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Towards Individual Accountability in Swiss Banking: A Behavioral Perspective on the Senior Managers Regime

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Gentiana Imeri*

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A. Introduction

"Changing banking for good"—this was the title of the landmark report published in 2013 by the UK Parliamentary Commission on Banking Standards in the aftermath of the Global Financial Crisis and the LIBOR scandal.[1] The

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1 House of Lords, House of Commons, Parliamentary Commission on Banking Standards, Changing Banking for Good, Report, Volume II, HL Paper 27-II, HC 175-II (2013); see also Brener, 275.

report fundamentally rethought individual accountability in banking and laid the foundation for the UK's Senior Managers Regime. The United Kingdom became the first jurisdiction to introduce a dedicated individual accountability regime for senior bank managers, followed by jurisdictions including Australia, Singapore and, most recently, Ireland.

In Switzerland, the debate on individual accountability gained significant momentum following the collapse of Credit Suisse in March 2023, which left UBS as the country's sole—and, following the takeover, even larger—global systemically important bank. In April 2024, the Federal Council announced a comprehensive reform of the Swiss too-big-to-fail framework and proposed the introduction of a Senior Managers Regime inspired by the UK model. Since then, Swiss legal scholars and practitioners have engaged in an ongoing debate on the appropriate design of an individual accountability regime for Switzerland. Although there is broad agreement that individual accountability in Swiss financial institutions should be strengthened, views diverge on the appropriate regulatory architecture and, in particular, on the extent to which the UK Senior Managers Regime should serve as a model for Swiss reform. On 12 August 2026, the Federal Council further concretized its proposal by presenting an individual accountability regime that builds on the existing Swiss fit-and-proper and supervisory framework. The proposal is currently in the consultation process.

This article contributes to the scholarly and policy discussion by assessing the Federal Council's proposal through a comparative and behavioral lens. Drawing on behavioral research on individual decision-making within organizations and empirical insights from jurisdictions that have implemented comparable regimes, it seeks to identify the design features of an individual accountability regime that are most likely to promote responsible managerial conduct and a culture of accountability in Swiss financial institutions. While dedicated individual accountability regimes are expected to facilitate supervisory enforcement and thereby strengthen deterrence, this article argues that another major contribution lies in their potential to shape managerial behavior through the expressive function of law. By clearly allocating and communicating individual responsibilities, such regimes are expected to reinforce normative expectations regarding appropriate managerial conduct, increase the salience of expected accountability and thereby promote more responsible decision-making. However, despite more than a decade of implementation in some jurisdictions, robust empirical evidence—particularly independent academic evidence—on the effectiveness of these regimes remains limited. Further empirical research is therefore needed to determine whether they can, in fact, contribute to the ambition of "changing banking for good".

The remainder of this article is organized as follows. Chapter B. outlines the Federal Council's proposed reform of the Swiss too-big-to-fail framework and the proposed individual accountability regime as concretized in the consultation draft of 12 August 2026. Chapter C. examines the behavioral foundations of individual accountability within organizations and reviews empirical evidence from jurisdictions that have implemented dedicated individual accountability regimes. Building on these insights, Chapter D. reviews the Swiss scholarly discussion and assesses the proposed Swiss individual accountability regime from the perspectives of effectiveness and efficiency. Chapter E. concludes.

B. Reform of the Swiss Too-Big-Too-Fail Regulation

The concept of individual accountability in financial market regulation was not entirely new in Switzerland and had previously been discussed primarily in connection with the UK's Senior Managers Regime[2]. It gained significant momentum, however, following the Credit Suisse crisis in March 2023. The Swiss Government was once again required to intervene—following the rescue of UBS during the global financial crisis in 2008—to prevent the collapse of a global systematically important bank. In addition to having to apply a measure of last resort, the take-over of Credit Suisse by UBS left Switzerland with a single and even larger global systemically important bank headquartered in the country. Against this backdrop, the Federal Council initiated a comprehensive review of Switzerland's too-big-to-fail banking regulation to identify measures to further strengthen the stability of the Swiss financial center.[3]

In its review of the too-big-too-fail regulation, the Federal Council concludes that strengthening the *preventive* dimension of the regulation is one of the key priorities. However, capital and liquidity requirements alone are considered insufficient to prevent the failure of a systemically important bank.[4]

One of the key findings in FINMA's "Lessons Learned" report published on the Credit Suisse Crisis is that Credit Suisse's corporate governance had been deficient in several aspects: Responsibilities had not been clearly defined, and accountability had often not been enforced. A deficient leadership culture

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2 E.g., IMF Country Report No. 19/184 of June 2019, 23; Emmenegger, UK Senior Managers Regime, 817.

3 Swiss Federal Council, Report on Banking Stability (including an evaluation in accordance with Article 52 of the Banking Act) of April 2024, 2, 9.

4 Swiss Federal Council, Report on Banking Stability, 22 et seq.

and a persistently weak "tone from the top" had contributed to a poor risk culture, compounded by shortcomings in the management of conflicts of interest and a lack of transparency towards FINMA. Over the years, the bank's governing bodies had failed to remedy the repeatedly identified organizational deficiencies in a sustainable manner.[5]

Against this background, the Federal Council emphasizes that effective corporate governance, responsible risk management and a sound corporate culture are indispensable for reducing the likelihood of future banking crises. It states that the objective should be achieved through clear corporate governance requirements, coupled with effective supervision and enforcement by FINMA.[6]

In particular, the Federal Council identifies *corporate governance and supervision* as action field and proposes the following three interrelated measures which, taken together, are intended to establish a comprehensive framework for individual accountability:[7]

(i) Strengthening the legal framework on corporate governance by defining corporate governance requirements in greater detail, including requirements for boards of directors regarding their responsibility for corporate culture (Measure 1);

(ii) Introducing **a Senior Managers Regime** to ensure a clearer allocation of responsibilities, implemented proportionately—at a minimum for the board of directors and executive management, and potentially extending to other management levels (Measure 2);

(iii) Strengthening the legal framework governing remuneration systems, particularly with regard to the design of variable remuneration, clawback mechanisms and retention periods (Measure 3).[8]

As complementary measures to reinforce the individual accountability regime, the Federal Council proposes to enhance FINMA's supervisory and enforcement toolkit by introducing comprehensive public disclosure of supervisory and enforcement proceedings (Measure 5) and by aligning the industry ban with the activity ban as well as extending the existing disgorgement of profits regime to other natural persons (Measure 6).[9]

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5 Swiss Financial Market Supervisory Authority (FINMA), FINMA Report: Lessons Learned from the CS Crisis of 19 December 2023, 46.

