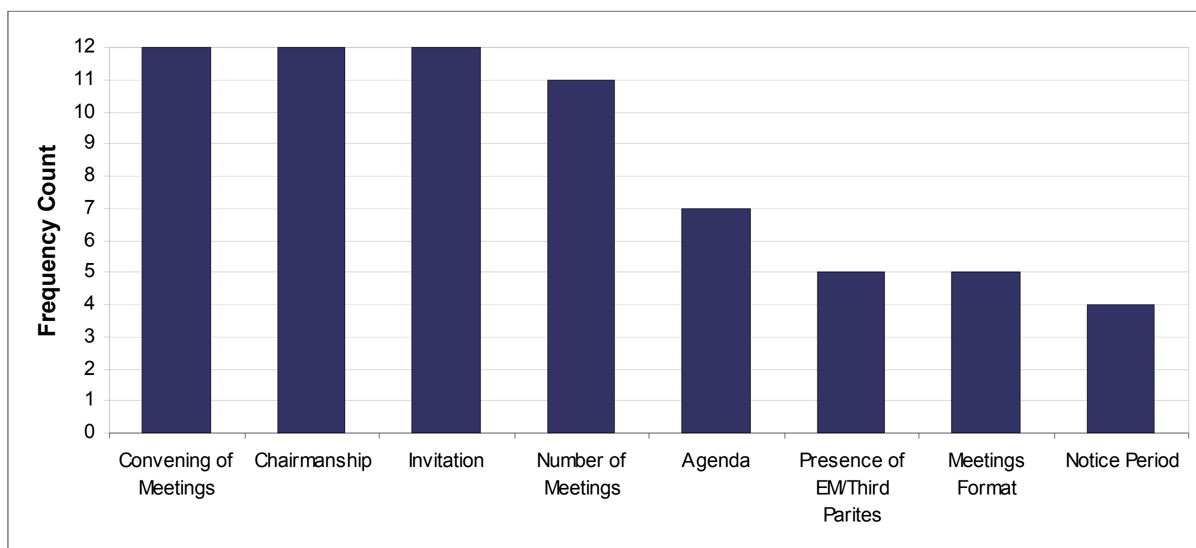
[796] Sec. 26.5 of Organizational Regulations of UBS AG (2010).
[797] Annex of Corporate Governance Guidelines of Credit Suisse AG (2006).
[798] Ibid.
[799] Ibid.
[800] Sec. 26.6 of Organizational Regulations of UBS AG (2010).

4.3.9. Rules of Procedure for the Board of Directors

4.3.9.1. Meetings, Minutes and Resolutions of the Board of Directors

All of the examined Internal Guidelines contain procedural information on the meetings of the board of directors. Some contain specific information as to a minimum and maximum number of board meetings; while others contain information on the convening of meetings, chairmanship and presence of executive and third party members (see Figure 42 below).

Figure 42: Board Meetings



Source: own development. (n=12).

When it comes to the number of meetings and format, 11 out of 12 Internal Guidelines include this information. Generally, documents state that the board may meet as "often as necessary" (n=4) or they set the minimum number of meetings required (n=7). A few of the Internal Guidelines also set the possible format of meetings e.g. whether a meeting is held in person, telephone or video conferencing (n=5).

Internal Guidelines also contain information as to how meetings are convened (n=12). Internal Guidelines are consistent in stating that the invitation is typically done by the chairman of the board in writing (n=12), but a meeting can also be requested by any member of the board in writing (n=6) or must be requested by at least by two board members (n=1). Internal Guidelines contain specific information as to how an invitation must be sent and a notice period. For example, Internal Guidelines state that invitations have to be done in a written form (n=12) and the invitation must be accompanied by an agenda and relevant materials (n=7). Only 4 of the Internal Guidelines analyzed supply a specific notice period, with 7 days being the average. On the other hand, Corporate Governance Guidelines of Credit Suisse do not set a specific time frame, but

instead refer that there has to be “sufficient notice.”[801] Analysis also shows that agenda and distribution of agenda is present in 7 out of 12 Internal Guidelines.

All of the Internal Guidelines on Corporate Governance contain information as to who chairs the meetings (n=12) and offer alternatives in case the chairman is absent (n=12).

Internal Guidelines also make a specific point to discuss the presence of executive members and or third parties at board meetings (n=5). While 4 documents state that participation of executive board members is possible, one document explicitly prohibits the presence of outside parties at board meetings. For example, section 2 of the Corporate Governance Guidelines of Credit Suisse explains that board of directors must hold separate meetings without the presence of management. Furthermore, when referring to the presence of executive board members, Internal Guidelines state that these persons must provide the reason for attending and the board must agree to the participation of executive members or third parties. For example, according to article 12 of the Business Regulations of the BEKB, members of the executive board are eligible to attend meetings but can only be in advisory role.

Only 1 out of 12 Internal Guidelines has an explicit point on the meetings of independent directors. According to section 6.7 of the Organizational Regulations of UBS, “SID organizes and leads the meetings of independent board members.” It also states frequency of meetings and specifies membership i.e. meetings are attended by independent directors and are held without the participation of the chairman. No other guideline makes explicit references to meetings of independent directors.

According to analysis, all of the Internal Guidelines on Corporate Governance contain procedures for minute taking. However, there is a degree of difference as to the level of detail. 11 out of 12 Internal Guidelines specifically state that board meetings must be minuted. Furthermore, documents state that minutes have to be signed by the chairman (n=7) and the secretary of the board (n=7) and they must be approved by the whole board (n=6). Some guidelines also contain minute specifications for circular resolutions (n=3).

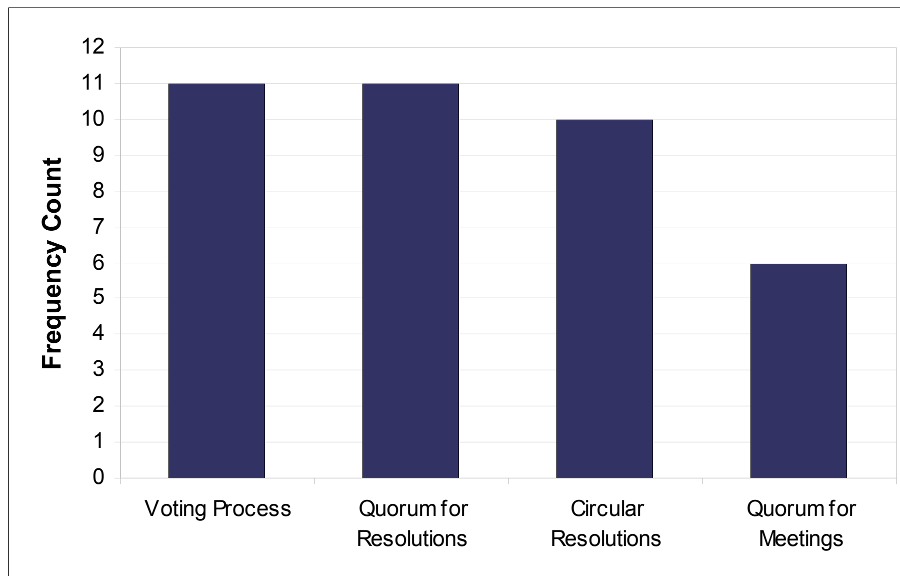
In addition, 4 out of 12 Internal Guidelines on Corporate Governance include rules on inspection rights. For example, section 6.10 of the Organizational Regulations of UBS states that “board members are entitled to examine the minutes of any board meeting at

[801] Sec. 2.1 of Corporate Governance Guidelines of Credit Suisse (2006).

any time." In addition, another guideline specifies that members of members of executive management can inspect minutes of the board of directors.

All of the Internal Guidelines for the Board of Directors provide detailed rules on passing of resolutions (see Figure 43 below). Internal Guidelines contain quorum requirements for meetings (n=6) and resolutions (n=11), they contain voting process (n=11) and rules for circular (n=10).

Figure 43: Resolutions



Source: own development. (n=12).

4.3.9.2. Meetings, Minutes and Resolutions of Committees

According to the analysis, Internal Guidelines also contain regulations concerning committee meetings, minutes and resolutions. For example, 3 out of 12 Internal Guidelines include guidelines as to the frequency of committee meetings.

2 out of 12 Internal Guidelines contain quorum and voting guidelines for committees. For example, one Internal Guideline states that a committee needs to have either an absolute or simple majority in order to pass resolutions and explains what to do in case of a tie.[802]

4.3.10. Rules of Procedure for the Internal Guidelines

More than half of the Internal Guidelines specify when, who and how a review and amendment of the Internal Guidelines take place (n=6). According to data, the responsibility for review lies either with a specific committee (n=4) or to the board as a whole

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[802] Para. 12 of Organizational and Business Regulations of the BLKB (2008).

(n=4). For example, the Organizational Regulations of UBS AG stipulate that the Governance and Nominating Committee carries out regular review of the internal regulations regarding corporate governance. According to section 8 of the Corporate Governance Guidelines of Credit Suisse Group AG, the Chairman's and Governance Committee "re-evaluates [the] guidelines and recommends to the BoD revisions as it deems necessary or appropriate for the BoD to discharge its responsibilities most effectively and to ensure the effective governance of the group." At BLKB there is a "regular review of the guidelines by the Audit & Risk Committee" and the guidelines declare that "the committee can amend regulations as necessary."[803] According to section 9.2 of the Organizational and Business Regulations of Valiant Holding, "the board of directors can create additional rules when necessary." At SGKB it is the "the board of directors that reviews the rules of procedure periodically" and "resolutions to amend these rules of procedure may only be passed if 2/3 of the members of the board of directors are present and the members present vote in favor of the amendment."[804]

Three Internal Guidelines also refer to the financial regular as the ultimate approval body (n=3). For example, "[the guidelines] may be amended by the board only with the approval of FINMA."[805]

Internal Guidelines are concluded by portraying the information as to when they entered into force. This information is presented either at the front or the end of the document. The statements are similar in language and typically state the date of when the internal regulations came into effect (n=11), the date of the board resolution (n=1) and whether or not the existing regulations replace former regulations (n=11), signatures (n=10) and a listing of abbreviations and definitions (n=11).

4.3.11. Conclusions

There is strong evidence that listed banks in Switzerland have Internal Guidelines for the board of directors on the subject of corporate governance. In general, Internal Guidelines have a similar structure and cover similar corporate governance topics. The majority of the examined Internal Guidelines are not stand-alone documents but are part of the organizational regulations. Credit Suisse and GKB are the only two banks that have a separate document titled Corporate Governance Guidelines and Board Regulations, respectively.

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[803] Para. 29 of Organizational and Business Regulations of the BLKB (2008).
[804] Art. 46 of Organizational and Business Regulations of the SGKB (2010).
[805] Sec. 27.2 of Organizational Regulations of UBS AG (2010).

On the whole, Internal Guidelines of listed banks are similar in length, but there is a difference in scope and depth in which listed banks cover certain corporate governance areas. Similarities include statements of purpose and legitimacy. Findings show that examined Internal Guidelines of listed banks lack stakeholder focus. While a few directly or indirectly mention shareholders, customers, employees and society at large do not appear anywhere in the documents.

The majority of the Internal Guidelines contain universal corporate governance principles, but also include administrative and procedural matters for the board of directors. This is consistent with the recommendations of NYSE and recommendations on board charters.[806]

However, it appears that the large, multi-national Swiss banks have much greater coverage of universal principles compared to small and medium sized Swiss and foreign banks and cantonal banks. The majority of the examined Internal Guidelines include provisions on board membership and composition principles, tasks and responsibilities of the board, independence and conflict of interest criteria. But in addition to these, the two large multi-national banks explicitly cover compensation, succession planning, director education and self-evaluation. These are important dimensions and are part of the integrated and controlling orientations of effective corporate governance.[807] Cantonal and small-and medium sized banks do not always explicitly state these responsibilities, but they devote more focus and attention on procedural matters for the board, such as voting, minutes, resolutions and so on. Internal Guidelines also contain administrative points on the revision, amendment and approval of the Internal Guidelines.

5. Discussion of Findings

5.1. Introduction

Based on the theoretical framework and the empirical data gathered during semi-structured interviews, questionnaire and documentary sources, the researcher will discuss the findings and compare and contrast findings from these three sources. First, the researcher presents the prevalence of Internal Guidelines on Corporate Governance among listed banks in Switzerland. Second, the perceived benefits of the Internal Guidelines on Corporate Governance are discussed in great depth. Third, the researcher presents and discusses initiation and development, implementation, content decisions

[806] Institute of Directors in South Africa (2009b, p. 4).
[807] Hilb (2008b).

and administration of the Internal Guidelines. Fourth, empirical data is pooled from semi-structured interviews, questionnaire and documentary sources to determine the content of the Internal Guidelines on Corporate Governance. Last, the researcher presents a framework for the Internal Guidelines on Corporate Governance for listed banks.

5.2. Internal Guidelines on Corporate Governance in Listed Banks

Interview and questionnaire data confirm that board of directors of listed banks already have Internal Guidelines on Corporate Governance. These are frequently contained in the organizational regulations rather than in a separate document, because no such internal guidelines are required by Swiss regulatory bodies or laws. Instead, findings show that banks enact organizational regulations in accordance with Articles 716a CO but these OR do contain elements of internal guidance on corporate governance. As a result, many examined documents refer to CO and those banks that are listed on other stock exchanges also refer to national country regulations, namely the NYSE.

Empirical data shows that Internal Guidelines are not new, but have existed for a long time albeit regular amendments and changes. Findings suggest that listed banks should lead in the development of the Internal Guidelines on Corporate Governance rather than wait for a regulatory or legal body to make laws. Research also shows that boards of listed banks already think that there are too many requirements and that corporate governance is becoming a box-ticking exercise. Findings show that listed banks believe that Internal Guidelines should be based on own initiative and not be another legal requirement. Results of the study show that internal guidelines need to be able to address internal governance problems and instill desired corporate governance principles. This is only possible if banks themselves lead the way in development of such Internal Guidelines, because then they would promote better governance rather than be a mechanism for compliance.

As mentioned above, findings suggest that Internal Guidelines on Corporate Governance are contained in a separate document (or are part of Organizational and Business Regulations). These internal guidelines establish duties and responsibilities of the board as a whole, chairman, non-executive directors and various board committees. Internal Guidelines contain corporate governance guidelines for the board along with administrative and procedural matters which ensure effective and efficient running of the board of directors. Internal Guidelines set out corporate governance principles of a listed bank and establish an efficient and effective framework for governance. They are based on applicable laws and regulations, but also represent the spirit of corporate governance of a listed bank.

Interview and content analysis findings also show that boards of listed banks have other internal regulations when it comes to corporate governance and these include committee charters, remuneration policy, risk policy, succession policy, procedures concerning conflict of interests among many others. Although most interview participants are content that corporate governance principles are included in the organizational regulations, a few respondents have stated that a single document purely on corporate governance principles would be beneficial. This is explained by ease of use and elimination of confusion, plus greater focus on governance and board of directors' values towards governance.

Overall, results show that it does not matter whether or not Internal Guidelines are contained as a separate document or as part of some other document, what matters is that a listed bank has written corporate governance principles. It is important these guiding principles are tailor-made by the board of directors for the board and that these internal guidelines clearly portray the values and the spirit of corporate governance in and outside the bank.

The Internal Guidelines represent the listed bank's efforts to ensure that the board of directors functions appropriately and that the tasks and the responsibilities of the board are performed effectively and efficiently. However, very few Internal Guidelines place emphasis on "improvement of corporate governance", "shareholder rights" or mention "wider stakeholders". Although the Swiss corporate governance system emphasizes the protection of shareholder interests, the importance of stakeholders is not represented in the examined Internal Guidelines. Most mention only shareholders and shareholder rights, but even then only passively. Shareholders are fundamental in the corporate governance of listed banks and examined literature suggests that the board of directors must facilitate the ability of shareholders to exercise their rights and responsibilities. However, the new approach to corporate governance now integrates various stakeholders, such as customer, employees and society.[808]As the result, more work needs to be done by the members of the board to include the interest of stakeholders in to the corporate governance principles of the bank.

5.3. Benefits of Internal Guidelines on Corporate Governance

The analysis of the data confirms that boards of listed banks see clear value in having Internal Guidelines on Corporate Governance. Benefits range from clarifying the task and responsibilities to improved control and risk management, disclosure and transpar-

[808] Hilb (2008b).

ency benefits with links to shareholder value, reputation and compliance, communication and values.

Interview results and questionnaire responses confirm that Internal Guidelines help to **clarify tasks and responsibilities** of the board and the committees of the board. By "making it clear who is responsible for what", by "defining tasks for the board of directors" and by setting "clear competencies," the bank can ensure that all board members operate within the same corporate governance framework. Establishment of clear processes helps to secure corporate governance standards in a bank. Interview findings show that Internal Guidelines help to the board to establish state of the art procedures when it comes to corporate governance.

Clear communication of tasks and responsibilities as well as setting norms for desired behavior helps to guarantee that members of the board understand of what is expected of them, that they are informed about their tasks and responsibilities, rights, duties and decision making authorities. By writing internal rules on corporate governance, the board can reduce misunderstanding, ambiguity and role conflict among board members.[809] For example, by communicating how members of the board vote and what are the decision making authorities, the board can make appropriate and timely decisions.[810] As a result, the board **improves its ability to perform its management and controlling tasks**.[811] Additionally, by ensuring clear separation of duties and responsibilities the bank improves independent control and ensures that the board does not get involved in operational decisions which typically belong to the executive management.[812]

Internal control is an essential element of corporate governance in banks and banking institutions and there exist special internal control recommendations for banks.[813] Findings suggest that the guidelines exist in order to embed these requirements. They also show that that internal control is only possible if there are clear and explicit written rules for the board of directors. This is supported by literature and other studies which state that rules guarantee conformity and clarity and help to make sure that everyone is aware of what must or must not be done.[814]

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[809] Iandoli and Zollo (2008, p. 66).
[810] Rizzo, House and Lirtzman (1970, p. 160).
[811] Müller (2011).
[812] Hofstetter (2002, p. 37).
[813] FINMA Circ. 08/24.
[814] Kaptein and Wempe (1998, p. 859).

Academic literature suggests that it is important to specify internal rules in order to fulfill legal or regulatory obligations.[815] Findings show that by writing down duties and responsibilities of the board and its committees, listed banks ensure that they comply with the Banking Act. Interview and questionnaire data show that Internal Guidelines on Corporate Governance offer the benefit of **compliance with applicable laws and regulations**. Compliance is also evident in documentary analysis, with the majority of the Internal Guidelines making explicit references to various laws and regulations (starting from CO to FINMA Circulars and NYSE Corporate Governance Rules). In doing so, the board wants to show that corporate governance principles contained in the Internal Guidelines are legitimate. Academic literature supports that legitimacy is important, as it ensures that the firm operates within the acceptable norms.[816] For example, clear separation of duties between the board of directors and the executive management is also an essential part of corporate governance in banks and banking institutions in Switzerland.[817] Based on findings, it can be suggested that Internal Guidelines are well equipped for establishing clear delineation of duties between the two boards in order to maintain a "system of checks and balances" required by law.

Compliance with laws is also part of an effective **internal control**.[818] Interview findings suggest that the board can only be compliant if it has written policies and procedures. It is not possible to exercise control if board level practices remain implicit. Writing down corporate governance principles for the board of directors ensures that members of the board are equally informed what is expected of them.

Internal control and risk are closely interconnected functions in corporate governance. Corporate governance includes management of financial, operational and reputational risks which arise from the people, systems and processes through which a bank operates.[819] Risk management is also one of the main responsibilities of the board of directors.[820] It is especially important in a post financial crisis environment, because regulators expect banks to do more when it comes to risks. However, findings suggest that this is only possible if there are clear processes and that everyone in the bank follows these processes. The ability of a listed bank to discuss, agree and to commit to corporate governance principles ensures that members of the board understand what they are

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[815] Kaptein and Wempe (1998, p. 859).
[816] Ljubojevic and Ljubojevic (2008, p. 227).
[817] Hilb (2008b, pg. 35).
[818] Eisenberg (1997, p. 237).
[819] Basel Committee on Banking Supervision (2004, p. 137).
[820] Coles, Daniel & Naveen (2008, p. 229).

responsible for. This guarantees due diligence.[821] And while due diligence does not eliminate all risks; empirical data obtained through questionnaires and semi-structured interviews confirm that Internal Guidelines play a role in a **risk management** mechanism as they have the potential to mitigate governance and reputational risks.

Another benefit comes from **improved transparency**. It is widely accepted that bank and banking institutions may be relatively opaque compared to other listed companies.[822] As a result, regulatory bodies place increasing emphasis on transparency and disclosure requirements of corporate governance information. For example, the Corporate Governance Directive of the SIX Swiss Exchange requires listed companies to make mandatory public disclosure when it comes to corporate governance. Although unlike the NYSE, the SIX Stock Exchange does not require listed companies to have Internal Guidelines on Corporate Governance, listed companies are encouraged to make voluntary disclosure provided they adhere to corporate governance rules of the stock exchange. Literature supports the notion that voluntary disclosure may be beneficial for companies as they can lead to firm-specific advantages.[823] Findings suggest that members of the board are generally in favor of disclosure of the Internal Guidelines on Corporate Governance, as this can enhance transparency, show compliance and improve reputation and relationships with shareholders.

Combined findings show that by having Internal Guidelines, a listed bank can **demonstrate its approach to corporate governance**, showing that the board's practices are compliant with laws and regulations and that the board adheres to best practice and corporate governance standards. For example, interview findings suggest that a listed bank can disclose the Internal Guidelines privately or a publicly. Private disclosure to a regulator can appease the regulatory body, while private disclosure to a shareholder reconfirms the board's commitment to shareholder values. In any case, disclosure signals that the board of directors of a listed bank is compliant, but also committed to corporate governance principles. Academic literature supports this by stating that by having written organizational rules, a company shows that it has appropriate corporate governance mechanisms in place i.e. that it exercises due diligence.[824]

Findings show that a **reputation benefit** is well understood by chairmen and non-executive directors. For example, cantonal banks saw disclosure of Internal Guidelines

[821] Van den Brink (2002).
[822] Claessens (n.d.).
[823] Labelle (2002, p. 28).
[824] Parker (2002, p. 16).

as an opportunity to re-instate 'stability' of a bank, while others see this is an opportunity to re-build trust. Interview findings also suggest that public disclosure of the Internal Guidelines can attract directors to the board as it is only natural for people to wish to work for companies with good reputation and a healthy track record. There is strong support from literature that voluntary forms disclosure are used by firms to maintain, build or rebuild corporate reputation.[825] For example, stakeholders are said to evaluate reputation based on the form of communication such as codes of conduct and other corporate documents.[826]

Voluntary disclosure of corporate documentation on corporate governance is regarded to **improve relationship with shareholders** by enabling them to participate in the governance of a bank.[827] For instance, academic literature supports that investors and shareholders are able to evaluate the company based on the corporate governance credentials.[828] However, findings are split as to whether or not shareholders benefit from disclosure of according Internal Guidelines on Corporate Governance. For example, only two listed banks that took part in interviews fully disclose their Internal Guidelines on Corporate Governance on the Internet, the remainder of the listed banks examined keep the document confidential. However, based on documentary source analysis, a further three listed banks were found to disclose the Internal Guidelines on the Internet. Low level of disclosure is explained by the fact that listed banks see little value from disclosure of the Internal Guidelines to shareholders. For example, the majority of interview participants were convinced that shareholders will not be interested in the information contained in the internal regulations. Interview findings also suggest that partial information from the Internal Guidelines can already be found in annual reports. Therefore, there is no further perceived value from additional disclosure. Interview findings also assert that too much disclosure can actually be dangerous because too much information leads to information overload and can make it easier to obscure relevant corporate governance information. Other reasons mentioned for non-disclosure included secrecy and fear that a competitor will copy the Internal Guidelines. Still, some participants have stated that while Internal Guidelines are not secret, they are not for the general public as competitors may gain some confidential information. Findings also indicate that full public disclosure may hinder innovation in corporate governance, as banks would just copy each other's Internal Guidelines.

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[825] Cheeseman (2010).
[826] Gotsi and Wilson (2001, p. 27).
[827] Krause (1998).
[828] Shleifer and Vishny (1997, p. 749).

