





# Supervision, enforcement and regulation

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2013 was marked by a further narrowing of margins in interest and commission business, continued growth in mortgage business and increasing uncertainty in cross-border business. Consolidation of the Swiss banking sector continued, though less rapidly than expected.

In 2013, the economic environment once again presented a challenge for banks and securities dealers in Switzerland. With interest rates still at extremely low levels, banks experienced a further decline in their interest income. The debate over cross-border advisory activities persisted, creating continued uncertainty.

## Consolidation in the wealth management market

The international pressure on cross-border wealth management grew in 2013. At the end of 2012, Germany had rejected the tax agreement negotiated with Switzerland. In France, a number of proceedings were initiated against Swiss banks accused of providing active assistance to tax flight. These events, coupled with the political debate over the Lex USA, prompted some major financial players to announce publicly that they would be severing ties with clients who are unable to demonstrate that their tax status is in order.

Meanwhile at the end of August 2013, the DoJ launched a programme to end the tax dispute between the US and Swiss banks,<sup>33</sup> giving the latter until 31 December 2013 to opt voluntarily for one of the three categories agreed between the DoJ and the SIF. It was already clear that the implementation of this programme would tie up considerable resources at the institutions concerned, and would result in high internal and external costs. In addition, banks that report themselves voluntarily for category 2<sup>34</sup> will have to pay a fine which may be substantial.

## Interest rate risks and mortgage growth

Monitoring and managing interest rate risks remains extremely important, and FINMA once again carried out supervisory reviews of a number of commercial banks in 2013 to gain in-depth insight into their risk management. This important topic is also regularly addressed in discussions with the banks, and where

necessary they are instructed to carry out organisational measures or increase their equity capital.

## Decline in commission income

While the equity markets performed better than in previous years, bond market yields remained very modest. Most client portfolios continued to hold large amounts of liquidity. As a consequence, the majority of Swiss financial market players experienced a further decline in their commission income. Earnings also came under pressure following the Federal Supreme Court's decision<sup>35</sup> on retrocessions. There is no sign yet of a turnaround. The result is that the critical mass which every bank requires in order to remain profitable over the long term is also growing.

## The euro and sovereign debt crisis

Although the measures enacted by the Troika (European Commission, ECB and IMF) have led to a stabilisation of the economy in certain European countries, the structural weaknesses remain and the situation could deteriorate rapidly once again.

FINMA therefore maintained the enhanced supervisory control measures that it imposed at the start of the crisis on certain Swiss institutions of European banking groups which faced greater risks as a result of the euro and sovereign debt crisis. These include more detailed reporting and the limitation of intra-group positions. The corresponding FINMA Circular 2013/7<sup>36</sup>, which entered into force on 1 July 2013, formalised and clarified the practice that had been common for some years regarding the limitation of Swiss banks' intra-group foreign exposures. FINMA's aim is to reduce the financial and operational interdependencies within a banking group and ensure appropriate protection for creditors of Swiss banks.

<sup>33</sup> See section on Cross-border financial services, p. 26.

<sup>34</sup> See section on Cross-border financial services, p. 26.

<sup>35</sup> See Federal Supreme Court decision 138 III 755.

<sup>36</sup> See FINMA Circular 'Limitation intra-group exposure – banks' (German version) (<http://www.finma.ch/d/regulierung/Documents/finma-rs-13-07-d.pdf>).

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## 'Too big to fail' decrees

At the end of December 2013, FINMA issued two decrees to Credit Suisse and UBS concerning special requirements under the provisions for systemically important banks contained in the Capital Adequacy Ordinance (CAO). They set out in detail the implications of the two financial groups' systemic importance, which was established by the SNB early in the year. In accordance with FINMA's decision, UBS AG and Credit Suisse AG are subject to special requirements at single entity level. Because of its current size and function within the Credit Suisse Group, the Neue Aargauer Bank does not have to comply with the special requirements.

The decrees stipulate for the first time the level of the progressive component for the two groups and single entities, which is determined by market share in Switzerland, and its overall size. The progressive component results in additional capital requirements and is reset each year. FINMA can grant rebates to take account of measures adopted by the banks to improve their overall resolvability; none were granted, however, in these first-time decrees.

As prescribed in the CAO, FINMA is obliged to grant rebates under certain conditions at single entity level so that financial groups do not hold a level of capital deemed excessive under the ordinance. Reducing quantitative requirements on regulatory capital is the authority's preferred measure because it is transparent. Since the ordinance sets out that a minimum level of 14% of risk-weighted positions cannot be breached, further rebates have been necessary. Contrary to the CAO, the two FINMA decrees treat direct and indirect holdings in subsidiaries equally. Where necessary, overall investment values are regarded as risk-weighted positions and not as deductions for holdings.

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## Zürcher Kantonalbank declared systemically important

In a decree dated 1 November 2013, the SNB declared Zürcher Kantonalbank to be systemically important. The key factor in this decision was the bank's important role in the domestic deposit-taking and lending business as well as in payment services. The decision to designate Zürcher Kantonalbank as systemically important lay within the authority of the SNB. FINMA was consulted in advance of the decision and supported it.

It is FINMA's task to define the particular legal requirements that Zürcher Kantonalbank must fulfil on account of its systemic importance. Specifically, systemically important banks must comply with special capital, liquidity and risk diversification rules. FINMA will now have to define the content and scope of these requirements.

A systemically important bank must provide an emergency plan in order to satisfy FINMA that systemically important functions can be maintained independently of the other parts of the bank and without interruption when faced with the threat of insolvency. If the bank is unable to demonstrate this, FINMA must order it to adopt the necessary measures.

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## Retrocessions

In November 2012, FINMA published FINMA Newsletter 41 (2012)<sup>37</sup> in which it informed market participants of its expectations concerning their treatment of retrocessions from a supervisory perspective. Having obtained an overall picture of the risk situation of the supervised institutions and their implementation of the newsletter in the first quarter of 2013, FINMA continued working on the issue in the context of its ongoing supervisory activities.

FINMA initiated specific measures at a number of institutions, especially when the expectations set out by FINMA in the newsletter had not been complied with. In general, banks have adopted a range of expedient measures, in particular in the area of transparency vis-à-vis clients and in the design of contract documentation.

The assessment of any claims clients may have against the institutions is a matter for the civil courts and is not part of FINMA's remit. The general approach adopted by banks to retrocessions will remain a topic of supervisory activity in 2014.

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<sup>37</sup> See FINMA Newsletter 41 (2012) 'Supervisory measures – retrocessions' (<http://www.finma.ch/finma/publikationen/Lists/ListMitteilungen/Attachments/49/finma-mitteilung-41-2012-e.pdf>).

The core element of FINMA's resolution strategy for globally active systemically important banks is that creditors should be compelled to bear a share of the losses. This bail-in reduces the implicit state guarantee and restores order to the market.

With its FINMA Banking Insolvency Ordinance (BIO-FINMA), Switzerland is one of the first countries to have a set of instruments at its disposal that in principle allows the resolution (and winding down) of systemically important financial groups to be carried out effectively.

#### BIO-FINMA meets international requirements

BIO-FINMA meets almost all of the requirements set out in the FSB's 'Key Attributes of Effective Resolution Regimes for Financial Institutions'.<sup>38</sup> This has been confirmed by initial international reviews carried out by the IMF and other institutions in 2013. BIO-FINMA is also equivalent to the draft EU Directive on a 'Framework for the Recovery and Resolution of Credit Institutions and Investment Firms'<sup>39</sup> and the US Dodd-Frank Wall Street Reform and Consumer Protection Act. Any measures required to be taken by FINMA and the SNB therefore fall within the international standards.

In view of doubts voiced by the Federal Administrative Court<sup>40</sup> about the legal basis of certain BIO-FINMA provisions and in the light of international developments in insolvency standards, FINMA is currently assessing whether further action needs to be taken in this area of regulation.

#### Bail-in instead of bail-out

The global resolution strategy for globally active systemically important Swiss banks is based primarily on a 'bail-in'<sup>41</sup> triggered by FINMA, involving a conversion of debt into equity. This means that bond holders as well as shareholders will bear some of the burden. Under FINMA's preferred approach, known as the 'single point of entry', this will take place at the highest level of the group under the auspices of its home supervisory authority.

On top of this are a range of measures such as the restructuring of the group, the winding-up of individual units or business areas, or a change of management. Only in the worst-case scenario, where the bail-in is impossible to execute, will the financial group have to be split up, with the local emergency plans being triggered.

#### Transparency on FINMA's actions

Once agreement had been reached with the British authorities (Bank of England, FSA<sup>42</sup>) and those in the US (Fed, FDIC, OCC and the authorities of individual states) on a common basis for a resolution strategy, FINMA published a position paper<sup>43</sup> on the subject on 7 August 2013. It provides transparency on how FINMA will proceed in the event of failure of a global systemically important bank and makes clear that the state does not intend to use taxpayers' money to rescue such institutions.

Initially, the bank's investors and creditors are to be called upon to bear the burden. Since they now have legal certainty on this point, in future they can factor the possibility of a bail-in into their investment decisions.

#### Large banking groups have submitted their recovery plans

Planning for recovery and resolution<sup>44</sup> begun in 2012 was developed further. In 2013, the large banking groups submitted their first complete recovery plans to FINMA, explaining how they would stabilise the situation in a crisis and maintain at least parts of their operations, including the systemically important functions, without government intervention.

In the event of an improvement in their global resolvability, banks designated systemically important under the 'too big to fail' rules may obtain a rebate on the special capital requirements applying to them.

<sup>38</sup> See [http://www.financialstabilityboard.org/publications/r\\_111104cc.pdf](http://www.financialstabilityboard.org/publications/r_111104cc.pdf).

<sup>39</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0280:FIN:EN:PDF>.

<sup>40</sup> See judgment of the Federal Administrative Court B-3771/2012 of 12 March 2013 in the Fabiani case.

<sup>41</sup> See Glossary, p. 111.

<sup>42</sup> On 1 April 2013, the Financial Services Authority was split into two separate bodies: the Prudential Regulation Authority (PRA), which is part of the Bank of England, and the Financial Conduct Authority (FCA).

<sup>43</sup> See FINMA position paper 'Resolution of global systemically important banks' (<http://www.finma.ch/e/finma/publikationen/Documents/pos-sanierung-abwicklung-20130807-e.pdf>).

<sup>44</sup> See Glossary, p. 113.

In its communication with the big banks, FINMA indicated that it views incorporation of the Swiss business into a separate legal entity with a registered office in Switzerland as a key prerequisite for granting a capital rebate. At the end of 2013, both UBS and Credit Suisse announced the establishment of separate Swiss legal entities into which they plan to bundle the Swiss business, including the systemically important functions.

At the same time, FINMA worked on resolution plans by means of which it resolves financial groups threatened with insolvency or winds them down in an orderly manner. The first versions of these plans

were finalised for Credit Suisse and UBS at the end of June 2013, and were then submitted to the SNB and the supervisory and resolution authorities in the US and UK for consultation.

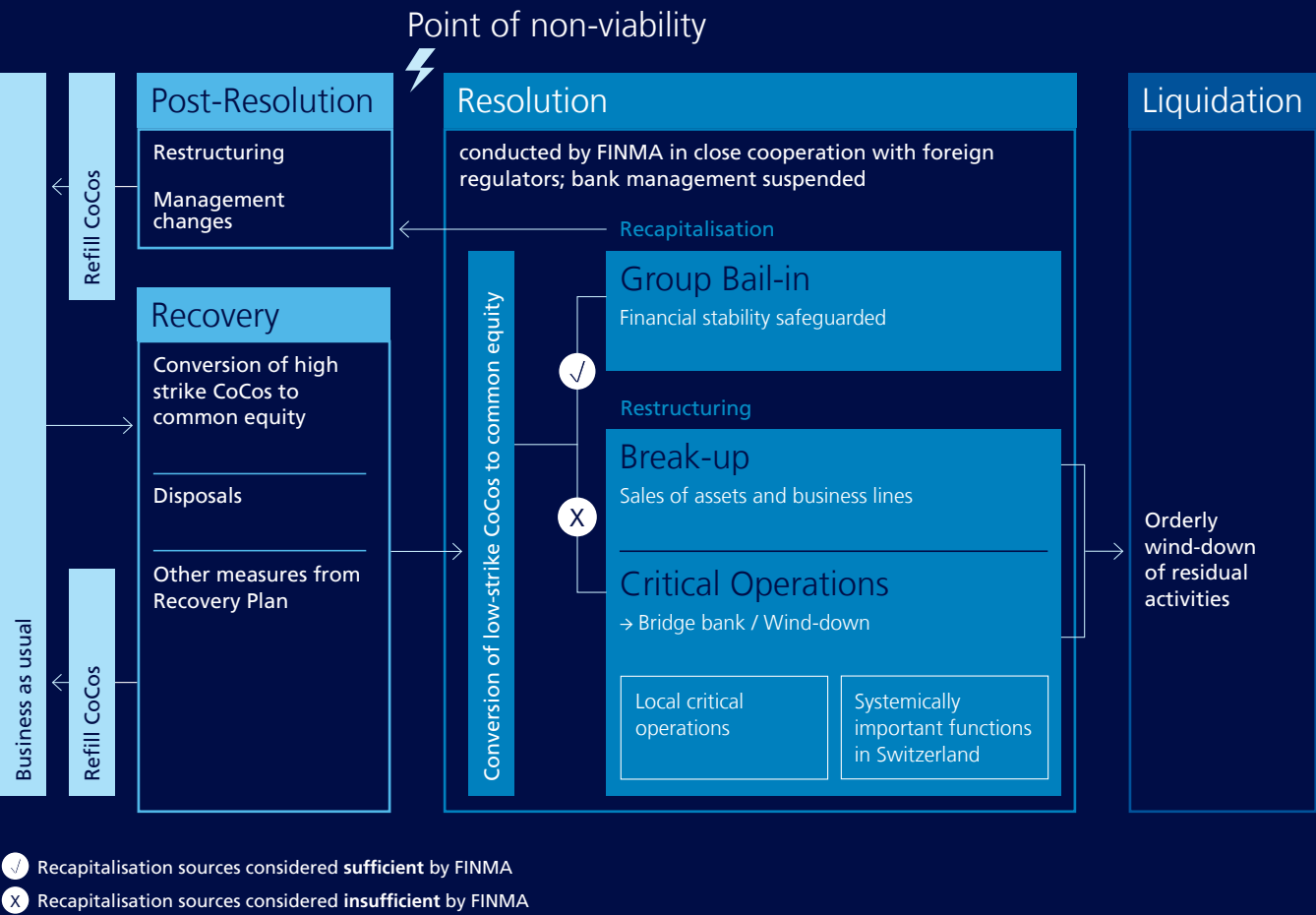
In joint working groups, FINMA discussed recognition of, and cooperation in, the (operational) implementation of the single point of entry resolution strategy, and the expedient structuring of the banks and their debt issuance.