6 Swiss Federal Council, Report on Banking Stability, 23.

7 Swiss Federal Council, Report on Banking Stability, 26, 150 et seqq.

8 See also Swiss Federal Council, Too-big-to-fail Factsheet: Bonuses (Federal Department of Finance) of 2024.

9 Swiss Federal Council, Report on Banking Stability, 26.

On 12 August 2026, the Federal Council further concretized the proposed Measures 1 to 3 in its consultation draft.[10] With respect to Measure 2, the Senior Managers Regime, the proposal builds on the existing fit-and proper framework. The banks in scope are banks with a complex organization, i.e. banks with at least 250 employees, as well as other banks designated by FINMA. The regime would extend fit-and-proper requirements to persons performing key functions within the bank and require their approval by FINMA. In addition, covered banks would be required to document the allocation of responsibilities through a firm-wide responsibility overview and individual responsibility statements.[11] Finally, the proposal introduces a statutory duty of care requiring fit-and-proper persons at all banks to ensure compliance with regulatory and internal requirements within their respective areas of responsibility.[12]

With respect to Measures 1 and 3, the proposal would raise the existing requirements on remuneration and corporate governance to the statutory level and further specify them. Regarding remuneration, all banks would be subject to general principles for risk-oriented and sustainable remuneration. For fit-and-proper persons and highly remunerated individuals at systemically important banks, variable remuneration would be subject to additional requirements, including deferral periods, reductions of deferred remuneration in cases of misconduct (malus) and the recovery of remuneration already paid (clawbacks).[13] The proposed corporate governance provisions would primarily codify and clarify existing requirements concerning the organization and management of banks.[14]

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10 Swiss Federal Department of Finance (FDF), Explanatory Report for the Consultation on the Amendment of the Banking Act (Implementation of the Measures from the Federal Council's Report on Banking Stability and the Report of the Parliamentary Investigation Committee) of 12 August 2026, 94 et seqq.

11 FDF, Explanatory Report for the Consultation on the Amendment of the Banking Act, 94 et seqq.; Arts. 3c, 3d and 19 lit. b Draft Banking Act.

12 FDF, Explanatory Report for the Consultation on the Amendment of the Banking Act, 96, 184 et seqq.; Art. 37n Draft Banking Act.

13 FDF, Explanatory Report for the Consultation on the Amendment of the Banking Act, 96 et seq.; Arts. 5c and 10b Draft Banking Act.

14 FDF, Explanatory Report for the Consultation on the Amendment of the Banking Act, 97.

C. Individual Accountability in Financial Institutions: Empirical Insights and Comparative Experience

I. Behavioral Foundations of Individual Accountability within Organizations

The proposed implementation of an individual accountability regime extends the focus of Swiss financial market regulation beyond institutions to encompass individual senior decision-makers. This broader regulatory approach opens the door to behavioral literature, which offers valuable empirical insights into individual decision-making within organizations and the extent to which the proposed regime can influence managerial conduct and corporate culture.

Behavioral research suggests that organizations do not merely respond to legal rules—they shape the decision-making environment within which employees interpret and act upon those rules.[15] Within this environment, firms can influence employee behavior in two principal ways:[16] First, they can alter the expected costs and benefits of conduct, for example through remuneration, rewards or sanctions. Second, they can shape employees' perceptions, expectations and preferences regarding "appropriate" conduct. This second mode of influence corresponds to the expressive function of law, which refers to the ability of legal rules to shape individuals' beliefs and preferences independently of rewards or sanctions.[17]

In its review of the too-big-too-fail regulation, the Federal Council proposes governance measures that rely on both modes of behavioral influence. The Federal Council has singled out the board's responsibility for corporate culture (Measure 1), clear allocation of responsibilities of senior managers (Measure 2), and employee remuneration (Measure 3) as the principal governance elements to be strengthened in order to enhance the effectiveness of corporate governance and, together with other measures, reduce the risk of future banking crises.[18]

Measures 1 and 2, concerning corporate culture and the allocation of managerial responsibility, can—if implemented correctly—influence behavior by operating through the expressive function of law. Formal governance requirements communicate normative expectations regarding the role and

15 Arlen/Kornhauser, 692.

16 Imeri, ch. 2.2.

17 Imeri, 16 et seqq.; see also McAdams, Expressive Powers.

18 See chapter B.

responsibilities of senior managers and the standards of conduct they are expected to uphold. Rather than merely altering the consequences of misconduct, these measures seek to shape how senior managers perceive their responsibilities and exercise their decision-making authority, thereby promoting responsible managerial behavior and, over time, fostering a culture of accountability.

By contrast, Measure 3, concerning employee remuneration, is currently framed primarily as a cost-benefit mechanism. It seeks to influence behavior by altering the expected costs and benefits of conduct through monetary rewards and sanctions.