However, questionnaire findings also show that just over half of non-executive directors (52%) think that disclosure of Internal Guidelines on Corporate Governance on the website of a bank is important. While support is marginal, it is higher than that of interviews with chairman and board secretaries. This difference may be explained by the fact that NEDs generally support wider disclosure.[829] Academic literature shows that non-executive directors act as defenders of shareholder interests and they may be more willing to promote the development of ethical codes of conduct and other policies geared towards shareholder value.[830]

Literature also establishes that differences in the levels of disclosure can be explained by the size of the firm, performance, and risk profile and ownership structure.[831] According to findings, out of five banks that disclose Internal Guidelines on the Internet, two are large multinational banks (i.e. UBS and Credit Suisse), two a small and medium sized banks and one is a listed cantonal bank. Furthermore, it has been suggested during interviews, that disclosure may be more beneficial for larger banks. Smaller banks are not exposed to the same risks and therefore do not warrant disclosure of the Internal Guidelines. Lack of interest in disclosure may also be explained by the fact that in order for investors to evaluate and compare corporate governance credentials based on the Internal Guidelines on Corporate Governance, more banks need to make this type of disclosure. At the present time, comparison is almost impossible because only a few banks disclose their Internal Guidelines.

However, the listed banks that make full disclosure of the Internal Guidelines on their websites have confirmed that there is value in disclosure. Here, results show that by disclosing Internal Guidelines, the bank can increase transparency, show compliance with applicable laws and regulations, show a commitment to good governance and support owner strategy. Interview participants have stated that Internal Guidelines are “calling cards” and help “show that the bank has good corporate governance standards” and “investors and shareholders can make appropriate investment decisions” as a result of disclosure. Findings also suggest that in some instances positive value of disclosure is beneficial for recruitment of executives, NEDs and employees. However, again the value of disclosure is only discussed in the context of shareholders and that wider benefits to society were not represented.

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[829] Schwartz (2002, p. 38).
[830] Rodriguez-Dominguez, Gallego-Alvarez, Garcia-Sanchez (2009, p. 197).
[831] Labelle (2002, p. 28).

It is important to note that while disclosure to outside of the bank is not well understood by the majority of banks, disclosure within the organization is well recognized and is considered to be a benefit. Findings suggest that private disclosure within the bank is important as it helps staff members to understand how the board works. Empirical findings also show that it is important for the regulator e.g. FINMA to see how a listed bank works. Academic literature is useful in explaining this, as it is believed that regulatory bodies are better equipped for detecting if the firm abides by the legal and regulatory provisions than small time depositors, employees, suppliers and shareholders.[832]

Empirical findings suggest that Internal Guidelines on Corporate Governance may **promote corporate governance values and good conduct** among board members. This is in line with literature that states that organizational rules help to promote desired behavior and open a dialogue on the value of ethical conduct in a company.[833] For example, by engaging non-executive directors in the development, revision and amendment of the Internal Guidelines there is greater motivation to follow the internal regulations or "live by them." Involvement of members of the board in the development and approval was seen as important by both interview participants and questionnaire respondents. In addition, findings indicate that Internal Guidelines can improve corporate governance standards in a bank. However, only slightly less than half of questionnaire respondents felt that Internal Guidelines can shape behavior of board members. Lower support may stem from the fact that Internal Guidelines can achieve very little by themselves. Implementation of the Internal Guidelines must be supported by training and education sessions in order to reinforce and embed values within the organization. Literature affirms that ethical conduct and corporate governance are in constant need of reinforcement and that corporate governance values must be communicated through various corporate policies.[834] Internal Guidelines are only a starting point, a bank can spend a lot of time developing them, but without constant support and reinforcement, they will be ignored.

According to findings, there is no conclusive support that Internal Guidelines play part in **continuity** of board level corporate governance practices. For example, a few interview participants stressed that continuity is especially important in cantonal banks as significant changes in laws may cause extensive changes on the board of directors of a

[832] Art. 5 of FINMASA.
[833] March, Schultz and Zhou (2000, p. 9).
[834] Glastetter and Kleiner (1989).

listed cantonal banks. Internal Guidelines and agreed corporate governance principles provide that much sought-after continuity. Also, in the aftermath of the financial crisis of 2008, many boards have over-reacted and have become too involved in day-to-day operations. Nevertheless, delineation of responsibilities between the board of directors and the executive management helps to maintain continuity of practices and prevents the board from crossing over into the management domain. Some participants have stated that Internal Guidelines do very little to promote continuity, instead they help to **communicate corporate governance principles** to existing and new members of the board. This is in line with literature that states that codified and explicit sets of rules make the process of transfer of procedural knowledge more effective.[835] A written document can minimize information loss and ensure that quality of standards is maintained.[836]

Based on the present findings, it is clear the Internal Guidelines offer a wide range of benefits for a listed bank. By drafting and implementing Internal Guidelines, the board can improve its ability to manage and control, improve risk management and internal control and ensure that corporate governance practices are in line with applicable laws, regulations and standard, and improve ethical conduct. By disclosing Internal Guidelines, listed banks can also achieve reputation benefits.

5.4. Initiation and Development Process

5.4.1. Set Objectives

Empirical data suggests that boards of listed banks have different objectives when it comes to the development of Internal Guidelines. Based on documentary analysis, all Internal Guidelines start with short statements highlighting their purpose. Analysis shows that many Internal Guidelines contain functional rules, which define and establish duties, tasks, powers and responsibilities for the board and its committees. These functional rules help to clarify responsibilities and thus reduce ambiguity and establish a standard approach for the all members of the board. In addition, there is also evidence that by developing Internal Guidelines boards of listed banks want to establish an effective and efficient corporate governance framework, which conforms to best practice and is compliant with applicable laws and regulations. Documentary analysis also

[835] Grant (1996, p. 114).
[836] Cowan and Forray (1997, p. 597).

shows that listed banks use Internal Guidelines to promote corporate governance principles and create a sound framework or system of corporate governance in a bank.[837]

Furthermore, the board needs to decide whether or not to disclose Internal Guidelines on Corporate Governance. According to empirical data, the board can do four types of disclosure when it comes to Internal Guidelines. The board can publish a copy of the Internal Guidelines on the bank's website or it can do a private disclosure to the regulator (e.g. FINMA), shareholders and investors. Alternatively, the board can make the Internal Guidelines available on the bank's Intranet, so employees can see how the board works or the document can remain for internal use only. As discussed in 5.3, listed banks that already disclose Internal Guidelines state that there are benefits of full public disclose, such as that of firm specific advantages linked to compliance and reputational benefits. Others claim that there are such disadvantages as the ability of competitors to copy the document. At any rate the decision whether to disclose Internal Guidelines or not lies with the whole board.

5.4.2. Leadership and Responsibility for the Internal Guidelines

The process of initiation and development of the Internal Guidelines depends on leaders or function players. Findings suggest that it is less important to know who makes the initial proposal; instead it is important that a specific individual or a specific committee is granted this responsibility. Empirical data suggests that the person in charge should be a corporate governance specialist within the board of directors. This responsibility is often granted to either the chairman of the board, the secretary of the board or it is assigned to a specific committee such as the audit and risk committee. These findings are consistent with existing literature that states that it is important to have a champion in a form of senior member of the board i.e. chairman or a board committee when initiating and developing an organizational code of conduct or similar policy.[838] While it may be surprising to some that the responsibility for coordination of the development of the Internal Guidelines on Corporate Governance is often granted to the secretary of the board, literature states that the role of the secretary of the board has evolved drastically from the position of a 'custodian' to a fully-fledged corporate officer.[839] Today, the secretary of the board is more much involved in corporate governance issues and is often discharged with a responsibility to provide advice on corporate governance issues to the board of directors. Shareholders and especially institutional

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[837] Suchman (1995, p. 574).
[838] Myers (2003, p. 183).
[839] Society of Corporate Secretaries and Governance Professionals (n.d.).

investors have come to demand professional corporate governance practices from the board and they expect written statements on the internal corporate governance principles. As a result, it is the secretary of the board who assists the board in tailoring corporate governance principles and practices so they fit the board's needs and investor expectations.[840]

The responsibility for the Internal Guidelines could also be given to a specific committee in order to ensure that the topic gets sufficient attention. This this may appropriate for larger banks, with much more complex structure. Literature states that committees are better suited for carrying out an in-depth analysis of specific matters and objectivity.[841] According to findings, committees do not make final decisions concerning the Internal Guidelines, but instead report on the findings to the board. Literature points out that while the board may delegate a particular task to a committee, the overall responsibility for duties remains with the whole board.[842]

Emerging evidence suggests that the secretary of the board and committees plays an important part in the development of the Internal Guidelines on Corporate Governance. It may be so that the secretary of the board initiates the process and/or leads on education and training, but it is the committee that is responsible for review of the Internal Guidelines and the committee should make recommendations to the whole board whether or not amendments are needed.

5.4.3. Support and Involvement of Board Members

Findings indicate that Internal Guidelines on Corporate Governance should be seen as a collective effort. Support and involvement from members of the board are needed right from the start. Findings suggest that involving members of the board in the development creates a feeling of ownership of the process. Direct involvement motivates and ensures greater support from members of the board. Findings are in line with existing literature that states that the development of a code must be supported by each employee.[843] Participation in the process is also said to increase acceptance or legitimacy of the document.[844] Based on empirical data, this does not mean that directors must comment on every single point or proposition, but they must be able to discuss and participate in the drafting of the Internal Guidelines. Involvement is beneficial not only for

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[840] Society of Corporate Secretaries and Governance Professionals (n.d.).
[841] Charkham (2005).
[842] Economiesuisse (2007, p. 16).
[843] Kaptein and Wempe (1998, p. 863).
[844] Institute of Business Ethics (2003).

the acceptance of corporate governance principles, but it also helps to ensure that the set forth principles reflect corporate governance practices of the board and that they are relevant. According to literature, participation increases the chances that the content is relevant and realistic[845] and that it represents the desired corporate governance values.[846]

To summarize, empirical data show that support from the entire board is important. Members of the board must be involved in the process of creation and amendment of the Internal Guidelines. However, findings also show that the degree of involvement of members of the board is not always high. In particular one interview suggests that members of the board expect compliance and the secretary of the board to come up with guidelines; the board is only there for approval. On the other hand, other results point strongly in the direction of high involvement. Findings show that corporate Governance principles and values must be discussed at the board level in order to increase the relevance of content. However, this does not have to be a direct involvement, but a reasonable opportunity to comment and to participate in the discussion.[847] Based on the presented findings, it is clear that full consensus is unnecessary but members of the board have to support the Internal Guidelines, because they must approve them at the end.

5.4.4. Key Players in the Development Process

Empirical data also shows that from, from time to time, there may be other parties involved. Depending on the topic, the board may involve head of legal and/or compliance, executive management, external auditors, corporate governance specialists, external law firms and others. The degree of outside participation is linked to the issues at stake and to the extent of re-development of the Internal Guidelines. Findings are in line with existing literature which states that there are no benefits for companies if they simply adopt a standard approach; instead, multiple stakeholders need to be consulted in order to have a relevant and effective code.[848] For example, external advice is needed in order to gain knowledge of what is considered to be best practice, while legal and compliance will make sure that the proposed corporate governance principles adhere to laws and regulations. Empirical data shows that development of the Internal Guidelines is never done by a single decision maker. This is important because academic research suggests that a single decision maker may lack sufficient knowledge on the topic. Fur-

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[845] Kaptein and Wempe (1998, p. 864).
[846] Johnson (1997, p. 6).
[847] Schwartz (2002, p. 38).
[848] Institute of Business Ethics (2003).

thermore, findings indicate that when developing Internal Guidelines, the board should seek support and endorsement from the executive board. While the document contains corporate governance principles for the board, the content may also have an impact on executive management such as meetings of the board, access to information, and decision making authorities and others.

5.4.5. Research

A company also needs to find how other companies in the same sector (and those outside the sector) approach corporate governance, ethics and conduct in order to determine what is required for an effective policy and this may require outside research.[849] Findings show that boards would like to see what other listed banks are doing. Empirical findings suggest that full public disclosure on the Internet may be useful, as it allows listed banks to research into corporate governance practices of others. Data also indicates that a sample would be useful, for as long as it does not hinder innovation in corporate governance. The board needs to examine international best practices in corporate governance and examine practices of others; subsequently, the board should still examine its own existing corporate governance practices in order to determine what is relevant and important for their own board. Literature supports the notion that research is very important, as it allows the board to benchmark its practices against others.[850]

5.4.6. Approval

According to findings, the Internal Guidelines on Corporate Governance must be approved by the board of directors. A committee or a working team makes a proposal and this proposal is voted on by the board. The approval is subject to similar quorum and voting requirements just like other board decisions.

5.5. Implementation Process

5.5.1. Distribution

Questionnaire data shows that non-executive directors do not consider it important to receive a copy of the Internal Guidelines before each meeting. Instead, findings suggest that it is up to the chairman and secretary of the board to make sure that members of the board and committees make appropriate decisions, and that they understand internal practices when it comes to corporate governance. For example, interview findings indicate that instead of relying on Internal Guidelines, members of the board rely on the chairman and secretary of the board to ensure that the decision making authority is ap-

[849] Institute of Business Ethics (2003).
[850] Johnson (1997, p. 6).

propriately allocated. It is also important that the Internal Guidelines are made available to newly appointed members. The results suggest that induction provides a perfect opportunity to distribute the Internal Guidelines, but also to discuss and explain corporate governance principles. Unless Internal Guidelines are publicly disclosed on the website of a bank, it may also be valuable to provide the candidate for the board with a copy of the Internal Guidelines.

Literature maintains that the implementation of a code may be accompanied by a sign-off process. Sign-off ensures that employees acknowledge that they have read, understood and will comply with the code.[851] However, empirical findings do not confirm this. Only one interview participant has stated that there is a formal sign-off process, where board members have to sign that they have read the Internal Guidelines and that they will comply with them. The majority of questionnaire respondents state that the sign-off is not important (61%), while only 16% of the respondents support the sign-off process. This is not surprising. Although sign-off is said to increase awareness, it can also signal a lack of trust.[852] Instead, it is expected that directors upon taking the appointment will read and uphold the values contained in the Internal Guidelines. In general, the theory is strongly in favor of a sign-off process. As a result, the author would like to see that members of the board acknowledge that they have read, understand and will adhere to the principles stated in the Internal Guidelines.

5.5.2. Communication and Reinforcement

Empirical data shows that listed banks have very little or no formal training in regard to Internal Guidelines on Corporate Governance. While listed banks do offer training on corporate governance for members of the board, it does not necessarily cover the Internal Guidelines. Many interview participants even questioned the value of formal education when it comes to corporate governance and the Internal Guidelines. They felt that if the content is too formal, then it would simply be boring. However, communication, training and awareness programs make it possible for the code to be embedded in the organization.[853]

While there may be no formal or special training when it comes to corporate governance or the Internal Guidelines, listed banks communicate the content of the Internal Guidelines to members of the board. Communication takes place during the induction and is rather informal in nature, where, depending on the situation and degree

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[851] Schwartz (2004, p. 332).
[852] Ibid., p. 333.
[853] Webley and Werner (2008, p. 411).

of knowledge, newly appointed members can meet with other members of the board or with members of management to see how the bank works. Questionnaire data also shows limited support for regular communication about the content of the Internal Guidelines via corporate communication channels. Only 36% of respondents consider regular communication to be important compared to 42% that do not. Literature states that regular reinforcement to employees, by means of emails and Intranet, is a must in order to emphasize the seriousness and importance a company places on compliance with the code.[854] However, this does not seem to be appropriate when it comes to the board. Reasons for this may be that unlike a code of conduct where employees do not think about conduct on a day to day basis, members of the board already part of a corporate governance mechanism. The board is also involved in the development of the Internal Guidelines and, as a result, its members are familiar with the internal corporate governance principles.

However, it does not necessarily mean that there should be no formal reinforcement of the content for members of the board, but the choice of communication medium should be more personalized. For example, questionnaire data shows that NEDs think that training at a time of implementation is important (52%). Even greater support is given to regular training on the content of the Internal Guidelines (58%). According to literature, training is especially important during the initial implantation stage, while face-to-face training gives an opportunity to raise questions.[855] It is also important to emphasize that training is not just a one-off event, but a continuous process.[856]

Based on interviews, formal training seems to be mostly focused on getting new board members to become familiar with the bank rather than with corporate governance. Instead, the board relies on the chairman or the secretary of the board to explain how the board works.

It is not enough to just have Internal Guidelines on Corporate Governance. There must be awareness about corporate governance among members of the board in listed banks. It does not necessarily mean that members of the board have to take courses and attend classes, but what is important is that everyone on the board is familiar with and understands corporate governance. Interview findings suggest that without regular communication on corporate governance, the content will be forgotten. This does not have to be formal communication and formal training such as those that exist in ethics

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[854] Schwartz (2004, p. 334).
[855] Yahr, Bryan and Schimmel (2009, p. 6).
[856] Webley and Werner (2008, p. 411).

compliance, but rather there must be continuous discussion of corporate governance values at the board level. Changes/amendments should also be discussed and if appropriate follow up training should be provided.

5.6. Administration of the Internal Guidelines

5.6.1. Enforcement and Monitoring

Findings show that monitoring and enforcement are needed to ensure the effectiveness of the Internal Guidelines. For example, 77% of NEDs agree that monitoring and enforcement of the Internal Guidelines are important. This is also confirmed by interview findings that state that adherence to Internal Guidelines is paramount. These findings are consistent with existing literature that states that the decision to create a corporate code creates a series of obligations for a company in terms of the administration of that code. These obligations revolve around enforcement and monitoring.[857]

However, according to findings monitoring compliance with the Internal Guidelines on Corporate Governance is a rather implicit process. According to interview data, it is generally expected that members of the board will comply with the provisions of the Internal Guidelines. It is quite rare to involve the compliance department. For example, only 32% of respondents are aware of any formal sanctions for non-compliance with the Internal Guidelines.

The responsibility for monitoring compliance and enforcement of provisions contained in the Internal Guidelines tends to lie with the chairman of the board or the board secretary, who ensures that decision-making, takes place in appropriate committees and that members of the board follow the provisions set out in the guidelines. This may be due to the fact that the chairman has to lead and coordinate the work of the board of directors. However, ultimately the responsibility for compliance lies with members of the board themselves. For example, interview participants have pointed out that it difficult to control the controller. At the end, it is a question of integrity. These results are not surprising, since there is no official sign-off process and thus, no system for monitoring compliance.

Empirical findings show that testing members of the board would not be acceptable or appropriate. According to interview data, it was felt that there is no need to test members of the board on the content as they already participate in the development of the Internal Guidelines and should be familiar with the content. Additionally, it was noted

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[857] Schwartz (2002, p. 39).

that if members of the board need to be tested on corporate governance, and then these individuals are on the wrong board and would be asked to leave. Interview data also indicates that testing would simply not be accepted by members of the board. For example, according to questionnaire results, only 7% of respondents have stated that they are being tested on corporate governance principles. Findings are consisted with existing research that employees generally dislike tests and would prefer not to be tested on the code; they find the practice patronizing and wasteful.[858]

Findings suggest that the board needs to define someone who is in charge of the Internal Guidelines and once pear year this person should report about compliance, development and possible changes. As mentioned earlier this person can be the secretary of the board or the task can be delegated to one for the committees. Regular audits and feedback will ensure that the code is understandable and that members of the board abide by provisions of the code. This is supported by questionnaire findings that revealed that 78% of the respondents think that is important to carry out an annual review of the Internal Guidelines. However, a vast number of banks carry out the actual review on bi-annual or ad-hoc basis. Interview findings confirm that review is necessary in order to ensure that corporate governance principles still represent internal board practices. Furthermore, the board checks to see if Internal Guidelines conform with laws, regulations and best practice standards and that they promote the values of corporate governance. There is even some evidence that monitoring is linked with board self-assessment.

Academic literature suggests that self-assessment includes evaluation of own performance in order to identify potential improvement regarding processes and procedures, but also with regards to existing corporate governance practices.[859] As a result, board self-assessment is part of the internal control mechanism in a bank. Self-assessment is needed in order to assess objectivity and work procedures. According to interview results, in the process of self-assessment, the board is asked what could be done better. The board receives a report on the outcomes of the self-evaluation and it can identify if there are areas that must be addressed or improved by the board. At the end, the board can make changes to Internal Guidelines if necessary. Self-assessment may, indeed, be a good way to monitor compliance and relevance of the Internal Guidelines, but this practice is not common place among listed banks. In most instances, there is no connection between self-assessment and the Internal Guidelines.

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[858] Schwartz (2004, p. 334).
[859] Schmid and Brauer (2006, p.12).

Regular review and reporting are fundamental in ensuring the effectiveness of the Internal Guidelines on Corporate Governance. This will ensure that the Internal Guidelines are up to date and relevant and that they adherent to best practice in corporate governance.

Furthermore, academic literature shows companies need to enforce the code in a consistent and fair manner. Literature suggests that the way in which the company enforces the code should be communicated in the code itself.[860] While documentary analysis shows that the majority of the Internal Guidelines contain a provision as to when corporate governance principles are reviewed, they do not contain statements on monitoring and enforcement. According to literature, without reinforcement, discussion and debate on corporate governance at the board level, the Internal Guidelines on Corporate Governance may be in "danger of becoming obsolete or disregarded."[861] However, at present, there is no evidence that this is addressed in a formal way by boards of listed banks.

5.6.2. Revision and Amendment

As mentioned earlier, reasons for amendment or change are important as they influence the degree to which changes will be made and the depth of involvement of various entities within a bank. According to empirical data, boards of directors are driven by multiple factors when reviewing Internal Guidelines on Corporate Governance. Some banks make amendments only as a response to changes in regulations or laws or changes in organization of a bank; others do it in search of best practice. A small number of interview participants have also stated that amendment happens as a result of the outcomes of self-assessment. For example, self-assessment helps the board to identify areas that need to be improved and, as a result, the board may amend internal rules. Self-assessment will be discussed in greater detail in section 5.7.2 of Part III.

Over 77% of questionnaire respondents state that annual review is important when having Internal Guidelines on Corporate Governance. However, interview data shows that in practice Internal Guidelines are not reviewed on an annual basis. There is an even split between those boards that undertake an annual review of the Internal Guidelines, and those that carry out review every two to three years. Still, there are others who periodically review the Internal Guidelines, without specifying the revision time frames. It is not clear what the board means by periodic, as a result, this weakens the board's

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[860] Schwartz (2002, p. 39).
[861] Schwartz (2004, p. 334).

ability to monitor and support Internal Guidelines. However, findings suggest that members of the board favor a more regular review. This is in line with literature that supports the need for period review, which is part of monitoring process of the code.[862] All corporate conduct documents are living documents, they evolve over time and they must be periodically reviewed and amended.[863]

Still, a code should not be amended too frequently. Internal Guidelines should be robust enough to maintain usability and effectiveness over a period of time.[864] Findings suggest that although there is frequent review, it does not always lead to an amendment.

5.7. Content of the Internal Guidelines on Corporate Governance

5.7.1. Introduction

Empirical data shows that on average, Internal Guidelines on Corporate Governance consist of 6.8 pages (with a range of 4 to 12) and contain 14 articles or major headings (with a range of 7 to 20). There is no difference in the length of the code or the number of heading between Internal Guidelines of large listed banks and those of small-and medium sized and cantonal banks. Furthermore, findings suggest that the value of corporate governance statements in annual reports is not clear, as it is too difficult to get past the first 200 pages of text. It is much better to have a separate, shorter document with 4-5 pages, which contains only the most important aspects of corporate governance. This is in line with literature that suggests that the length of the code is very important to ensure effectiveness of a document. A short code is more likely to have an influence on behavior and perceptions.[865] On the other hand, long codes can reduce the likelihood that information is retained by relevant parties.[866]

However, it is not enough to look at the length of the document; there are many other steps that ensure that a code remains effective. For example, is the formulation of the content framed in a positive or negative language, is it detailed or concise, is it concrete or general, realistic and actual.[867]

Empirical findings show that on the whole, Internal Guidelines on Corporate Governance have a positive formulation. All Internal Guidelines contain guidelines as what members of the board should do, what are their tasks and responsibilities, and what are

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[862] Schwartz (2002, p. 36).
[863] Kaptein and Wempe (1998, p. 868).
[864] Gaumnitz and Lere (2002, p. 11).
[865] Ibid., p. 12.
[866] Ibid.
[867] Kaptein and Wempe (1998, p. 858).

their rights. Positive formulation forms a guide for employees regarding what should be done.[868] Nonetheless, Internal Guidelines also include “should not” provisions but they are limited and primarily refer to conflict of interest situations and confidentiality. Research states that negative formulation is needed as it explicitly conveys the message to the employees of what they should “definitely not do.” A negative formulation is also more likely to lead to a feeling of insecurity or threat and companies should minimize the use of negative formulation in corporate documents.[869]

A code must not be too far from reality. Empirical findings show that Internal Guidelines undergo an annual or at least periodic review by the board or a relevant committee. However, this does not mean that changes are frequent. Interview respondents stated that too many changes that are made too frequently are not beneficial because they are not practical but may reduce the effectiveness of the Internal Guidelines. Frequent changes may actually hurt how the board works together. While review may be on the annual or periodic basis, results suggest that revisions/amendments to the Internal Guidelines are made only if there are changes in regulations, changes in organization, or if the procedures and processes no longer reflect the way in which the board operates. This is supported by literature that states that corporate codes should not only be concerned with ‘actuality’ but they should sustain a test of time. A good code should not have to be re-written every few months, but should withstand the test of time.[870]

Empirical findings also show that members of the board prefer a principle-based or mixed approach to the content rather than rule-based content of the Internal Guidelines. According to interview data, it is simply not practical to have rule-based content because it is not possible have a rule for everything. Interview participants have expressed that although rules are needed in order to control the desired behavior, rules are rigid and may reduce responsibility; board members feel that a rule-based approach to the content reduces flexibility. This is in line with existing literate which states that prescribed rules can reduce the ownership of individual’s responsibility and reduce flexibility.[871] Content analysis of the Internal Guidelines confirms that, on the whole, Internal Guidelines contain mix of general and precise statements.

