

# **Annual Report 2013**

## **Foreword**

Since July 1, 2013, I have been privileged to lead a competent and dedicated team that offers its services with pride. Thanks to the confidence of the foundation board and the support from staff members - including the retirees during 2013 - the transition from the former Ombudsman could be managed successfully. On this occasion, I express my sincere thanks to all persons involved.

The financial crisis, the international pressure from tax issues, the regulatory and legal developments and the affairs in which some companies were entangled in: All those are factors that directly impact the banking industry and have resulted in turbulent times. Strategies are changing and business cases are in constant upheaval. Products and services offered have become more complex and the customers' expectations are rising.

In this insecure environment, the benefit of a professional information - and mediation - organisation is evident. On a daily basis, the Ombudsman is faced with the challenge to provide adequate responses to insecure customers, which in most cases cannot just consist of supporting the customer's view. Rather, the goal must be to provide acceptable, founded and insightful explanations and possible solutions based on independent and professional analysis of claims.

I have full confidence in the capacities of the current crew and that we will be able to assume our future role in a comprehensive way, to the full satisfaction of all stakeholders.

Marco Franchetti  
Swiss Banking Ombudsman

## **Executive Summary**

As stated in Art. 7.1 of the (new) rules of procedure, the Ombudsman reports on his activities on an annual basis. Next to the presentation of detailed statistics in the two areas of mediation and search for dormant accounts, the annual report 2013, complementary to the traditional case examples, addresses three core issues: retrocessions, foreign customers (including customers with US-status living in Switzerland) and savings accounts for adolescents. In addition, the year under review was marked by some additional events. The “Foundation Swiss Banking Ombudsman” celebrated its 20 years of existence and, at the same time, put into effect the new rules that were revised in the year 2012. On the personnel side, next to the new Ombudsman, two new members of the foundation board and two new staff members of the Ombudsman assumed their functions.

**Rules:** The rules were subject to revision on three levels. First, there were some changes in the Foundation Charter resulting in more independence of the Ombudsman and the organisation. The foundation board also issued rules of procedure which specifically define the responsibilities, tasks and competencies of the Ombudsman. Accordingly, the possibility now exists to qualify certain cases as serial cases in order to allow efficient treatment. Finally, a code of conduct governing the treatment of conflicts of interest, as well as rules of conduct for the Ombudsman and his staff members, was introduced. The rules were put into effect as of July 1, 2013 and are published on the website ([www.bankingombudsman.ch](http://www.bankingombudsman.ch)).

**Ombudsman procedure:** Like in previous years, we like to devote a few words to the process itself. It should be noted that the Ombudsman usually only becomes active after the customer has unsuccessfully tried to resolve the problem directly with his bank. Only after this, and with knowledge of the position of both parties, can he address the case. Likewise, the limits of his competencies are demonstrated.

**Retrocessions:** After publication of the Federal Supreme Court’s October 2012 decision, a total of 350 verbal and written submissions were recorded in the year under review. As a result of partially controversial media reports, which often reflected personal views and opinions of the authors, many customers were unclear about the core points of the decision (statute of limitations, discretionary management vs. investment counselling, right of disclosure). The information sheet published by the Ombudsman already in 2012 listed the conclusions to be drawn from the court decision and was meant to serve as guideline for customers. At the end of the year under review, a large part of the mediation cases could be terminated with a successful result for the customer.

**Foreign status:** Again, the Ombudsman was contacted by numerous banking customers living abroad that were affected in various ways by measures adopted by their banks (such as unilateral cancelling of the relationship and restrictions limiting availability of funds). By pointing to the principle of freedom of contract and because of his inability to address issues of general business and tariff policy of banks, the Ombudsman had to mostly restrict himself to general information. However, based on the principle of “fair banking,” he intervened - predominantly with success – in those cases where the customer was faced with undue short deadlines or where the bank, to the disadvantage of the customer, did not want to adhere to contractually agreed maturities for specific products.

**Savings accounts for adolescents:** The diverging conditions for accounts and savings products for adolescents offered by banks were leading to some customer complaints. Questions and complaints concerning the right of information and disposal of funds were central along with disputes as to if and when funds must be considered adolescent assets. The Ombudsman is of the opinion that the two issues must be distinguished. According to him, the right for disposal and information belongs to the person who owns the rights as per the contractual agreement at the specific time. He has also taken the position that the bank does not have the competence to decide bindingly if funds are to be regarded as adolescent assets or not.

**Selected cases:** This part of the report mirrors a cross section of the varied customer complaints that were submitted to the Ombudsman. Unlike in previous years, the cases are presented in a new form: As introduction, in each case an accentuated short summary, including the final result, followed by the detailed description of the customer's and the bank's arguments as well as the Ombudsman's appraisal.

**Facts and figures:** In the years 2008/2009, the statistics were strongly influenced by the extensively narrated serial cases and reached an all-time peak. Subsequently, after stagnating on a somewhat lower level in the years 2010 to 2012, a considerable augmentation in the number of cases submitted was recorded in the year under review. In fact, there was an overall increase of 18% to 2178 cases. There was recorded strong growth in both the verbal and written cases, which was predominantly due to around 350 cases dealing with retrocessions (see comments that follow).

**Dormant accounts:** The central office for dormant accounts (in place since 1996) once again recorded numerous search demands (specifically from heirs and family members of persons who have passed away). The number of questionnaires requested (806) was on the level of the previous year. A total of 27 beneficiaries received access to assets of about 5 million Swiss Francs and to 4 bank safes. Since the implementation of the rules issued by the Swiss Banker's Association in the year 2001, a total of 330 dormant relationships could be identified and assets of some 48 million Swiss Francs as well as 36 bank safes were made accessible to legitimated persons. This exhibits support for the need for this search function.

**Personnel and organisation:** At the end of 2012, Marco Franchetti was elected as successor of Hanspeter Häni, who retired after 20 years of service. He assumed the position of Banking Ombudsman as of July 1 in the year under review. In addition, there were four additional planned retirements pending: two deputies and two employees with staff functions. Given the total headcount of 8 persons (equal to a full time equivalent of 7.5), this unusual turnover in long term employees was a big challenge. Capable successors could be hired for deputies as well as for the staff functions. Due to an extraordinary effort of all persons involved, this personnel turnover did not negatively impact the work processes.

**Foundation board:** Among the members of the foundation board, there were two changes. Each of Mrs. Monika Weber and Prof. Dr. Mario Giovanoli retired at the end of 2012, and Mrs. Franziska Troesch-Schnyder and Prof. Dr. Christian Bovet were elected as new members of the foundation board.