Empirical research provides insights into these three measures and offers guidance on how they may be designed and implemented in the corporate setting to achieve their intended objectives more effectively:

Corporate culture and compliance with organizational rules (Measure 1): Organizations can influence employees' compliance with legal and ethical obligations by making those obligations more salient in employees' day-to-day decision-making.[19] In particular, the following factors appear to influence the salience of legal norms and employees' decision to comply with them:

(i) Salience of organizational rules: Organizational rules, particularly those aimed at preventing misconduct, must be communicated to employees on a regular basis and remain salient in their daily professional activities.[20]

(ii) Salience of the underlying harm that the organizational rules seek to prevent: Compliance with organizational rules further depends on whether the harm those rules seek to prevent is psychologically salient to employees. Studies show that individuals respond more strongly to intentional misconduct than to conduct creating merely a risk of harm, and they are more concerned about harm affecting a particular person, people they know or of their proximate vicinity or the same social group than harm affecting unidentified, especially socially or geographically distant strangers. Harms that are perceived as concrete and morally significant are more likely to evoke feelings of guilt and shame and, in turn, influence behavior.[21] Consequently, not only the rules themselves, but also the harms they seek to prevent, must be clearly communicated so that employees understand their rationale and the potential consequences of their conduct.

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19 Arlen/Kornhauser, 699 et seqq; see also McAdams, Focal Point Theory; Schelling.

20 Arlen/Kornhauser, 699.

21 Arlen/Kornhauser, 699, and the empirical literature cited therein.

(iii) Corporate culture and peer behavior: Compliance with organizational rules can be undermined or reinforced by corporate culture and the behavior of peers. In particular, people are more likely to engage in self-serving misconduct while maintaining a positive ethical self-image where their organizational decision-making environment tolerates, excuses or accepts unethical conduct.[22]

Studies further show that individuals infer the normative significance of legal rules primarily from the behavior of the people around them, i.e. compliance by others reinforces the perception that the rule is socially accepted and compliance with it expected, whereas widespread non-compliance reduces anticipated shame and guilt because individuals no longer expect their conduct to be socially condemned.[23]

Moreover, organizations can either undermine or reinforce law's expressive message through their response to detected misconduct. Regularly communicating the consequences suffered by employees who have violated the law keeps the legal norm salient and reminds employees of the personal consequences of non-compliance, whereas silence diminishes the norm's expressive force.[24]

Accordingly, the above-mentioned studies indicate that employees are more likely to comply with legal and organizational rules and to refrain from excessive risk-taking where organizational rules remain focal in day-to-day decision-making, where the potential harm of misconduct is made concrete and psychologically salient, and corporate culture consistently reinforces compliance through the conduct and expectations of colleagues and management.

Allocation of managerial responsibility (Measure 2): Empirical research shows that individuals experience guilt or shame for misconduct only to the extent that they perceive themselves as responsible for the decision that produced the outcome, whereas shared responsibility reduces individuals' perceived responsibility for outcomes.[25] In particular, studies show that the perception of responsibility is weakened in the following common organizational settings:

22 Arlen/Kornhauser, 700, and the empirical literature cited therein.
23 Arlen/Kornhauser, 700, and the empirical literature cited therein.
24 Arlen/Kornhauser, 710.
25 Arlen/Kornhauser, 701, 705 et seq., and the empirical literature cited therein.

(i) Sequential decision-making: Individuals making an early decision do not perceive themselves as responsible when the final unlawful outcome depends on a later affirmative decision by someone else.[26]

(ii) Unexercised supervisory authority: Individuals who possessed, and knowingly failed to exercise, authority to prevent others from engaging in misconduct, do not perceive themselves as responsible for the outcome.[27]

(iii) Collective decision-making: Individuals who take decisions in a group (e.g. by voting or consensus) do not tend to perceive themselves as responsible for the collective decision.[28]

(iv) Delegation: Individuals will deliberately delegate ethically questionable decisions to others, even if delegation imposes a cost, thereby reducing anticipated feelings of guilt and shame.[29]

Lastly, shared and dispersed responsibility also weakens social attribution; individuals who share responsibility for a decision are less likely to be perceived by others within the organization as primarily responsible for a negative outcome, thereby reducing anticipated feelings of shame.[30]

Taken together, the empirical literature highlights the importance of clearly allocating managerial responsibilities within organizations. Sequential decision-making, collective decision-making and responsibility-sharing, all common features of organizational decision-making, tend to diffuse perceived responsibility and consequently weaken the expressive effect of organizational rules. Clear allocations of managerial responsibilities reinforce senior managers' perceived responsibility for ensuring compliance with those rules and thereby strengthen the expressive effect of organizational rules. Importantly, defining responsibilities does not mean that senior managers can no longer delegate tasks or even responsibilities. Rather, it means that they remain accountable for potential negative outcomes.

Employee remuneration (Measure 3): Another way in which organizations shape employees' decision-making environment is through the design of their compensation, promotion and retention policies and procedures. These policies influence employees' incentives and, consequently, their inclination to engage in misconduct.

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26 Arlen/Kornhauser, 705; see also Spellman, 323; Arlen/Tontrup, 152.
27 Arlen/Kornhauser, 705; see also Spellman, 323; Arlen/Tontrup, 152.
28 Arlen/Kornhauser, 705; see also Arlen/Tontrup, 162.
29 Arlen/Kornhauser, 706, and the empirical literature cited therein.
30 Arlen/Kornhauser, 706, and the empirical literature cited therein.

While remuneration primarily operates as a behavioral mechanism affecting employees' cost-benefit calculus, it also conveys an expressive message: Organizations can undermine the law's expressive function when they adopt compensation, promotion and retention policies that prioritize employee performance over ethics or permit performance evaluations and salary determinations to be based solely on objective measures of productivity. Such policies communicate to employees that the organization's dominant authority values financial outcomes above all else, including legal compliance, thereby prioritizing profits and productivity while relegating ethical and legal obligations to a secondary concern.[31]

Accordingly, remuneration systems influence employee behavior not only by creating financial incentives but also by signaling the values that the organization genuinely prioritizes. Where employees are rewarded primarily for achieving measurable financial results and face adverse career consequences for underperformance, they are more likely to focus on self-interest and financial success, thereby diminishing the influence of the law's expressive message.[32] Conversely, remuneration systems that visibly incorporate ethical conduct and compliance into performance assessments are more likely to communicate that lawful behavior forms an integral part of organizational success.