According to content analysis, two thirds of Internal Guidelines specify retirement age and number of terms a member of the board can service on the board, the way in which

[868] Kaptein and Wempe (1998, p. 859).
[869] Ibid.
[870] Ibid., p. 858.
[871] Ibid., p. 859.

voting takes place and how a member of the board is able to request a meeting or put an item on the agenda, minutes and approval procedures, requests for information access, and number of committee members. For example, on average, Internal Guidelines contain 6 responsibilities and tasks for the chairman of the board and 10 for the board. However, this ranges from 3 to 9 for the chairman and from 4 to 110 for the board as a whole. The greater the number, the more specific and less general guidelines become.

Additionally, the majority of Internal Guidelines contain general statements on topics such as independence, confidentiality, conflict of interest and conduct. Only a small number of Internal Guidelines offer explicit statements and definitions on independence and conflict of interest. Interview participants have recognized that conflict of interest is one of the most important elements in corporate governance. However, the subject matter is typically discussed in a general, principle-based form. The reason for this may indeed be that members of the board generally understand the importance of independence. However, there may exist multiple interpretations of what constitutes independence. As a result, it is not very clear what is meant by the following statements such as "members must organize their business and private affairs in such a way as to ensure there arises no conflict of interest" and "there should be no personal or business interests." According to literature, general statements, such as "we strive for the highest degree of integrity," offer little footing for the employees.[872] The board must do more to improve the clarity of the existing guidelines and reduce situations in which misinterpretation or incomplete understanding can occur. Explicit statements also emphasis the issue and make it more difficult to ignore the content.[873]

Empirical findings are in line with existing literate, which states that it is not possible to include all desired items in the code as it makes the document unmanageable and less useful.[874] While content analysis confirms that Internal Guidelines on Corporate Governance contain many specific tasks and responsibilities, provisions, definitions and guidelines, it is not possible to cover all corporate governance topics. According to interview findings, Internal Guidelines must contain relevant topics for the board of directors, and they must reflect the size, type, and the corporate governance issues of this bank. Internal Guidelines on Corporate Governance are also said to be effective if they are comprehensive. One way to determine comprehensiveness is to examine the

[872] Kaptein and Wempe (1998, p. 857).
[873] Ibid., p. 858.
[874] Gaumnitz and Lere (2002, p. 11).

length of the Internal Guidelines (an average of 6.8 pages and 14 headings) and, the second is to examine the content areas against the established theoretical framework.

Literature states that a code should contain a range of topics and, ideally, the chosen issues must be of high relevance to the employees and to the company. For example, Internal Guidelines mostly focus on defining tasks and responsibilities of the board. Few mention corporate governance and best practice. None of the Internal Guidelines examined contain the rights of shareholders, instead shareholders are briefly mentioned in the basic responsibilities of the board of directors. Wider stakeholders such as employees, customers and society are not mentioned either. Furthermore, the content focuses more on the "responsibilities" of the board of directors and its committees, the "rights" of the members of the board are not well addressed in the Internal Guidelines. This is especially true for small-and-medium sized (including foreign) and cantonal listed banks.

The intended message should also be clearly presented and in a relatively concise way.[875] However, interview findings also point out that Internal Guidelines should not be too long, as this decreases the likelihood that anyone would read it. As a result, OR are not appropriate to convey Internal Guidelines on Corporate Governance as they already contain pages and pages about the bank's organization. Values and principles of corporate governance are thus buried under procedures and regulations. It is not surprising, that interview participants stated that members of the board only look at the Organizational Regulations when the board decides to re-develop internal regulations; otherwise OR are locked in the "drawer". Still, it is important that a code corresponds, as much as possible, to concrete problems encountered by the bank and the board. Board members often already know what is acceptable or not, and therefore, the guidelines should not lecture employees on what is appropriate or not but instead provide standards which should be achieved.[876]

Based on findings, it is suggested that a board of directors should benchmark its corporate governance principles against international standards such as those contained in the Principles for Enhancing Corporate Governance of the Basel Committee on Banking Supervision.

[875] Gaumnitz and Lere (2002, p. 11).
[876] Kaptein and Wempe (1998, p. 859).

Literature also indicates that Internal Guidelines on Corporate Governance should cover standards set out in the NYSE Corporate Governance Rules, which contain the following universal corporate governance principles:

a) director qualification standards,

b) director independence criteria,

c) director and chairman responsibilities,

d) director access to management and independent advisors,

e) director compensation guidelines and overall board compensation principles,

f) succession policies and principles including performance review, and

g) director education and self-assessment provisions.[877]

Based on presented findings, it appears that Internal Guidelines of large multi-national listed banks provide a better coverage of these universal principles as compared to cantonal and small-and medium sized (domestic and foreign) banks. There is a greater focus on corporate governance rather than administrative and procedural matters. However, this is not surprising as large multi-national banks have to adhere to diverse regulatory environments e.g. NYSE regulations and they are under much greater scrutiny by the media and regulators. Internal Guidelines of listed cantonal banks and small-medium sized Swiss or foreign banks have a much more narrow scope but instead do better coverage of procedural rules. As a result, Internal Guidelines of listed cantonal and small and medium sized banks (domestic and foreign) omit or offer substantially less information on succession planning, compensation principles, succession policies, director education and self-assessment procedures. Instead, small and medium sized and cantonal banks include more administrative and procedural guidelines, which are recommended by King III. Large listed banks also cover these areas in detail. Findings also show that Internal Guidelines of listed banks contain guidelines on confidentiality and bank secrecy as these two issues are of major importance for banks in the Swiss market. A number of Internal Guidelines also contain conduct related content.

[877] NYSE (2003, p. 14).

5.7.2. Discussion of Universal Corporate Governance Principles

5.7.2.1. Board Membership and Composition

Content analysis shows that Internal Guidelines on Corporate Governance of listed banks contain board **membership and composition** principles and rules. However, the depth and the range of information differ considerably. Typically, documents contain rules on the **board election process**, **terms of office**, **age limit**, **retirement age**, and **size of the board.** On the whole, this is consistent with NYSE recommendations[878] and international recommendations.[879] However, not all Internal Guidelines set a size for the board, yet size is important for the delivery of good performance.[880]

Skills and qualifications of board members are important in ensuring that the board can perform its duties effectively. Research states that banks do not have enough board members with sufficient levels of expertise relevant to the company's core operations.[881] It is discouraging to see that only one Internal Guideline on Corporate Governance sets explicit director selection principles and qualifications standards. The Internal Guideline in questions sets out general evaluation criteria which includes independence, diversity, age, skills, management experience in business and banking sector and the extent to which the candidate compliments the board and its committees.[882] However, interview participants have stressed that board composition, skills, qualifications and competencies of members of the board are very important. According to one interview, there is still a belief that there is still a shortness of qualified non-executive directors on the boards of Swiss banks and that many members of the board lack financial expertise and banking experience.

NYSE recommends that Internal Guidelines must also **specify and limit and the number of outside directorship** a member of the board can have.[883] For example, section 5.4.5 of the German Corporate Governance Code states that members of the executive board are not allowed to take more than three non-executive appoints at a time.[884] Content analysis findings present no evidence that Internal Guidelines of listed banks in Switzerland specify or limit outside directorships. Only one Internal Guideline contains general guidelines on time requirements and desired level of commitment

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[878] NYSE (2003, p. 14).
[879] Basel Committee on Banking Supervision (2010a).
[880] Baysinger and Butler (1985, p. 120).
[881] Schwartz, Dunfree and Kline (2005, p. 86).
[882] Corporate Governance Guidelines of Credit Suisse AG (2006).
[883] NYSE (2003, p. 14).
[884] Government Commission on the German Corporate Governance Code (2010).

from members of the board. However, literature suggests that directors with too many directorships lack time and commitment[885] and this negatively impacts a director's ability to perform duties effectively.[886] It is important that the board of directors set not only the responsibilities of members of the board, but also sets **clear expectations** from board members.

5.7.2.2. Independence and Conflict of Interest

Internal Guidelines should clearly state **independence requirements**.[887] Empirical findings show that just half of examined Internal Guidelines on Corporate Governance define independence and contain explicit independence requirements for members of the board. For example, members of the board may not work for another bank or for a daughter company and cannot be members of a national parliament or cantonal administration. One Internal Guideline even remarks that conflict of interest is regulated by FINMA.

It is interesting to note that empirical findings show that listed banks do better at stating procedural matters for conflict of interest situations. For example, 67% of the examined Internal Guidelines state what directors should and should not do if a conflict of interest arises. For example, Internal Guidelines prohibit directors from taking part in a discussion or voting if they are conflicted and require directors to notify the chairman of the board if a conflict of interest arises.

Listed banks need to do more when it comes to establishing independence requirements, especially listed cantonal banks as there is still a high level of political influence on the board. Interview findings confirm that directors have top of mind awareness when it comes to independence and conflict of interest. Interview participants also feel that Internal Guidelines must address these issues in greater detail. While it is expected that directors are familiar with notions of independence and conflict of interest, the board of a specific listed bank must be able to articulate more clearly as to what constitutes as lack of independence and conflict of interest. Internal Guidelines must also do more to set special independence requirements for the chairman, vice chairman and members of committees.

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[885] Fich and Shivdasani (2006).
[886] Ruigrok, Peck and Keller (2006).
[887] NYSE (2003, p. 14).

5.7.2.3. Tasks and Responsibilities of the Board of Directors

Content analysis of Internal Guidelines confirms that Internal Guidelines contain detailed tasks and responsibilities of the board. In fact, all of the Internal Guidelines on Corporate Governance contain tasks and responsibilities of the board. However, while some listed banks present very specific and detailed tasks and responsibilities, others contain more general statements. According to content analysis, on average Internal Guidelines contain 10 tasks and responsibilities. Tasks and responsibilities cover the legally required duties and tasks, but also go above minimum requirements and list additional bank specific references to tasks and responsibilities. This is in line with existing literature that recommends that the board should "clearly articulate what is expected from a director, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials."[888]

Clear tasks and responsibilities help to ensure separation of ownership and control,[889] reduce ambiguity,[890] and reduce anxiety.[891] Interview findings confirm that by defining tasks and responsibilities, a listed bank can ensure clear separation between the board and executive management, create a standard approach to corporate governance within a bank, reduce ambiguity and set expectations among other things.

In addition, 25% of the examined Internal Guidelines are accompanied by a detailed annex containing details of decision making and authorities containing up to 110 individual responsibilities for board members and committee members. However, interview findings suggest that "the more the better" approach may increase comprehensiveness, but it does not necessarily improve compression of the content. It is unlikely that members of the board will remember every detail and aspect. This is supported by literature that states that too much detail may increase the likelihood that Internal Guidelines will not be read by members of the board.[892] Findings indicate that too much depth and detail may actually reduce transparency due to information overload.

5.7.2.4. Tasks and Responsibilities of Chairman

While the chairman is responsible for leading the board, he or she also has a responsibility for the strategy of the bank.[893] Because the chairman has such a big role in the governance of a bank, Internal Guidelines should contain guidelines for the post of the

[888] NYSE (2003, p. 14).
[889] Müller (2001, p. 6).
[890] Iandoli and Zollo (2008, p. 66).
[891] Rizzo, House and Lirtzman (1970, p. 160).
[892] Kaptein and Wempe (1998, p. 859).
[893] Crawford (2007, p. 2).

chairman and the responsibilities. Findings confirm that Internal Guidelines contain information on the chairman of the board of director, typically about the appointment and responsibilities. While Internal Guidelines are good at covering responsibilities of the chairman, on average containing 6 responsibilities, no attention is given to the qualifications and independence requirements of the chairman. However, literature suggests that too many chairmen accumulate too many board memberships[894] and it is quite frequent that outgoing CEO's get promoted to the post of the chairman.[895] Thus, it would also be advisable if the Internal Guidelines contained qualifications and independence requirements for the chairman.

5.7.2.5. Tasks and Responsibilities of Vice Chairman and Senior Independent Director

While every Internal Guideline contains a separate and a rather large section on the post of the chairman, just over a half includes provisions for the vice chairman. Mostly, Internal Guidelines cover the election of the vice-chairman and the responsibility for leadership of board meetings in absence of the chairman. Internal Guidelines hardly even mention the post of the senior independent director, but this is not surprising as SIDs are not frequently found in Swiss companies. For example, according to information contained in annual reports only two listed banks in Switzerland have a post of the SID or Lead Director. However, based on content analysis, only one Internal Guideline actually contains tasks and responsibilities for the SID. The Internal Guidelines of a listed bank with the post of the lead director does not even mention his existence. Also, only one Internal Guideline contains independence requirements for the vice-chairman and the SID. Still, according to literature, the vice chairman and/or senior independent director are important posts as they share the work of the chairman. For example, it is the duty of the vice chairman to plan the succession of the chairman and the SID or Lead Director is often entrusted in facilitating the work of other non-executive directors.[896] Thus, Internal Guidelines must do more in outlining the responsibilities and qualifications for the vice-chairman's and SID's post.

5.7.2.6. Tasks and Responsibilities of Secretary of the Board

25% of Internal Guidelines contain internal rules for the post of the board secretary. Traditionally, the secretary of the board is not considered part of a corporate governance mechanism. However, in recent years the secretary of the board has come to play

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[894] Heidrick and Stiles International (2009).
[895] Böckli (2002, p. 7).
[896] Walker (2010).

a much more important role in corporate governance. Nowadays, the secretary of the board is often given the responsibility for advising the board on corporate governance matters, frequently assisting the board in tailoring corporate governance principles and practices so they fit the board's needs and investor expectations.[897] This is confirmed by interview findings, where a large number of respondents have stated that the secretary of the board is responsible for taking a lead in the revision and development of the Internal Guidelines and compliance with provisions of the Internal Guidelines. According to interview findings, the secretary along with the chairman organizes induction sessions and prepares the agenda for board meetings.

Content analysis shows that Internal Guidelines contain information concerning the appointment of the secretary to the board, but only one explicitly states functions, responsibilities and duties of the board secretary. As a result, this area needs greater attention from the board, especially as to the role of involvement of the secretary of the board in corporate governance in the bank.

5.7.2.7. Access to Information, Executive Management and Third Parties

Literature suggests that non-executive directors are faced with a disadvantage when it comes to access to information and they rely on the executive management to provide this.[898] NEDs have both the right and the responsibility to ensure that they have sufficient information in order to carry out their duties. This is in line with literature which suggests that the effective Internal Guidelines must contain both responsibilities and rights of members of the board.[899] It is, therefore, expected that Internal Guidelines contain information rights of the directors. However, study findings show that just half of the Internal Guidelines have explicit guidelines concerning rights to information. The ones that do only state the procedures for directors with regards to access to information and access to executives, management and third parties. For example, section 3 of the Corporate Governance Guidelines of Credit Suisse states that "committees are entitled to engage independent legal, financial or other advisers as they deem appropriate without consulting or obtaining the approval of any officer of the Group with respect to any matters subject to their respective authority." However, not all Internal Guidelines contain such information. Yet, access to information is central for ensuring that the board of directors effectively performs its duties and responsibilities.[900]

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[897] Society of Corporate Secretaries and Governance Professionals (n.d.).
[898] Hendry and Kiel (2004, p. 502).
[899] Johnson (1997, p. 5).
[900] Higgs (2003, p. 50).

5.7.2.8. Confidentiality

Statements on confidentiality are found in half of the examined Internal Guidelines. While some contain general, principle-based statements typically found in a code of conduct, others include very specific provisions. For example, Internal Guidelines offer definitions of what constitutes confidential information, how members of the board should treat this confidential information e.g. sign-off and disclosure and use (even after retirement). Additionally, statements on confidentiality include references to applicable laws and bank secrecy. For example, directors are under "strict obligations of confidentiality" which are subject to various laws such as bank customer confidentiality, banking secrecy, business secrecy, the prevention of market abuse and so on. Although the NYSE does not include confidentiality as one of the universal principles of corporate governance, information security, confidentiality and bank secrecy are of strategic importance for Swiss banks.[901] While it is acceptable to have general statements of duty of confidentiality, internal regulations for the board of directors may also contain much more specific rules and procedures on information security[902] and whistleblowing.[903] However, interview findings suggest that it is best if the Internal Guidelines are focused on corporate governance principles and leave conduct related content for the code of conduct. For example, there is some evidence that listed banks already have corporate policy documents with links to corporate governance such as a code of conduct and information policy.

5.7.2.9. Responsibilities and Rights of the Directors

According to literature, the board of directors carries the overall responsibility for **compensation principles** of the bank.[904] However, empirical findings show that only 17% of the Internal Guidelines on Corporate Governance refer to the board's responsibility for compensation policy. While most Internal Guidelines mention the board's responsibility for remuneration, a single bullet point is not sufficient to address this issue. For example, literature recommends that "director compensation guidelines should include general principles for determining the form and amount of director compensation and principles for reviewing those principles."[905] Interview findings support that the issue of compensation principles is one of the most important points in corporate governance. Establishing who decides on compensation gives a clear picture

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[901] Federal Department of Finance (2010).
[902] Pedergnana, Müller and Piazza (2009, p. 942).
[903] International Law Office (2008).
[904] FINMA Circ. 10/1.
[905] NYSE (2003, p. 14).

about the strength of the board of directors. Compensation remains at the top of media and political agenda and thus deserves the attention of the board of directors.[906]

Internal Guidelines must include guidelines on **succession planning**. For example, it is recommended that Internal Guidelines include policies and principles for the succession of the CEO.[907] The guidelines should also cover such events as the premature retirement of the CEO or succession planning in emergency situations. The board of directors is responsible for the selection and recruitment of a successor, the development of succession planning and the communication of key succession policies to shareholders.[908] In addition, there may be a periodic review of the chairman and the CEO, which includes performance review.[909] However, content analysis findings show that only 25% of Internal Guidelines contain a separate section on succession planning. Yet even then they contain mostly general information. Although interview participants do not refer explicitly to succession planning, they have identified the nomination of directors as being one of the important areas for the Internal Guidelines on Corporate Governance.

According to literature, Internal Guidelines on Corporate Governance must contain guidelines for **director orientation and education**.[910] However, empirical findings show that listed banks attach little importance to director education. Content analysis shows that only 25% of the Internal Guidelines on Corporate Governance have a separate section on director education. For example, Governance Guidelines of Credit Suisse dedicate 14 lines to director education and UBS states that the GNC is given the responsibility for director education and the committee must establish an "induction program for new board members and ongoing training and education program for existing board and committee members."[911] BLKB is the only cantonal bank that mentions director education, other cantonal and small-and medium sized banks do not explicitly mention induction, orientation and education of the board. However, literature states that continuing education and lifelong learning are critical for directors due to a fast changing market place.[912] Furthermore, because the banking industry and the regulatory environment are changing rapidly, directors need to be able to understand industry

[906] Core, Holthausen and Larcker (1999, p. 372).
[907] NYSE (2003, p. 14).
[908] Sharma, Chrisman and Chu (2003, p. 2).
[909] NYSE (2003, p. 14).
[910] Ibid.
[911] Annex C of the Organizational Regulations of UBS (2010).
[912] Saucier (2001, p. 16).

challenges and have up-to-date skills.[913] It is recommended that each NED should be provided with a personalized induction, training and development.[914] What is important to note is that interview participants have spoken widely about the induction of non-executive directors. It appears that orientation sessions for new members of the board are quite wide spread, however only a few participants stressed that continuing education is important. Interview findings also show that continuing education focuses primarily on the financial, risk and banking aspects but do not really address corporate governance.

Internal Guidelines on Corporate Governance should also include guidelines on the **performance evaluation** and **self-assessment** of the board, the directors, the CEO and chairman. For example, it is recommended that the board should carry out a self-evaluation on an annual basis.[915] According to content analysis, the responsibility for self-assessment and evaluation is often mentioned as part of board tasks and responsibilities. However, only 17% of Internal Guidelines (namely UBS and Credit Suisse) contain explicit and detailed principles on self-assessment. For example, they specify how often evaluation should take place, who is involved in the evaluation process and what happens as a result of self-assessment.[916] They cover the assessment of the CEO, the executive board, chairman, members of the board and committees.[917] However, even then Credit Suisse does not mention annual performance and board self-assessment in any detail in the Internal Guidelines, but the area is presented in the Chairman's and Governance Committee Charter which is available on the website.[918] There is no evidence that listed cantonal and other small and medium sized banks note down principles for performance evaluation and self-assessment in the Internal Guidelines. On the whole, board evaluation is a growing practice in Switzerland and up to 20% of Swiss companies carry out evaluation on a regular basis.[919] Self-assessment and performance evaluations are needed for continuous improvement of monitoring and supervision and also provide a good opportunity to think and discuss how the board works and develop new ways to make this work more effective.[920] The effectiveness of evaluation and self-assessment demands on how the board structures the process, there-

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[913] Walker (2009, p. 43).
[914] Ibid.
[915] NYSE (2003, p. 14).
[916] Organizational Regulations of UBS AG (2010).
[917] Corporate Governance Guidelines of Credit Suisse (2010).
[918] Credit Suisse (2011).
[919] Albert-Roulhac (2008, p. 289).
[920] Behan (2004, p.1).

fore the board needs to develop and present and discuss the value of its self-assessment and evaluation principles in the Internal Guidelines on Corporate Governance.

It is interesting to note that compensation and succession principles as well as director education and evaluation and self-assessment guidelines are mostly found in the Internal Guidelines of the two largest, multi-national Swiss banks. This may be explained by the fact that larger, multi-national banks are under greater scrutiny by the regulators and investors but also by the fact that they are cross-listed on the NYSE and must comply with NYSE regulations.

Based on the presented findings, it is advisable that all listed banks (large and small) in Switzerland include compensation, succession planning, director orientation and education and evaluation and self-assessment principles in the Internal Guidelines on Corporate Governance as these topics form part of the effective and efficient corporate governance in a bank.

5.7.3. Committees of the Board of Directors

According to the Swiss Code a board can set up as many committees as it wishes but recommends at least an Audit Committee, a Compensation Committee and a Nomination Committee. The Basel Committee on Banking Supervision also recommends that a bank has a risk management committee. According to findings, boards of listed banks set up an average of three standing committees (total number of committees ranges from 2 to 6). This includes typical board committees such as risk, nomination, compensation, combined nomination and compensation, combined audit and risk committees. Additionally, according to questionnaire findings 31% of listed banks have a board committee, 25% have a strategy committee and a further 31% have other less standard committees such as Governance & Nomination, Chairman's and Governance, Executive and Innovation committees among others.

While tasks and responsibilities for standard committees may be similar and are often set by soft law, tasks and responsibilities for other committees are less obvious and not pre-determined by laws. Therefore, it is vital that listed banks define **tasks and responsibilities for each of the committees** and explicitly communicate these guidelines within the bank. Questionnaire and content analysis findings show that listed banks set guidelines for standing committees in the Internal Guidelines on Corporate Governance.

According to content analysis, this typically covers committee structure, tasks and responsibilities of each of the committees**, committee membership** (size), **qualifications and skills** of members of committees. It is interesting to note that Internal Guide-

lines do a better job at expressing qualifications and skills requirements for committees as compared to qualifications requirements for the board as a whole. For example, 58% of the Internal Guidelines include the following specific but also general requirements: committee members should have experience in areas of finance, corporate governance, risk control and be adequately skilled and experienced to assume responsibilities. While all Internal Guidelines on Corporate Governance contain duties and responsibilities of the established committees, the way in which responsibilities are presented in the Internal Guidelines differs. For example, half of the Internal Guidelines present responsibilities in separate charters while another half presents these in the main body of the Internal Guidelines.

Empirical data also shows that Internal Guidelines contain **administrative and procedural guidelines** for committees. According to findings, 17% of the Internal Guidelines state the frequency of committee meetings, while another 17% state procedures for passing resolutions. However, low occurrence may be explained by the fact that most boards have separate internal regulations for committees or committee charters and, therefore, administrative and procedural information concerning committees may be presented in those documents.