One key area in 2014 will be the operational implementation of a bail-in and its process planning.

# FINMA's resolution strategy

Having an effective and internationally coordinated resolution strategy in place is pivotal in tackling the ‘too big to fail’ issue at systemically important banks.

## Overview of resolution strategy





## Structural changes in the banking market

The changed economic situation continues to encourage the consolidation of Switzerland's banking industry. Cross-border wealth management and branches of foreign banks are particularly affected.

The market consolidation that began some years ago remains unchanged. Low interest rates, squeezed margins and a significantly altered cross-border environment are placing pressure on existing banks and securities dealers. It therefore comes as no surprise that the number of applications for a new banking or securities dealing licence continues to decline. In 2013, the number of newly authorised banks and securities dealers remained at a similar low level as in the previous two years (two banking and four securities dealers' licences).

### Major challenges

Wealth management business models that have been profitable for decades have to be critically re-examined, while reorientation of the cross-border wealth management business is leading to increased compliance costs.

Amid persistently low interest rates, the private client segment is also facing major challenges, including falling earnings. Institutions below a certain critical mass, in particular, are increasingly being forced to close down their banking business and surrender their licence. Some three dozen banks and securities dealers opted for this course of action in 2013. Eight have already left the regulated sector for good; twenty institutions are still being seen through the process of exiting the market.

### Search for new business models

Some banks are pinning their hopes on new owners to improve their fortunes. Often, however, these projects fail owing to the lack of a plausible business model or question marks surrounding unclear ownership structures. Here as elsewhere, FINMA applies a robust supervisory benchmark, acting to safeguard the interests of the financial centre but without distorting the market through its interventions.

In the four years since 2010, 80 banks (including securities dealers) have left the Swiss financial centre. A large number of them, 40 in total, were subsumed by a new partner, seeking to secure their future via a merger or a sale. 28 institutions left the market voluntarily by handing back their licence; nine were liquidated, and three were prompted to exit the market as a result of enforcement proceedings launched by FINMA.

In most cases, banks leaving the market are small: 64 of those departing were in category 5, 14 in category 4, and only two medium-sized banks in category 3. It is possible to discern a general trend of foreign banks increasingly withdrawing to their home markets: some 16 closed their Swiss entities in 2013.

**Market exits since 2010**

broken down by exit type, supervisory category and domestic/foreign banks

|  | 2010          | 2011           | 2012           | 2013           |
|--|---------------|----------------|----------------|----------------|
| <b>Mergers</b>   | <b>7 (6)</b>  | <b>10 (3)</b>  | <b>8 (5)</b>   | <b>15 (9)</b>  |
| Category 3 (of which foreign banks)                          | –             | –              | 1 (0)          | –              |
| Category 4 (of which foreign banks)                          | 1 (1)         | 5 (1)          | 1 (1)          | 5 (3)          |
| Category 5 (of which foreign banks)                          | 6 (5)         | 5 (2)          | 6 (4)          | 10 (6)         |
| <b>Voluntary cessation of business requiring supervision</b> | <b>3 (1)</b>  | <b>9 (6)</b>   | <b>9 (6)</b>   | <b>7 (6)</b>   |
| Category 3 (of which foreign banks)                          | –             | 1 (0)          | –              | –              |
| Category 4 (of which foreign banks)                          | 1 (0)         | –              | –              | 1 (0)          |
| Category 5 (of which foreign banks)                          | 2 (1)         | 8 (6)          | 9 (6)          | 6 (6)          |
| <b>Voluntary liquidation</b>                                 | <b>2 (1)</b>  | <b>3 (1)</b>   | <b>3 (2)</b>   | <b>1 (1)</b>   |
| Category 5 (of which foreign banks)                          | 2 (1)         | 3 (1)          | 3 (2)          | 1 (1)          |
| <b>Revocation of licences</b>                                | <b>1 (1)</b>  | <b>1 (0)</b>   | <b>1 (1)</b>   | <b>0 (0)</b>   |
| Category 5 (of which foreign banks)                          | 1 (1)         | 1 (0)          | 1 (1)          | 0 (0)          |
| <b>Total (of which foreign banks)</b>                        | <b>13 (9)</b> | <b>23 (10)</b> | <b>21 (14)</b> | <b>23 (16)</b> |

## PostFinance receives banking licence

Since 26 June 2013, PostFinance has been subject to FINMA supervision as a bank and securities dealer. It is obliged to meet the same strict requirements and is supervised with the same intensity as other financial institutions of comparable size and complexity.

On 6 December 2012, FINMA granted PostFinance a licence to operate as a bank and securities dealer. Before the licence came into force, however, PostFinance was obliged to demonstrate that it fulfilled a series of organisational, financial and staff-related conditions. In June 2013, FINMA concluded that PostFinance did indeed meet these requirements. With effect from 26 June 2013, Swiss Post then hived off its PostFinance unit into a separate public limited company, thereby creating the formal basis for PostFinance to be placed definitively under banking supervision.

### Strict regulatory requirements

The licensing process took a total of three years. From the outset, FINMA emphasised that PostFinance must satisfy the same regulatory requirements as any other financial institution of comparable size and complexity. The areas examined by FINMA as part of the licensing process included the projected organisational structure, capitalisation and staffing of PostFinance. FINMA concluded that PostFinance had established a solid basis for its planned activities as a bank and securities dealer and for supervision by FINMA.

### Corporate governance is key

When considering the licence application, FINMA also took account of the fact that PostFinance will still be owned by the Confederation, and that extensive collaboration with other Swiss Post companies raises

particular issues and entails certain risks. It therefore imposed specific requirements on corporate governance and (financial) relations between PostFinance AG and the Swiss Post Group. Great importance was also attached to the prevention of money laundering. As a very important and complex market participant, PostFinance was allocated to category 2<sup>45</sup> for the purpose of ongoing supervision. The second-highest supervisory category brings with it additional regulatory requirements, including an increased capital buffer and more intensive supervision involving regular supervisory reviews.

### Why PostFinance needed a banking licence

Swiss Post had already been providing financial services via its PostFinance unit before 26 June 2013. PostFinance accepts deposits from the public on a commercial basis and is required to fulfil a legally defined universal service remit in the area of payment services. It was permitted to provide these services without a banking licence owing to an exceptional provision of the law.<sup>46</sup> Once Parliament had decided via the Postal Act and the Postal Organisation Act that PostFinance was to be hived off into a public limited company under private law, it was clear that the financial arm of the Swiss Post Group would require a licence from FINMA. The existing exception under banking law ceased to apply once PostFinance became a separate legal entity on 26 June 2013. The postal legislation continues to prohibit PostFinance from offering loans and mortgages on its own account.

<sup>45</sup> See Appendix, section on Supervisory categories for banks and insurance companies, p. 102.

<sup>46</sup> In addition to banks, only public-law corporations and entities, as well as savings banks for which they are fully liable, are allowed to accept deposits from the public on a professional basis (Art. 3a para. 1 BO).

## Changes in banking regulation

The most important developments in banking regulation during 2013 resulted in various amendments to FINMA circulars.

| FINMA CIRCULARS   | REGULATORY PROJECTS |   |   | CHANGES   | IN FORCE SINCE / FROM |
|---|---------------------|---|---|---|-----------------------|
|   | FORM                | CONTENT / SUBJECT MATTER  | AIMS / REASONS  |   |                       |
| 'Credit risks – banks' (08/19)<br>'Market risks – banks' (08/20)<br>'Capital adequacy disclosure – banks' (08/22)<br>'Eligible equity capital – banks' (13/1)<br>'Capital buffer and capital planning – banks' (11/2) | Partial revision    | Alignment with international Basel III standards  | Implementation without material deviations from the international regime  | Small number of detail clarifications and isolated adjustments                        | 1 Jan. 2014           |
| 'Operational risks at banks' (08/21)  | Partial revision    | BCBS 'Principles for the Sound Management of Operational Risk' <sup>47</sup> of June 2011             | – Implementation of Basel recommendations on the management of operational risks<br>– New appendix on data security | Extension to include qualitative requirements for the management of operational risks | 1 Jan. 2015           |
| 'Risk diversification – banks' (08/23)  | Partial revision    | 'Too big to fail' regulations   | No rebates for exposures to systemically important cantonal banks   | Detail clarification  | 1 Jan. 2014           |
| 'Limitation intra-group exposure – banks' (13/7)  | New regulation      | Intra-group claims and commitments  | Reducing intra-group financial and operational interdependencies  | –   | 1 July 2013           |
| 'Guidelines on asset management' (09/1) <sup>48</sup>   | Partial revision    | Retrocessions, information and investigation obligations, duties of due diligence in asset management | Adjustments to reflect developments in the civil law requirements for the areas mentioned                           | Appendices and detail clarifications  | 30 May 2013           |

## Outlook

A number of regulatory projects involving adjustments to Federal Council ordinances are currently under way. The consultation on the full revision of the Banking Ordinance (BO) closed at the end of December 2013. The new accounting legislation<sup>49</sup> requires banks to amend their accounting procedures from financial year 2015 onwards.<sup>50</sup> This revision also governs the liquidation of dormant assets, which every bank will now be allowed to carry out itself. Following the RCAP,<sup>51</sup> minor adjustments also need to be made to the Capital Adequacy Ordinance (CAO) to bring it in line with international standards. Work on quantitative requirements on liquidity is also in progress. The consultation on the short-term Liquidity Coverage Ratio (LCR),<sup>52</sup> a key component of Basel III that has already been approved internationally, ends in February 2014.

<sup>47</sup> <http://www.bis.org/publ/bcbs195.pdf>.

<sup>48</sup> The scope of application of this circular extends to professional organisations of the asset management sector (including banks and securities dealers) that submit self-regulatory measures to FINMA for the purpose of recognition as a minimum standard (see <http://www.finma.ch/e/regulierung/Documents/finma-rs-09-01-e.pdf>).

<sup>49</sup> Articles 957 ff. CO.

<sup>50</sup> For consolidated accounts: from financial year 2016.

<sup>51</sup> See section on FINMA undergoes inspections, p. 24.

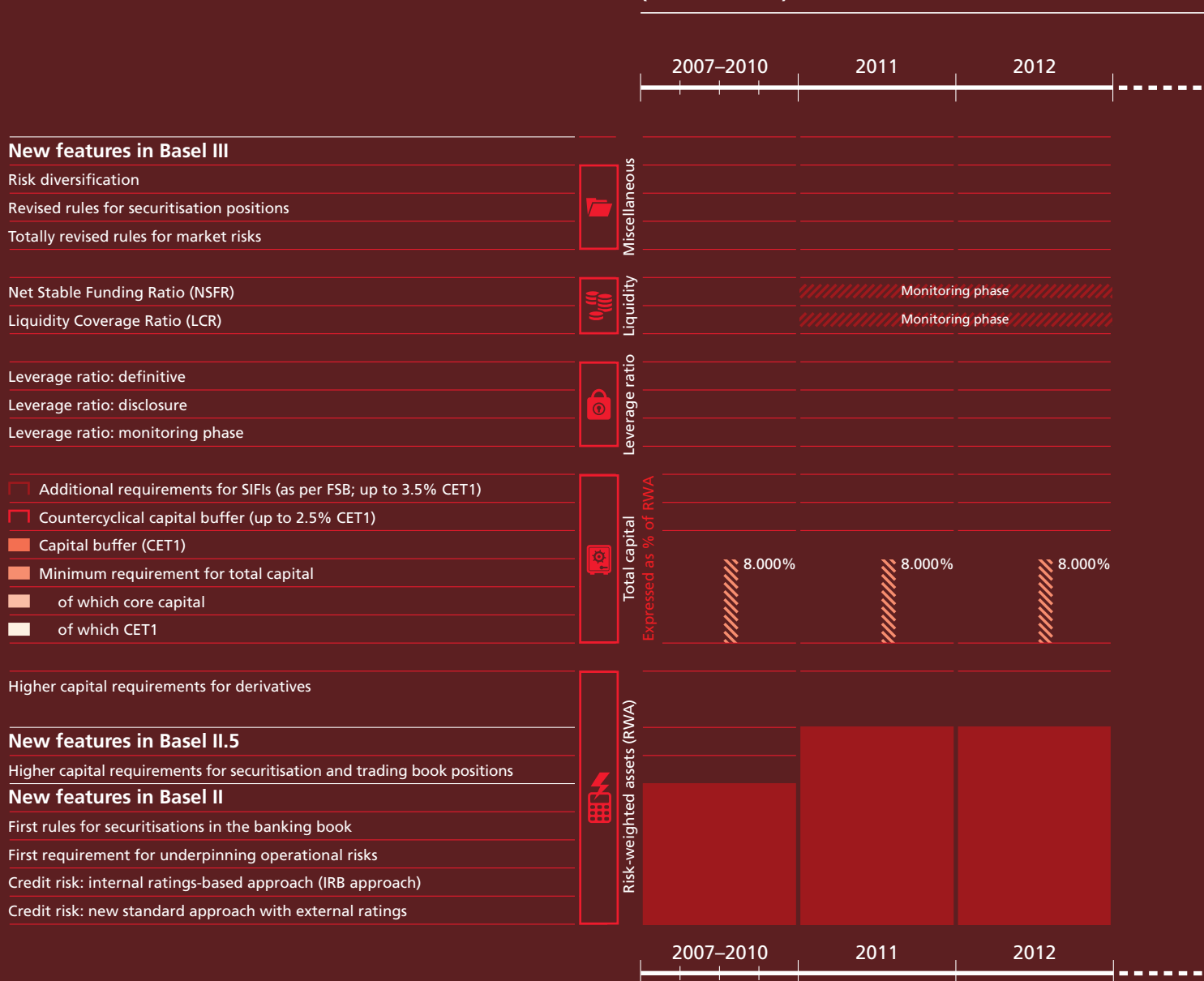
<sup>52</sup> See Glossary, p. 113.