II. Regulatory Approaches to Individual Accountability in Practice

The focus on individual accountability in financial regulation emerged in the aftermath of the 2008 Global Financial Crisis and subsequent banking scandals. Regulators increasingly recognized that corporate liability alone was insufficient to address misconduct within financial institutions. Although banks were subject to substantial regulatory sanctions for violations of banking regulation, the financial consequences were ultimately borne by shareholders and, in some cases, the wider public rather than the individuals responsible for the underlying decisions. Moreover, the complexity of organizational structures and collective decision-making often made it difficult to identify and hold accountable the senior managers responsible for misconduct.[33] As a consequence, the Basel Committee on Banking Supervision (BCBS) and the Financial Stability Board (FSB) strengthened the international

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31 Arlen/Kornhauser, 709 et seq., with empirical studies cited therein.

32 Arlen/Kornhauser, 712, with empirical studies cited therein; see also Kouchaki/Smith-Crowe/Brief/Sousa, 53 et seq.

33 Oliveira/Walters/Zamil, 6.

governance framework to promote stronger individual accountability by introducing clearer allocation of senior management responsibilities and enhanced oversight of misconduct risk.[34]

1. Regulatory Architecture of Individual Accountability

Comparative reports show that jurisdictions that have strengthened individual accountability in financial institutions have adopted different regulatory architectures.[35] Broadly, these approaches can be divided into three categories: (a) dedicated individual accountability regimes, (b) embedded accountability frameworks without a dedicated regime and (c) a hybrid approach combining elements of the former two.

(a) Individual accountability regimes (dedicated regimes): Several jurisdictions have implemented a standalone accountability regime by identifying senior management functions, allocating responsibilities to identifiable individuals, documenting those responsibilities and imposing personal accountability for their discharge. This regulatory approach has been adopted, for example, by the United Kingdom, Ireland, Australia and Singapore.[36]

Dedicated regimes generally share the following core features:[37]

(i) Identification of senior management functions: The regime applies primarily to a defined group of senior executives responsible for key management functions. Although the scope of covered roles differs across jurisdictions, the regimes consistently focus on those individuals capable of materially influencing a firm's safety, soundness or market integrity, including, in some jurisdictions, senior managers performing relevant functions outside the jurisdiction.

(ii) Allocation of individual responsibilities: Firms are required to identify the senior managers responsible for functions that are core to the management and soundness of the firm. Accordingly, the regimes specify the

34 Basel Committee on Banking Supervision, Corporate Governance Principles for Banks (Bank for International Settlements of July 2015, 20 et seqq.; Financial Stability Board, Strengthening Governance Frameworks to Mitigate Misconduct Risk: A Toolkit for Firms and Supervisors of 20 April 2018, 23 et seqq.

35 For reviews see e.g. Oliveira/Walters/Zamil; PA Consulting, Individual Accountability Regimes: A Comparative Report (prepared for the Swiss Federal Department of Finance of 17 December 2024.

36 Oliveira/Walters/Zamil, 11; PA Consulting, 5 et seqq.

37 Oliveira/Walters/Zamil, 10 et seqq.; PA Consulting, 17 et seqq.

management functions or prescribed responsibilities within their scope and require each to be allocated to an identified senior manager.

(iii) Formal documentation of responsibility: The allocation of responsibilities must be formally documented through individual "Accountability Statements" or "Statements of Responsibilities" for each senior manager within the scope of the regime. In some jurisdictions, these are supplemented by firm-wide "Accountability Maps" or "Management Responsibilities Maps". Individual statements identify each senior manager's areas of responsibility, while the maps set out the firm's organizational structure, governance arrangements, reporting lines and the overall allocation of responsibilities. The documentation is maintained as part of the firm's governance framework and updated as responsibilities change.

(iv) Personal duty to take reasonable steps: Senior managers are subject to a statutory or regulatory obligation to take reasonable (or adequate) steps to prevent or address regulatory breaches within their areas of responsibility. The applicable standard and terminology differ across jurisdictions.

The key differences between dedicated accountability regimes relate to (i) the scope of covered institutions and individuals, including the treatment of non-executive directors, (ii) supervisory requirements applicable to covered individuals, including prior regulatory approval or registration requirements, (iii) accountability frameworks applicable to specific employees, such as significant risk-takers or material risk personnel, including certification regimes (with public registers) or fit-and-proper assessments, and (iv) the degree of legislative and regulatory prescriptiveness with which the regimes articulate their requirements for covered firms and individuals.[38]

(b) Embedded accountability frameworks (no dedicated regimes): These frameworks do not have a dedicated accountability regime but pursue individual accountability through governance requirements, fit-and-proper assessments, directors' duties, supervisory review processes and enforcement powers embedded across existing prudential and supervisory legislation. The European Union and the United States have adopted this approach.[39]

(c) Hybrid accountability frameworks: The hybrid approach combines elements of dedicated accountability regimes with existing prudential and supervisory mechanisms, creating a formal responsibility allocation while

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38 Oliveira/Walters/Zamil, 10 et seq.; PA Consulting, 17 et seqg.

39 Oliveira/Walters/Zamil, 16 et seqq.; PA Consulting, 17 et seqq.

relying on the broader supervisory framework. This approach has been adopted by Hong Kong, where accountability is implemented through two complementary frameworks: (i) statutory accountability requirements under the Banking Ordinance, overseen by the Hong Kong Monetary Authority, which apply to banks, and (ii) the "Manager-in-Charge" regime, introduced by the Securities and Futures Commission in 2017, which applies to securities firms.[40]

The comparative reports further show that all jurisdictions in the sample, irrespective of the chosen regulatory architecture, employ complementary regulatory mechanisms that reinforce individual accountability. These include, in particular, corporate governance frameworks, which emphasize the responsibility of the board and senior management to foster a culture of accountability and prudent conduct, and remuneration frameworks, which align compensation with prudent risk-taking and discourage excessive short-term incentives.[41]

Further complementary mechanisms include restrictions on the use of directors' and officers' liability insurance that might offset regulatory sanctions, whistleblower protection frameworks that encourage the reporting of misconduct, and regulatory reference requirements intended to prevent individuals with a history of serious misconduct from moving between financial institutions without appropriate disclosure.[42]