5.7.4. Purpose

Purpose statement or aims statement sets out the rationale for the Internal Guidelines or internal regulations. For example, 92% of the examined Internal Guidelines contain some sort of purpose statement. Content analysis shows that purpose statements appear to be mostly functional. For example, it is frequently stated that Internal Guidelines define functions, duties, powers and authorities of the board of directors and that of board committees. Still, up to 33% of the Internal Guidelines contain explicit statements on corporate governance, conduct, shareholder value, effectiveness and efficiency of corporate governance. It is interesting to note that while only five listed banks publish their Internal Guidelines on their websites, only 2 Internal Guidelines explicitly mention transparency and recognize the value of disclosure in a purpose statement.

Overall, these findings are in line with literature which suggests that employees have a better understanding of functional rules, rather than general rules. For example, general statements on integrity and effectiveness are considered to be empty and of little value.[921] Nonetheless, when it comes to corporate governance, establishing only mechanical or procedural rules offer little benefit. It is important that Internal Corporate Gov-

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[921] Kaptein and Wempe (1998, p. 859).

ernance emphasize the corporate governance aspect, they need to establish a culture of governance and ethical conduct. Internal Guidelines of listed banks must set out appropriate principles of remuneration, succession, education and performance evaluation policies just as much as they need to set out administrative and procedural rules.

5.7.5. Legitimacy

Internal Guidelines need to ascertain legitimacy and there is a need to clearly communicate the legal basis and framework for the established internal regulations.[922] Interview and questionnaire findings confirm members of the board of listed banks want to show that the board is compliant with applicable laws and regulations. Content analysis shows that 92% of Internal Guidelines make explicit references to laws and regulations. In doing so, the board reconfirms its compliance and credibility. However, the existing internal guidelines do little to represent the interests of shareholders and other stakeholders. Furthermore, the interests of the owners should be a central point in the corporate governance culture in the bank. The Internal Guidelines should also include the interests of wider stakeholders.

5.7.6. Conduct

17% of Internal Guidelines on Corporate Governance contain statements on duty of care and loyalty, fairness, duty of confidentiality, compliance and corporate opportunities. These statements of ethical conduct are found only in the Internal Guidelines of the two large, multi-national banks. These statements represent general management philosophy and reflect that a company values ethical conduct.[923] Conduct statements act as another attempt by listed banks to show compliance, commitment to ethical values and enlarge the trust of stakeholders.[924] However, these statements are very general and simply outline ethical sentiments. It is not clear if there is any benefit in these statements as listed banks may also have separate codes of conduct and ethics. For example, interview findings show that general conduct-like statements are better suited to be in a separate code of conduct.

[922] Suchman (1995, p. 574).
[923] International Labour Organization (n.d.).
[924] Kaptein and Wempe (1998, p. 857).

5.7.7. Rules of Procedure

5.7.7.1. Rules of Procedure for the Board of Directors

Rules help to routinize organizational activities and set authority parameters within the organization and its decision making structure.[925] Interview findings indicate that besides corporate governance, Internal Guidelines should contain administrative and procedural rules for the board of directors and its committees. Without functional rules, the board cannot function. The board needs to have rules on procedure, meetings, voting, and attendance. In turn, this will help to ensure smooth running of the board meetings and will make decision making more efficient and effective.

Therefore, it is not surprising that analysis of the Internal Guidelines shows that written documents contain procedural information concerning **meetings of the board of directors**. However, there are differences to the degree of formalization. For example, the board of a listed bank may set guidelines as to the minimum number of meetings, how meetings can be called, notice period, agenda and distribution of the agenda. Findings also indicate that Internal Guidelines establish who chairs the meetings and clearly state who may attend meetings of the board and its committees.

It is important to note that Internal Guidelines may also explicitly refer to the **meetings of independent directors**, however, the incidence of this is low. Only one Internal Guideline distinguishes between regular board meetings and meetings of independent directors. For example, it states that it is the responsibility of the SID to organize and lead meetings of independent NEDs. This also includes frequency of and membership of meetings e.g. meetings are attended by independent directors and are held without the participation of the chairman.[926] No other internal guideline refers to independent director meetings explicitly. However, one more bank notes that the board holds separate meetings without the presence of management."[927] On the other hand, 40% of the Internal Guidelines state that presence of members of the executive board is possible but executives only have an advisory role and can not take part in decision making. However, literature suggests that it is important that independent directors hold separate meetings as it improves their ability to scrutinize and discuss issues affecting the bank.[928]

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[925] March, Schultz and Zhou (2000, p. 942).
[926] Sec 6.5 of Organizational Regulations of UBS AG (2010).
[927] Sec 2.1 of Corporate Governance Guidelines of Credit Suisse (2006).
[928] Roberts, McNulty and Stiles (2005, p. S13).

Questionnaire data suggest that 90% of the Internal Guidelines also spell out how **minutes** should be taken and what the approval process for the meetings is, however, only 40% of the Internal Guidelines include rules on inspection rights, including procedures for requesting access to the minutes. Again, the section on minutes is very concise and concrete. Making it possible for members of the executive board to examine minutes facilitates information transfer between the board of directors and the executive board[929] and increases transparency of decision making at the board level.

As stated earlier, establishing decision making authority is important in ensuring that the board carries out its duties efficiently and effectively. Therefore, it is not surprising that Internal Guidelines of listed banks contain internal rules on **resolutions**. Interview and content analysis findings indicate that board of directors of listed banks consider it important to explicitly state quorum requirements for the meetings, but also for resolutions, voting and decision making authority. For example, Internal Guidelines set out the exact voting process, number of votes required to pass a particular resolution and what happens in case of a tie. Decision making by circular resolutions is also explained in detail.

Administrative and procedural matters for the board are usually very concise, specific and concrete. This is necessary as literature suggests that explicit statements reduce ambiguity and improve understanding.[930] Although specific rules may seem rather unnecessary and mundane, they help to routinize the behavior and set clear processes.[931]

Even though administrative and procedural matters are important, the majority of the content of the Internal Guidelines should be focused on corporate governance. Based on the findings there are areas that need to be improved. For example, listed banks need to set clear guidelines concerning inspection rights, attendance of third parties and meetings of independent directors.

5.7.7.2. Rules of Procedure for the Internal Guidelines

As mentioned in section 5.6.2 of Part III, it is important the board of directors sets a specific time frame for review of the Internal Guidelines. Findings also suggest that a responsibility over the content, development, and monitoring of the Internal Guidelines has to be given a specific member of the board or a committee in order to ensure that Internal Guidelines remain up-to-date and relevant.

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[929] Adams and Ferreira (2007).
[930] Gaumnitz and Lere (2002, p. 11).
[931] March, Schultz and Zhou (2000, p. 942).

The results of the content analysis confirm that Internal Guidelines contain administrative and procedural matters for review and approval of the Internal Guidelines. For example, Internal Guidelines clearly state when, who and how review and amendment takes place. However, only 40% of Internal Guidelines identify that a specific committee is charged with the responsibility for review and amendment, others suggest that it is the entire board that is responsible. While board involvement is important,[932] it does not mean that the board as a whole can effectively initiate the review process. It is much better if a responsibility is assigned to a specific committee as a committee can focus better on the issue at stake.[933] Still, the overall findings are consistent with literature.

On the other hand, there is no evidence that Internal Guidelines include information as to how the board plans to monitor compliance with the provisions of the Internal Guidelines. Also, there is no indication as to whether or not there are sanctions for non-compliance. However, the effectiveness of the document depends on whether or not the document states **how compliance will be monitored** and if there are any sanctions for non-compliance.[934] According to interviews, there is monitoring of the Internal Guidelines and even monitoring of compliance, however, it is rather implicit.

Finally, Internal Guidelines contain information the specific date of **entry into force** and some even contain the date for the board resolution and whether or not the existing regulations replace former regulations.

Based on the presented findings, it is therefore highly advisable that listed banks clearly set out in the Internal Guidelines **when and how revision and amendment** take place. Ideally, the board sets out a concrete time frame e.g. annual review. Furthermore, it is advisable that listed banks clearly state **who is responsible for development, maintenance and review** of the Internal Guidelines in order to make proposals for the board approval. Also, listed banks must specify how compliance is monitored and whether or not there are sanctions for non-compliance.

5.7.8. Conclusions

In this section, the researcher integrates the findings and presents a model for the development, maintenance and review of the Internal Guidelines on Governance for listed banks in Switzerland. It has already been established that listed banks have internal

[932] Kaptein and Wempe (1998, p. 863).
[933] Economiesuisse (2007, p. 16).
[934] Institute of Business Ethics (2003).

regulations containing corporate governance principles for the board of directors. Although not required by laws or regulations, Internal Guidelines exist either as a standalone document or is included in the organizational regulations or similar.

According to findings, it is expected that boards of directors of listed banks lead in the development of best practice without waiting for regulations to come in.

However, since there are no laws and regulations concerning Internal Guidelines on Corporate Governance, the corporate governance sections of organizational regulations vary substantially in the range of topics and the depth of coverage. Most Internal Guidelines cover universally accepted corporate governance principles such as board composition and conflict of interest, and provide an overview of the committees and list tasks and responsibilities of the board, the chairman and vice-chairman. However, they often leave out the composition and skills requirements, time commitments, and do not always have concrete definitions of independence, succession planning, compensation, director education and board evaluation, despite the fact that international recommendations such as those of the Basel Committee, national recommendations such as those of the NYSE, Swiss Code of Best Practice and FINMA Circulars – all of which place a great emphasis on the importance of these areas. Including Internal Guidelines on Corporate Governance as part of the OR is also limiting. The OR exists to establish the organization of the bank and does not necessarily concern with corporate governance principles and values. ORs tend to be long and give too much focus on structure and authorities in the bank. As a result, there is a great value in having separate Internal Guidelines on Corporate Governance.

Furthermore, the content of the examined Internal Guidelines focuses more on the "responsibilities" of the board and its committees rather than the "rights" of the directors and shareholders. However, both orientations are important. Examined Internal Guidelines also contain no stakeholder orientation, which contracts the modern approach to corporate governance.

The study shows that they are benefits for listed banks that develop and adopt Internal Guidelines on Corporate Governance. However, these benefits partly depend on whether or not a listed bank chooses to disclose Internal Guidelines on Corporate Governance to those outside the bank e.g. shareholders and third parties. Benefits also depend on the way a bank develops, implements and administers Internal Guidelines on Corporate Governance.

According to results, Internal Guidelines on Corporate Governance offer the following benefits to the board of directors and the bank:

a) establish clear tasks and responsibilities for the board and its committees,

b) improve monitoring and controlling of the board,

c) improve risk management,

d) comply with applicable laws and regulations,

e) promote a culture of corporate governance,

f) enhance transparency,

g) enhance reputation,

h) improve relationships with shareholders,

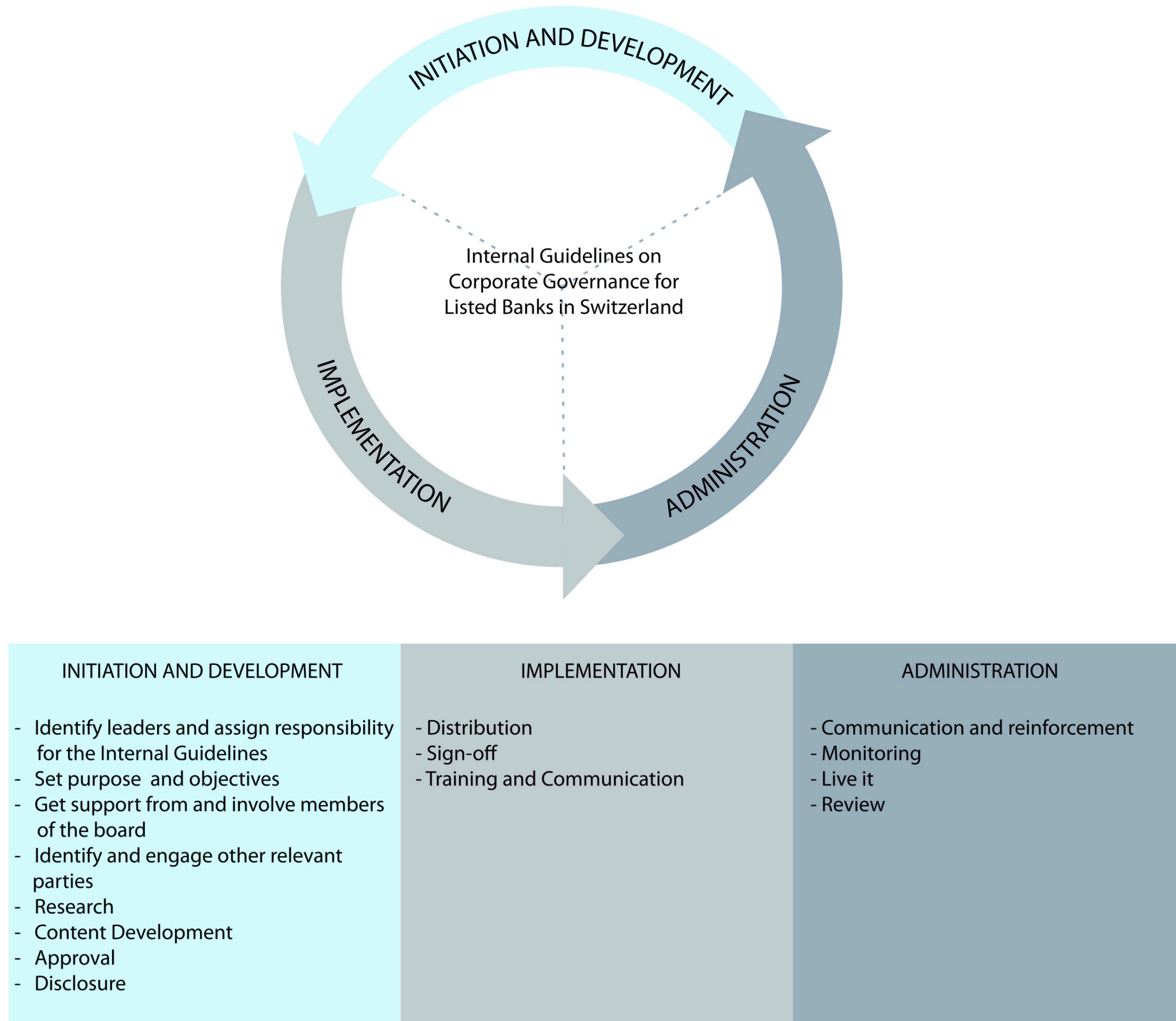
i) establish continuity in practices.

Based on the theoretical framework and the findings, a three-stage model is presented (see Figure 44 on the next page). Although the content design decisions stage is typically separated from the initiation and development stage in the code of conduct studies, based on findings, the researcher proposes that it is best to include content design decisions in the initiation and amendment stage (Stage 1), as these areas are tightly interconnected. The board of directors of a listed bank should then plan the implementation (Stage 2) and administration (Stage 3) of the Internal Guidelines on Corporate Governance.

The researcher also developed two checklists for the board of directors of a listed bank. The first checklist focuses on the development, implementation and administration aspects of the Internal Guidelines (Appendix 1), while the second one covers content areas (Appendix 2). The researcher made a sample of the Internal Guidelines on Corporate Governance and it is available in Appendix 3.

The developed framework is appropriate for all listed banks in Switzerland, and with modifications can be applied to non-listed banks, both private and cantonal.

Figure 44: Framework for the Effective Internal Guidelines on Corporate Governance



INITIATION AND DEVELOPMENT	IMPLEMENTATION	ADMINISTRATION
- Identify leaders and assign responsibility for the Internal Guidelines - Set purpose and objectives - Get support from and involve members of the board - Identify and engage other relevant parties - Research - Content Development - Approval - Disclosure	- Distribution - Sign-off - Training and Communication	- Communication and reinforcement - Monitoring - Live it - Review

Source: own development.

Stage 1: Initiation and Development

1. **Identify leaders and assign responsibility**: Initiation and development requires leadership. While it has been suggested that it is less important to know who initiates the development, leadership is important for getting support for the development of the Internal Guidelines. The board should also assign the responsibility for the Internal Guidelines to a member of the board with corporate governance expertise (for example, secretary of the board). However, giving the responsibility to a committee such as Audit and Risk or a Governance Committee is more appropriate as it will ensure continued focus and the ability to control implementation and the revision process. Previous studies have also shown

that committees provide in-depth analysis and objectivity.[935] Ad-hoc committees would not be appropriate, as they are temporary and dissolved once the task is completed. However, in smaller boards, the secretary of the board can take on this responsibility.

2. **Set objectives:** The initiation and development process starts with the identification of aims and objectives for the development/amendment of the Internal Guidelines on Corporate Governance. For example, the board of directors must answer the question as to why they want to establish (or amend) Internal Guidelines on Corporate Governance or what is the purpose of such Internal Guidelines. The study proposes that there are triggers that lead the board of directors to develop or amend existing Internal Guidelines. These triggers include changes in regulations, changes in organizational structure, the desire to establish best practice in corporate governance, outcomes of self-assessment, and so on. Findings show that by enacting or re-developing Internal Guidelines, the board is forced to review its own practices. This examination and re-evaluation will ensure that corporate governance practices are consistent with applicable laws and regulations and that the bank adheres to best practice standards.[936] Listed banks may also disclose Internal Guidelines in order to enhance reputation and improve relationships with stakeholders. Furthermore, the development of a corporate governance framework within a listed bank may help to develop a stronger corporate governance culture at the board level and in the bank in general. Internal Guidelines may also bring about improved efficiency and effectiveness in corporate governance. The setting of objectives is closely linked to the revision process presented in stage 3.

3. **Research**: Empirical evidence suggests that the board needs to review existing corporate governance principles. Furthermore, it may be useful to examine corporate governance principles of other banks and to research international best practice recommendations such as those contained in the Principles for Enhancing Corporate Governance of the Basel Committee, the NYSE Corporate Governance Rules, and recommendations of the FRC among others. The board should also ensure that it is aware of legal and regulatory changes and recommendations such as those of the CO, the Banking Act, the stock exchange, the Swiss Code and FINMA. This is in line with existing literature, which states

[935] Charkham (2005).
[936] Institute of Business Ethics (2003).

that a company must review international best practices and practices of others in the same industry when developing a code of conduct.[937] If a model Internal Guidelines on Corporate Governance is available, then the board of a listed bank should examine its contents and benchmark own practices against the recommendations.

4. **Support and Involvement of Members of the Board:** Empirical evidence indicates that members of the board should be involved in the development right from the start. Involvement creates board ownership of the Internal Guidelines and, as a result, increases acceptance and ensures that the content is realistic and relevant. There is also strong support from the literature that involvement increases the legitimacy of the document.[938] While a collective effort is important, it does not mean that directors have to comment on every point or proposition. Instead, there has to be sufficient opportunity to openly discuss corporate governance principles, ask questions and provide feedback on the proposals. There must be consensus among members of the board when it comes to drafting corporate governance principles. This helps to achieve comprehensiveness of the content and to ensure that members of the board live by the established corporate governance principles.[939] Support and involvement are necessary as the board must ultimately approve Internal Guidelines on Corporate Governance.

5. **Engagement of internal and external parties**: From time to time, it may be necessary to involve other key persons in the development and consultation process. This may include the head of legal and compliance, CEO, CFO, members of the executive board, experts and external auditors. Members of the board and other key persons play an important role in the research, review and feedback of best practice and their contribution will ensure that the board develops relevant and actual Internal Guidelines on Corporate Governance.[940] For example, changes in the regulatory environment may mean that a listed bank needs to consult outside legal firms or experts. Endorsement from members of the executive board may also be it may be necessary.

[937] Institute of Business Ethics (2003).
[938] Schwartz (2002, p. 38).
[939] Johnson (1997, p. 6).
[940] Institute of Business Ethics (2003).

6. **Disclosure Decision:** It is advised that the board publishes its Internal Guidelines on Corporate Governance on the bank's website. Although there is some evidence that public disclosure makes it easy for competitors to copy Internal Guidelines, Internal Guidelines are just like a "visiting card." Disclosure improves transparency of internal corporate governance principles and board practices. In doing so, there is a potential to improve relationships with shareholders, appease regulators and create a better reputation for the listed bank among customers, employees and the community. Recommendation for public disclosure is in line with the international and national recommendations for best practice in corporate governance.[941]

7. **Proposals for the board of director's approval**: The body responsible for the development, maintenance and review of the Internal Guidelines on Corporate Governance makes recommendations on the development or amendment to the board of directors for approval. For example, it may be necessary to seek comments and feedback on a draft proposal before a final one is presented to the board.[942] Review is also an on-going task in stage 3.

8. **Content Design and Decisions:**

   A. **Content Design:** Depending on the aims identified in Stage 1, the board must decide whether it favors a more principle-based, general approach or a more rule-based, specific approach to content. For example, the more specific the content, the easier it is to monitor compliance with the rules.[943] In general, more principle-based statements may be appropriate if a bank wants to develop and promote a culture of corporate governance. Principle-based guidelines also give greater flexibility as compared to specific rules. However, both are necessary and it is recommended that a board combines principle-based content along with rule-based content in order to have a good balance between conduct and functional guidelines. It is also recommended that the content of the Internal Guidelines is written in a positive language as this promotes values and conduct rather than pure compliance and adherence to rules. If possible, the board should minimize the use of "not to" negative statements in the Internal Guidelines. It may also be tempting for board of directors to include as many corporate governance areas in the Internal

[941] Basel Committee on Banking Supervision (2010a, p. 8).
[942] Institute of Business Ethics (2003).
[943] Kaptein and Wempe (1998).

Guidelines as possible which is however impractical and not valuable. While the Internal Guidelines should be comprehensive, they should also be concise in order to increase readership and knowledge of the content. It is important that the content remains "actual" and that it reflects legal and regulatory requirements, but also contains corporate governance principles relevant to the banking industry in Switzerland and to the type and size of the bank.[944] Furthermore, the Internal Guidelines should contain both the responsibilities and rights of the directors (shareholders and stakeholders). Therefore, the board should not simply copy an existing Internal Guidelines of another bank nor should it have an Internal Guideline that resembles the legal book. Instead, the board must search and identify important corporate governance principles that may be helpful for the board and then set expected and desired standards.[945]

B. **Write down purpose and legitimacy**: Internal Guidelines on Corporate Governance should start with a written purpose statement. The board should also establish legitimacy for its corporate governance principles. Purpose statements should represent the objectives set in Stage 1 and should represent the value the bank places on corporate governance. The focus should really be on governance. Legitimacy is also essential as it shows that a listed bank's internal corporate governance principles comply with applicable industry and regulatory standards and adhere to best practice recommendations. This is important for large multi-national banks as they may establish Internal Guidelines in line with foreign corporate governance requirements (e.g. SOX and SEC).

C. **Corporate Governance Content Decisions:** It is recommended that Internal Guidelines contain **universal corporate governance principles** and **procedural guidelines** for the board of directors**.** For example, the study shows corporate governance principles proposed by the NYSE, King III and Basel are appropriate for listed banks in Switzerland, provided they reflect corporate governance aspects of Switzerland's corporate governance framework. Furthermore, listed banks may also add corporate governance guidelines which cover confidentiality and bank secrecy. In addition, Internal Guidelines should contain guidelines for the committees. The researcher groups the

[944] Kaptein and Wempe (1998).
[945] Institute of Business Ethics (2003).

universal corporate governance principles based on the four corporate governance dimensions: situational, strategic, integrated and controlling in order to reflect the holistic nature of corporate governance.[946] Contrary to universal principles that focus on conduct, procedural guidelines (set out in King III) contain administrative and procedural matters for the board of directors. They ensure clarity of procedures and processes. Initially, it may seem that these recommendations are not applicable to listed banks in the Swiss legal and regulatory context, but the fact remains that procedures of the board of directors are just as universal as corporate governance principles, provided they are adjusted to meet the legal and regulatory environments of a country. All boards of directors need to establish specific rules concerning board administration. Universality also means that these content areas are applicable to large multi-national banks, but also small and medium sized (domestic and foreign) and cantonal banks. Again, this does not mean that they should be identical, every board should develop its own approach based on the following recommendations:

D. Universal Corporate Governance Principles:

Situational Elements:

- **Stakeholder rights** (e.g. participation of shareholders at AGM, access of stakeholders to the board of directors and information). The Swiss corporate governance system places emphasis on the interests of shareholders. In order for the listed bank to "act on behalf of the listed bank in the long-term interest of the shareholders", the board should not forget that one of the board's responsibilities includes enabling shareholders to exercise their responsibilities and rights. However, the board should also not forget about the rights and the interests of other groups, such as the employees, customers and the general public (e.g. stakeholders).