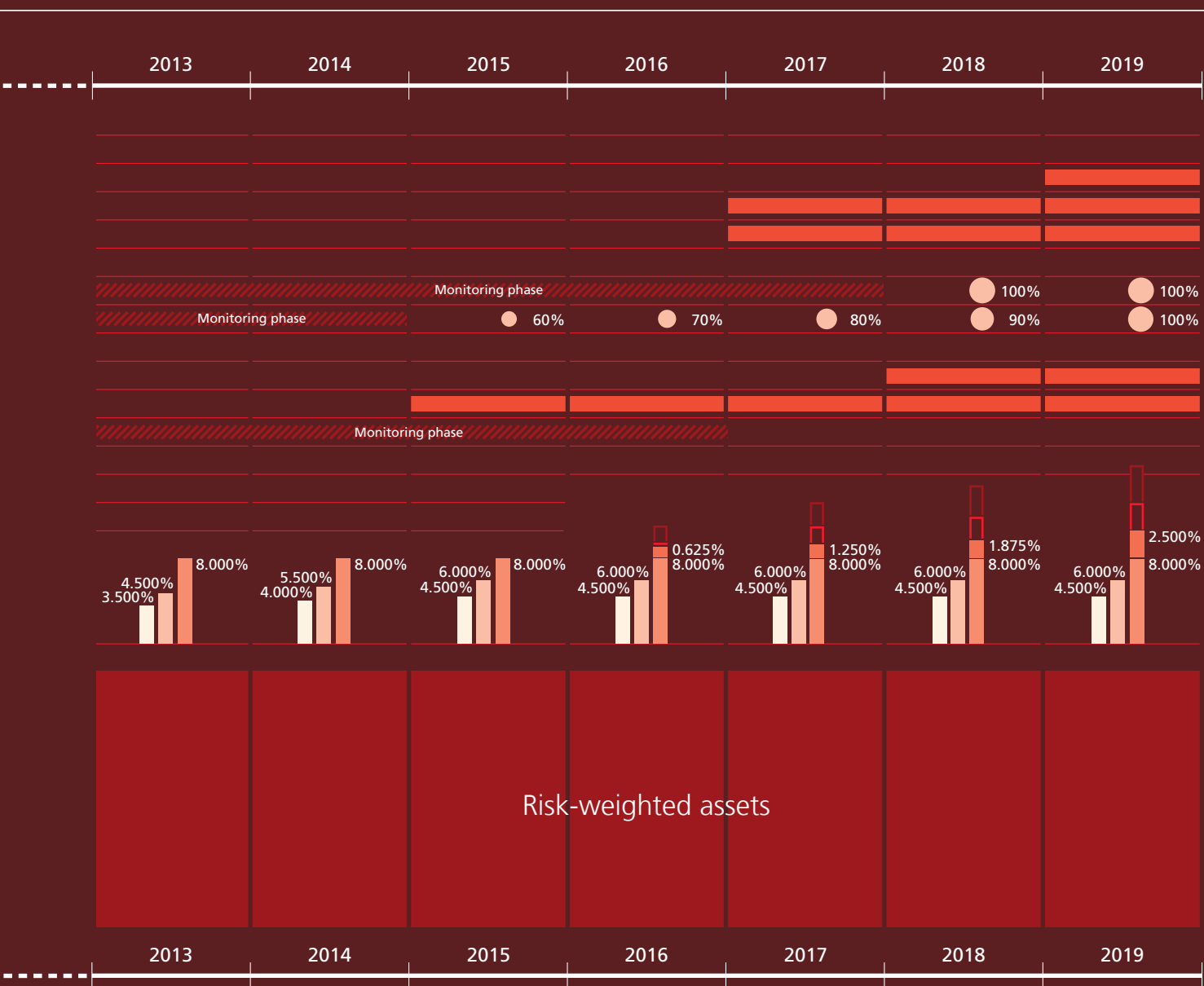


# At a glance: the Basel framework

In the years ahead, further adjustments will also have to be made to banking regulation in response to the ongoing process of implementing Basel III. This chart provides an overview of the principal components of Basel III and the timetable for implementation.

Development of the Basel framework  
(effective dates)





## Overview of insurance companies

The persistent phase of low interest rates continues to affect the insurance industry, posing major challenges for life insurers in particular. Nevertheless, the sector as a whole is in stable to good condition. FINMA is watching developments closely, addressing problem areas by conducting supervisory consultations, risk dialogues and supervisory reviews.

In 2013, low interest rates remained the main discussion topic in the insurance sector. The yield on ten-year Confederation bonds dropped to less than 0.5% at the beginning of the year. The situation defused somewhat during the year, with interest rates rising to over 1%. Insurers are using a range of measures to counter these challenges in the various sectors. FINMA's primary goal is to ensure that companies remain solvent and that technical provisions are adequate. In both areas, the Swiss insurance industry is in good condition when compared internationally.

### Solvency II in sight

The EU has not yet reached this stage after years of internal deliberations, and it announced in November 2013 that it would implement its new solvency regime on 1 January 2016. Neither the key points nor the details of Solvency II are clear at this stage. However, it seems certain that the EU will, in principle, have an instrument for measuring solvency that closely reflects market trends and is similar to the Swiss Solvency Test (SST) that has already been in use since 2011.

The temporary adjustments to the SST that FINMA introduced because of the phase of low interest rates did produce the desired effect in 2013: solvency figures disclosed by life insurers have improved all in all, and fewer insurance companies are now underfunded compared to previous years. This gives life insurers more time to tackle the challenges that lie ahead.

Direct commitments by Swiss insurance companies in the problematic GIIPS<sup>53</sup> countries remain manageable. On the other hand, commitments in EU bank bonds are a cause of concern, in particular in the case of numerous life insurers.

### Life insurance companies:

#### some relief in a tough environment

The economic situation of life insurance companies in general improved somewhat in 2013. The financial markets calmed down on the one hand, and previously earned profits accumulated in the companies on the other. The effects from biometric risks<sup>54</sup> were less pronounced than in previous years, and the cost burden was also lower than had been expected. This enabled life insurance companies to earn above-average profits in 2013 compared to the previous year and gain financial stability.

Individual life insurers are currently adjusting their products. The new products offer lower or no interest rate guarantees, making them less attractive for policyholders and therefore generally having a negative impact on turnover. In the occupational pensions sector (group life), demand for full-cover products remains strong. Here the challenge lies in investing new assets in a way that generates a reasonable return.

### Non-life insurance companies:

#### in good shape all in all

Non-life insurance companies are generally in good financial condition. Out of the 100 insurance companies under supervision, only two small ones find themselves in a financially tense situation. With an average combined ratio<sup>55</sup> of 93.6% and an average return on equity of 15.4%, non-life insurance companies demonstrated their ability to perform well in 2013 once again.

In its assessment of risk profiles of non-life insurers, FINMA in 2013 focused on auditing the provisions and quality of tied assets. The audits indicate that non-life insurers have stable balance sheets and

<sup>53</sup> Greece, Ireland, Italy, Portugal, Spain.

<sup>54</sup> See Glossary, p. 111.

<sup>55</sup> See Glossary, p. 111.

income statements, despite increasing claims from natural catastrophes, declining investment income and a tense global economic environment. Furthermore, property insurers have solid reserves, and their investments in tied assets are of good quality.

#### **Health insurance: an eventful year**

Supplementary health insurers achieved an excellent result in 2012, in particular because of the new hospital financing scheme. FINMA conducted an extraordinary and comprehensive review of the tariffs used in supplementary health insurance. In some instances, premiums for 2014 were reduced considerably.<sup>56</sup>

Besides conducting its own supervisory reviews and engaging in risk dialogues, FINMA mandated external providers to conduct special audits. Following the interventions that FINMA ordered against Assura/Supra in November 2012, some of which included suspending the group's directors, a new board of directors was appointed on 22 March 2013. The transfer to Assura SA of all persons previously insured with Supra was concluded before year-end 2012.

A systematic audit of technical provisions of some health insurers found that they had insufficiently included ageing risk in their assessment. In 2013, all the affected health insurers submitted financing plans to FINMA, which were subsequently approved. Solvency among health insurers thus proves to be very solid when compared to the average for the sector.

#### **Reinsurance: stronger capital base**

In 2013, FINMA again supervised fewer reinsurance captives though a larger number of professional reinsurers. New authorisations of companies again in-

cluded domicile relocations from abroad. In general, these companies have a significant capital base on account of their considerable business volume. Some of the rather small companies were exempt from supervision, causing the average capital base of those under supervision to increase considerably. The capital base of the reinsurance market worldwide has also stabilised at a historic high level.

Many reinsurers paid high dividends in 2013. Some of these were of an extraordinary nature and were used to repay excess capital, as well as to disburse a part of the profits. FINMA has classified these disbursements as business plan changes that require authorisation. Besides the effects on solvency, the audit also focused on company-specific risk tolerance, capital management and liquidity aspects.

#### **Group supervision: internationalisation**

With respect to group supervision, which supplements individual supervision, the focus on supervisory colleges<sup>57</sup> was further intensified. These are no longer merely annual events, but instead are developing into permanent information exchange platforms. In 2013, FINMA conducted colleges for six of the eight groups that are being supervised, namely Helvetia, Swiss Life, Baloise, Nationale Suisse, Swiss Re and twice for Zurich Insurance Group.

The exchange of opinions among supervisory authorities intensified, and FINMA, as a home supervisor of several important groups, is facing significantly more challenges. In this respect, it focused primarily on assessing risk from the perspective of groups and individual companies, capital adequacy and structure, internal group financing and group transactions, and risk management.

<sup>56</sup> See section on Effects of the new hospital financing scheme, p. 56.

<sup>57</sup> See Glossary, p. 114.



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## Swiss Qualitative Assessment: SQA II results published

In April 2013, FINMA published the results of the second Swiss Qualitative Assessment (SQA II).<sup>58</sup> SQA is the qualitative parallel to SST, focusing on corporate governance, risk management and the internal control systems of insurance companies. SQA II identified positive trends in many areas, such as increased awareness among boards of directors with respect to their supervisory obligations. It also found areas where some insurers can improve, namely in connection with certain aspects of risk management and compliance. A part of SQA also includes holding risk dialogues with members of boards of directors, executives and key people who hold control functions at companies. This dialogue helps to identify areas in which further steps are needed or where there is room for improvement. SQA III is planned for 2015.

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<sup>58</sup> See FINMA Newsletter 46 (2013) (<http://www.finma.ch/e/finma/publikationen/Lists/ListMitteilungen/Attachments/57/beilage-finma-mitteilung-46-2013-e.pdf>).

## First experience with temporary adjustments to the SST

Persistently low interest rates and delays in the EU's regulatory initiatives caused FINMA to introduce temporary adjustments to the Swiss Solvency Test as of 1 January 2013. The experience has been positive from FINMA's perspective.

The continuing low interest rates and the delayed introduction of the European Solvency II regime are posing considerable difficulties, in particular for life insurers. FINMA responded to this situation at the end of 2012 by announcing temporary adjustments to the Swiss Solvency Test (SST).

### Risk-based yield curves

With the partial revision of the Insurance Supervision Ordinance (ISO) as of 1 January 2013, the Federal Council put in place conditions whereby insurance obligations arising from in-force business during phases of low interest rates can be valued with yield curves that are not risk-free. This led to an increase in risk-bearing capital and thus to a higher disclosed solvency ratio. As part of an additional adjustment, FINMA lowered its intervention threshold temporarily. It thus refrains from implementing some of the measures that would apply if a defined threshold were to be undershot following the SST. Both of these adjustments are valid for three years.

### Adjustments have proven worthwhile

During SST analyses in 2013, 23 of the roughly 130 insurance companies required to carry out the SST opted to use the adjustments as a way of discounting their insurance obligations. Of the 19 life insurers, just under two thirds used this approach. In this sector, the effects are most clearly apparent. While life insurers would have had to report a SST ratio of around 125% in the absence of adjustments, the figure climbed by around 20 percentage points because of the adjustments. Due directly to the adjustments, four companies were able to report a SST ratio of above 100%.

From FINMA's perspective, the adjustment approach has proven to be worthwhile. Only in a few instances did FINMA find that the simultaneous use of risk-free and risk-bearing yield curves was interpreted incorrectly. Nevertheless, all of the SST benchmarks continue to be calculated based on the risk-free yield curve, except for the best estimates of the insurance obligations. With a view to 1 January 2016, when the temporary adjustments will cease to apply and all insurers will again have to use risk-free yield curves to value their obligations, this measure has already resulted in optimum transparency. Furthermore, the adjustments are implemented in a way that continues to ensure compatibility with the underlying assumptions of SST as an economical, market-based and risk-oriented approach.

### Well accepted, also internationally

Not only the insurance industry but also other stakeholders, foreign supervisory authorities for instance, have accepted the adjustments favourably. They emphasised the simplicity of the approach, its transparency and especially the fact that the measures apply only to in-force business and are time-bound. Furthermore, there are no misdirected incentives because any new business is ineligible for temporary adjustments. With respect to Solvency II, the temporal restriction is a big advantage for FINMA since, if necessary, it can respond flexibly to developments in this area when assessing insurance obligations.