Finally, the reports emphasize that the effectiveness of individual accountability frameworks ultimately depends on effective supervisory oversight and enforcement. In particular, dedicated accountability regimes facilitate supervision and enforcement by clarifying the allocation of individual responsibilities and by requiring the documentation of "reasonable steps" taken to mitigate the issues in question. This allows supervisors to attribute responsibility more readily than under broader prudential accountability frameworks. However, supervisory judgment remains indispensable. Supervisors must assess, on a case-by-case basis, whether senior managers have taken reasonable steps to address misconduct and whether complementary mechanisms, such as whistleblower frameworks, have been complied with. Additional enforcement powers and the credible threat of sanctions, such as professional bans, public censures, financial penalties and criminal referrals, further reinforce individual accountability by deterring misconduct.[43]

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40 Oliveira/Walters/Zamil, 16 et seq.; PA Consulting, 14, 17et seqq.
41 Oliveira/Walters/Zamil, 20 et seqq.; PA Consulting, 30 et seqq.
42 Oliveira/Walters/Zamil, 22 et seqq.
43 Oliveira/Walters/Zamil, 25 et seq.

2. Empirical Insights on Dedicated Individual Accountability Regimes

Whether dedicated individual accountability regimes effectively prevent misconduct and excessive risk-taking by senior bank managers is ultimately an empirical question. To date, however, systematic empirical evidence on their effectiveness remains limited. Some jurisdictions have conducted regulatory reviews or surveys following implementation of the regimes. While these assessments provide useful insights into the implementation and operation of the regimes, they offer only limited evidence of their effects on individual behavior and organizational culture.[44]

The UK Prudential Regulation Authority (PRA), for example, conducted a survey with 120 regulated firms to better understand their experience and implementation with the Senior Managers and Certification Regime (SMCR). Most surveyed firms reported "positive behavioral changes" and successful integration of the regime into their governance practices.[45] While these findings provide useful evidence of stakeholders' perceptions, they are based primarily on self-reported survey responses collected by the regulator.

Independent academic empirical research examining whether and how dedicated individual accountability regimes influence behavior is even more limited. Sheedy and Canestrari-Soh, for example, conducted a comprehensive empirical study of Australia's Banking Executive Accountability Regime (BEAR) to examine whether the regime led to better risk management practices and behavior by senior executives.[46]

The study adopts a mixed-methods approach, drawing on a survey and 41 semi-structured interviews with "accountable persons" and their reports across 15 Australian authorized deposit-taking institutions. The study finds that the introduction of more explicit individual accountability expectations

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44 E.g., Financial Conduct Authority, Senior Managers and Certification Regime Banking Stocktake Report of 5 August 2019; Prudential Regulation Authority, Evaluation of the Senior Managers and Certification Regime of December 2020; Australian Prudential Regulation Authority, Information Paper: Review of the Implementation of the Banking Executive Accountability Regime of December 2020.

45 Prudential Regulation Authority report, 11, 13 and 25.

46 Sheedy/Canestrari-Soh, 4093; BEAR has since been replaced by the broader Financial Accountability Regime (FAR), which entered into force for authorised deposit-taking institutions on 15 March 2024 and extends the accountability framework to the insurance and superannuation sectors; for more see Financial Accountability Regime (FAR) | APRA.

promoted more deliberate "System 2" thinking[47], requiring greater cognitive effort, and led to behavioral changes among accountable persons. Specifically, accountable persons:

(i) experienced higher levels of felt accountability;

(ii) adopted more proactive risk management behaviors, including greater questioning and coaching of subordinates, more extensive consultation, closer monitoring of risks and a stronger sense of ownership and responsibility;

(iii) displayed less avoidance behavior, reflected in a stronger focus on consequence management, increased executive attention to reported risks and the more timely resolution of identified issues; and

(iv) engaged more closely with risk, legal and compliance functions in organizational decision-making by consulting these functions more frequently to demonstrate that they had taken "reasonable steps" to address and mitigate identified risks.[48]

While the study concludes that the BEAR strengthened executive accountability and risk management, it also identifies unintended consequences. Many participants perceived that the introduction of the BEAR improved organizational culture, whereas a minority reported adverse cultural effects, mentioning increased administrative burdens, a growing culture of fear associated with heightened individual accountability, and concerns that employees might become less willing to speak up about issues or expose deficiencies within their business units.[49]

These findings are complemented by Hickman and Brener's more recent qualitative empirical study that examines the practical operation of the UK Senior Managers and Certification Regime (SMCR). The authors conducted twelve semi-structured interviews with individuals directly involved in implementing or subject to the regime. A key finding is that participants generally agree that the SMCR has improved the quality of governance documentation and strengthened individual accountability, whereas the views on its impact on organizational culture and professionalism are more mixed.[50]

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47 See Kahneman, who introduced the concept to contrast to "System 1" thinking, which refers to intuitive and automatic decision-making.

48 Sheedy/Canestrari -Soh, 4110 et seqq.

49 Sheedy/Canestrari-Soh, 4117.

50 Hickman/Brener, 356. The authors report that they considered twelve interviews sufficient to achieve data saturation, as participants' responses became increasingly repetitive (358).