- **Conduct:** findings suggest that only a small percentage of listed banks have conduct related statements as part of corporate governance principles, publishing these at the end of the Internal Guidelines in the annex. However, ethical conduct is important for good corporate governance. Literature indicates that members of the board must set the ethical tone

[946] Hilb (2008b).

for their bank.[947] This is only possible if the board is committed to fairness, duty of loyalty, honesty and so on. Conduct often requires ethics compliance programs, which include whistleblowing. However, whistleblowing is still viewed as a breach of confidentiality and trust in Switzerland.[948] On the other hand, it has become an essential element in companies' codes of conduct in Anglo-Saxon countries and it is part of the SOX requirements.[949] As a result, those listed banks that have a presence in the US marketplace may especially find it useful to set up a whistleblower process as part of its corporate governance principles or make provisions in a separate code of conduct document. Still, evidence shows that directors would like the Internal Guidelines to be more focused on governance, and general statements on conduct are better suited for a separate document on code of conduct. As a result, although conduct and ethics are important, it would be best if the board develops a separate document that deals with these issues.

- **Confidentiality:** Bank secrecy, information security and confidentiality are fundamental for the Swiss banking industry.[950] These are also important in the corporate governance context of banks in Liechtenstein.[951] For example, banks are exposed to a number of threats in information security and these are increasing due to growth in the use of information technology and employee mobility. Most information security threats occur as a result of human failure rather than deliberate action.[952] Results of the study show that Internal Guidelines already contain general provisions on confidentiality and bank secrecy, however it may also be useful to include more specific provisions on how an individual member of the board should handle confidential information. One study suggests that banks should have information policies which cover email, uses of confidential documents outside the bank, including travel abroad, and duties to confidentiality after retirement and emergency situations.[953]

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[947] Heidrick and Struggles International (2004).
[948] International Law Office (2008).
[949] Sec. 806 of Sarbanes Oxley Act (2002).
[950] Federal Department of Finance (2010).
[951] Art. 14 of Banking Act.
[952] FineExtra.com (2010).
[953] Pedergnana, Müller and Piazza (2009).

Strategic Elements:

- **Board membership and composition** (e.g. election, qualification requirements, director tenure, retirement). Director qualifications requirements are especially important as many Swiss banks still suffer from a lack of well-qualified independent directors.[954] Studies have shown that a shortage of professional skills prevents members of the board to carry out their responsibilities to the full potential.[955]

- **Tasks and responsibilities** of the board, chairman, vice-chairman (SID), secretary of the board (e.g. expectations, basic duties and responsibilities, attendance and review of information). While the NYSE and King III recommend that Internal Guidelines should contain tasks and responsibilities for the board and chairman, there exist no specific recommendations for the post of the vice chairman or the senior independent director. However, the post of the vice-chairman is very important in corporate governance of listed banks in Switzerland as vice-chairmen play a key role in the succession planning of the chairman and chair meetings and coordinate the work of members of the board when the chairman is not available.[956] Unlike the SIDs which can frequently be found in Anglo-Saxon boards, it is more common place to have a post of a vice-chairman on board of directors of banks in Switzerland. The secretary of the board has also become an important player in corporate governance, often being responsible for corporate governance matters of the board. According to findings, the secretary of the board may be responsible for monitoring and administering Internal Guidelines on Corporate Governance. For example, investors and shareholders have come to depend on the secretary of the board on matters concerning corporate governance.[957] Therefore, Internal Guidelines of listed banks should contain guidelines not only for the board and the chairman, but also for the vice-chairman (and SID) and the secretary of the board.

[954] Schwartz, Dunfree and Kline (2005).
[955] Hilb (2008).
[956] Walker (2010).
[957] Society of Corporate Secretaries and Governance Professionals (n.d.).

– **Committee structure and tasks and responsibilities of standing committees** (e.g. number and type of committees, membership, size, qualifications, independence, and functional guidelines). Committees are an important part of the corporate governance mechanism as they can increase objectivity in decision making.[958] This, however, depends on the definition and scope of the responsibilities of the committees, membership and size of a committee among other items.[959] For example, the SOX and FINMA set out specific requirements for the audit committee (including independence requirements).[960] Although the Swiss Code recommends that a board has at least three committees, banks are free to determine their own committees as they see fit. As a result, in order to ensure clear delineation of responsibilities between committees and to ensure effective and efficient decision making, the "board must set out clear qualifications and skills requirements of committee members and shall establish terms of reference for the committees which are to be reviewed on an annual basis." Terms of references of committee charters shall "include authority, functions, membership and reporting lines of the committees as well as meeting frequency, voting rights and quorums."[961]

Integrated Elements:

– **Compensation principles** (e.g. who sets and reviews type, form and amount of director compensation, including compensation principles). Compensation is one of the topics that is being discussed in the Swiss parliament and has been highlighted by the financial regulator and the stock exchange. For example, empirical findings show that banks are aware of the criticism when it comes to excessive executive compensation and lack of transparency behind compensation principles. Therefore, it is appropriate for the board to not only establish and communicate compensation principles, but also disclose who sets and reviews compensation of directors, the CEO, and members of the board.

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[958] Charkham (2005).
[959] Central Bank of Ireland (2010, p. 36).
[960] FINMA Circ. 08/24.
[961] Central Bank of Ireland (2010, p. 36).

- **Succession planning** (e.g. qualifications and skills requirements, review and selection, performance review, succession planning in emergency situations). It is advised that the board sets out succession planning principles, because succession planning is no longer just part of ordinary business proceedings. It is part of the fundamental duty of the board and of the larger risk-management picture with serious repercussions if not handled correctly.[962] Empirical findings support that succession planning is very important, however, existing Internal Guidelines do not always include succession planning principles. In setting these out, listed banks should consider a gradual re-election of board members in order to maintain relevant know-how and experience.

- **Director orientation and education** (e.g. induction, continuing education, type and form). Studies suggest that there is a connection between director education and transfer of best-practice in corporate governance in the boardroom. Director education and training also lead to enhanced governance in a bank.[963] Empirical results of this study show that listed banks carry out induction trainings for members of the board and provide continuing education (although, not necessarily on governance). However, only a few banks actually state director education principles in the Internal Guidelines. As a result, it appears that the boards of directors in listed banks in Switzerland assign little value to education and training. Research suggests that the board should assign higher priority to director orientation and education. It is therefore recommended that the board sets out clear policies and procedures when it comes to education, training and development.[964] As a minimum, Internal Guidelines should state who is responsible for director induction and education, type and frequency of training, as well as what is expected from members of the board when it comes to continuing education.

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[962] Griesedick (2010).
[963] Walker (2009, p. 43).
[964] Hartmann (2008).

Control Elements:

- **Independence and conflict of interest** requirements (e.g. definition of independence (including references to regulations on independence), policies limiting the number of directorships or affiliations, notification of conflict of interest and procedural matters). Listed banks must define independence and establish independence criteria for the NEDs, the chairman, vice-chairman and the SID (if applicable). There is still a high degree of interlocking directorships among Swiss boards.[965] Defining and establishing independence criteria for the members of the board is important as Swiss banks often engage in the practice of the 'automatic promotion' of the CEO to the post of the chairman upon retirement. Also, it is still the case that executive directors of bank holding companies hold posts of chairmen in Swiss banks. In addition, past studies have shown that cantonal banks retain a degree of political influence.[966]

- **Director access to information and third parties** (e.g. advance review of material, access to relevant and timely information, access to members of the board and bank employees, third parties). Experts agree that the board should be supplied in a timely manner with relevant and necessary information in order for the board to discharge its duties.[967] However, a review of bank failures in the financial crisis has highlighted the problem that non-executive directors still do not always have sufficient and timely information.[968] As a result, it is recommended that the boards of directors establish what information is supplied and how it is made available to members of the board, what internal and external advice is available and what the duties and rights of members of the board are when it comes to information and access requests.

- **Performance evaluation and board self-assessment** (e.g. annual evaluation and self-assessment of the board, directors, CEO, chairman, vice-chairman, committees). Empirical findings show that board self-assessment and performance evaluation is recognized as one of the main responsibilities of the board of directors. A good number of examined

[965] Ruigrok, Peck and Keller (2006).
[966] Pedergnana, Müller and Piazza (2009).
[967] FRC (2010).
[968] Hooghiemstra and van Manen (2004).

guidelines already contain explicit statements about annual evaluation and assessment, but what is needed now is a greater level of detail, as well as clear indication of what is expected and desired.

E. Procedural Guidelines:

I. Rules of Procedure for the Board: In addition to corporate governance principles, the Internal Guidelines should also contain procedural and administrative matters for the board. Although not fully in the domain of corporate governance, procedural rules help to establish clear processes, reduce ambiguity, eliminate misunderstanding and help promote desired behavior.[969] Rules of procedure may seem rigid and excessively specific, but they are necessary in order to manage risks and to establish a standard framework for corporate governance.[970] Rules of procedure should not be only mechanistic, but they should be specific enough in order to set clear practices and operations.[971] It is advised that Internal Guidelines on Corporate Governance include the following functional rules on administration and procedural matters for the board of directors:

- Meetings of the board, committees and independent directors (e.g. number of meetings, how can meetings take place, conveying meetings and notice period, chairmanship including situations in which the chairman is not available),
- Agenda (e.g. who sets the agenda and how can items be placed on agenda),
- Minutes (e.g. approval of minutes, access and inspection rights),
- Resolutions (e.g. quorum, voting).

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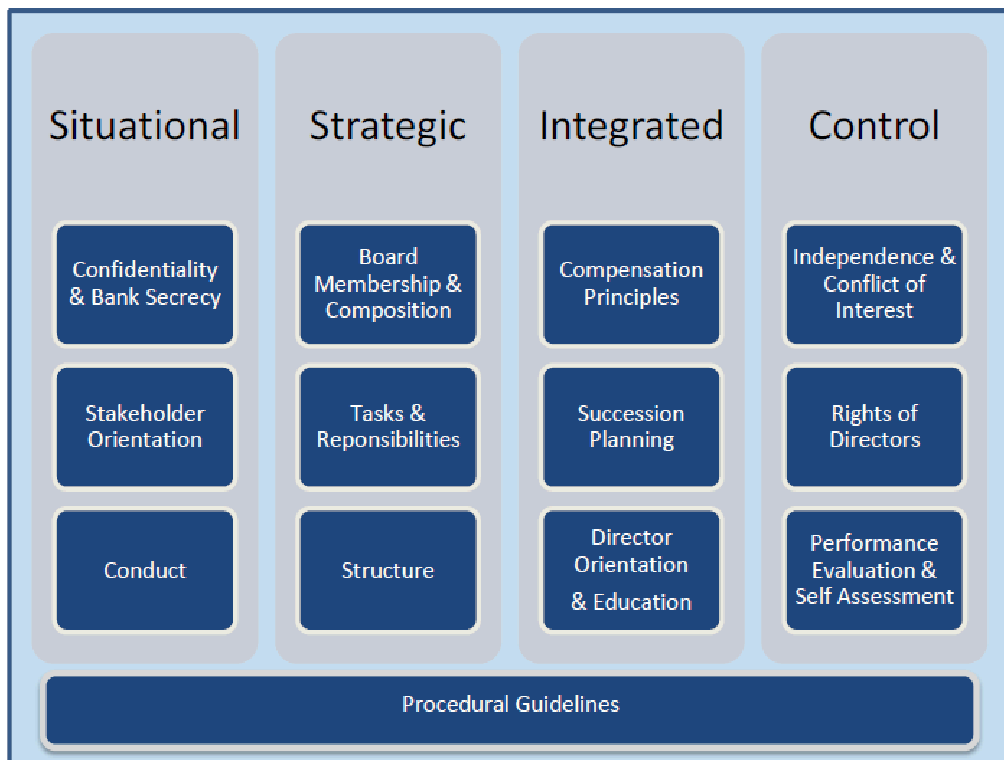
[969] Kostova (1999).
[970] March, Schultz and Zhou (2000, p. 942).
[971] Ibid., p.11.

II. **Rules of Procedure for the Internal Guidelines**: In order to effectively monitor and review Internal Guidelines, the board must clearly set administrative and procedural provisions concerning the document itself. This is necessary in order to establish an efficient and effective monitoring and review process. Administrative and procedural matters for the Internal Guidelines require establishment of:

- who is responsible for development, maintenance and review (e.g. committee or individual),
- set time frame for revision (e.g. ideally, on an annual basis),
- how adherence and compliance is monitored and whether or not there are sanctions (if applicable),
- entry into force (e.g. date of entry, date of resolution, replacement of previous Internal Guidelines).

Figure 45 summarizes content areas for Internal Guidelines on Corporate Governance. As mentioned earlier, the content checklist can also be found in Appendix 2.

Figure 45: Content Areas for Internal Guidelines on Corporate Governance for Listed Banks



Source: own development.

Stage 2: Implementation

1. **Distribution:** Research results show that boards differ in their approach to distribution of the Internal Guidelines. Board members receive the Internal Guidelines during the induction or get a copy along with their "contract." Distribution prior to the start of the employment is believed to be important as it helps to ensure that members of the board are familiar with the content. For example, expectations from board members have increased substantially in the last two decades. As a result, it is useful if directors are aware of the required time commitments and that they understand their responsibility in corporate governance before accepting the appointment. However, distribution during the induction facilitates discussion of corporate governance principles and gives an opportunity for board members to ask questions.

2. **Sign-off:** Members of the board may be required to sign a document confirming that they have received, read and will adhere to the guidelines set forth in the Internal Guidelines. According to findings, this practice is not commonplace among the board of directors of listed banks. However, it is recommended that the board creates a sign-off process, requiring members of the board to acknowledge that they have read, understand and will abide by the principles contained in the Internal Guidelines. The sign-off process needs to be clearly communicated to members of the board.

3. **Training and Communication:** The results of the study how that implementation of the Internal Guidelines on Corporate Governance needs to be supported by training. For example, the chairman along with the secretary of the board already goes over the Internal Guidelines during the induction. Training on corporate governance is especially important if members of the board come from outside banking industry or when new members may be unfamiliar with the regulatory environment in Switzerland. Training is also important when the Internal Guidelines are amended and reviewed, as it gives an opportunity for the board to highlight its position on corporate governance and reinforce the commitment of the board to governance. It provides a perfect opportunity to embed established practices and ensures that everyone is familiar with the provisions contained in the Internal Guidelines. This does not mean that members of the board have to attend classes, but there must be communication about the Internal Guidelines at the time of development. Therefore, a committee in charge of the Internal Guidelines has to take on the responsibility for communication of the established corporate governance principles and make certain that sufficient training is provided.

Stage 3: Administration

1. **Communication and Reinforcement**: It is advised that the board communicates and reinforces the spirit of the developed corporate governance principles. Without reinforcement, discussion and debate on corporate governance at the board level, the Internal Guidelines on Corporate Governance may be forgotten or ignored. Internal Guidelines are only a tool and just like with any tool, it is only effective if used appropriately. Literature supports that without reinforcement, there is a danger that the content and provisions contained in the code may become obsolete.[972] This does not mean that communication and reinforcement should follow ethics compliance type training, but there must be a continuous and discussion of corporate governance at the board level. It is therefore advised that the committee responsible for the Internal Guidelines communicates regularly on the bank's corporate governance principles.

2. **Monitoring**: Unlike a code of conduct, there is very little explicit compliance and monitoring of the Internal Guidelines on Corporate Governance. While a code of conduct is primarily used to ensure that employees comply with ethical norms, results of this study show that Internal Guidelines set forth corporate governance principles and as a result, offer guidance for members of the board. At the same time, adherence to Internal Guidelines is also seen as paramount. The results of the study suggest that it is important to monitor and enforce Internal Guidelines. Findings are consistent with existing literature that states that the decision to create a corporate code creates a series of obligations for a company in terms of the administration of that code. These obligations revolve around enforcement and monitoring.[973] However, it is of course generally expected that members of the board will adhere to the provisions and guiding principles which are contained in the Internal Guidelines. The study found that is it generally expected that members of the board have read, understand and follow corporate governance principles of the bank. As it is unlikely that an ethics compliance system similar to a code of conduct can exist in this situation. The results of the study highlight that it is exceptionally difficult to control the controller. Compliance with the guiding principles in the Internal Guidelines is a matter of integrity. The first step towards monitoring and enforcement starts by assigning the responsibility for monitoring and review to someone at the

[972] Schwartz (2004).
[973] Schwartz (2002).

board level. The committee in charge would once per year report about compliance, development and possible changes. Literature suggests that regular audits and feedback will ensure that the code is understandable and that members of the board abide by the provisions of the code. The way in which the board will enforce Internal Guidelines should be indicated in the content of the code and also discussed during the education sessions.[974] One way in which the board can ensure members of the board adhere to the internal corporate governance principles is to incorporate questions about Internal Guidelines in the annual self-assessment. Self-assessment is already part of the board's regular assessment of objectivity.[975] As a result of self-assessment, the board asks what could be done better and has an opportunity to evaluate its working practices.

3. **Live it:** Members of the board have to support the corporate governance principles set forth in the Internal Guidelines. It is not enough to simply write down the regulations, but the board needs to make sure that they "live by" the established principles. As mentioned earlier, integrity and conduct are important aspects of corporate governance in a bank and it is not something that can be developed overnight.

4. **Review**: It is advised that the board establishes an annual review of the Internal Guidelines and determine who is responsible for this review. For example, depending on the size of the bank this could either be a secretary of the board or a committee. It should be made clear what is involved in this process. Regular review and reporting are fundamental in ensuring the effectiveness of the Internal Guidelines. The committee's job is to conduct the review and present a report to the board whether or not changes should be made. In smaller, less complex banks these tasks could be carried out by the secretary of the board. Changes or amendments must be proposed for the board's decision. Annual review ensures that the Internal Guidelines are up to date and relevant and that they adhere to best practices in governance. "Regular review of the Internal Guidelines will help the board maintain its focus on high governance standards and generate further ideas for continuous board self-improvement."[976] If amendments are necessary, the board should again go through stages 1, 2 and 3.

[974] Schwartz (2002).
[975] FINMA-Circ. 08/24.
[976] Johnson (1997).

Part IV: Conclusions and Implications

1. Conclusion

The study focused on the adoption of Internal Guidelines on Corporate Governance among listed banks in Switzerland. In particular, the study wanted to establish whether or not Internal Guidelines on the boards of listed banks are commonplace and why boards of directors adopt Internal Guidelines.

Despite the fact that regulations and laws do not require listed banks to have corporate governance guidelines, the results confirm that listed banks in Switzerland overwhelmingly have Internal Guidelines for the board of directors. Internal Guidelines define tasks and responsibilities of the board and its committees and set forth corporate governance principles for the board of directors.

Previous studies support the notion that corporate governance depends on clear structures, strategies and rules e.g. by-laws, organizational regulations, minutes and other documents.[977] However, Internal Guidelines are not necessarily contained in a separate, stand-alone document. Instead most boards of listed banks include corporate governance principles as part of organizational and business regulations. This is to be expected as companies and especially banks are required to establish organizational regulations based on article 716a of the Swiss Code of Obligations and FINMA circulars. There is evidence that members of the board of a listed bank favor a single document that contains all relevant corporate governance guidance as compared to multiple internal regulations. Therefore, it is not surprising that most banks have only organizational regulations. Still, there is also evidence that a document with a focus purely on corporate governance would be beneficial, since it has the potential to replace or integrate other internal policies. Not only, this but International Guidelines on Corporate Governance have the potential to address specific governance problems that exist in the bank and promote better corporate governance among the board, its members and the bank.

However, findings suggest that listed banks would not welcome additional regulation. Members of the board already feel that the financial market sector is over-regulated. Instead, results show that the boards of listed banks should take the lead on the Internal Guidelines on Corporate Governance. They should be proactive and not wait for the regulator to make it “a must” document. Listed banks need to lead by example. They

[977] Müller (2011).

need to examine and develop internal corporate governance principles, based on international standards of best practice. Findings indicate that in time, regulations would catch up, so it is best if listed banks develop their own best practices in corporate governance. To help banks develop such guidelines, samples and checklists should be developed by research institutes or other organizations.

The results show that although large multi-national banks do a better job of disclosing Internal Guidelines on Corporate Governance, small and medium sized banks (including foreign banks) and cantonal listed banks also have Internal Guidelines on Corporate Governance. The overall level of disclosure of the Internal Guidelines on the Internet is low. Instead, listed banks engage in other types of disclosure, such as private disclosure to regulators, shareholders and bank employees. Evidence also suggests that full public disclosure may be risky as it will make it easier for listed banks to copy Internal Guidelines of others and in this way, would limit innovation in corporate governance practices. However, theory and other empirical studies suggest that there are benefits from full public disclosure, such as reputation and transparency.

It can be noted that Internal Guidelines on Corporate Governance of large multinational banks contain a wider range of corporate governance principles, whereas Internal Guidelines of small, medium and cantonal banks cover fewer areas and generally exclude evaluation and self-assessment, compensation, education and succession planning principles. Still, all Internal Guidelines contain a mix between general (broad) principle-based guidelines and specific, procedural rules. However, most of the examined Internal Guidelines of listed banks focus on the responsibilities rather that the rights of the directors. Although, findings suggest that the board of directors place importance on shareholders, Internal Guidelines do not explicitly refer to shareholder rights and completely leave out the interests of stakeholders. This can be explained by the importance shareholders play in the corporate governance framework in Switzerland, but also by the studies that promote principle-agency view of corporate governance. However, listed banks should not forget about the stakeholder view, and reflect the rights of the directors. International Guidelines should not forget to include the needs of other stakeholder groups when talking about corporate governance, e.g. employees, customers and general public.

The results of the study provide evidence that Internal Guidelines are beneficial for the board of directors of listed banks as they help to **clarify tasks and responsibilities** of the board and its committees. This helps to make **monitoring and control** of the board more effective and efficient. The findings are consistent with studies on organizational rules, which state that routinezation of organizational activities sets authority parame-

ters within the organization.[978] There is also a **risk management aspect** as clear processes and understanding of tasks and responsibilities ensure due diligence and continuity. To be specific, procedural guidelines ensure that the bank has appropriate procedures in place. By committing to write down tasks and responsibilities of the board and its committees as well as by identifying and writing down corporate governance principles, the board can make certain that it is compliant **with a applicable rules and regulations** and that there is a strong **corporate governance culture** in a bank. Earlier studies on organizational values and ethics confirm that by establishing ethical principles, the board commits to moral responsibility and instills ethical behavior throughout the organization.[979] The same is true for the Internal Guidelines, by involving members of the board in an open discussion about corporate governance and asking members of the board to determine which best practices the board should adopt, the board can instill stronger corporate governance values. Although the level of disclosure is very low, there is evidence that there are **reputation benefits** that come from disclosure and transparency of the Internal Guidelines on Corporate Governance. Previous studies on organizational rules state that rules and guidelines symbolize organizational commitments.[980] For example, Internal Guidelines can show that the listed bank is **compliant with applicable laws and regulations** and that the bank adheres to best practice in corporate governance and can potentially enhance its **relationship with shareholders and other stakeholders**. Previous research supports that codifying practices and processes is necessary to comply with the established standards.[981] At the end, the ultimate aim of the Internal Guidelines is to increase effectiveness of governance in bank.

The study further investigated how the boards of directors develop, implement and administer Internal Guidelines on Corporate Governance, including examination of content decisions. The study shows that there are three stages to enactment of the Internal Guidelines, which comprise of:

Initiation and Development: In this stage, leaders emerge and the board assigns the responsibility for development of the Internal Guidelines to a committee or an individual member of the board or the board secretary. The board then sets objectives for the Internal Guidelines. Support and involvement of non-executives is also important, as well as the involvement of other relevant internal parties. Results suggest that the board should first examine existing corporate governance practices and, if necessary, get ex-

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[978] March, Schultz and Zhou (2000).
[979] Dunfee (1999).
[980] March, Schultz and Zhou (2000).
[981] Ibid.

ternal expertise, examine international best practices and practices of others in and outside the banking sector. The success of Internal Guidelines depends on open discussion and dialogue of corporate governance principles. The board should also make decisions concerning disclosure. During the content development phase, the board sets the tone of voice and scope of the content. Internal Guidelines should contain universal corporate governance principles such as board composition, independence, compensation, education, succession planning and self-assessment and principles specific to the Swiss regulatory and banking environment. They should also embrace the rights of directors and shareholders and contain procedural guidelines for the board and its committees. Unfortunately, research results show that corporate governance principles of the boards of listed banks do little to reflect or include interests of shareholders and especially that of stakeholders. However, stakeholder orientation in governance is becoming more prominent in governance research. The financial crisis of 2008 also exposed the problem of director myopia and lack of protection and responsibility towards various stakeholder groups. As a result, it is recommended that corporate governance guidelines reflect situational, strategic, controlling and integrated dimensions of corporate governance in banking industry, but also reflect the holistic approach to governance. Finally, proposals are made to the board of directors for final approval.