## Effects of the new hospital financing scheme

On 1 January 2012, numerous changes came into effect related to financing hospital benefits. The cost of supplementary health insurance has therefore dropped considerably. FINMA has conducted an extraordinary tariff audit of all supplementary hospital insurance products, ordering insurers to reduce premiums significantly in some cases.

During the first quarter of 2013, FINMA had solid data available for the first time from cost analyses of supplementary hospital insurance. Large outstanding amounts from invoices initially prevented a conclusive cost analysis. The analysis results were significant.

### Analysis of benefit costs

Based on the 2012 financial statements, the cost of supplementary hospital insurance products dropped considerably, by CHF 582 million in total. For the general ward supplementary hospital insurance model, costs were reduced by 73%. The cost of semi-private ward products declined by 16%. And for the private ward hospital insurance model, the amount was minus 18%.

### Premium reductions for persons with general insurance cover

FINMA conducted an extraordinary review of the tariffs of all supplementary hospital insurance products. Roughly half of the 56 insurance companies offering supplementary health insurance products submitted tariffs that FINMA approved without any changes. In 22 cases, FINMA requested major corrections in some instances, following an initial review of the tariff requests. After intense discussions, all insurers finally accepted FINMA's rules. This meant there was no further need to institute formal proceedings in order to lower the tariffs.

As a consequence, premiums were reduced by a total of CHF 240 million, effective as of 2014. The general ward supplementary health insurance products experienced significant cost relief, with across-the-board tariff cuts averaging 40%. Products that also include numerous supplementary outpatient benefits were subject to more moderate reductions. A total of 3.7 million policyholders will benefit from premium reductions of CHF 172 million per year.

### Other premiums less strongly affected

The case is different for the supplementary health insurance products, semi-private ward and private ward products, of which 80% will see no premium changes in 2014. This is attributable in part to the insufficient earnings from these products in previous years, affecting approximately one million policyholders. For 11% of the products, distributed over roughly half a million policyholders, premiums will drop by 7% on average, which corresponds to approximately CHF 68 million. For 9% of the products, FINMA even approved premium increases of approximately 6% (CHF 27 million, 485,000 policyholders). These hikes are necessary in order to cover the products against longevity shifts among policyholders in future.

# Use of premiums in supplementary health insurance

## No abusive profits

In 2011, actuarial profit for the sector was minus 7%, after deduction of administration costs and amounts used to form provisions; in 2012, the amount was 2%, following the introduction of the new hospital financing regime. This means that not only individuals with supplementary health insurance plans benefited in 2012, but loss-making products did as well.

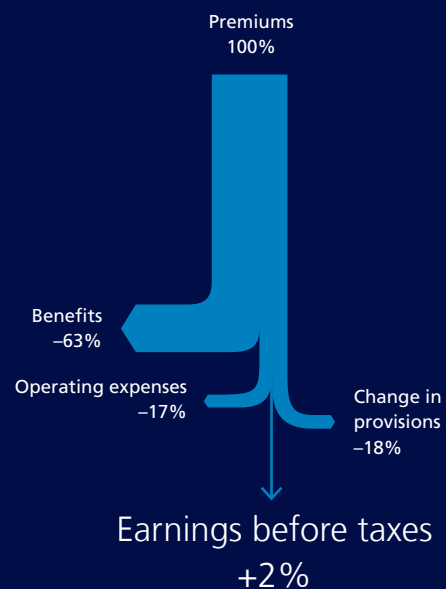
A part of the cost savings will be applied to company profits, a measure that is permitted in the private insurance sector. While reviewing the tariffs, FINMA found that insurers had not calculated any abusively high profit margins. Administrative cost components had also not been raised unreasonably (see chart on the right).

## The cost trend remains under observation

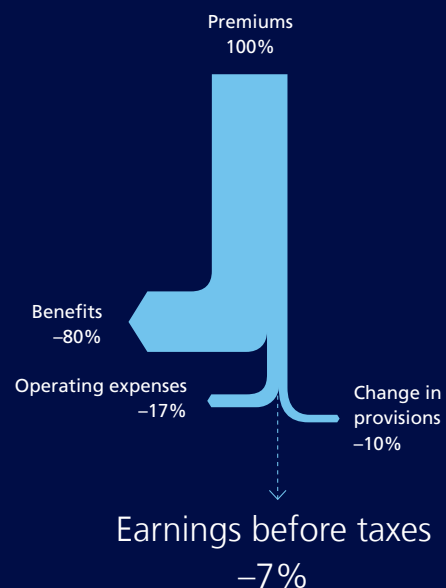
The trend in costs remains unstable, and FINMA is watching the situation closely. There is reason for concern about steadily increasing health costs, stalled negotiations on setting hospital tariffs, temporarily valid cantonal hospital lists and hospital quotas, and the still unforeseeable effects of flat rates per case (SwissDRG<sup>59</sup>).

<sup>59</sup> See Glossary, p. 114.

2012



2011





## Systemic importance of insurance companies

In 2013, the issue of whether there are also insurance companies, besides banks, that are of global systemic importance, was resolved at the G-20 level by international standard-setting bodies, namely the FSB and, in particular, the IAIS, and also in Switzerland.

The position taken by Switzerland on business conducted by internationally active insurance groups and conglomerates operating from Switzerland was laid out in the expert committee's final report on limiting macroeconomic risks arising from large companies in 2010. The 'too big to fail' expert committee did not identify any tendency of systemically important risks being formed in the conventional insurance sector.

### Risks from non-traditional business and capital market transactions

When engaging in non-traditional transactions of a certain size outside of their sector, for example, in banking or capital markets, insurance companies can pose the same risks to the financial system as those arising from the banking sector. FINMA represented this position at the international level in the FSB and, in particular, in the Financial Stability Committee (FSC) of the IAIS.

### Nine systemically important insurance companies

At the instruction of the G-20 and in accordance with the relevant national supervisory authorities, the FSB named nine global systemically important insurance companies (G-SII) for the first time on 18 July 2013. They do not currently include any insurers domiciled in Switzerland. However, this may change during the annual update of the G-SII list.

The decision on which reinsurers are to be regarded as 'global systemically important' has been postponed until July 2014. Here it will be particularly difficult to assess the strong interdependency associated with the business model of the reinsurance sector.

### Criteria of IAIS

In order to identify systemically important insurers, the FSB and national authorities rely on criteria and methods developed by the IAIS. At the same time, the FSB approved the regulatory measures developed by the IAIS.<sup>60</sup> They are intended to help mitigate risks to financial stability arising from insurance companies that are of global systemic importance.

The list of measures developed for this purpose falls under the FSB's comprehensive approach that is valid for all sectors. The measures are to be implemented by the relevant authorities and companies in phases. However, the supervisory authorities must first establish the necessary principles that apply to capital requirements. In particular, these pertain to basic equity capital requirements (loss absorbency,<sup>61</sup> as of September 2014) and to more stringent capital requirements (higher loss absorbency,<sup>62</sup> as of 2019).

### The Swiss framework meets international requirements

If an annual review in future finds that Swiss insurers are also of global systemic importance, the current Swiss insurance regime, as seen from FINMA's perspective, already now largely meets the principles as defined in the measures published by the IAIS. This applies in particular to the comprehensive SST, the FINMA Circular on insurers' liquidity, and the extension of FINMA's powers to intervene. Further adjustments are still necessary to some points for the sake of conformity, with particular attention being paid to additional capital requirements and recovery and resolution capabilities of the supervisory authority.

<sup>60</sup> See IAIS press release of 9 October 2013 on developing a Global Insurance Capital Standard by 2016 at [www.iaisweb.org](http://www.iaisweb.org).

<sup>61</sup> See Glossary, p. 113.

<sup>62</sup> See Glossary, p. 112.

## Changes in insurance regulation

Important international trends and gaps in the Swiss legal system call for moderate changes to regulations applying to insurance companies. The FINMA Insurance Bankruptcy Ordinance and two FINMA circulars came into effect on 1 January 2013. Work on the Insurance Supervision Ordinance (ISO) will continue in 2014.

| FINMA ORDINANCES /<br>FINMA CIRCULARS            | REGULATORY PROJECTS |  |   | IN FORCE<br>SINCE |
|--|---------------------|--|---|-------------------|
|  | FORM                | CONTENT / SUBJECT MATTER   | AIMS / REASONS  |                   |
| FINMA Insurance Bankruptcy Ordinance (IBO-FINMA) | New regulation      | Execution of insurance bankruptcy  | <ul style="list-style-type: none"> <li>– More precise definition of insurance bankruptcy proceedings, which are only summarised in the Insurance Supervision Act (ISA)</li> <li>– Protection of policyholders</li> <li>– Legal certainty</li> </ul> | 1 Jan. 2013       |
| FINMA Circular 13/2 'SST adjustments'            | New regulation      | <ul style="list-style-type: none"> <li>– Temporary adjustments to the SST until the end of 2015</li> <li>– Changes in the yield curve when valuing insurance obligations</li> <li>– Changes in the thresholds that, when undershot, call for FINMA to intervene and demand measures</li> </ul> | <ul style="list-style-type: none"> <li>– Continuing low interest environment</li> <li>– Delay in the introduction of new solvency requirements following Solvency II in the EU</li> </ul>   | 1 Jan. 2013       |
| FINMA Circular 13/5 'Liquidity – insurers'       | New regulation      | <ul style="list-style-type: none"> <li>– Principles for identifying liquidity risks</li> <li>– Minimum requirements on the type and content of reports on liquidity</li> </ul>   | Liquidity management is a key area of financial management also for insurance companies.  | 1 Jan. 2013       |

## Outlook

FINMA has developed a proposal for partial revision of the Insurance Supervision Ordinance. Changes to the provisions on solvency, qualitative risk management (incl. liquidity requirements), own risk and solvency assessment (ORSA), and disclosure comprise the core of the revision proposal submitted to the FDF at the end of 2013. Responsibility for any changes to the Insurance Supervision Ordinance rests with the Federal Council.

# At a glance: the Swiss solvency regime, taking life insurers as an example

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Supervision, enforcement and regulation  
FINMA | Annual Report 2013

## The policyholder's perspective: from concluding an insurance contract to its termination

### Contract conclusion

A customer decides to take out a life insurance policy to provide financial security for family members in a worst-case scenario. This means, for instance, that in the event of death, the insurer assumes the financial consequences, thereby relieving the customer's family (beneficiaries).

The insurer checks if the customer's request fits into its business model. If this is the case, the insurer can issue a contract which is signed by the customer (then referred to as the policyholder).

The contract agreed upon by both parties sets out the benefits the insurer will pay out to the policyholder/beneficiaries in the event of the policyholder's death or disability. The insurer determines the amount of premium to be paid by the policyholder.

### FINMA's role

To take up business activities, a life insurer must apply to FINMA for a licence. Concluding such a contract is, however, a contractual relationship under private law between the insurer and its customers.

### Contract period

The policyholder must pay the premiums agreed with the insurer for the duration of the contract.

In return, the insurer ensures that at all times it can cover the agreed benefits in the contract. In order to do so, the insurer invests the money paid in by the policyholder profitably, a strategy that depends on many external factors, including macroeconomic ones.

- If interest rates go down, the insurer must ensure that there are enough earnings to cover the agreed benefits in the contract.
- If life expectancy increases, the insurer must ensure that the amount of premium paid by the policyholder is sufficient.
- If the benefits guaranteed by the insurer are not or are inadequately covered by the premiums, this can with time weigh negatively on the company's financial situation.
- If the guaranteed interest rate or the conversion rate for pension benefits is too high, it becomes difficult for the insurer to provide the agreed benefits.

The insurer's adept handling of these factors subsequently determines, along with the products the insurer designs, the company's stability, i.e. its solvency.

### FINMA's role

FINMA's main duty is to supervise the insurer's financial stability. It takes action if the insurer's solvency is threatened, which ultimately protects the interests of policyholders.

### Contract termination

Once the contract terminates, the insurer must pay out the agreed benefits to the policyholder or the family members.

If the benefits promised by the insurer are too high, paying them out may jeopardise the company's solvency. The insurer may reduce benefits that were not guaranteed.

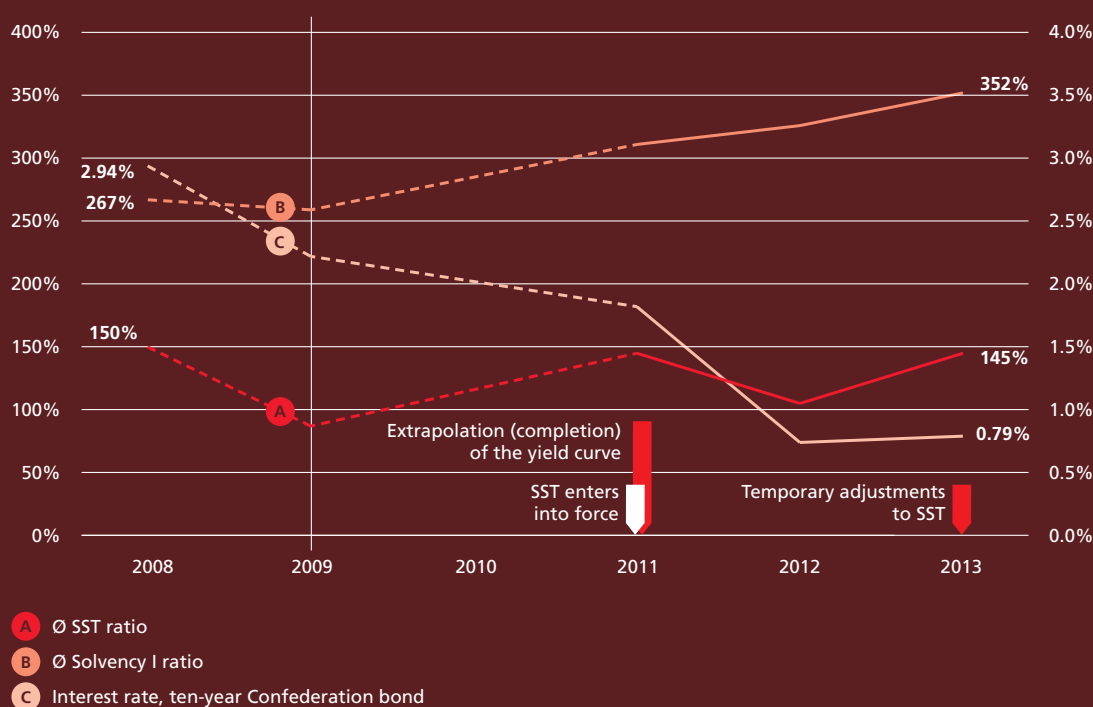
### FINMA's role

Since FINMA requested the insurer to hold sufficient solvency capital during the term of contract, the insurer can cover the agreed benefits when the contract terminates, even in hard economic times.