In particular, participants reported increased professionalism and improved governance through more comprehensive record-keeping and better-quality decision-making. At the same time, many observed a tendency to "lawyer up", with senior managers placing greater emphasis on documenting decisions to protect themselves from personal liability. Participants noted that this defensive behavior increased administrative burdens and could inhibit openness within organizations.[51]

The administrative burden associated with dedicated individual accountability regimes has also been recognized by UK policymakers. As part of the Edinburgh Reforms, HM Treasury, together with the Financial Conduct Authority (FCA) and the PRA, conducted a comprehensive survey of the SMCR. While respondents broadly supported the regime's core accountability objectives, they also advocated reforms to reduce unnecessary administrative burdens.[52]

In its recent report of April 2026, HM Treasury concluded that the SMCR was achieving its core policy objectives but proposed a package of targeted legislative reforms to streamline the regime. The proposed reforms include reducing statutory prescription by removing the Certification Regime from primary legislation, reducing the number of senior management functions requiring prior regulatory approval, simplifying the requirements relating to Statements of Responsibilities and the Conduct Rules, and granting the FCA and PRA greater flexibility to calibrate the regime according to firms' size, complexity and risk profile.[53]

Overall, while the available evidence suggests that dedicated individual accountability regimes may positively affect individual behaviour and organisational culture, robust empirical evidence remains limited. Further, and in particular longitudinal, empirical research is required to assess their effectiveness over time. Such research should recognize that organizational culture is an inherently difficult concept to operationalize and measure. Because cultural change is unlikely to occur immediately following regulatory intervention, evaluations of dedicated individual accountability regimes should adopt sufficiently long observation periods to capture whether behavioral changes become internalized and translate into durable organizational cultural change.

For a critical discussion of dedicated regimes see also e.g. Hickman, 1301 et seqq; Walker/McGrath, 69 et seqq.; McGrath/Scholten, 509.

51 Hickman/Brener, 359.

52 HM Treasury, Reforming the Senior Managers & Certification Regime: Consultation Response of 22 April 2026, 7 et seqq.

53 HM Treasury, 7 et seqq.

D. Towards an Individual Accountability Regime in Switzerland

I. Swiss Legal Scholarship on the Proposed Individual Accountability Regime

The Federal Council's proposal to introduce an individual accountability regime inspired by the UK's Senior Managers Regime has given rise to a growing body of Swiss legal scholarship on the topic.[54] There is broad consensus that the Credit Suisse crisis has underscored the need to strengthen individual accountability within systemically important financial institutions. The principal divergence concerns rather the appropriate regulatory response. While some authors advocate the implementation of a dedicated individual accountability regime, others argue that the existing Swiss legal framework is sufficient and should instead be refined through targeted legislative and supervisory measures.

Accordingly, the debate has centered on two principal regulatory approaches for strengthening individual accountability: the adoption of a dedicated individual accountability regime, as implemented in jurisdictions such as the United Kingdom, Ireland, Australia and Singapore, or the enhancement of individual accountability within the existing legal and supervisory framework. The Federal Council has since concretized its approach in the consultation draft of 12 August 2026. Rather than transplanting the UK Senior Managers Regime wholesale, the proposal introduces distinct statutory accountability requirements while integrating them into the existing Swiss fit-and-proper and supervisory framework.[55]

The principal proponents of a dedicated individual accountability regime in the Swiss literature are Emmenegger and Chabloz. Drawing on the UK and the Irish Senior Managers Regimes, they argue that Switzerland should introduce a dedicated, but distinctly Swiss, accountability regime tailored to its legal and institutional framework. Their proposal is largely congruent with that of the Federal Council. In particular, they advocate adopting the core governance instruments of the UK and Irish regimes, including Statements of Responsibilities, Management Responsibilities Maps, Conduct Rules, and a statutory

54 E.g. Sume/Witzig, 303 et seqq.; Reiser, 80 et seqq.; Reiser/Markwalder, 585 et seqq.; Bertschinger, 718 et seqq.; Emmenegger, Eckpunkte des Senior Managers Regimes, 96 et seq.; Emmenegger/Chabloz, 21 et seqq.; Isabelle Chabloz, 31 et seqq.; Curchod/Ivanovic, 783 et seqq.; Ivanovic/Curchod, 823 et seqq.

55 FDF, Explanatory Report for the Consultation on the Amendment of the Banking Act, 94 et seqq.; Arts. 3c, 3d, 37n and 19 lit. b Draft Banking Act.

Duty of Responsibility requiring senior managers to take "reasonable steps" to prevent or remedy regulatory breaches within their area of responsibility. They further propose building on existing Swiss supervisory mechanisms like the fit-and-proper assessment. Finally, they also support linking the regime to remuneration-related sanctions.[56]

Their proposal, however, differs from the Federal Council's consultation draft in two important respects: First, they advocate a broader institutional scope, arguing that the regime should apply to all FINMA-supervised financial institutions—or, as Chabloz suggests in a different contribution, at least to banks in supervisory categories 1–3, with proportionality according to size and complexity. The consultation draft, by contrast, proposes applying the formal responsibility-allocation requirements principally to banks with a complex organization and banks specifically designated by FINMA, while the statutory duty of care would apply to fit-and-proper persons at all banks.[57] Secondly, they propose that the introduction of FINMA administrative fines on individuals should be examined, whereas the Federal Council does not propose administrative fines for individuals.[58]

In contrast, Curchod and Ivanovic question whether the introduction of a fully-fledged dedicated Senior Managers Regime is needed. While they acknowledge that individual accountability should be strengthened, they contend that the existing Swiss supervisory framework already provides a sufficient foundation for individual accountability and should be strengthened through targeted legislative and supervisory refinements rather than by introducing a dedicated regime.[59]

In particular, they propose enhancing the allocation and documentation of responsibilities through Responsibilities Maps and Statements of Responsibilities to be incorporated into FINMA Circular 2017/1 on Corporate Governance. At the same time, they reject key features of the UK regime, including prescribed management functions, prior regulatory approval of senior managers and a statutory duty requiring senior managers to take reasonable steps. In their view, the latter two are already sufficiently reflected in the fit-

56 Emmenegger/Chabloz, 21 et seqq.; for a comparison, see Swiss Federal Council, Report on Banking Stability, 150 et seqq.

57 Emmenegger/Chabloz, 28; Chabloz, 31 et seqq., p. 32; FDF, Explanatory Report for the Consultation on the Amendment of the Banking Act, 94 et seqq.