Implementation: The results confirm that distribution and training are important. Training at the time of implementation is especially important as this provides an opportunity to explain the content of the Internal Guidelines and to highlight the position of the bank when it comes to corporate governance. Previous studies support that training is needed in order to embed the content in the organization.[982] However, testing of directors on the content of the Internal Guidelines and a sign-off process are unpopular measures and would not be welcomed by the board. The findings are in line with literature that states that testing is wasteful and patronizing.[983] However, if the board decided to adopt testing or a sign-off process, this should clearly communicated to the directors.

Administration: Findings show the board must monitor and reinforce the Internal Guidelines. This is consistent with previous studies, which show that codification of organizational practices requires a firm to devise monitoring and enforcement mechanisms.[984] However, there is evidence that the monitoring of the Internal Guidelines tends to be implicit and informal. However, self-assessment can prove to be a useful

[982] Webley and Werner (2008).
[983] Schwartz (2004).
[984] Schwartz (2002).

approach for monitoring whether or not the board "lives" by the corporate governance principles set forth in the Internal Guidelines. While the board may establish formal sanctions, adherence to principles and guidelines of the Internal Guidelines can only come from the integrity of members of the board. It is expected that members of the board are familiar with the content and that they stick to the established guidelines. Regular communication about Internal Guidelines was deemed unnecessary by respondents; however, previous research suggests that regular communication is important to ensure that that corporate governance remains at the top of the board agenda.[985] Although the board is already part of the corporate governance mechanism and members of the board are by now familiar with corporate governance, regular communication helps to create a culture of corporate governance at the board level. Literature also suggests that a company may impose sanctions for non-compliance with the provisions of the guidelines; however sanctions do little for changing of behavior.[986] As a result, the board should focus on building a culture of corporate governance and penalties are not effective. An important element of administration is revision. Regular audits and review are needed to ensure that Internal Guidelines stay relevant.[987] Therefore, it is recommended that the committee (or an individual if banks are small) charged with the responsibility for the Internal Guidelines carries out an annual review of the Internal Guidelines and makes recommendations to the board whether or not amendments are necessary. Open discussion of corporate governance principals of listed banks should also be encouraged.

2. Theoretical Implications

By providing empirical evidence on the adoption of Internal Guidelines on Corporate Governance among listed banks in Switzerland, the study contributes to the literature on corporate governance of financial institutions by integrating a wide range of models and concepts from areas of corporate governance, organizational practice and rules, disclosure and transparency, compliance and code of conducts.

Despite the increase in efforts of companies to formalize organizational practices, the majority of studies still focus on development, benefits and effectiveness of code of a conduct or code of ethics.[988] The study raises concern that research often the ways in which banks formalize corporate governance practices. While recommendations for

[985] Schwartz (2004).
[986] Snell and Herndon (2004).
[987] Johnson (1997).
[988] Paine et al. (2005).

development of corporate governance guidelines have been around since 2003, at present there are no empirical studies that examine the adoption of the Internal Guidelines nor are there any studies that address the benefits of the Internal Guidelines.[989] Nonetheless, regulators are increasingly asking companies to establish internal corporate governance principles and disclose them on the companies' websites.[990]

The board of directors is one of the key elements in corporate governance of the bank and its functions and roles today go beyond the legally required direction and control functions. The board of directors now acts as a critical advisor on strategy to top management.[991] As a result there needs to be a greater understanding of the value that Internal Guidelines bring to the board of directors. For example, the results suggest that listed banks in Switzerland can derive a number of positive benefits as the Internal Guidelines clarify tasks and responsibilities of the board and its committees and can establish clear processes and procedures with regards to corporate governance. The development of the Internal Guidelines provides an opportunity for a listed bank to review, assess and identify areas of corporate governance which need improvement.[992]

The study also contributes to literature on organizational practice and organizational rules. It documents that by establishing codified practices at board level, the board can increase effectiveness of monitoring and control and enhance risk management. For example, explicit and clear organizational rules are said to reduce ambiguity, eliminate misunderstanding, reduce role conflict, and enhance understanding among others. In turn, this leads to greater efficiency in tasks and makes it easier to control appropriate behavior.[993]

This study further adds to disclosure and transparency literature. Because there are no mandatory requirements for disclosure when it comes to Internal Guidelines, the number of listed banks that disclose its corporate governance principles in this particular format publicly remains low. Most corporate governance discloses take place in a form of the annual report, however previous studies have already pointed out that there is a big variation in the quality of such corporate governance disclosures.[994] This study also raises a question as to whether or not there is a value in corporate governance disclo-

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[989] Gallagher (2002).
[990] NYSE (2003).
[991] Coles, Daniel and Naveen (2008).
[992] Gallinger (2008).
[993] Kostova (1999).
[994] Labelle (2002).

sures in the annual report as annual reports often contain too much information and, as a result, it is easy to bury relevant corporate governance information.

The study also finds that large multinational banks have higher rates of disclosure when it comes to Internal Guidelines compared to small and medium sized domestic and foreign banks and cantonal banks. The findings contribute to earlier studies on disclosure and once more illustrates that disclosure is linked to the size of the firm and its operations.[995] Despite low levels of disclosure, the study shows that non-executive members of the board recognize the benefits of voluntary disclosure. Disclosure is beneficial in terms of reputation and even relationship with shareholders. It re-establishes legitimacy and shows compliance with applicable laws and a commitment to good corporate governance, all of which are important in the banking sector. The study builds upon communication and disclosure studies and contributes to the research on the communication and compliance benefits of disclosure.[996]

Furthermore, by combining theory from the areas of corporate governance, code of conduct and organizational practice, the study provides a comprehensive framework for the adoption of effective Internal Guidelines on Corporate Governance, contributing to these fields. Also, the findings support previous studies on code of conduct and organizational rules, which suggest that the way in which companies develop, maintain and review codes has an impact on the code's effectiveness.[997]

The study may also be of interest to those that examine the role of non-executive directors in the governance mechanism of a bank. Earlier studies suggest that NEDs play a role in furthering the organization's commitment to shareholder value and ethical conduct.[998] The researcher confirms that NEDs play a direct role in the formulation and development of the Internal Guidelines on Corporate Governance. The results of the study may also be useful for those researching the roles of the chairman and secretary of the board of directors.

The results of the study contribute to content design. For example, the researcher suggests that listed banks need to set forth broad principles and procedural rules. The study establishes that the content of the Internal Guidelines should combine universal corporate governance principles with administrative and functional guidelines for the board of directors. For example, the researcher proposes that Internal Guidelines should set

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[995] Labelle (2002).
[996] El Kharbili et al. (2008).
[997] Kaptein and Wempe (1998).
[998] Rodriguez-Dominguez, Gallego-Alvarez, Garcia-Sanchez (2009).

forth corporate governance principles on board composition, independence, tasks and responsibilities of the board and its committees, succession planning, education, compensation, self-assessment.[999] At the same time, procedural rules should also be included such as number and frequency of meetings, voting procedures, and minutes.[1000]

The also study enriches the literature on banks and banking institutions.[1001] Existing studies on banks focus primarily on corporate governance practices of U.S. or UK bank holding companies.[1002] There is has been very little research carried out on continental European banks, especially Swiss banks.[1003] Even then, studies tend to focus on the effects of financial regulation, bank supervision, and risk management. This study deepens the understanding of corporate governance practices in a bank. The understanding of internal procedures at the board level provides insights as to how listed banks approach corporate governance, risk management and internal control. Nowadays, it is not enough to address only financial and regulatory aspects of listed banks, but studies need to examine corporate governance practices of the board of directors.

3. Practical Implications

The findings make a contribution to the corporate governance of listed banks, but also have wider implications for private banks and regulatory bodies. First, the study provides empirical evidence that listed banks in Switzerland implement and embed corporate governance practices. The majority of listed banks have Internal Guidelines on Corporate Governance, however these written corporate governance principles and procedural guidelines for the board of directors are not always contained in a single document but rather is split over many documents or is contained in the organizational regulations.

Second, the results of this study are of special interest for members of the board, committee members and board secretaries who have the responsibility for setting, monitoring and reviewing existing corporate governance principles in listed banks. For example, boards of listed banks that wish to create effective Internal Guidelines on Corporate Governance must be aware that Internal Guidelines alone cannot guarantee board effectiveness. However, enactment and amendment of the Internal Guidelines on Corporate Governance provides an opportunity to review, assess and identify those areas of

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[999] NYSE (2003).
[1000] Institute of Directors in South Africa (2009b).
[1001] De Andres and Vallelado (2008).
[1002] Adams and Mehran (2003).
[1003] Macey and O'Hara (2003).

corporate governance that need improvement.[1004] If the board examines its own principles, it provides a basis for what is appropriate and makes it possible to determine if existing corporate governance practices are in line with national and international standards. The study also suggests that listed banks should lead the way in development of Internal Guidelines themselves rather than wait for regulations to "catch up" with initiatives.

More importantly, the study provides advice to the boards of listed banks wishing to develop Internal Guidelines on Corporate Governance. This advice covers content decisions over key corporate governance areas that the board needs to set forth in the Internal Guidelines. These key areas include universal corporate governance principles, set international standards of best practice such as board composition, director responsibilities, access to information, director compensation, director independence criteria, and succession planning and performance evaluation. In addition, there must be coverage of further key areas which are relevant to the banking industry in Switzerland such as confidentiality, bank secrecy and conduct. Corporate governance guidelines could be structured to reflect situational, strategic, controlling and integrated dimensions of corporate governance.

Since laws and regulations do not require listed banks to develop Internal Guidelines, there is no template or a model that the board of directors can follow. However, samples and models are useful and are needed. They help to set the standard and provide a benchmark for development for listed banks. As a result, the study provides advice to the board of directors on how to go about developing content, as well as provide a checklist for initiation and development, implementation and administration of the Internal Guidelines. In doing so, the researcher establishes a minimum standard for the Internal Guidelines on Corporate Governance.

The study shows that Internal Guidelines on Corporate Governance are just a tool and just like any good tool, if used properly, it can bring clear added value to the board. However, without appropriate implementation and administration, Internal Guidelines are unlikely to bring great benefits. While listed banks establish corporate governance principles for the board, there appears to be a significant variability in how the board of directors implements and administers the Internal Guidelines on Corporate Governance. As a result, the study provides recommendations about monitoring and review, training and communication.

[1004] Gallinger (2008).

The findings are also of interest to investors and shareholders. Although listed companies are required to make corporate governance disclosure in annual reports, banking operations are still relatively opaque compared to other listed companies. This makes it difficult for shareholders to understand the operations of the bank.[1005] The study shows that some listed banks favor private disclosure to regulators and employees rather than full public disclosure. Based on the evidence obtained from listed banks that publicly disclose Internal Guidelines the researcher shows that public disclosure is actually beneficial. It promotes owner strategy and makes it possible for shareholders to examine corporate governance principles of a specific listed bank, compare them to a minimum standard and to make an independent and informed decision with regards to the traded security. This applies not only to large, multinational banks but also to small and medium sized, foreign and cantonal listed banks.

The study suggests that Internal Guidelines on Corporate Governance may be better suited in conveying corporate governance principles of the bank, as it is easier to examine four or five pages as compared to the corporate governance information contained in the annual report or in the full organizational regulations. Also, Internal Guidelines express the underlying corporate governance principles of the board of directors of a listed bank (looking ahead), whereas the annual report shows whether or the board has followed its own principles (looking backwards). In the aftermath of the financial crisis of 2008, there is an increased interest in the ways in which banks are governed and also what the banks do to develop and enhance the culture of governance. The study suggests that the board of a listed must have Internal Guidelines on Corporate Governance. These not only set the standards for the board, but promote the culture of governance. The development of such internal guidelines requires participation and long-lasting debate about the value of corporate governance at the board level. Furthermore, a single document provides much greater focus on the corporate governance principles.

The findings are also of interest to regulatory bodies. Banks are already heavily regulated in Switzerland, but there have been a number of changes to improve transparency and disclosure.[1006] Regulators are interested in mandatory and voluntary disclosure as this provides an insight into the bank's attitude on corporate governance and also make it possible to assess existing corporate governance practices. Besides private disclosure of corporate governance principles to the regulator, shareholders and bank employees, there are calls for full public disclosure when it comes to corporate governance. The

[1005] Claessens (n.d.)
[1006] Ibid.

study confirms the recommendations of the Basel Committee on Banking Supervision which states that the board of a bank must "make full disclosures of material information on the bank's governance structures and policies, in particular, they should disclose the content of any corporate governance code or policy and the process which it is implemented."[1007] Although FINMA does not yet require banks to make full public disclosure of organizational regulations, listed banks should follow national and international recommendations on best practice such as those of the NYSE, King II and Basel Committee.

Furthermore, the study shows that Internal Guidelines ensure that the board of directors of a listed bank adopts best practice recommendations on corporate governance of FINMA, FMA and others. However, despite the fact that there are many national and international recommendations for best practice in corporate governance in the banking sector, there exists no model Internal Guideline that listed banks can use to benchmark their own written corporate governance principles. As a result, findings show that listed banks vary in the way they structure Internal Guidelines on Corporate Governance, as well as in its content and depth. In turn, this makes it difficult for outsiders to evaluate the quality of the Internal Guidelines. The study proposes a template or a model Internal Guidelines which set the minimum requirement for the board of directors. It is believed that standards are useful as they provide a starting point and they open and stimulate dialogue on existing and desired corporate governance principles at the board level of a listed bank. Academic literature supports that standards and models are needed as they have a positive impact on innovation.[1008] Checklists and a template of Internal Guidelines on Corporate Governance can be found in Appendix 1 and 2, respectively. A sample of Internal Guidelines on Corporate Governance is included as Appendix 3.

4. Limitations and Future Research

This empirical study has several limitations. Limitations mostly stem from the choice of the research methodology and sampling techniques used. However, these limitations also represent opportunities for future research. Although the use of a mixed-method research approach is said to improve validity and generalizeability of findings, at present there exist no other studies that examine Internal Guidelines on Corporate Governance. As a result, it is not possible to compare the results of the study against previous findings. Instead, the researcher is forced to benchmark the findings of the study against code of conduct studies. However, while the code of conduct has much wider

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[1007] Basel Committee on Banking Supervision (2010a).
[1008] Allen and Sriram (2000).

cross-company implications and addresses conduct and sets desirable behavior for all employees in the company, the Internal Guidelines have a much more narrow scope.

It is also possible that the study introduced a self-selection bias. It is generally difficult to get members of the board to take part in research studies due to busy schedules and work commitments. The researcher has sent a short overview of the study along with requests for participation in order to increase the interest of the respondents in the study and to increase the rate of response. As a result, members of the board, chairmen and secretaries of the board could self-select to participate or not.[1009] Therefore, it is possible that only listed banks with good track records and well-established corporate governance principles took part in the study. Yet, the overall sample and the range of banks that took part in the study is representative of the type and size of banks found in Switzerland. Still, the researcher must be careful when making generalizations to other contexts.

The researcher relied on organizational regulations for written corporate governance principles. However, the purpose of organizational regulations differs from that of the Internal Guidelines on Corporate Governance. Organizational regulations exist to establish appropriate structure for the bank, including that of the board of directors and the executive board. As a result, it may be difficult to generalize the findings outside the context of this study. For example, companies in Switzerland are required by law to have organizational regulations, but not the Internal Guidelines on Corporate Governance.

This study is the first about the Internal Guidelines on Corporate Governance and as a result, future studies need to validate the framework. This can be done by carrying out studies on the Internal Guidelines of all listed companies in Switzerland and not just banks. The researcher welcomes future research attempts that would use this study as a benchmark for the analysis of the Internal Guidelines of other firms. It is also possible to take research outside the Swiss market and examine Internal Guidelines of listed banks and other listed firms in e.g. the US. Furthermore, it may be interesting to focus on multi-national companies and to carry out a comparative study comparing practices in Switzerland to that of another country or countries.[1010] The study does not measure the impact of the Internal Guidelines on behavior of members of the board, allowing future researchers to examine the relationship between the Internal Guidelines and be-

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[1009] Bryman and Bell (2003).
[1010] Wood (2000).

havior. The study also discovered that the Internal Guidelines on Corporate Governance need to be supported and reinforced at the board level; however no attempts were made to make specific recommendations as to the type and frequency of training required. It would also be valuable to research the relationship between disclosure on Internal Guidelines and cost of capital and the ability to attract investors. For example, other studies on disclosure point out that by engaging in active mandatory and voluntary disclosure, firms can lower the cost of capital by being able to attract investors.[1011] Therefore, it would be interesting to investigate if disclosure of the Internal Guidelines on Corporate Governance would generate similar effects. Finally, future studies can also focus more on the need for the Internal Guidelines on Corporate Governance from regulatory perspective as compared to bank or investor perspectives.

5. Concluding Remarks

The increasing demand for accountability and good corporate governance at the board level resulted in a wide-spread adoption and development of Internal Guidelines on Corporate Governance. Results show that large multinational banks, small-and medium sized, foreign and cantonal banks all have written documents on corporate governance principles. The content and structure of the various examined Internal Guidelines is similar, however, large multi-national banks cover a wider range of corporate governance topics whereas medium-sized and cantonal banks focus more on procedural rules. However, previous studies on the code of conduct show that an effective code should have both broad rules which cover main principles and functional rules which address procedural aspects.[1012] As a result, the study suggests that Internal Guidelines should contain a mix of universal corporate governance principles, rights and responsibilities of directors and various stakeholders together with administrative and procedural items.

The establishment of the Internal Guidelines clarifies tasks and responsibilities of the board and its committees. In doing so, the board can improve the efficiency and effectiveness of monitoring and control, improve risk management, instill a culture of governance, enhance corporate reputation and show commitment to owner strategy, and ensure that board practices are in line with legal requirements and industry standards.

The study shows that it is important that the board examines its corporate governance practices, as well as compares them with existing models, methods and recommenda-

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[1011] Bushee (2004).
[1012] Kaptein and Wempe (1998).

tions in order to determine appropriate and relevant corporate governance standards. Corporate governance discussions at the board level are extremely helpful, as they force the board to write down what it believes in and also ensures the board's commitment to set fourth corporate governance principles in the Internal Guidelines.

While templates, models and checklists are useful, Internal Guidelines on Corporate Governance are unique to the board of a listed bank. They should not be copies or standard documents because there is no value in that.

The study indicates that public disclosure may be beneficial, since Internal Guidelines contain no "real secrets". Instead, they can be used to compare corporate governance practices of one listed bank against minimum standards. In doing so, the board of directors of a listed bank can provide value to shareholders. Disclosure can also lead to a better corporate governance reputation.

According to this study that it is not enough to simply develop Internal Guidelines on Corporate Governance, but the board of a listed bank must plan how it will implement and administer Internal Guidelines.[1013] The study suggests that the implementation stage would consist of distribution and training, while administration stage would focus on embedding corporate governance values which is done through training and communication. Part of the effectiveness of the Internal Guidelines depends on the ability of a bank to successfully monitor and review Internal Guidelines on Corporate Governance. Board self-assessment can be used as part of the review mechanism. This is line with previous studies that establish that annual revision and monitoring of the effectiveness helps to embed principles and guidelines contained in the code.[1014]

To conclude, this study contributes to the development of the corporate governance field as well as to research on banking institutions. The research also adds to research on organizational practices and rules. The study provides practical recommendations for the board of directors of listed banks that want to develop, review or amend Internal Guidelines on Corporate Governance in order to ensure appropriate functioning of the board of directors and its committees, to reinforce the listed bank's commitment to corporate governance and good conduct and to ensure the long-term value for the listed bank and its shareholders.

[1013] Schwartz (2002).
[1014] Johnson (1997).

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Appendix

Appendix 1: Checklist for Internal Guidelines on Corporate Governance

(own development)

INITIATION AND DEVELOPMENT

1. **Identify leaders and assign responsibility for the Internal Guidelines**
   - Identify board members with corporate governance expertise;
   - Assign responsibility development, implementation and administration to a standing committee.
2. **Set purpose and objectives**
   - Identify reasons why development or amendment is needed;
   - Identify what the board wants to achieve by developing (or amending) Internal Guidelines.
3. **Get support from and involve members of the board**
   - Ask members of the board what they think are important corporate governance areas;
   - Encourage open discussion of corporate governance principles;
   - Provide sufficient opportunity for directors to feedback on proposals and ask questions.
4. **Identify and engage other relevant parties**
   - Identify and include internal parties;
   - Seek external expertise and advice.
5. **Research**
   - Evaluate existing corporate governance principles and practices within the board;
   - Review regulations and laws, existing models, and international and national recommendations on best practice in corporate governance;
   - Review templates and Internal Guidelines of other listed banks but do not copy one.

6. **Content Development**
   - Identify key corporate governance and procedural areas to include in the Internal Guidelines;
   - Tailor Internal Guidelines to fit your board – Internal Guidelines are not meant to be identical, one size does not fit all. The content must fit the values and working practices of the board and the bank.
7. **Approval**
   - Make proposals for the board of director's approval and get endorsement from the executive board.
8. **Disclosure**
   - Publish Internal Guidelines on Corporate Governance on the bank's website.

IMPLEMENTATION

1. **Distribution**
   - Make Internal Guidelines available to members of the board and expect directors to uphold them.
2. **Sign-off**
   - Members of the board acknowledge in writing that they have received, read and will uphold corporate governance principles set forth in the Internal Guidelines on Corporate Governance.
3. **Training and Communication**
   - Arrange for educational sessions or meetings to lay out the specifics of the Internal Guidelines and reinforce the bank's commitment to high standards of corporate governance.

ADMINISTRATION

1. **Communication and reinforcement**
   - Communicate to members of the board the importance of Internal Guidelines and continue and encourage open discussion of corporate governance principles at the board.

2. **Monitoring**
   - A procedure for members of the board to state that they understand and apply the corporate governance principles set forth in the Internal Guidelines;
   - Make monitoring of Internal Guidelines part of self-assessment and/or carry out an annual review of the Internal Guidelines.
3. **Live it**
   - Members of the board must adhere to the corporate governance principles of the Internal Guidelines on Corporate Governance.
   - Create a culture of good corporate governance
4. **Review**
   - Have a procedure for annual review and amendment (e.g. responsibility assignment to the secretary of the board of a committee).

Appendix 2: Content Checklist for the Internal Guidelines on Corporate Governance for Listed Banks

(own development)

A. PREAMBLE

- Introductory note by the chairman,
- Purpose,
- Legal Basis.

B. CORPORATE GOVERNANCE PRINCIPLES

- Board membership and composition (e.g. election, qualification requirements including director tenure, retirement, succession),
- Independence and conflicts of interest (e.g. definition of independence, specifying which independence criteria the board is using, limit to the number of outside directorships or affiliations a member can have, procedural matters for conflicts of interest situations such as notification and abstinence from participation and voting),
- Tasks and responsibilities of members of the board, chairman, vice-chairman, if applicable senior independent director or lead director, secretary of the board (e.g. basic duties and responsibilities, clear articulation of what is expected from a director including attendance at board meetings and advance review of meeting materials),
- Committee structure and tasks and responsibilities of standing committee* (e.g. number and type of committees, membership, size, qualifications, special independence requirements, if any and rules of procedure concerning meetings, quorum, voting),
- Director access to information and third parties (e.g. advance review of material, access to relevant and timely information, access to members of the executive team and bank employees plus right to seek expert advice from third parties),

* The board should also etablish Committee Charters.

- Compensation principles (e.g. general principles for determining director compensation, including identification of who sets and reviews the type, form and amount of director compensation),
- Succession planning (e.g. principles for selection of CEO, chairman and members of the board, including qualifications and skills requirements, performance review, and succession principles for emergency situations),
- Director orientation and education (e.g. induction, continuing education, type and form),
- Performance evaluation and board self-assessment (e.g. annual evaluation and self-assessment of the board, CEO, chairman, vice-chairman, and committees),
- Rights of shareholders and stakeholders (e.g. election of members of the board, access to the BoD, and AGM),
- Confidentiality (e.g. duty of confidentiality including statements on bank secrecy, information security for when in office and after term),[†]
- Conduct[‡] (e.g. duty of loyalty, duty of care, fairness, honesty, including whistleblowing).

C. RULES OF PROCEDURE FOR THE BOARD OF DIRECTORS

- Meetings of the board, committees and independent directors (e.g. number of meetings, meetings format, conveying of meetings, invitation and notice period, chairmanship of meetings including procedures for when the chairman is unable to attend),
- Agenda (e.g. who sets the agenda and how can items be placed on agenda, access to agenda),
- Minutes (e.g. approval of minutes, access and inspection rights),
- Resolutions (e.g. quorum, voting).

[†] General statement on confidentiality and security is recommended and is sufficient, if the Bank has a separate Information Policy.

[‡] General statement on conduct is recommended and is sufficient, if the Bank has s separate Code of Conduct and Whistleblowing Policy.

D. RULES OF PROCEDURE FOR INTERNAL GUIDELINES

– Identify who is responsible for development, maintenance and review (e.g. name of the individual (board secretary) or name of the committee),

– Set time frame for revision (e.g. annual revision),

– State whether or not adherence and compliance is monitored and whether or not there are sanctions (if applicable), and how international guidelines evaluated (e.g. board self-assessment),

– Entry into force (e.g. date of entry, date of resolution, approval process, statement whether or not Internal Guidelines replace any previous document).