The Swiss Solvency Test (SST) has been in force since 2011. It has proved to be a good 'thermometer' that allows companies to form a realistic picture of their economic situation. The SST provides FINMA with an overview of the entire market and the risk situation.

## SST and Solvency I

### Measuring solvency: reaction of both systems to the low interest environment



The chart shows that the SST reacts to basic changes such as low interest rates in contrast to the old system of measuring solvency (Solvency I), which is not responsive to economic changes and gives a false sense of security. The SST has raised FINMA's awareness of risks in good time. This has allowed FINMA to ensure that insurance companies strengthen their equity capital, which subsequently helps to protect policyholders.

FINMA's Markets division heightened its supervision in 2013, developing an approach to conducting supervisory reviews at supervised institutions under the Collective Investment Schemes Act. With regard to combating money laundering, FINMA intensified its supervision of self-regulatory organisations, including issues related to auxiliaries acting for financial intermediaries who transfer money or assets.

The Markets division once again stepped up its supervision of the various market participants in 2013, introducing risk-based approaches and, where necessary, implementing clearly focused supervisory measures.

#### **Changes to supervision of financial market infrastructures**

Having allocated financial market infrastructures to various risk categories in 2012, FINMA put its risk-based supervisory approach into practice in 2013. It carried out an assessment of the infrastructures in the Swiss financial market and used it to give each institution an individual rating. Two parameters – categorisation and rating – determine the intensity of supervision.

The extension of FINMA's risk-based supervisory approach to include financial market infrastructures marks a key step towards ensuring effective supervision of these important market participants. The implementation of the legislative project headed by the FDF for the new Financial Market Infrastructure Act (FMIA) will permit broad-based, yet individually tailored, supervision of financial market infrastructures in Switzerland that is in keeping with international standards.

#### **On-site inspections of supervised institutions under the Collective Investment Schemes Act**

In 2013, FINMA introduced on-site inspections (supervisory reviews) for supervised institutions under the Collective Investment Schemes Act. These enable FINMA to obtain its own, independent assessment of a business area or a function at a supervised institution, and thus allow for more efficient supervision. The first such supervisory review was carried out in 2013, and the plan is to introduce this new supervisory tool for the collective investment schemes sector in 2014.

#### **Reviews of investment advisors**

In recent years, FINMA has found that persons formally engaged as advisors to investment funds were actually carrying out activities that went beyond mere advisory services, and as such require authorisation. It therefore introduced measures to ensure that the activities of investment advisors are in future restricted to the advisory function. As a result, there was an increase in the number of applications submitted to FINMA by investment advisors in 2013 requesting authorisation as asset managers of collective investment schemes. In other cases, the fund providers refrained from engaging investment advisors altogether.

#### **Money laundering: focus on the independence of SROs and regulatory arbitrage**

In 2013, FINMA also increased its supervisory activities in the area of money laundering and the financing of terrorism. In the case of self-regulatory organisations (SROs), measures were taken to prevent regulatory arbitrage and ensure the independence of the SROs. FINMA also examined compliance with the provision set down in the Ordinance on the Professional Practice of Financial Intermediation (OPPF)<sup>63</sup> stating that auxiliary persons of financial intermediaries active in Switzerland may only act for a single authorised or affiliated financial intermediary. FINMA found that this rule had not been heeded in all cases. Together with the SROs responsible, it took steps to restore compliance with the law.

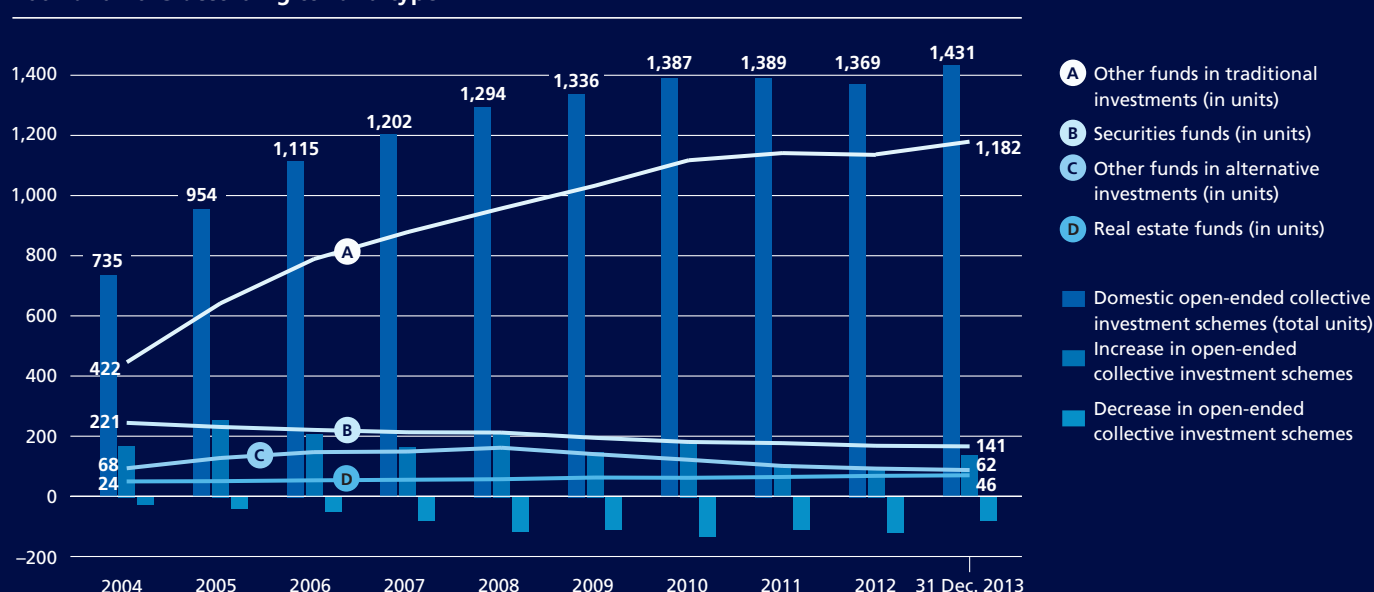
<sup>63</sup> Specifically, compliance with Article 1 para. 2 let. f no. 3 OPPFI.



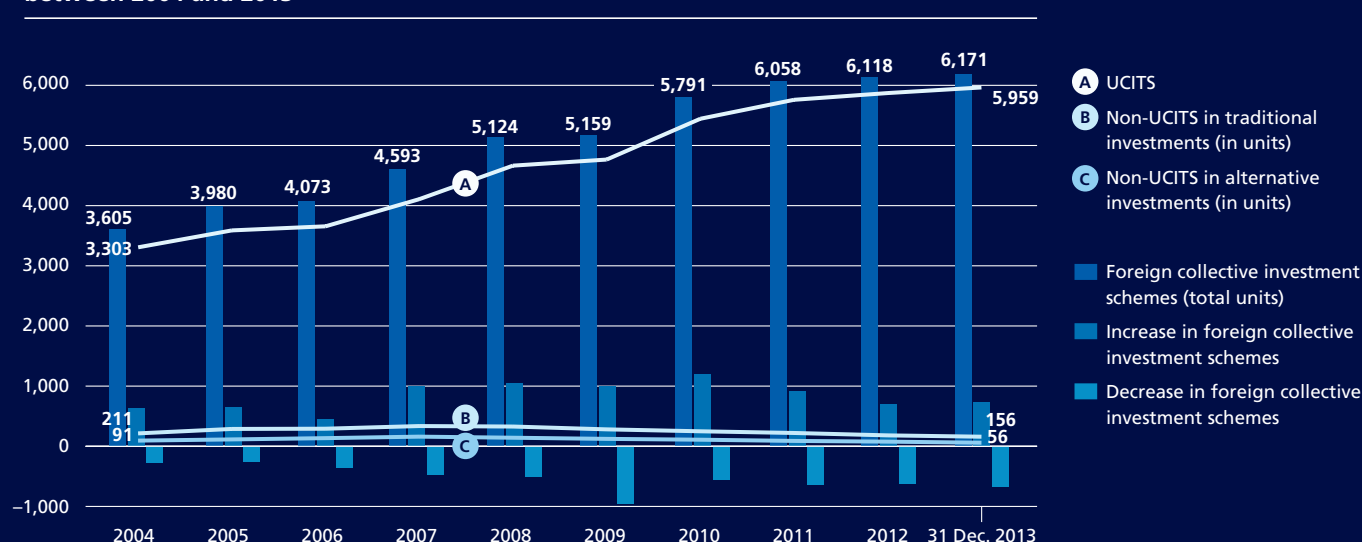
# Trends in product volumes

Compared with 2012, the number of open-ended Swiss collective investment schemes increased in 2013 due in particular to first-time authorisation of other funds for traditional investments and real estate funds. UCITS were able to continue their steady upward trend for the distribution of authorised foreign collective investment schemes from in and outside Switzerland to non-qualified investors.

**Growth in the number of domestic open-ended collective investment schemes between 2004 and 2013 according to fund type**



**Growth in the number of foreign collective investment schemes between 2004 and 2013**



Revision of the Collective Investment Schemes Act has led to changes in this sector. This has resulted in cooperation arrangements being concluded on cross-border management and distribution. With its new approach to approving collective investment schemes, FINMA hopes to cut the processing time further.

Both the EU's AIFMD and the Swiss Collective Investment Schemes Act (CISA), which was revised as of 1 March 2013, stipulate that cross-border fund services can now only be provided if FINMA concludes cooperation agreements (Memoranda of Understanding, MoUs) with other European supervisory authorities. These agreements are one of the conditions that must be met for the management of European alternative investment funds to be delegated to Swiss asset managers or for such funds to be distributed to professional investors in EU member states.

#### **Asset management of European funds in Switzerland**

By the deadline at the end of July 2013, FINMA had signed MoUs with 28 EU and EEA member states. These regulate the supervision of risks and the collection of data from asset managers, as well as the transfer of data by the relevant supervisory author-

ities to FINMA. The MoUs also include cross-border supervisory reviews and mutual assistance in the enforcement of the respective supervisory laws. Cooperation applies to Swiss alternative investment fund managers (AIFMs) who manage or market alternative investment funds (AIFs) in the EU, and also to EU AIFMs who manage investment products in Switzerland or distribute them in Switzerland to qualified investors.<sup>64</sup>

#### **Fund distribution to non-qualified investors**

The MoUs also fulfil a prerequisite between the supervisory authorities with regard to cross-border distribution to non-qualified investors. Once again, the aim is for FINMA to always have the necessary data for its supervisory activities, which enable it to provide Swiss investors with the information they need. After 1 March 2014, the conclusion of such MoUs will be a prerequisite for foreign collective investment schemes

## **International conference of the Enlarged Contact Group on the Supervision of Collective Investment Schemes**

In October 2013, FINMA hosted the annual meeting of the Enlarged Contact Group on the Supervision of Collective Investment Schemes (ECG). The meeting, which was held in Zurich, attracted high-ranking representatives from authorities in 19 countries. In addition to European countries such as France, Luxembourg and Ireland, the US, South Africa and Singapore also took part.

The informal discussions covered issues such as the legal framework for collective investment schemes, their supervision and general international developments in the fund business.

Established in 1975, the ECG is an informal group of supervisory authorities from most key fund locations worldwide. The aim of joint meetings is to exchange information and opinions, and to discuss current regulatory issues in the collective investment schemes sector.

<sup>64</sup> See Glossary, p.113.

to be distributed to non-qualified investors in Switzerland. At the end of 2013, FINMA had concluded three MoUs with foreign supervisory authorities regarding the distribution of foreign collective investment schemes to non-qualified investors.<sup>65</sup>

### **New approach to approvals**

Until 1 March 2013, every time it approved an open-ended Swiss collective investment scheme, FINMA had to approve the fund contract in its entirety, checking each and every one of its provisions. In many cases, FINMA only had to give purely formal feedback to the applicants, which does not serve to improve investor protection and in some instances prolonged the process unnecessarily.

Following the partial revision of CISA and the Collective Investment Schemes Ordinance (CISO), only the points in the contract that are relevant from a supervisory perspective now have to be checked. FINMA can therefore restrict itself to examining the provisions that deal with the protection of investors. Those that lie within the freedom of contract of the parties concerned, or that are covered by binding law, are now solely the responsibility of the fund management company and the custodian bank.<sup>66</sup>

Accordingly, FINMA developed and introduced a new approach to approving Swiss collective investment schemes in 2013. Applicants must supply the information FINMA needs for the review in a concise and standardised format. FINMA also wishes to have direct contact with the individuals managing the assets of collective investment schemes, and hopes that this will also help to further shorten the time needed to process applications. FINMA is counting on market participants to cooperate fully, which is essential for a quick and efficient process.