58 Emmenegger/Chabloz, 28; Chabloz, 31 et seqq., p. 32; Swiss Federal Council, Report on Banking Stability, 29 et seqq.

59 Curchod/Ivanovic, 783 et seqq.; Ivanovic/Curchod, 823 et seqq.

and-proper assessment under the Swiss Banking Act and the directors' duty of care under the Swiss law on companies limited by shares.[60]

Finally, Reiser and Markwalder discuss the implementation of a Swiss approval-based responsibility regime. Assuming that such a regime will be introduced, they argue that requiring FINMA approval of a documented allocation of managerial responsibilities would not constitute a fundamental departure from existing Swiss law, which already requires transparent responsibility structures. Rather, they emphasize the regime's positive prophylactic effect on governance and corporate culture. They advocate a proportionate, principles-based implementation through targeted amendments to the Banking Act, the Banking Ordinance or the FINMA Circular 2017/1 on Corporate Governance, arguing that such an approach would enhance legal certainty.[61]

The consultation draft of 12 August 2026 has since concretized the Federal Council's approach. It introduces formal ex-ante allocation and documentation of individual responsibilities and a statutory individual duty of care, while building on the existing fit-and-proper framework rather than creating an entirely separate supervisory system.[62] The proposal thereby incorporates core elements of dedicated individual accountability regimes while adapting them to the existing Swiss regulatory architecture.

II. The Proposed Swiss Individual Accountability Regime: Considerations of Effectiveness and Efficiency

Building on the Swiss debate, this chapter assesses the regulatory architecture proposed by the Federal Council in light of the behavioral evidence and comparative experience examined in chapter C. The current proposal combines core elements of a dedicated individual accountability regime with existing Swiss supervisory mechanisms. The relevant question is therefore whether this regulatory architecture is likely to strengthen individual accountability effectively and efficiently.

This assessment should be informed not only by considerations of legal and regulatory design, but also by the available behavioral evidence and the practical experience of jurisdictions that have already implemented comparable regimes. Two criteria are particularly relevant: First, its effectiveness

60 Ivanovic & Curchod, 829 et seqq.; see also Art. 3 para. 2 lit. c of the Swiss Banking Act and Art. 717 of the Swiss Code of Obligations.

61 Reiser/Markwalder, , 585et seqq.; see also Reiser, 80 et seqq.

62 FDF, Explanatory Report for the Consultation on the Amendment of the Banking Act, 94 et seqq.

in influencing managerial behavior and reducing misconduct. Second, its efficiency, that is, its ability to achieve these objectives in a proportionate manner while minimizing unnecessary administrative burdens and costly enforcement actions.

1. Considerations of Effectiveness

Individual accountability may influence managerial behavior through two complementary mechanisms. First, it may prevent misconduct *ex-ante* by shaping how senior managers perceive their responsibilities and the standards of conduct expected of them. Secondly, it may facilitate the *ex-post* attribution of responsibility by enabling supervisory authorities to identify the individuals responsible for misconduct and, where appropriate, impose sanctions. While both mechanisms affect managerial decision-making, they operate through different channels. The former relies primarily on the expressive function of law by communicating and reinforcing normative expectations regarding responsible conduct, whereas the latter relies on the law's deterrent function by increasing the likelihood that misconduct will be detected, attributed and sanctioned.[63]

Individual accountability should therefore be designed in such a way as to activate both the expressive and deterrent functions of law. Although these functions are closely related, the expressive dimension deserves particular attention because it shapes managerial behavior before supervisory intervention becomes necessary. The effectiveness of individual accountability thus depends not only on the substantive obligations it imposes but also on how those obligations are communicated through its regulatory architecture.

The behavioral impact of the law's expressive function depends on several preconditions. In particular, the literature suggests that legal norms are most likely to influence behavior where: (i) the regulated situation involves an element of coordination, (ii) the legal rule is clear, (iii) the legal rule is sufficiently public and salient and (iv) no stronger competing focal points undermine the behavioral signal communicated by the legal rule.[64]

Compared with an embedded accountability framework, a dedicated individual accountability regime is better positioned to satisfy the second and third conditions and thereby strengthen the expressive effects of individual accountability rules for the following reasons:

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[63] For a summary on the different functions of law see Imeri, ch. 2.2.

[64] McAdams, Expressive Powers, 62; For a comprehensive review of this literature see Imeri, ch. 3.

(i) **Consolidation**: A dedicated regime consolidates the relevant duties, standards of conduct and accountability mechanisms within a single, clearly identifiable regulatory framework, such as the Banking Act. By contrast, an embedded framework requires senior managers to infer their responsibilities from dispersed provisions of company law, criminal law and supervisory regulation, making the applicable norms less clear and less salient.

(ii) **Normative Message**: Individual accountability that is anchored in prudential supervisory legislation rather than in complementary legislation conveys a stronger normative message and is thus more salient. It signals that senior managers' duties of responsibility are owed not merely to shareholders and creditors under company law, or to individuals protected by criminal law, but to the broader public interests served by financial regulation.[65] These include the protection of creditors, investors and insured persons, as well as the proper functioning, integrity and stability of the financial system. In doing so, a dedicated regime also supports the long-term reputation, competitiveness and sustainability of Switzerland's financial centre.[66]

(iii) **Authority**: Individual accountability that is enacted at the highest appropriate level of the legal hierarchy is more salient than one that is implemented at a lower level, such as at the ordinance level or even in FINMA circulars. While the detailed implementation of the dedicated regime may be left to lower levels, its core elements should be established in primary legislation, such as the Banking Act.

Taken together, these features enable a dedicated individual accountability regime to communicate a clearer, more salient and more authoritative message concerning individual responsibility than an embedded accountability framework. By providing a single and coherent reference point for the responsibilities of senior managers, the regime is more likely to serve as a focal point for managerial behavior and corporate culture, thereby strengthening the expressive effect of individual accountability rules.

These design features not only strengthen the expressive effect of the regime but also reinforce its deterrent function by facilitating supervision and enforcement by regulatory authorities. In particular, the ex-ante allocation and documentation of responsibilities through individual responsibility statements and a firm-wide responsibility overview clarifies the allocation

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[65] See Article 754 of the Swiss Code of Obligations and in criminal law, for example, Articles 158, 164 and 165 of the Swiss Criminal Code.