Appendix 3: Sample of the Internal Guidelines on Corporate Governance for Listed Banks

"INTERNAL GUIDELINES ON CORPORATE GOVERNANCE OF XYZ BANK AG"

(own development)

A. Preface or Introduction

The Board of Directors (BoD), upon recommendation of the Governance Committee, has adopted these Internal Guidelines on Corporate Governance to summarize corporate governance principles that the BoD believes represent the values of the Bank and the BoD. The BoD is determined to uphold the highest standards of corporate governance and conduct. The corporate governance principles contained in these Internal Guidelines ensure that the BoD and its committees are well run. Internal Guidelines enable the BoD to carry out effective and efficient governance of the Bank, acting in the long-term interest of the bank and its shareholders.

The corporate governance principles and processes presented in these Internal Guidelines comply with all relevant Swiss and international corporate governance requirements, laws and regulations.

(Signed by the Chairman of the Board)

B. Corporate Governance Principles

1. Role and Responsibilities of the Board of Directors.

1.1. The BoD is elected by the shareholders in order to supervise the management of the Bank and its business. The BoD is following what it deems to be in the best long-term interests of the shareholders and stakeholders of the Bank. The major areas of the BoD's responsibilities are with overall direction, control and supervision of the Bank.[§]

1.2. Members of the BoD must meet as frequently as needed and dedicate adequate time and attention so as to fulfill their responsibilities. In doing so, directors must use their business judgment and perform their duties in a way that they believe is in good faith and in the long-term best interests of the Bank, its shareholders and stakeholders. Directors are expected to attend the Annual General Meeting (AGM), and all or the majority of all BoD meetings and meetings of the BoD committees on which they serve. Members of the Board are expected to spend whatever additional time needed for them to appropriately execute their duties and responsibilities. Members of the BoD shall make sure that other current or prospective obligations do not materially interfere with their ability to discharge their responsibilities as members of the BoD.

[§] The BoD may add a detailed list of the responsibilities.

2. Composition of the Board of Directors

2.1. The BoD shall consist of a minimum of 6 and a maximum of 12 members. The size of Board shall be that small enough to enable effective and fast, but large enough that the BoD can effectively monitor and supervise management.

2.2. The BoD shall review its structure on a regular basis. In doing so, the BoD shall consider existing composition of the Board, legislative and regulatory developments, international best practice in corporate governance, bank circumstances and other factors the BoD may consider relevant.

2.3. To serve as directors, the BoD shall identify and choose highly qualified candidates. The BoD believes that it is in the best interests of the Bank and its shareholders for BoD to consist of members with various perspectives and backgrounds. The Nomination Committee (NC) reviews director candidates against board membership criteria and recommends candidates to the BoD for election by the Bank's shareholders at the AGM. The NC, with the BoD, shall review annually the BoD qualifications criteria for the Board membership, reflecting the requirements of the Bank and applicable laws and regulations. Qualifications criteria shall include diversity, age, skills, management expertise and the degree to which the candidate and his experience complements or supports the Board and its Committees. When evaluating a candidate the NC shall consider whether the candidate has expertise in banking, finance, audit and risk management and determine whether the candidate holds any other mandates that might lead to conflicts of interest and has the time necessary to fulfill the duties responsibilities as a member of the BoD.

2.4. The term of office for each member of the board is one year, subject to election by shareholders. The BoD members are normally expected to serve for a minimum of three years. The board believes that by staggering terms, the BoD can increase its own effectiveness, balancing the need for the Board renewal and increased contribution and insight that comes from the director’s knowledge of the Bank and its operations. The BoD shall evaluate and review annually the ongoing contribution of each director to the overall effectiveness of the Board. The BoD does not believe that it is appropriate to set arbitrary term limits for members of the BoD based on age. However, the services of directors should not outlast their capacity to contribute. The BoD does not believe that members of the BoD should expect to be nominated continually.

3. Independence and Conflicts of Interest[**]

3.1. The majority of the members of the BoD shall be independent. An independent director is one who meets the definition of independence of the FINMA Circular 08/24 “Supervision and Internal Control” and takes into account further corporate governance standards,[††] applying the stricter standard. This independence should be both in fact and appearance in order to enable oversight at

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[**] The BoD may establish further independence criteria in a separate Independence and Conflicts of Interest Policy.

[††] It is recommended the BoD limits the maximum number outside directorships a director could have and puts a limit on the maximum years in office. A director is no longer independent if he has serviced on the BoD for more than nice years from the date of his first election (FRC, 2010).

arms-length. The BoD encourages directors to limit the number of outside directorships so in order not to obstruct their service as a Board member of the Bank. The BoD makes reviews independence of directors annually.

3.2. Each director must notify the Chairman immediately if his or her circumstances change so that they may affect his or her independence. A director with a conflict of interest shall abstain from discussions and voting involving the interest at stake. A director is expected to submit his or her resignation to the Chairman if a change in circumstance may impinge on his or her continuing independence in regards to the BoD's independence standards.

4. Board Leadership and Support

4.1. Chairman: The BoD appoints the Chairman, who shall be independent. The Chairman is responsible for leading and conducting the BoD in the interests of the Bank and its shareholders. The Chairman's primary role is to preside over the AGM; to facilitate an open flow of information between management and the BoD; to lead the annual performance review of each of the CEO, of the members of the BoD and Board Committees, to ensure effective communication with shareholders and stakeholders; to coordinate the work of all Committees; to ensure effective succession planning for the Bank; to set the agenda for the BoD meetings and to chair BoD meetings so that they run efficiently and effectively.

4.2. Vice Chairman: The BoD appoints a Vice Chairman (VC). The VC must be independent. The VC is expected to lead the BoD in the absence of the Chairman. He or she provides support and advice to the Chairman and undertakes additional duties and functions entrusted on him or her by the BoD.

4.3. Senior Independent Director: The role of the Senior Independent Director (SID) is to preside at independent director sessions of the BoD. If the BoD has an independent Vice Chairman, he or she can take on responsibilities of the SID.

4.4. Board Secretary: The BoD appoints a secretary for the board. The Board Secretary keeps the BoD and Committees' minutes and assists the BoD, the Chairman and the VC, and the Committees in fulfilling their duties. The Board Secretary reports to the Chairman.

5. Board Committees

5.1. Committee Structure: The BoD believes that the Board as a whole should deal with major corporate decisions. However, a more detailed examination than might be possible at a full BoD meeting might be required in certain areas. As a result, the BoD has established the following regular committees:

- Nomination Committee
- Compensation Committee
- Audit Committee
- Risk Committee
- Governance Committee

The BoD may also occasionally establish ad hoc committees, as warranted by circumstances and business activities.

5.2. Committee Charters: Each regular Committee shall have a written Charter that shall be approved by the BoD. Each Charter shall state the purpose of the Committee and set qualifications for Committee membership. Charters shall reflect the responsibilities of Committees, together with rules of procedure for each of the Committees including frequency of meetings, quorum, voting). Annually, each Committee shall evaluate its Charter and propose appropriate modifications, reflecting changes in responsibilities, applicable laws and regulations, and other areas.

5.3. Committee Membership: Committee members and their chairs are appointed by the BoD annually at the AGM. All members are non-executive independent members that shall meet requirements of the FINMA Circular 08/24 on “Supervision and Internal Control” or other corporate government requirements, whichever are stricter. Committee members must have the necessary knowledge and experience to fulfill their functions and be able to commit as such time to the role as may be necessary for the proper discharge of their duties. Reappointment is possible and desirable to foster the development of specific knowledge of the businesses, continuity and efficiency of the Committees' work.

5.4. Committee Meetings: The Chairman of each Committee, in consultation with others as appropriate, determines the frequency, length and agenda of the Committee's meetings. The Chairman of each Committee prepares the agenda and distributes agenda along with relevant materials to Committee members Materials. The invitation must be sent to the Committee members at least five business days prior to the date of the Committee meeting. The Chair of each Committee shall report to the BoD on the activities of the Committee. Minutes of Committee meetings shall be distributed to all members of the BoD.

6. Rights of the Board of Directors

6.1. Access to Management and Information: Members of the BoD shall have free access to executive management and employees of the Bank to fulfill their duties as members of the BoD. The BoD encourages the Chairman to invite members of executive management to make presentations at Board meetings in order to provide particular insights into aspects of the Bank's business. Management shall be responsive to all requests for information from members of the BoD, regardless of the agenda. Should a member of the BoD require information or wish to review documents outside a meeting, he shall address his request to the Chairman in writing. In order to discharge their duties effectively, the BoD and its Committees are entitled to seek independent legal, financial and other external advice as they deem appropriate, without consulting or obtaining the approval of any senior manager of the Bank.

6.2. Compensation of Members of the Board: Members of the BoD shall be compensated for their time dedicated to their task and responsibilities at the Bank. The Compensation Committee (CC) will annually review, approve or suggest changes to the compensation for BoD members. When discussing proposals, the BoD member concerned shall abstain from taking part in the decision. The CC shall take into account the following factors, among others: compensation shall be competitive compared to peers and consistent with market practices; compensation shall be fair to BoD members for the responsibilities and duties undertaken in serving as BoD members; compensation shall be such as to align inter-

ests of directors with those of shareholders and shareholders. Compensation shall be consistent with the remuneration policy of the Bank.

7. **Rights of Shareholders & Stakeholders:** Shareholders elect members of the BoD annually at the AGM. Shareholders, employees, and customers can expect that the management of the Bank is ethical and is committed to highest standards of corporate governance and conduct and that the BoD acts in the long-term interests of the Bank and its stakeholders and stakeholders. Shareholders can ask questions to the Chairman during the AGM, subject to reasonable time constraints, topics and rules of order. Shareholders can submit questions in writing to the BoD to allow for an approprate response to be prepared. Shareholders and employess can expect that the BoD make a considerable effort to inform them during the course of the year about developments in the Bank. Shareholders and others may contact any member of management, the Chairman of the BoD, the Vice Chairman or Senior Independent Director by writing to them.

8. **Responsibilities of the Board of Directors:**

8.1. Compensation:

8.1.1. The BoD is responsible for the remuneration policy of the Bank and must publish a remuneration report on an annual basis. The Bank is committed to employing compensation principles that reward excellence, encourage personal contribution and professional development, retain talent and align the values of employees with those of the Bank.

8.1.2. The Compensation Committee (CC) annually reviews compensation principles of the Bank and proposes any amendments to the BoD for approval. The CC shall review and approve the compensation proposals for the members of the executive management and reports on this to the BoD.

8.1.3. The BoD approves amendments to existing or the establishment of new management and employee compensation plans.

8.2. Succession Planning:

8.2.1. The BoD shall annually review short- and long-term succession plans of the CEO, seminar management, Chairman, members of the BoD and Committees, including in the event of unanticipated vacancies in those offices.

8.2.2. The Chairman will report at least annually to the full BoD on succession planning.

8.2.3. In assessing the possible candidates the Board shall identify and periodically update skills, experience and attributes required to be an effective CEO reflecting the Bank's strategy, opportunities and challenges. In light with qualification requirements and information obtained during performance evaluation and self-assessment, the Board determines whether or not changes should be made to membership of the BoD.

8.3. Director Orientation and Education

8.3.1. All new BoD members shall receive extensive written materials and shall participate in an induction program. As part of the induction, BoD members shall meet in one-on-one sessions with members of senior management to discuss the Bank's operations, goals and strategic plans, financial statements, risk management framework, legal and management structure, corporate governance and legislative and regulatory framework, corporate governance principles and a code of conduct of the Bank. The induction program shall be tailored to the respective director and appropriately consider his or her skills and experience.

8.3.2. The Chairman, upon consultation with the CEO, shall regularly add items to the BoD meeting agendas that support the familiarization of the BoD members with current developments in the financial services industry and corporate governance. The BoD shall encourage each director to participate in continued training and educational programs.

8.4. Performance Evaluation and Board Self-assessment:

8.4.1. The BoD seeks to determine whether the BoD and its Committees function effectively and efficiently. The BoD reviews its own performance, as well as the performance of its directors and each of the Committees on an annual basis. In line with best practice recommendations, performance evaluation and board self-assessment will be carried out by an external party once every three years.

8.4.2. The BoD shall carry out a performance evaluation for the Chairman and the CEO on an annual basis. This review serves as a basis for review and assessment of the compensation proposals for the executive management. In light of the annual performance evaluation, the BoD must consider whether any changes should be made to the membership of the BoD or its Committees.

8.5. Confidentiality: All members of the BoD must uphold the confidentiality of confidential information entrusted to them, except when the Bank approves its disclosure or if it is required by laws, regulations, or legal proceedings. Confidential information may include, but is not restricted to, non-public information that, if disclosed, could be harmful to the Bank or its customers, or be of use to competitors of the Bank. If directors believe they have a legal obligation to disclose confidential information, they are expected to check with the Chairman of the BoD or a Head of Compliance. The obligation of duty continues after the term of office of the BoD member has expired for as long as the relevant information remains confidential.

8.6. Conduct: The BoD expects that every director has read and understands ethical principles set forth in the Code of Conduct.[‡‡] The BoD holds each director accountable to compliance with applicable laws and regulations, duty of loyalty, duty of care, fairness, honesty, integrity and respect. The BoD expects that directors promptly contact the Chairman of the Board or a Head of Compliance if he or she believes that he or she has observed illegal or unethical behavior by any employee, officer, or director, or by anyone else acting on either Bank's behalf and the reporting director has any doubt about the best course of action in a

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[‡‡] The BoD shall adopt the Code of Conduct, which outlines the principles governing the conduct of the BoD.

particular situation. All such reports may be made anonymously. Upon request, confidentiality of the director will be maintained, subject to applicable laws. When in doubt, members of the BoD should consult the Code of Conduct and Whistleblowing Policy.

C. RULES OF PROCEDURE FOR THE BOARD OF DIRECTORS

1. Meetings of the BoD

1.1. The BoD shall meet at least six times pear year, additional meetings may be scheduled if required to discuss or resolve on urgent matters. It is expected that BoD members attend all meetings or majority of the BoD meetings. The Chairman, or the Vice Chairman, if he is absent, calls the meetings and prepares an agenda for each meeting with input from BoD members or the executive management. Directors are encouraged to suggest the inclusion of items on the agenda. The Chairman shall have final approval of the agenda for BoD meetings. Directors are free to raise issues at BoD meeting that are not on the agenda for that meeting.

1.2. The BoD meetings are chaired by the Chairman or, in his absence, by the Vice Chairman or, in his absence, by the SID or, in his absence, by another BoD member selected by the BoD.

1.3. Board meetings may be held in person, by telephone or video conference.

2. Invitation and Agenda: The invitation contains the agenda and must be sent to the BoD members at least five business days prior to the date of the BoD meeting together with all necessary supporting material. On urgent matters, the notice period may be shorter.

3. Meetings of Non-Executive Directors: The SID organizes and leads independent BoD member meetings. Independent director sessions are held regularly, at least two times per year.

4. Minutes: The BoD keeps minutes of all meetings. The minutes must be signed by the Chairman and the Secretary of the Board and must be available for review and approval prior to the next BoD meeting. The BoD shall make minutes of the meetings available to the Shareholders no later than three weeks after the meeting's date.

5. Resolutions

5.1. A majority of BoD members must be present in person in order to pass resolutions. Participation via telephone or video-conferencing shall be permitted. Resolutions of the BoD require the approval of an absolute majority of the votes cast. In case of a tie, the Chairman's vote is decisive.

5.2. If there is no quorum, the Chairman can seek a circular resolution of the BoD. The Board resolutions may be passed in writing provided the text of the resolution is sent to all members of the BoD and provided that a majority of the directors cast a vote. Each director has the right to request within a period stipulated for a vote, that the matter be discussed in a meeting. Circular resolution is as binding as a Board resolution adopted at a BoD meeting and must be recorded under a separate title in the Board minutes prepared for the next Board meeting.

D. RULES OF PROCEDURE FOR INTERNAL GUIDELINES

1. The GC shall lead the review of the Internal Guidelines on Corporate Governance annually and shall recommend the BoD revisions as it deems necessary or appropriate for the BoD to discharge its responsibilities most effectively and to ensure the effective governance of the Bank. The GC welcomes open discussion and participation of directors in the revision process.

2. The BoD believes that each director, by agreeing to serve as a director, has agreed to read, understand and uphold the corporate governance and conduct principles set forth in these Internal Guidelines. The BoD expects each director to sign, on request, a written acknowledgement confirming commitment to these corporate governance principles.

3. These Internal Guidelines came into effect on 1 June 2011, based on a Board resolution 1 April 2011.

Chairman of the Board **Signature:**

Board Secretary **Signature:**

Appendix 4: List of Banks with a Listing on the SIX Swiss Exchange

1. Bank CA St. Gallen AG
2. Bank Coop AG
3. Bank Linth LLB AG
4. Bank Sarasin & Cie AG
5. Banque Cantonale de Genève
6. Banque Cantonale du Jura
7. Banque Cantonale Vaudoise
8. Banque Privée Edmond de Rothschild S.A.
9. Basellandschaftliche Kantonalbank
10. Basler Kantonalbank
11. Bellevue Group AG
12. Berner Kantonalbank AG
13. Credit Suisse Group AG
14. EFG International AG
15. Graubündner Kantonalbank
16. Hypothekarbank Lenzburg
17. Julius Bär AG
18. Liechtensteinische Landesbank
19. Luzerner Kantonalbank AG
20. Neue Aargauer Bank AG
21. Schweizerische Nationalbank
22. Société Bancaire Privée S.A.
23. St. Galler Kantonalbank
24. UBS AG
25. Valiant Holding AG
26. Verwaltungs- und Privat-Bank
27. Vontobel Holding AG
28. Walliser Kantonalbank
29. Zuger Kantonalbank AG

Appendix 5: List of Interview Participants

Bär, R. (personal interview, February 10, 2011). Chairman of the Board of Directors of Julius Bär AG, Zürich

Cameron, L. (personal interview, January 27, 2011). Company Secretary of UBS AG, Zürich.

Dami, M. (personal interview, January 13, 2011). Board Secretary of *Banque Privée* Edmond de *Rothschild* Group, Geneva.

Gassner, H-W. (personal interview, February 3, 2011). Chairman of the Board of Directors of Liechtensteinische Landesbank AG, Vaduz.

Hatz, H. (personal interview, December 16, 2010). Chairman of the Board of Directors of *Graubündner* Kantonalbank, Chur.

Lauber, M. (telephone interview, December 1, 2010). Chairman of the Board of Directors of Liechtenstein Financial Market Authority.

Linder, J. (personal interview, January 7, 2011). Deputy Head Corporate Disclosure of SIX Exchange Regulation, Zürich.

Michel, B. (personal interview, February 3, 2011). Board Secretary of Valiant Holding AG, Bern.

Muff, F. (personal interview, January 13, 2011). Head of Compliance of Neue Aargauer Bank, Aarau.

Ösch, F. (personal interview, December 3, 2010). Chairman of the Board of Directors of St. Galler Kantonalbank, St. Gallen.

Ponti, R. (personal interview, February 10, 2011). Board Secretary of Basellandschaftliche Kantonalbank, Liestal.

Schärli, A. (personal interview, February 3, 2011). Chief Financial Officer. Berner Kantonalbank AG, Bern.

Steiner, C. (personal interview, January 13, 2011). Board Secretary of Neue Aargauer Bank, Aarau.

Varges, G.S. (telephone interview, May 6, 2011). Head of Corporate Governance of Swiss Financial Market Supervisory Authority.

Appendix 6: List of Internal Guidelines on Corporate Governance

1. Business and Organizational Regulations of the Bank Sarasin & Cie AG (2008)
2. Business Regulations of the Bank Council of the Graubündner Kantonalbank (2009)
3. Business Regulations of the Berner Kantonalbank (n.d.)
4. Corporate Governance Guidelines of Credit Suisse AG (2006)
5. Organizational and Business Regulations of the Basellandschaftliche Kantonalbank (2008)
6. Organizational and Business Regulations of *the* Neuer Aargauer *Bank* (2010)
7. Organizational and Business Regulations of the St.Galler Kantonalbank (2010)
8. Organizational and Business Regulations of the Valiant Holding AG (2003)
9. Organizational and Management Regulations of Julius Bär (2010)
10. Organizational Regulations of the Vontobel Holding AG (2010)
11. Organizational Regulations of UBS AG (2010)
12. Rules of Procedure of the Liechtensteinische Landesbank AG (n.d.)

Appendix 7: Request to Participate in the Study and Questionnaire to Non-Executive Directors

Dear

My name is Anna Nikulina. I am a doctoral student at the University of St. Gallen (HSG). Together with Prof. Roland Müller and Prof. Martin Hilb, I am carrying out an empirical study of the Internal Guidelines on Corporate Governance of Listed Banks.

Internal Guidelines on Corporate Governance define tasks and responsibilities of the board of directors, and its committees. They ensure that the board establish appropriate corporate governance practices for its own work and have in place the means to ensure such practices are followed and periodically reviewed.

In my thesis, I seek to investigate how wide-spread the use of the Internal Guidelines on Corporate Governance is among listed banks. Furthermore, the study aims to examine issues surrounding Internal Guidelines such as the development, implementation and administration process, as well identify ways in which the board can improve the effectiveness of existing Internal Guidelines. At the end of the study, the researcher aims to present a set of recommendations concerning Internal Guidelines on Corporate Governance for listed banks in Switzerland.

I would like to request your help and ask you to complete the enclosed questionnaire. If your board does not have or is in the process of development of the Internal Guidelines on Corporate Governance, your participation in the study is just as important. Please send the questionnaires back by post 20 December 2010.

Your contribution is very important and I hope you will find the inclination and the time to take part the study. Responses to the questionnaire will be kept in confidence and are anonymous. If you would like to receive the results of the empirical study, please send your request separately to anna.nikulina@unisg.ch.

Thank you and best regards,

Anna Nikulina

Please send the completed questionnaire in the enveloped enclosed to:

Questionnaire to Non-Executive Directors

Disclaimer: Responses to the questionnaire will be kept in confidence and anonymous. The information sought is part of the empirical study for the doctoral dissertation titled 'Internal Guidelines on Corporate Governance of Listed Banks' at the University of St.Gallen (HSG). If you wish to receive the results of the study, please email your request separately to anna.nikulina@student.unisg.ch.

1. **Does your board have the Internal Guidelines on Corporate Governance? (If no, please go to Question 9).**

   Yes ☐ No ☐

2. **In your opinion, what benefits do the Internal Guidelines on Corporate Governance offer to the board?** (tick all that apply)
   Show compliance with laws/regulations ☐

   Part of good risk management ☐

   Enhance corporate reputation ☐

   Improve transparency and disclosure ☐

   Ensure continuity of board practices ☐

   Improve corporate governance standards ☐

   Improve management and control ☐

   Ensure corporate governance practices are in line regulatory/industry requirements ☐

   Improve relationship with shareholders ☐

   Other (please specify): ☐

3. **Please state to which extent do you agree or disagree with each of the following statements concerning Internal Guidelines on Corporate Governance.** (1=strongly agree and 5=strongly disagree)

	1	2	3	4	5
They clarify the responsibilities of the board and the directors	☐	☐	☐	☐	☐
They make clear what is expected from the directors	☐	☐	☐	☐	☐
They establish clear structure and procedures for the board	☐	☐	☐	☐	☐
They clarify the rights of the directors	☐	☐	☐	☐	☐
They shape behaviour of directors	☐	☐	☐	☐	☐

4. **How the Internal Guidelines on Corporate Governance were first introduced to you? (only one response).**

Sent along with my contract ☐

At the induction session ☐

Before the first board meeting ☐

Not formally introduced ☐
Other (please specify): ☐

5. **Are you aware of any sanctions for non-compliance with the Internal Guidelines on Corporate Governance?**

Yes ☐ No ☐

6. **Please state to which extent you agree the following improve the effectiveness of the Internal Guidelines on Corporate Governance.** (1=strongly agree and 5=strongly disagree)

	1	**2**	**3**	**4**	**5**
Involvement of the directors in the development process	☐	☐	☐	☐	☐
Regular reinforcement of the content through training and education	☐	☐	☐	☐	☐
Training (education) session at the time of the implementation/amendments	☐	☐	☐	☐	☐
An opportunity to ask questions during development	☐	☐	☐	☐	☐
Requirement that directors sign a statement acknowledging the knowledge of and familiarity with the content	☐	☐	☐	☐	☐
Making Internal Guidelines available before each meeting	☐	☐	☐	☐	☐
Regular communication via corporate communication channels	☐	☐	☐	☐	☐
Annual review	☐	☐	☐	☐	☐
Monitoring and enforcement of the guidelines	☐	☐	☐	☐	☐
Disclosure of the Internal Guidelines on the bank's website	☐	☐	☐	☐	☐

7. **Are you tested on the content of the Internal Guidelines on Corporate Governance?**

Yes ☐ No ☐

8. **Do you have terms of references for the committees?**

Yes ☐ No ☐

9. Which committees does your board have? (tick all that apply)

Audit Committee ☐

Nomination Committee ☐

Compensation Committee ☐

Risk Committee ☐

Board Committee ☐

Strategy Committee ☐

Combined Nomination & Compensation ☐

Committee Audit & Risk Committee ☐

Other (please specify): ☐

10. Are there any other comments you would like to make regarding Internal Guidelines on Corporate Governance.

(Please use the space below to write any additional comments you may have. If your board does not have Internal Guidelines on Corporate Governance, please state if there are specific reasons why your bank does not have Internal Guidelines on Corporate Governance.)