### **Limited partnerships as an investment vehicle defined in more detail**

Swiss limited partnerships for collective investment are closed-ended vehicles that invest in risk capital such as private equity, alternative investments, and real estate and construction projects. The legislators have further clarified these projects while revising the CISA. It has now been clearly stated that persons who are connected neither directly nor indirectly to the general partner,<sup>67</sup> to persons responsible for management and business operations or to investors may also invest in construction, real estate and infrastructure projects. Limited partnerships as an investment vehicle can now be separated from the operational business; FINMA has since authorised various limited partnerships that invest directly in construction and real estate projects.

### **Insufficient compliance with statutory reporting requirements by distributors**

Anyone distributing collective investment schemes in or from Switzerland requires authorisation from FINMA. The supervisory authority examines whether applicants meet the criteria. Once issued a licence, distributors must report to FINMA any change that requires authorisation. Distributors are, however, not placed under ongoing prudential supervision. Fund management companies and representatives of foreign collective investment schemes monitor distributors on a self-regulatory basis. While conducting an audit, FINMA found that monitoring and reporting requirements for distributors were not always being complied with properly. Subsequently, FINMA contacted the distributors in question. Wherever there were grounds to suspect unauthorised activities, FINMA carried out inspections and initiated measures where necessary.

<sup>65</sup> See section on MoUs at the international level, p. 110.

<sup>66</sup> See Glossary, p. 111.

<sup>67</sup> See Glossary, p. 112.

## Developments in financial market infrastructures

Financial market infrastructures have come under the focus of regulation across a broad front worldwide. A new law on this issue is also being drawn up in Switzerland. Other key aspects were the ESMA's recognition of the equivalence of regulation and supervision of central counterparties in Switzerland, and changes to basic principles in the authorisation of foreign exchanges.

In 2013, FINMA extended its risk-based supervisory approach to financial market infrastructures. Supervised companies and the holding company, SIX Group Ltd, were allocated to a risk category and assessed in line with legal requirements and international standards. FINMA then set the intensity of future supervision. For the first time, the result of this assessment was sent in writing to the Board of Directors of SIX Group Ltd as the holding company of the most important financial market infrastructure provider in Switzerland.

### International standards for central counterparties

In April 2012, the Committee on Payment and Settlement Systems and IOSCO (CPSS-IOSCO) defined and published new international standards for key financial market infrastructures<sup>68</sup> such as central counterparties (CCPs),<sup>69</sup> central securities depositories and securities settlement systems. Moreover, following a decision taken by the G-20 in 2009, international efforts have been under way to regulate trading in OTC derivatives.<sup>70</sup> CCPs have a special role in reducing risk in OTC derivatives trading. Inter-

national efforts to regulate financial market infrastructures have been incorporated into law by the EU, in particular with the European Market Infrastructure Regulation (EMIR).

### New law on financial market infrastructures

Against the backdrop of efforts at the European level, the FDF has been instructed by the Federal Council to draft a new Financial Market Infrastructure Act (FMIA), which is also to cover derivatives trading in addition to financial market infrastructures. The aim is to establish a regulatory framework equivalent to that in the EU. As a member of the financial market infrastructures working group, FINMA is seeking to contribute to establishing sustainable regulation for financial market infrastructures that takes into account the interests of the Swiss financial market. In addition to regulating OTC derivatives, the FMIA covers all market infrastructures from trading platforms, clearing by CCPs, and safekeeping and settlement of securities by central depositories, to possible trade repositories for reporting on derivatives transactions.

<sup>68</sup> See Glossary, p. 112.

<sup>69</sup> See Glossary, p. 111.

<sup>70</sup> See Glossary, p. 113.

### **Equivalence for central counterparties**

The SNB and FINMA engaged in an equivalence assessment with the EU on the regulation of central counterparties and the supervision of CCPs in Switzerland, the aim being to preserve market access for Swiss providers under the EU's EMIR Directive. ESMA submitted a positive recommendation to the European Commission in September 2013, confirming the equivalence of both Swiss regulations and supervisory standards. This will pave the way for Swiss market infrastructure operators to continue to provide clearing services as CCPs in EU markets and for EU participants.

### **Authorisation of foreign exchanges simplified**

With a view to sharpening the focus of its supervisory activities, FINMA revised and amended its practice for authorising foreign exchanges. Such authorisation is based primarily on appropriate supervision of the foreign trade platforms concerned in their home countries and the willingness of the responsible authority to cooperate, and applies to these platforms irrespective of their specific status, i.e. whether

they are a regulated exchange, multilateral trading facility, swap execution facility or a comparable system. Reporting requirements for platform operators have been kept to the minimum necessary. Other requirements such as the status of trading participants on such platforms have been waived entirely. The definition of corresponding requirements remains a matter reserved to the law of the home country in question.

## Supervision of self-regulatory organisations

FINMA heightened its supervision of self-regulatory organisations in 2013. An examination of their independence revealed a mixed picture. Moreover, SRO regulations were adapted to be in line with the FINMA Anti-Money Laundering Ordinance.

The Anti-Money Laundering Act (AMLA) states that FINMA is to supervise efforts to combat money laundering and the financing of terrorism. It also allows financial intermediaries from the para-banking sector to subject themselves to the supervision of a self-regulatory organisation (SRO).

### Supervision and self-regulatory organisations

More than 6,500 financial intermediaries from the para-banking sector are members of an SRO. These SROs are in turn subject to FINMA supervision. They are obliged to issue regulations setting out duties arising from the AMLA and to check compliance with these requirements.

FINMA subjects the SROs to active and direct supervision. Since 2013, it has been conducting an annual risk analysis and categorisation of the SROs, covering in particular their membership structure and numbers, their business, risk and supervision policies and their organisation. SRO risk categorisation determines the intensity and frequency of the supervisory instruments used. These instruments include periodic supervisory reviews, analysis of SRO annual reports and regular bilateral supervisory talks. All SROs receive an assessment letter each year, identifying weaknesses and pointing out where there is need for action. FINMA also organises meetings with all SROs twice a year to discuss the general challenges of implementing the AMLA at the operational level.

### Independence of the self-regulatory organisations is pivotal

FINMA conducted supervisory reviews at all 12 SROs in 2013. The results of these reviews were essentially satisfactory. Corrections were suggested in certain instances, but the SROs had largely already recognised the need for the respective improvements and had initiated the corresponding measures.

One focal point of the supervisory reviews conducted in 2013 was the legal, personnel, financial and organisational independence of SROs. Such independence is a fundamental prerequisite for the critical, objective and effective definition, supervision and implementation of rules. It is presumably also a pivotal factor in the recognition of Swiss self-regulation internationally, as clearly underscored by the public criticism voiced by the Financial Action Task Force (FATF).

### FINMA's requirements

Concerning the independence of SROs, FINMA requires effective recusal rules to be put in place. Moreover, at least half of an SRO's board of directors must be independent of the members it supervises. In cases where SROs are integrated into associations, this independence must also be preserved in respect to the association. The results of FINMA's reviews showed a mixed picture. While most SROs displayed a very high degree of independence, others still clearly must improve, particularly one SRO that is integrated into an association.

To eliminate regulatory arbitrage and provisions contrary to the law, the SROs were required to bring their regulations in line with FINMA's Anti-Money Laundering Ordinance (AMLO-FINMA). FINMA had analysed material discrepancies in 2012, and requested the SROs to amend the corresponding provisions in their regulations. In the case of one SRO, FINMA had to take steps to prevent regulatory arbitrage.



## Changes in market regulation

Entry into force of the partial revision of CISA meant the subordinate regulations had to be amended. In particular, the ‘Public advertising – collective investment schemes’ circular was replaced by the ‘Distribution of collective investment schemes’ circular. Furthermore, provisions governing bankruptcy proceedings under CISA were defined in more detail in CISBO-FINMA.

| FINMA ORDINANCES /<br>FINMA CIRCULARS                                  | REGULATORY PROJECTS |  |  | CHANGES   | IN FORCE<br>SINCE |
|--|---------------------|--|--|---|-------------------|
|  | FORM                | CONTENT / SUBJECT MATTER   | AIMS / REASONS   |   |                   |
| FINMA Collective Investment Schemes Bankruptcy Ordinance (CISBO-FINMA) | New regulation      | Proposed regulations covering the bankruptcy of possible legal forms of collective investment schemes, tailored to the legal forms in question   | Since 1 September 2011, FINMA has been responsible for initiating and conducting bankruptcy proceedings against various legal forms of collective investment schemes. This ordinance adds specific detail to the provisions of CISA, which contains only rudimentary regulations on bankruptcy proceedings.  | –   | 1 Mar. 2013       |
| FINMA Circular 13/9 ‘Distribution of collective investment schemes’    | Full revision       | <p>The circular provides a detailed definition of the term ‘distribution of collective investment schemes’ and specifies which activities are to be deemed distribution. It also explains the legal consequences of a particular activity being deemed to constitute distribution.</p> <p>The circular is aimed at banks, insurance companies, securities dealers, fund management companies, SICAVs, limited partnerships for collective investment, SICAFs, asset managers of collective investment schemes, representatives of foreign collective investment schemes, distributors, and all other persons who distribute collective investment schemes.</p> | With the entry into force on 1 March 2013 of the partial revision of the Collective Investment Schemes Act (CISA) and the Collective Investment Schemes Ordinance (CISO), the term ‘public advertising’ was replaced by the more broadly defined term ‘distribution’ (Art. 3 CISA; Art. 3 CISO). Following this revision, there is no longer a differentiation between public and non-public advertising. This necessitated the complete revision of FINMA Circular 08/8 ‘Public advertising – collective investment schemes’. | Replaces FINMA Circular 08/8 ‘Public advertising – collective investment schemes’ | 1 Oct. 2013       |

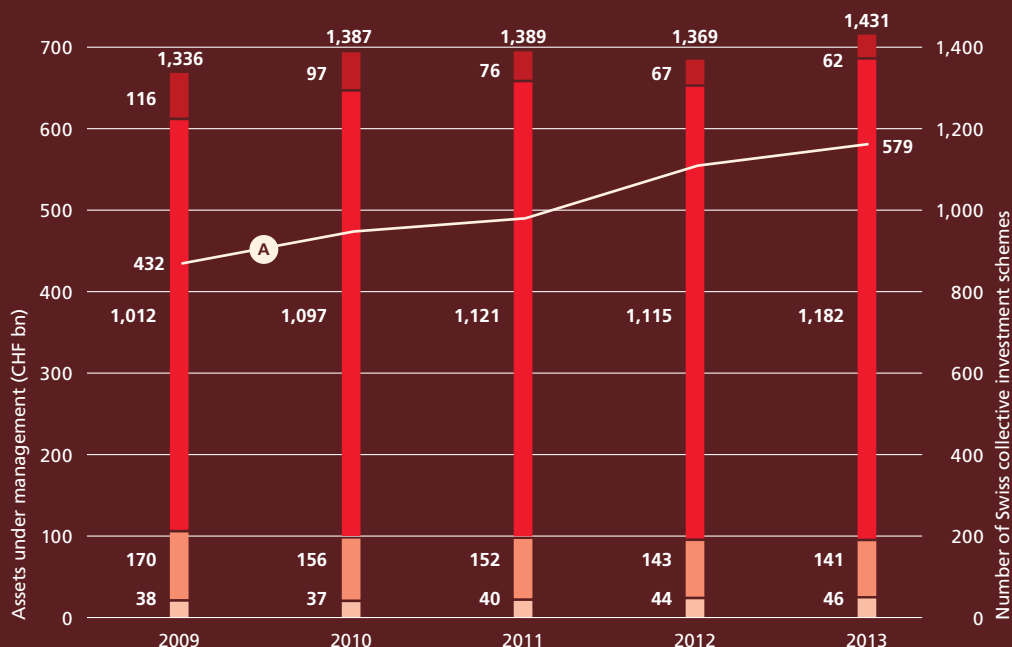
## At a glance: the Swiss fund market

The Swiss fund market has grown steadily in recent years – both assets under management and the number of Swiss-domiciled asset managers of collective investment schemes.

70

Supervision, enforcement and regulation  
FINMA | Annual Report 2013

**Number of Swiss collective investment schemes and assets under management**



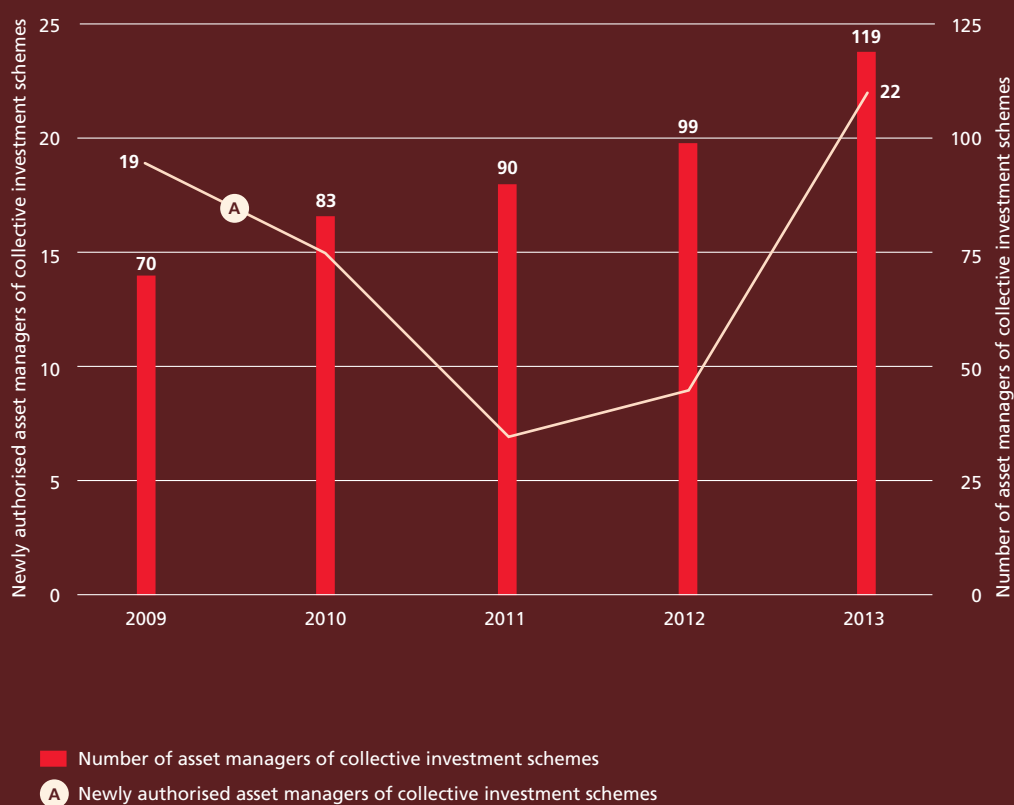
Source Assets under Management: SNB Statistical Bulletin December 2013, D6\_1 Swiss Collective Investment Schemes, net assets at quarter-end (31 July 2013).