[66] See Article 4 of the Federal Act of the Swiss Financial Market Supervisory Authority.

of responsibility and mitigates its diffusion within complex organizations. Combined with the proposed statutory duty of care, this should enable supervisory authorities to assess more effectively whether a particular fit-and-proper person has discharged their responsibilities and complied with the applicable standards of conduct, thereby facilitating regulatory investigations and the attribution of responsibility.

2. Considerations of Efficiency

Having argued that a dedicated individual accountability regime is more likely to achieve the intended behavioral objectives than an embedded individual accountability framework, the remaining question is whether it can do so in a proportionate and efficient manner.

The review of the empirical literature and implementation experience from other jurisdictions demonstrates that administrative burden is among the principal concerns associated with the introduction of a dedicated individual accountability regime.[67] The ongoing reform of UK's SMCR illustrates this point. While preserving the regime's core accountability objectives, the proposed reforms seek to reduce unnecessary compliance burdens by lowering the level of statutory prescription, streamlining documentation requirements, narrowing the scope of formal approval and certification requirements, and granting the FCA and PRA greater flexibility to adjust the regime according to firms' size, complexity and risk profile.[68]

The consultation draft adopts a similarly proportionate approach. Rather than limiting the regime to systemically important banks or extending it uniformly to all banks, the Federal Council proposes applying the formal responsibility-allocation requirements principally to banks with a complex organization. This is expected to encompass banks with at least 250 full-time equivalent employees, while FINMA would be empowered to subject additional banks to these requirements where appropriate.[69] By contrast, the statutory duty of care would apply to fit-and-proper persons at all banks.[70] This differentiated approach reflects the Federal Council's assessment that the benefits of formal responsibility allocation are particularly significant in complex organizations,

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67 See ch. C.II.2.

68 See para. 40 et seq.

69 FDF, Explanatory Report for the Consultation on the Amendment of the Banking Act, 8 et seq., 25 et seq., 94 et seq., 120 et seq., Art. 19 lit. b Draft Banking Act.

70 FDF, Explanatory Report for the Consultation on the Amendment of the Banking Act, 25 et seq., 96, 184 et seqq.; Art. 37n Draft Banking Act.

whereas the associated administrative burden may be disproportionate for smaller institutions.[71]

This concern is supported by the regulatory impact assessment, which identifies potentially significant implementation costs and considerable differences in the relative burden across institutions of different sizes.[72] The findings therefore reinforce the importance of a proportionate implementation that preserves the regime's core accountability mechanisms while minimizing unnecessary compliance costs.

With respect to enforcement, a dedicated individual accountability regime is expected to improve efficiency over the medium to long term. Although supervisory enforcement activity has increased in the past year, it is not possible to predict whether the introduction of a dedicated regime will further increase the number of enforcement proceedings.[73] Rather, the principal benefit is expected to lie in enabling supervisory authorities to conduct investigations more efficiently by facilitating the identification of potential misconduct and the attribution of responsibility. This may also reduce the duration of enforcement proceedings, which in complex cases can take several years to conclude.

To conclude, a dedicated individual accountability regime can be both effective and efficient if implemented through a proportionate and calibrated approach that preserves its core accountability mechanisms while minimizing unnecessary administrative burdens.

E. Conclusion

Following the collapse of Credit Suisse, the Federal Council announced a comprehensive reform of the Swiss too-big-to-fail framework and proposed strengthening individual accountability within Swiss financial institutions. The consultation draft of 12 August 2026 has since concretized this proposal by introducing a statutory individual accountability regime built on the existing

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71 FDF, Explanatory Report for the Consultation on the Amendment of the Banking Act, 29 et seqq.; FDF, Regulatory Impact Assessment on the Amendment of the Banking Act of 12 August 2026, 20 et seq.

72 FDF, Regulatory Impact Assessment on the Amendment of the Banking Act of 12 August 2026, 20 et seq. According to the assessment, systemically important banks estimated initial implementation costs of approximately CHF 1.1–8 million and recurring annual costs of CHF 1–3 million; estimates for other banks ranged from low five-figure amounts to approximately CHF 3 million.

73 See the FINMA media conference of 2026: <https://www.finma.ch/de/news/2026/04/20260421-mm-jmk-2026/>.

Swiss fit-and-proper framework. The proposed regime combines core features of dedicated accountability regimes—including the explicit allocation and documentation of individual responsibilities and a statutory duty of care—with existing Swiss supervisory mechanisms. The Federal Council's proposal is currently in the consultation process.

This article argues that the effectiveness of this regulatory architecture should be assessed not only from the perspective of legal and regulatory design, but also in light of behavioral insights and comparative experience. Behavioral research suggests that individual accountability influences conduct through two complementary mechanisms: The deterrence and expressive functions of law. The proposed Swiss regime has the potential to activate both mechanisms. By facilitating the attribution of responsibility, it may strengthen supervision and enforcement and, consequently, deterrence; by clearly allocating and communicating individual responsibilities, it may reinforce normative expectations regarding responsible managerial conduct, increase the salience of accountability and serve as a focal point for managerial behavior and a culture of accountability.

At the same time, experience in jurisdictions that have implemented comparable regimes demonstrates that dedicated accountability regimes entail additional administrative burdens. The Federal Council's proposed differentiation according to organizational complexity reflects a proportionate approach to addressing these costs. Whether this approach succeeds in preserving the behavioral and enforcement benefits of the regime while minimizing unnecessary administrative burdens will ultimately depend on its implementation in practice.

Finally, this article highlights an important limitation that should guide future research. Despite more than a decade of implementation in the United Kingdom and several years of experience in other jurisdictions, robust empirical evidence—particularly independent academic evidence—on the effectiveness of dedicated individual accountability regimes remains limited. Hence, whether such regimes ultimately succeed in "changing banking for good" remains an open empirical question. Further empirical research is essential to evaluate their effectiveness and identify the design features most likely to promote responsible managerial behavior.

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