Thank you for taking part in the survey!

Please send the completed questionnaire to Anna Nikulina.

Appendix 8: Requests for Interview and Interview Schedule - Chairman and Board Secretary

Dear

As per our conversation, as part of my doctoral thesis at the University of St. Gallen (HSG), under the supervision of Prof. Roland Müller and Prof. Martin Hilb, I am carrying out an empirical study of Internal Guidelines on Corporate Governance of listed banks in Switzerland.

Internal Guidelines on Corporate Governance define tasks and responsibilities of the board of directors, and its committees. They ensure that the board establishes appropriate corporate governance practices for its own work and has in place the means to ensure such practices are followed and periodically reviewed.

In my thesis, I seek to investigate how wide-spread the use of the Internal Guidelines on Corporate Governance is among listed banks. Furthermore, the study aims to examine issues surrounding Internal Guidelines such as the development, implementation and administration process, as well identify ways in which the board can improve the effectiveness of existing Internal Guidelines. At the end of the study, the researcher aims to present a set of recommendations concerning Internal Guidelines on Corporate Governance for listed banks in Switzerland.

I would like to request your help in this project and ask you to take part in a face-to-face interview.

Your contribution is very important and I hope you will find the inclination and the time to take part in an interview. The interview is expected to last for up to one hour. All responses will be kept in confidence and are anonymous. The information will only be used for this study. If you would like to receive the results of the empirical study, I would be happy to provide you with a copy. Please send your requests separately to anna.nikulina@unisg.ch.

If your bank does not have the Internal Guidelines on Corporate Governance, it is equally important that you participate in the study.

An extract from the empirical study of the Internal Guidelines on Corporate Governance of listed banks and interview schedule are attached along with this letter.

I look forward to hearing from you. Many thanks and best regards,

Anna Nikulina, Minervastrasse 128, 8032 Zürich.

Interview Schedule for Chairmen and Board Secretaries

1. What are the biggest corporate governance challenges for listed banks in Switzerland?

2. What is the role of the board of directors in corporate governance of a listed bank in Switzerland?

3. Are you familiar with the "Internal Guidelines on Corporate Governance"? What do you understand by the term?

4. Does your board have Internal Guidelines on Corporate Governance? How long have you had one? If not, have you considered developing one?

5. Why did your board develop Internal Guidelines on Corporate Governance?

6. Did the board have any specific objectives in mind when it developing Internal Guidelines on Corporate Governance?

7. What areas should Internal Guidelines on Corporate Governance cover?

8. How do you ensure that the Internal Guidelines are still relevant? Is there a formal review process? If so, can you explain the process?

9. Who is involved in the review and development? Is there a person/committee that has the responsibility for the Internal Guidelines?

10. Are other members of the board involved in the development/amendment? How do you inform directors about Internal Guidelines on Corporate Governance? (or amendments to them).

11. How/when are the Internal Guidelines distributed to new board members?

12. What is in place to ensure that board of directors are familiar with the Internal Guidelines on Corporate Governance? (training, education, communication)

13. How do you ensure that members of the board adhere with corporate governance principles and rules of procedure contained in the Internal Guidelines? (Is "compliance" monitored, if so how? Are there any sanctions?)

14. Do you disclose Internal Guidelines on Corporate Governance (is there full public disclosure or private disclosure)? Please comment.

15. Does your board have other corporate governance documents?

16. Do you have any other remarks concerning Internal Guidelines on Corporate Governance coming out of your function?

Request for Interview and Interview – Financial Market Supervisory Authority

Dear

As per our conversation, as part of my doctoral thesis at the University of St. Gallen (HSG), under the supervision of Prof. Roland Müller and Prof. Martin Hilb, I am carrying out an empirical study of Internal Guidelines on Corporate Governance of listed banks in Switzerland.

Internal Guidelines on Corporate Governance define tasks and responsibilities of the board of directors, and its committees. They ensure that the board establishes appropriate corporate governance practices for its own work and has in place the means to ensure such practices are followed and periodically reviewed.

In my thesis, I seek to investigate how wide-spread the use of the Internal Guidelines on Corporate Governance is among listed banks. Furthermore, the study aims to examine issues surrounding Internal Guidelines such as the development, implementation and administration process, as well identify ways in which the board can improve the effectiveness of existing Internal Guidelines. At the end of the study, the researcher aims to present a set of recommendations concerning Internal Guidelines on Corporate Governance for listed banks in Switzerland.

I would like to request your help in this project and ask you to take part in a face-to-face interview. Because the study focuses on listed banks in Switzerland, it is important that I seek input from the Financial Market Supervisory Authority

Your contribution is very important and I hope you will find the inclination and the time to take part in an interview. The interview is expected to last for up to one hour. All responses will be kept in confidence and are anonymous. The information will only be used for this study. If you would like to receive the results of the empirical study, I would be happy to provide you with a copy. Please send your requests separately to anna.nikulina@unisg.ch.

An extract from the empirical study of the Internal Guidelines on Corporate Governance of listed banks and interview schedule are attached along with this letter.

I look forward to hearing from you. Many thanks and best regards,

Anna Nikulina

Interview Schedule for the Financial Market Supervisory Authority

1. International recommendations i.e. Basel, NYSE Corporate Governance Rules and others, require that board of directors have written corporate governance principles. Should board of directors of listed banks in Switzerland have such Internal Guidelines on Corporate Governance? If so, why?

2. What should these Internal Guidelines on Corporate Governance contain? Are there any particular issues that banks really must address in the Internal Guidelines?

[if needed, guide through content areas and seek explanations]

a. BoD responsibilities
b. Chairman responsibilities
c. Board composition
d. Independence
e. Director Compensation
f. Succession planning
g. Director education
h. Self-assessment and evaluation
i. Committee structure
j. Other areas?

3. Should content be principle-based or rule-based?

4. Who should lead the initiation/development process?

5. Should there be training and education on the Internal Guidelines?

6. Should the board monitor adherence with the corporate governance principles in the Internal Guidelines. If so, how?

7. Is there a need for annual review?

8. Should listed banks publicly disclose Internal Guidelines on Corporate Governance? [Should this be voluntary or should this be required?]

9. Are there any benefits of public disclosure? Or should disclosure only be private?

10. Is there any value for the board in having a model document (template) of the Internal Guidelines on Corporate Governance available?

11. Do you have any other remarks concerning Internal Guidelines on Corporate Governance coming out of your function?

Request for Interview and Interview Schedule – SIX Swiss Exchange

Dear

As per our conversation, as part of my doctoral thesis at the University of St. Gallen (HSG), under the supervision of Prof. Roland Müller and Prof. Martin Hilb, I am carrying out an empirical study of Internal Guidelines on Corporate Governance of listed banks in Switzerland.

Internal Guidelines on Corporate Governance define tasks and responsibilities of the board of directors, and its committees. They ensure that the board establishes appropriate corporate governance practices for its own work and has in place the means to ensure such practices are followed and periodically reviewed.

In my thesis, I seek to investigate how wide-spread the use of the Internal Guidelines on Corporate Governance is among listed banks. Furthermore, the study aims to examine issues surrounding Internal Guidelines such as the development, implementation and administration process, as well identify ways in which the board can improve the effectiveness of existing Internal Guidelines. At the end of the study, the researcher aims to present a set of recommendations concerning Internal Guidelines on Corporate Governance for listed banks in Switzerland.

I would like to request your help in this project and ask you to take part in a face-to-face interview. Because the study focuses on listed banks, it is important that I seek input from the SIX Swiss Exchange.

Your contribution is very important and I hope you will find the inclination and the time to take part in an interview. The interview is expected to last for up to one hour. All responses will be kept in confidence and are anonymous. The information will only be used for this study. If you would like to receive the results of the empirical study, I would be happy to provide you with a copy. Please send your requests separately to anna.nikulina@unisg.ch or nikoulina@gmail.com.

An extract from the empirical study of the Internal Guidelines on Corporate Governance of listed banks and interview schedule are attached along with this letter.

I look forward to hearing from you. Many thanks and best regards,

Anna Nikulina

Interview Schedule for the SIX Swiss Exchange

1. What are the biggest corporate governance challenges for listed banks in Switzerland?

2. What is the role of the board of directors in corporate governance of a listed bank in Switzerland?

3. Are you familiar with the “Internal Guidelines on Corporate Governance”? What do you understand by the term?

4. International best practice recommends that “the board should have in place the means to ensure that corporate governance practices are followed and periodically reviewed for improvement”. Similar recommendations are made by the NYSE and KING III report, you do you think it listed companies should have Internal Guidelines on Corporate Governance. What are the benefits?

5. Which areas do you think Internal Guidelines on Corporate Governance need to cover?

6. Should listed companies publicly disclose Internal Guidelines on Corporate Governance Guidelines? If so, why?

7. Do you have any other remarks concerning Internal Guidelines on Corporate Governance coming out of your function?

Appendix 9: Descriptive Statistics

		N	*Min*	*Max*	*Mean*	*SD*	*Mdn*	*Mode*
Q0	Type of a Bank	32	1	4	2.50	.92	3	3
Q1	Internal Guidelines on Corporate Governance	32	0	1	.97	.18	1	1
Q2a	Show compliance with regulations/laws	31	0	1	.87	.34	1	1
Q2b	Part of risk management	31	0	1	.74	.45	1	1
Q2c	Enhance corporate reputation	31	0	1	.52	.51	1	1
Q2d	Improve transparency and disclosure	31	0	1	.68	.48	1	1
Q2e	Ensure continuity of board practices	31	0	1	.68	.48	1	1
Q2f	Improve corporate governance standards	31	0	1	.84	.37	1	1
Q2g	Improve management and control	31	0	1	.61	.50	1	1
Q2h	Ensure CG practices are in line industry/regulatory requirements	31	0	1	.58	.50	1	1
Q2i	Improve relationship with shareholders	31	0	1	.39	.50	0	0
Q2j	Other (please specify)	31	0	1	.03	.18	0	0
Q3a	Clarify responsibilities of board members	31	1	4	1.29	.69	1	1
Q3b	Make clear what is expected from board members	31	1	5	2.13	1.23	1	1
Q3c	Establish clear structure and procedures for the board	31	1	3	1.61	.76	1	1
Q3d	Clarify the rights of board members	31	1	5	2.32	1.19	1	1
Q3e	Shape behavior of board members	31	1	5	2.65	1.25	2	1
Q4	Distribution of Internal Guidelines on Corporate Governance	31	1	5	2.39	1.20	2	2
Q5	Sanctions/Penalties for Non Compliance	31	0	1	.32	.48	0	0
Q6a	Involvement of NEDs in the development	31	1	3	1.52	.77	1	1

		N	*Min*	*Max*	*Mean*	*SD*	*Mdn*	*Mode*
Q6b	Regular training and education about the Internal Guidelines	31	1	3	1.61	.80	1	1
Q6c	Training sessions at the time of the implementation	31	1	3	1.65	.76	1	1
Q6d	Ability to discuss and ask questions during development	31	1	3	1.48	.77	1	1
Q6e	A sign-off procedure	31	1	3	2.45	.77	3	3
Q6f	Making Internal Guidelines available for meetings	31	1	3	2.45	.77	3	3
Q6g	Regular communication via corporate communication channels	31	1	3	2.06	.89	2	3
Q6h	Annual review	31	1	3	1.29	.59	1	1
Q6i	Monitoring and enforcement	31	1	3	1.26	.51	1	1
Q6j	Disclosure of the bank's website	31	1	3	1.87	.96	1	1
Q7	Testing on the content	31	0	1	.06	.25	0	0
Q8	Terms of references for committees	31	0	1	.97	.18	1	1
Q9a	Audit	32	0	1	.75	.44	1	1
Q9b	Nomination	32	0	1	.34	.48	0	0
Q9c	Compensation	32	0	1	.44	.50	0	0
Q9d	Combined Nomination & Compensa-tion	32	0	1	.47	.51	0	0
Q9e	Combined Audit & Risk	32	0	1	.28	.46	0	0
Q9f	Risk	32	0	1	.50	.51	0.5	0
Q9g	Board	32	0	1	.31	.47	0	0
Q9h	Strategy	32	0	1	.25	.44	0	0
Q9i	Other	32	0	1	.31	.47	0	0
Q10	Number of Committees	32	2	6	3.59	1.27	3	3

Appendix 10: Tests of Normality

	Kolmogorov-Smirnov			**Shapiro-Wilk**		
	Statistic	*df*	*Sig.*	*Statistic*	*df*	*Sig.*
Type of a Bank	.248	31	.000	.876	31	.002
Internal Guidelines on Corporate Governance	.518	31	.000	.397	31	.000
Show compliance with regulations/laws	.461	31	.000	.547	31	.000
Part of risk management	.346	31	.000	.638	31	.000
Enhance corporate reputation	.429	31	.000	.591	31	.000
Improve transparency and disclosure	.429	31	.000	.591	31	.000
Ensure continuity of board practices	.506	31	.000	.445	31	.000
Improve corporate governance standards	.396	31	.000	.619	31	.000
Improve management and control	.379	31	.000	.629	31	.000
Ensure that CG practices are in line industry/regulatory requirements	.396	31	.000	.619	31	.000
Improve relationship with shareholders	.469	31	.000	.490	31	.000
Other (please specify)	.251	31	.000	.824	31	.000
Clarify responsibilities of board members	.338	31	.000	.736	31	.000
Make clear what is expected from board members	.284	31	.000	.854	31	.001
Establish clear structure and procedures for the board	.195	31	.004	.887	31	.003
Clarify the rights of board members	.304	31	.000	.848	31	.000
Shape behavior of board members	.429	31	.000	.591	31	.000
Distribution of Internal Guidelines on CG	.537	31	.000	.270	31	.000
Sanctions/Penalties for Non Compliance	.539	31	.000	.176	31	.000
Involvement of NEDs in the development	.477	31	.000	.519	31	.000
Regular training and education about the Internal Guidelines	.412	31	.000	.607	31	.000
Training sessions at the time of the implementation	.362	31	.000	.635	31	.000
An opportunity to discuss and ask questions during development	.362	31	.000	.635	31	.000

A sign-off procedure	.346	31	.000	.638	31	.000
Making Internal Guidelines available for meetings	.429	31	.000	.591	31	.000
Regular communication about the Internal Guidelines and their content	.461	31	.000	.547	31	.000
Annual review of the Internal Guidelines	.445	31	.000	.571	31	.000
Monitoring and enforcement of the Internal Guidelines	.394	31	.000	.667	31	.000
Disclosure of the bank's website	.358	31	.000	.711	31	.000
Testing on the content	.320	31	.000	.753	31	.000
Terms of references for committees	.413	31	.000	.639	31	.000
Audit	.375	31	.000	.693	31	.000
Nomination	.375	31	.000	.693	31	.000
Compensation	.272	31	.000	.758	31	.000
Combined Nomination & Compensation	.463	31	.000	.548	31	.000
Combined Audit & Risk	.466	31	.000	.550	31	.000
Risk	.335	31	.000	.690	31	.000

Appendix 11: Frequency Distributions

Q0: Type/Size					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Large (International)	5	15.6	15.6	15.6
	Small and Medium	10	31.3	31.3	46.9
	Cantonal	13	40.6	40.6	87.5
	Foreign	4	12.5	12.5	100.0
	Total	32	100.0	100.0	

Q1: Does your board have IGCG?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	1	3.1	3.1	3.1
	Yes	31	96.9	96.9	100.0
	Total	32	100.0	100.0	

Q2:

Show compliance with regulations/laws					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	4	12.50%	12.90%	67.7
	Yes	27	84.38%	87.10%	100.0
	Total	31	96.88%	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Improve transparency and disclosure					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	10	31.25%	31.25%	67.7
	Yes	21	65.63%	67.74%	100.0
	Total	31	96.88%	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Enhance corporate reputation					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	15	46.88%	48.39%	67.7
	Yes	16	50.00%	51.61%	100.0
	Total	31	100.00%	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Improve relationship with shareholders					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	19	59.38%	61.29%	67.7
	Yes	12	37.50%	38.71%	100.0
	Total	31	10.00%	10.00%	
Missing	System	1	3.1		
Total		32	100.0		

Improve Corporate Governance standards					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	5	15.6	16.1	67.7
	Yes	26	81.2	83.8	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Ensure that CG practices are in line with industry/regulatory requirements					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	13	40.6	41.9	67.7
	Yes	18	56.3	58.1	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Part of risk management					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	8	25.0	25.8	67.7
	Yes	23	71.9	74.2	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Ensure continuity of board practices					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	10	31.3	32.3	67.7
	Yes	21	65.6	67.7	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Improve management and control by the board					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	12	37.5	38.7	67.7
	Yes	19	59.4	61.3	100.0
	Total	31	100.0	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Q3:

Clarify the responsibilities of board members					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	29	91.5	93.5	93.5
	Neither Agree/Disagree	1	3.2	3.2	96.7
	Disagree	1	3.2	3.2	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Establish clear structure and procedures for the board					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	26	81.3	83.9	83.9
	Neither Agree/Disagree	5	15.6	16.1	100.0
	Disagree	0	0.0	0.0	100.0
	Total	31	100.0	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Make clear what is expected from board members					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	22	68.8	71.0	71.0
	Neither Agree/Disagree	4	12.5	12.9	83.9
	Disagree	5	15.6	16.1	100.0
	Total	31	100.0	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Clarify the rights of board members					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	21	65.7	67.7	67.7
	Neither Agree/Disagree	4	12.5	12.9	80.6
	Disagree	6	18.8	19.4	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Shape behavior of board members					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	15	46.9	48.4	48.4
	Neither Agree/Disagree	10	31.3	32.3	80.7
	Disagree	6	18.8	19.4	100.00
	Total	31	100.0	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Q4: How were the Internal Guidelines on Corporate Governance first distributed to you?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Sent along with the contract	7	22.6%	22.6	22.6
	Distributed during the in-duction	14	45.2%	45.2	67.7
	Made available for the first time before the first meeting	3	9.7%	9.7	77.4
	Not formally introduced	5	16.1%	16.1	93.5
	Other	2	6.5%	6.5	100.0
	Total	31	100.0%	100.0	
Missing	System	1	31.0		
Total		32	100.0		

Q5: Sanctions/Penalties for Non Compliance					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	21	65.6	67.7	67.7
	Yes	10	31.3	32.3	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Q6:

Involvement of NEDs in development					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	20	62.5	64.5	64.5
	Neither Agree or Disagree	6	18.8	19.4	83.9
	Disagree	5	15.6	16.1	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	32		

Ability to discuss and ask questions					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	21	65.6	67.7	67.7
	Neither Agree or Disagree	5	15.6	16.1	83.9
	Disagree	5	15.6	16.1	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	32		

Regular training and education					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	18	56.3	58.1	58.1
	Neither Agree or Disagree	7	21.9	22.6	80.6
	Disagree	6	18.8	19.4	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	32		

Training sessions at the time of the implementation					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	16	50.0	51.6	51.6
	Neither Agree or Disagree	10	31.3	32.3	83.9
	Disagree	5	15.6	16.1	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	32		

Sign-off procedure					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	5	15.6	16.1	16.1
	Neither Agree or Disagree	7	21.9	22.6	38.7
	Disagree	19	59.4	61.3	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	32		

Making Internal Guidelines available for meetings					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	5	15.6	16.1	16.1
	Neither Agree or Disagree	7	21.9	22.6	38.7
	Disagree	19	59.4	61.3	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	32		

Regular communication about the Internal Guidelines					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	11	34.4	35.5	35.5
	Neither Agree or Disagree	7	21.9	22.6	58.1
	Disagree	13	40.6	41.9	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	32		

Monitoring and enforcement of the Internal Guidelines					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	24	75.0	77.4	77.4
	Neither Agree or Disagree	6	18.8	19.4	96.7
	Disagree	1	3.1	3.2	100.00
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	32		

Disclosure on the bank's website					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	16	50.0	51.6	51.6
	Neither Agree or Disagree	3	9.4	9.7	61.3
	Disagree	12	37.5	38.7	100.00
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	32		

Annual Review					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Agree	24	75.0	77.4	77.4
	Neither Agree or Disagree	5	15.6	16.1	93.5
	Disagree	2	62.5	6.5	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Q7: Testing on the content of the Internal Guidelines					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	29	90.6	93.5	93.5
	Yes	2	6.3	6.5	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Q8: Terms of References for the Committees					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	1	3.1	3.2	3.2
	Yes	30	93.8	96.8	100.0
	Total	31	96.9	100.0	
Missing	System	1	3.1		
Total		32	100.0		

Q9: Committees

Audit					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	8	25.0	25.0	3.2
	Yes	24	75.0	75.0	100.0
	Total	32	100.0	100.0	
Missing	System	0	.0		
Total		32	100.0		

Risk					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	16	50.0	50.0	3.2
	Yes	16	50.0	50.0	100.0
	Total	32	100.0	100.0	
Missing	System	0	.0		
Total		32	100.0		

Nomination & Compensation					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	17	53.1	53.1	3.2
	Yes	15	46.9	46.9	100.0
	Total	32	100.0	100.0	
Missing	System	0	.0		
Total		32	100.0		

Compensation					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	18	56.3	56.3	3.2
	Yes	14	43.8	43.8	100.0
	Total	32	100.0	100.0	
Missing	System	0	.0		
Total		32	100.0		

Nomination					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	21	65.6	65.6	3.2
	Yes	11	34.4	34.4	100.0
	Total	32	100.0	100.0	
Missing	System	0	.0		
Total		32	100.0		

Board					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	22	68.8	68.8	3.2
	Yes	10	31.3	31.3	100.0
	Total	32	100.0	100.0	
Missing	System	0	.0		
Total		32	100.0		

Audit & Risk					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	23	71.9	71.9	3.2
	Yes	9	28.1	28.1	100.0
	Total	32	100.0	100.0	
Missing	System	0	.0		
Total		32	100.0		

Strategy					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	24	75.0	75.0	3.2
	Yes	8	25.0	25.0	100.0
	Total	32	100.0	100.0	
Missing	System	0	.0		
Total		32	100.0		

Other					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	22	68.8	68.8	3.2
	Yes	10	31.3	31.3	100.0
	Total	32	100.0	100.0	
Missing	System	0	.0		
Total		32	100.0		

Q10: Number of Committees					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	2	7	21.9	21.9	21.9
	3	10	31.3	31.3	53.1
	4	7	21.9	21.9	75.0
	5	5	15.6	15.6	90.6
	6	3	9.4	9.4	100.0
	Total	32	100.0	100.0	

Curriculum Vitae

Anna Nikulina

Education

Aug 2007 - Feb 2012 — **University St. Gallen (HSG)**, Switzerland
Candidate for Doctor of Business Administration (Dr. oec.)

Jan. 1999 - May 2001 — **University of Houston** (USA)
MBA in International Business

Aug. 1993 - Dec. 1998 — **University of Houston** (USA),
Bachelor in Business Administration in Management

Professional Experience

From Aug. 2010 — **Kalaidos University of Applied Sciences**
Lecturer and Dissertation Supervisor

Jan. 2004 - Aug. 2011 — **Regent's College** (London)
Senior Lecturer and Pathway Leader

From Jan. 2010 — **Zurich University of Applied Sciences**
Lecturer and Dissertation Supervisor

Oct. 2003 - Apr. 2011 — **Foundation for International Education** (London)
Senior Faculty for International Business and Economics

Sep. 2003 - Dec. 2008 — **European School of Economics** (London)
Lecturer in Marketing and Business Management

Jan. 2006 - Jun. 2006 — **Ealing & Hammersmith West London College** (London)
Lecturer in Marketing

Jan. 2003 - Jun. 2003 — **City University of New York, ZBS** (New York)
Teaching Assistant

Nov. 2001 - Jun. 2002 — **Schiller International University** (Engelberg)
Lecturer in Marketing and ITC

Dec. 1998 - Jun. 2001 — **Grubb & Ellis** (Houston)
Marketing Research

May 1996 - Sep. 1996 — **Hewlett Packard** (Moscow)
Marketing Assistant