- Other funds for alternative investments
- Other funds for traditional investments
- Securities funds
- Real estate funds

A Assets under management (CHF bn)

The volume of assets under management in Swiss collective investment schemes has increased steadily in recent years. Other funds for traditional investments are the most commonly used form of funds in Switzerland. There has also been an increase in real estate funds.

## Number and growth trend in Swiss-based asset managers of collective investment schemes



With the entry into force of CISA on 1 January 2007, asset managers of Swiss collective investment schemes came under FINMA supervision for the first time. This led to a temporary increase in the number of authorisations issued until 2009. The volume of authorisations then decreased, until FINMA reviewed the investment decision-making process in 2011 and found that certain investment advisors were de facto managing the assets of collective investment schemes without holding the required authorisation.

To receive approval to distribute collective investment schemes, investment advisors are increasingly opting to apply for authorisation as asset managers of collective investment schemes. In 2013, there was a renewed increase in authorisations owing to the revision of CISA, which made all asset managers of collective investment schemes in principle subject to supervision. These authorisations mainly involved existing companies that became subject to CISA for the first time due to the closing of the gap in the regulations.

## Overview of enforcement

Expansion of the Enforcement division was completed in 2013. With 68 full-time equivalent positions, it is now large enough to allow FINMA to act in a targeted manner against breaches of the law in all areas of supervision.

The expansion by a total of 20 full-time equivalent positions in 2012 and 2013, combined with the integration of the international administrative assistance group following completion of an internal reorganisation, has generated valuable synergies, especially in market supervision and action against unauthorised activities. The division's new responsibility for administrative assistance also facilitates the task of carrying out enforcement proceedings with an international dimension (such as investigating possible manipulations of exchange rates<sup>71</sup>).

The intensity of enforcement activities varies between supervisory areas. The freedom of manoeuvre granted to FINMA is narrowest where there are suspicions of unauthorised activities.<sup>72</sup> Where prudentially supervised licence holders are concerned, in contrast, irregularities and problems can often be adequately addressed within the scope of ongoing supervisory activities.

### Process-oriented organisation has proved its worth

Dividing Enforcement into an Investigations section (concerned with licence holders, unauthorised activities, market supervision and administrative

assistance), a Proceedings section and separate groups for Insolvency and Operational Services has proved successful. The process-oriented structure permits an 'unité de doctrine' concerning the material appraisal of supervisory law and an assessment of escalation up to and including the initiation of proceedings, as well as a focus on ongoing enforcement proceedings until they become legally binding.

### Focus on business conduct obligations

In terms of themes, FINMA's Enforcement division increasingly dealt with the various business conduct obligations applying to financial intermediaries during 2013. Areas of particular importance included combating money laundering, new regulations governing market conduct, and due diligence obligations in cross-border services. FINMA identified breaches of the law, initiated corrective measures, imposed restrictions on business activity and applied sanctions such as disgorgement of profits, prohibitions on practising a profession and the preventive publication of rulings (such as bans on activities).

<sup>71</sup> See section on Full revision of the circular on 'Market conduct rules', p. 80.

<sup>72</sup> See section on Dealing with companies and individuals engaged in unauthorised activities, p. 78.

### **Executive Board committee takes decisions on enforcement**

FINMA's activities in enforcing the law are guided by the Enforcement Committee (ENA), which is made up of members of the Executive Board.<sup>73</sup> The committee decides on final rulings and, in the vast majority of cases, on whether or not to initiate enforcement proceedings against licence holders, their governing bodies or employees. Initiating proceedings in response to suspicions of unauthorised activity, ordering precautionary measures and issuing rulings related to insolvency and international administrative assistance are delegated to the Enforcement division.

### **Appeal proceedings taking time**

The time taken to complete appeal proceedings is giving cause for concern. This results in a long period of great uncertainty for all concerned. Such protracted proceedings are a major challenge, especially where the cases involve supervised licence holders or liquidations. Uncertainty over the outcome of the proceedings and the degree of freedom of manoeuvre means that it is often difficult to structure the ongoing supervisory relationship in such instances.

To counter this uncertainty and protect the interests of investors and policyholders, FINMA removes the suspensory effect of a complaint wherever appropriate and orders precautionary measures in parallel. The Federal Administrative Court grants FINMA the flexibility to do this or may take appropriate measures itself.

From an international perspective, the rapid processing of rulings in international administrative assistance cases is an important issue. Here, the power to take final decisions lies exclusively with the Federal Administrative Court, which deals with such complaints swiftly and thereby helps safeguard the ability to provide administrative assistance.

<sup>73</sup> See section on Board of Directors and Executive Board, p. 90.

## Enforcement statistics

|   | ONGOING AS<br>OF 1 JAN. 2013 | PROCEEDINGS<br>INSTITUTED | PROCEEDINGS<br>CONCLUDED | ONGOING AS<br>OF 31 DEC. 2013 |
|---|------------------------------|---------------------------|--------------------------|-------------------------------|
| <b>Enforcement proceedings</b>                                      |                              |                           |                          |                               |
| – in institutional supervision                                      | 14                           | 23                        | 24                       | 13                            |
| – conducted separately against employees of authorised institutions | 3                            | 17                        | 7                        | 13                            |
| – due to unauthorised activity                                      | 12                           | 22                        | 21                       | 13                            |
| <b>Preliminary investigations</b>                                   | 342                          | 740                       | 545                      | 537                           |
| <b>Liquidations</b>   |                              |                           |                          |                               |
| – of licence holders  | 2                            | 0                         | 0                        | 2                             |
| – of companies engaging in authorised activities                    | 29                           | 8                         | 11                       | 26                            |
| <b>Bankruptcies</b>   |                              |                           |                          |                               |
| – of licence holders  | 10                           | 0                         | 0                        | 10                            |
| – of companies engaging in authorised activities                    | 93                           | 34                        | 31                       | 96                            |
| <b>Recognition of foreign insolvency measures</b>                   |                              |                           |                          |                               |
| – involving licence holders   | 9                            | 5                         | 0                        | 14                            |
| – involving unauthorised activities                                 | 6                            | 0                         | 2                        | 4                             |
| <b>Recognition of foreign restructuring measures</b>                |                              |                           |                          |                               |
| – involving licence holders   | 2                            | 0                         | 0                        | 2                             |
| – involving unauthorised activities                                 | 0                            | 0                         | 0                        | 0                             |



# Examples of enforcement practice in 2013

## Increase in enforcement activities relating to directly subordinated financial intermediaries

As an alternative to joining a self-regulatory organisation (SRO), financial intermediaries operating in the para-banking sector have the option of submitting themselves to supervision by FINMA in regulatory money laundering matters as directly subordinated financial intermediaries (DSFIs). The difficult economic environment is also having an impact on the para-banking sector. Players in this market must meet the requirements of an environment that is more complex than it used to be. This leads to an increase in the number of cases involving such DSFIs being referred to the Enforcement division: around a dozen in 2013 alone.

## Countertrades used as a channel for proceeds of organised crime

In the course of two large-scale foreign criminal investigations, FINMA became aware that organised crime syndicates are using countertrades to launder the proceeds of crime, and that such transactions had also been carried out via authorised Swiss financial institutions. Foreign clients of Swiss banks were receiving sums of money (the proceeds of, for example, the street-level drug trade) in their home country via middlemen.

These clients would then instruct their bank to transfer a corresponding amount to a further payee at a third institution (for example in Asia), which would end up being credited to suspected members of organised criminal structures. The fact that countertrades lend themselves so readily to money laundering means that they harbour substantial legal and reputational risks which it is essential for institutions to control. Following its own investigations at various institutions, FINMA ordered organisational measures to be taken to limit these risks.

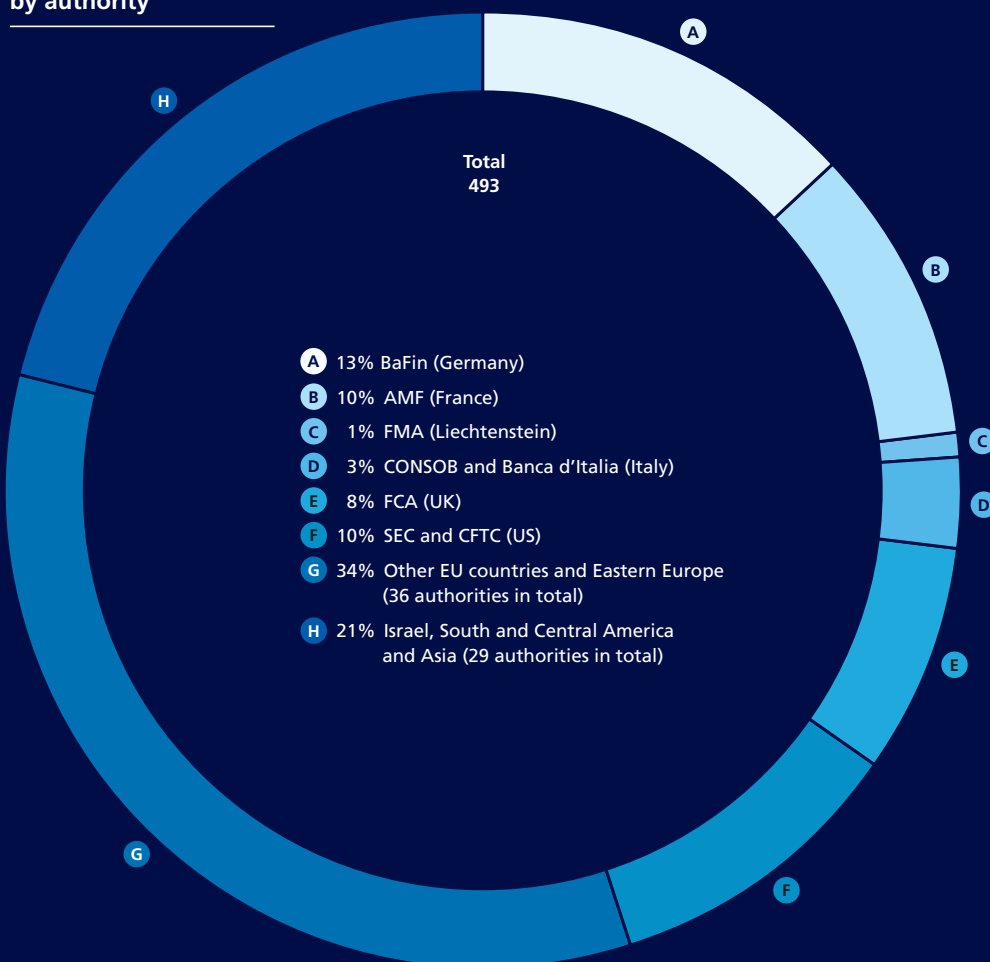
## Progress in the Lehman Brothers bankruptcy proceedings

A large number of insolvency proceedings were completed in 2013. At the same time, however, FINMA's more intensive enforcement activity led to an increase in the number of new proceedings being opened, so that the total number of ongoing proceedings in this area remained as high as ever. Substantial progress was made in the bankruptcy proceedings against Lehman Brothers Finance AG. The schedule of claims was presented, and settlements reached with major counterparties. A number of appeals prevented the first instalment payments from being made.

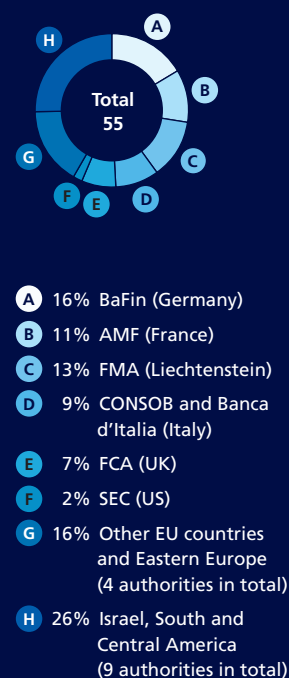
# International administrative assistance statistics

FINMA receives the third-largest number of requests for international administrative assistance worldwide. The majority of these are dealt with satisfactorily, though the uniquely Swiss client procedure, which entails delays and involves the parties affected being notified in advance, has earned criticism.

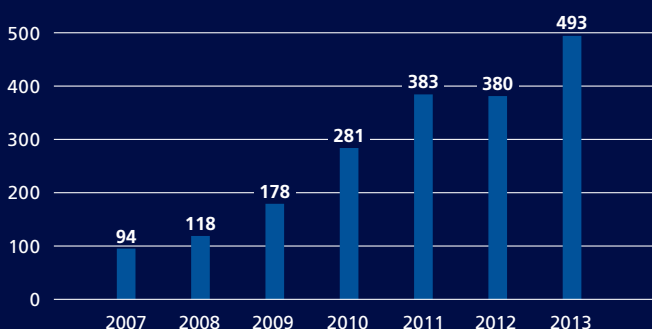
## Incoming requests by authority



## Outgoing requests by authority



## Requests for administrative assistance (2007–2013)<sup>74</sup>



<sup>74</sup> The figures for 2009 and 2010 have been adjusted from those published in previous annual reports.

### Incoming requests

In 2013, FINMA received 493 requests for administrative assistance from 73 foreign supervisory authorities. Of these, 363 concerned financial intermediaries and 1,218 clients. In respect of those 1,218 clients, a total of 194 client procedures have been initiated to date and 19 rulings issued. Appeals against ten of those rulings have been submitted to the Federal Administrative Court. In four cases, the Court ruled in FINMA's favour; six cases were still pending at the end of 2013. FINMA is in third place worldwide in terms of the number of requests received, which reflects the importance of Switzerland as a location for private banking. The statistics compiled each year by IOSCO confirm that FINMA handles the majority of the requests to the satisfaction of the foreign supervisory authorities, although the length of proceedings and the prior information given to the parties involved has earned criticism.

### Outgoing requests

In 2013, FINMA submitted 55 requests for administrative assistance to the relevant foreign authorities, including nine to Germany's BaFin, six to France's AMF, seven to Liechtenstein's FMA, five to CONSOB and the Banca d'Italia in Italy, four to the UK's FCA, one to the SEC in the US and 23 further requests to 13 supervisory authorities in EU member states, Eastern Europe and other countries. A total of six requests were made to foreign supervisory authorities in Europe and North, South and Central America regarding disclosure law.

## Dealing with companies and individuals engaged in unauthorised activities

FINMA investigates whether companies or individuals are operating illegally in the financial sector without a licence, and has the power to take measures when it identifies breaches of financial market legislation. This most often occurs in cases involving unauthorised acceptance of deposits from the public or unauthorised operations as an issuer or insurer.

FINMA receives several thousand reports of possible unauthorised activities every year. These typically come from investors, sources within FINMA, criminal prosecution authorities, foreign supervisory authorities or the media. FINMA investigates all substantiated grounds for suspicion with due care, and assesses them from a supervisory law perspective. Investigations focus in particular on cases in which funds received from investors are at risk, large numbers of investors are affected or very large sums of money are involved.

### Consequences for companies and individuals

Such investigations into unauthorised activities give rise to a range of measures. Some investigations are discontinued without further steps being taken, either because Switzerland is not (or has ceased to be) the jurisdiction responsible, or because it emerges that no activities relevant to financial market legislation are being, or have been, carried out. In many cases, compliance with the law is restored by FINMA ordering changes to business models, contracts or advertising materials, or the provider applying for the licence they require or for membership in an SRO.

If an amicable settlement cannot be achieved, FINMA will initiate enforcement proceedings against the company concerned and, if necessary, appoint an investigating agent. Proceedings frequently end with the liquidation of the company that has been engaging in unauthorised activities, and a ban on the person

concerned engaging in the unauthorised activity, which is then often published on the FINMA website. If, in the course of its investigations, FINMA becomes aware of criminal offences under ordinary law or breaches of financial market legislation, it notifies the relevant prosecutors and files a criminal complaint.

### Limits of FINMA's activities

FINMA has to limit itself to pursuing cases where the initial suspicions result in concrete evidence. It does not go out looking for companies or individuals that may be operating in the financial sector illegally. Across-the-board monitoring of the unsupervised sector would exceed FINMA's supervisory remit and area of responsibility.

FINMA only takes action in the unauthorised sector when financial market legislation has been breached. Most often, this involves cases of the illegal receipt of deposits from the public, illegal issuance or insurance activities, or breaches of money laundering legislation. Where no financial market laws have been broken, FINMA's hands are tied. In such cases, FINMA normally refers investors to the civil authorities or prosecutors.

# Examples of dealing with companies and individuals engaged in unauthorised activities

## Shares in purported start-up companies

FINMA repeatedly becomes aware of cases in which aggressive methods are used to sell shares in unknown start-up companies that are often worthless. In many cases, the companies concerned are claimed to be operating in areas such as alternative energies, commodities trading or medical technology. It is not uncommon for them to be promoted with reference to an alleged planned initial public offering (IPO). Often, FINMA is unable to intervene in such cases, as neither the sale of own shares nor the mere referral of share sales requires a licence.

## Do bitcoin activities require a licence?

During 2013, FINMA was often asked whether activities in connection with the new virtual trading currency bitcoin<sup>75</sup> require FINMA authorisation. Supervisory law does not contain any specific provisions on virtual currencies, but trading in bitcoins (or another virtual currency) may require authorisation, depending on the business model. For example, a banking licence is required if deposits are accepted from more than 20 individuals. Companies whose business models include the rapid purchase and sale of bitcoins in exchange for legal tender require a licence under the Anti-Money Laundering Act (AMLA). They must either join an SRO or apply for a licence from FINMA.

## Increase in requests for free legal advice and assistance (legal aid)

FINMA increasingly finds itself faced with requests for free legal advice and assistance in cases against the owners and governing bodies of companies operating without a licence. When such requests are received, FINMA assesses whether the conditions are met: if the applicant lacks sufficient means and their legal argument has at least some prospect of success, and if the proceedings are of a certain legal complexity, the provisions of the Swiss Constitution require FINMA to approve free legal advice and assistance, with the costs being borne by the other fee payers.

<sup>75</sup> See Glossary, p. 111.

## Full revision of the circular on 'Market conduct rules'

Following the revision of the Stock Exchange Act and Stock Exchange Ordinance, FINMA can now take action against anyone who uses insider information or engages in market manipulation. Details of its supervisory practice are set out in the fully revised 'Market conduct rules' circular.

The revised provisions of the Stock Exchange Act (SESTA) and Stock Exchange Ordinance (SESTO) relating to stock exchange offences and market abuse came into force on 1 May 2013. These adopt a broader definition than before of conduct that constitutes market abuse, and are more closely aligned with international standards.

### A level playing field for all

The creation of generally applicable predicate offences for impermissible market conduct under supervisory law creates a level playing field for all, enabling FINMA to enforce market conduct rules against everyone, and not just supervised financial market participants. To permit certain economically justified forms of conduct to continue in spite of the far-reaching supervisory prohibitions on insider trading and market manipulation, the Stock Exchange Ordinance defines permitted forms of conduct in what it terms 'safe harbours'.

### Circular sets out details of prohibited conduct

The revision of the superordinate legislation necessitated a fundamental overhaul of FINMA Circular 2008/38 'Market conduct rules'. The circular sets out specific details of the general rules on exploiting insider information and market manipulation.

It includes a non-exhaustive list of forms of conduct that constitute market abuse, defines securities transactions and forms of conduct that are permitted and, in three cases, allows for a presumption that a certain type of conduct does not constitute market abuse.

### Ban on manipulation extends beyond Swiss securities dealing

General market supervision by FINMA and the prosecuting powers of the Attorney General's Office are limited to the protection of Swiss securities dealing. The aim is to prevent both actions that infringe equality of opportunity and fairness, and those that mislead other market participants. However, abusive conduct on other markets is no different from abusive conduct in Swiss securities dealing, and is therefore regarded as equally reprehensible in terms of the assurance of proper business conduct.

The circular confirms FINMA's long-established practice on this issue and clearly states that when it comes to assessing the assurance of proper business conduct, the provisions on insider trading and market manipulation also apply, *mutatis mutandis*, to the conduct of those required to provide that assurance in securities dealing on the primary market, on a foreign exchange or on other markets (for example in connection with interest reference rates and other benchmarks).

### Organisational requirements now apply to all those subject to prudential supervision

The fully revised circular also includes the extensively revised organisational requirements. These now cover not just securities dealers but all those subject to prudential supervision. This means that the key factor governing the applicability of the requirements is not the possession of the licence, but rather the business activity and the associated risks.

The fully revised FINMA Circular 2013/8 'Market conduct rules'<sup>76</sup> entered into force on 1 October 2013. The transitional period for supervised institutions to implement the organisational requirements runs until 1 January 2015.

<sup>76</sup> See <http://www.finma.ch/e/regulierung/Documents/finma-rs-13-08-e.pdf>.



# Examples of investigations and proceedings due to market manipulation

## Enforcement proceedings due to market manipulation

During 2013, FINMA issued a ruling against a bank that had manipulated the market by entering a large number of fictitious orders. In addition to other measures, FINMA ordered the disgorgement of illegally generated profits amounting to some CHF 3.5 million to the Swiss government.

FINMA imposed special conditions on a cantonal bank that had manipulated the market price of its own participation certificates by engaging in massive support buying. The bank was likewise ordered to disgorge its illegally generated profit of CHF 2.64 million. In its Newsletter 52 (2013)<sup>77</sup> published on 18 November 2013, FINMA informed issuers and securities dealers of its expectations regarding current market conduct rules on trading own equity securities.

## Internationally coordinated investigation of possible manipulation of exchange rates

In the second half of the year, FINMA was heavily involved in an investigation of possible manipulation of exchange rates at a number of Swiss financial institutions. FINMA is working closely with foreign authorities, as banks in other countries may be implicated. It is impossible to predict at this stage how long the investigation will last.

<sup>77</sup> See FINMA Newsletter 52 (2013) 'Trading own equity securities with the purpose of ensuring liquidity under the new provisions on market manipulation' (<http://www.finma.ch/e/finma/publikationen/Lists/ListMitteilungen/Attachments/64/finma-mitteilung-52-2013-e.pdf>).

If there are genuine grounds for concern that a company falling within FINMA's area of responsibility is overindebted or has serious liquidity problems, and if restructuring appears impossible or has failed, FINMA opens bankruptcy proceedings. This intervention serves to secure the protection of investors, policyholders and creditors as intended by the legislature.

Where bankruptcy proceedings need to be opened against a bank, securities dealer, insurance company or fund management company, FINMA intervenes, acting as a bankruptcy court for institutions under its supervision.<sup>78</sup> It also acts as a bankruptcy authority, and can conduct bankruptcy proceedings itself as a bankruptcy liquidator or appoint an external liquidator to carry out this task. In practice, most bankruptcy cases involve small and medium-sized companies. However, it is not uncommon for these also to have international links, which renders the task of liquidation complex.

#### **Particular challenges of cross-border bankruptcy proceedings**

Small and medium-sized financial intermediaries usually have flexible organisational structures designed to allow them to respond rapidly to the needs of the market. Their foreign-based clients are often acquired via the Internet, and those clients' assets are spread across banks in various countries.

If the intermediary in Switzerland goes bankrupt, the links to other countries soon throw up cultural, linguistic and, especially, legal hurdles that slow down the bankruptcy proceedings. In particular, assets abroad that form part of the bankrupt estate in Switzerland cannot be returned to Switzerland until a corresponding recognition procedure has been completed in the foreign country.

#### **Use of external bankruptcy liquidators**

FINMA has a pool of tried and tested, qualified external experts that it can deploy as liquidators in bankruptcy and restructuring proceedings. However, FINMA can also act as liquidator and conduct the bankruptcy proceedings itself, for example, when the assets available are small.

#### **Cooperation with criminal prosecution authorities**

It is not uncommon for criminal proceedings to be initiated against the governing bodies of an unauthorised financial intermediary against which FINMA has opened bankruptcy proceedings. As a result, the assets of the bankrupt estate are seized under criminal law, and the creditors in the bankruptcy proceedings become injured parties in criminal proceedings. For this reason, FINMA attaches great value to constructive cooperation with the Swiss criminal prosecution authorities.

<sup>78</sup> See Article 173b Debt Enforcement and Bankruptcy Act (DEBA).

## Changes in regulation

In the field of enforcement, FINMA adapted the FINMA Stock Exchange Ordinance and FINMA Circular ‘Market conduct rules’ during 2013.

| FINMA ORDINANCE /<br>FINMA CIRCULAR          | REGULATORY PROJECTS |   |  | CHANGES   | IN FORCE<br>SINCE |
|--|---------------------|---|--|---|-------------------|
|  | FORM                | CONTENT / SUBJECT MATTER  | AIMS / REASONS   |   |                   |
| FINMA Stock Exchange Ordinance (SESTO-FINMA) | Partial revision    | The disclosure obligation under Article 20 para. 1 SESTA now also applies to companies domiciled abroad whose equity securities are mainly listed in Switzerland. Article 11 para. 2 SESTO-FINMA defines when the disclosure obligation arises in the event of capital changes and restructuring and, for Swiss companies, links it to the date of publication in the ‘Swiss Official Gazette of Commerce’. For foreign companies, no such publication occurs. Article 11 para. 2 SESTO-FINMA therefore now states that for holdings in foreign companies, the disclosure obligation arises on publication of the current total number of equity securities issued and the corresponding voting rights by the company in accordance with Article 53b para. 3 SESTO. | Alignment with changes to superordinate law  | Change to Article 11 para. 2  | 1 May 2013        |
| FINMA Circular 13/8 ‘Market conduct rules’   | Full revision       | Detailed description of supervisory practice in combating market abuse on the basis of the new superordinate provisions of the Stock Exchange Act on insider trading and market manipulation  | Alignment with changes to the superordinate law, taking account of practical experience with Circular 08/38 ‘Market conduct rules’ | See section on Full revision of the ‘Market conduct rules’ circular, p. 80. | 1 Oct. 2013       |

# At a glance: enforcement measures

The Financial Market Supervision Act (FINMASA) has granted FINMA additional enforcement powers over and above those accorded to its predecessor authorities. The charts show how FINMA uses these powers.

## Authorised segment

### Measures against licence holders

- A** Deployment of an investigating agent (I)
- B** Declaratory ruling / reprimand
- C** Special conditions and restrictions (II)
- D** Implementation overseen by third parties (III)
- E** Suspension and removal of assurance holders (IV)
- F** Disgorgement of profits
- G** Withdrawal of licence
- H** Liquidation/bankruptcy proceedings

### Measures against governing bodies, owners and employees of licence holders

- A** Declaratory ruling / reprimand
- B** Suspension and removal (V)
- C** Professional prohibition and ban on activity (VI)
- D** Disgorgement of profits

## Unauthorised segment

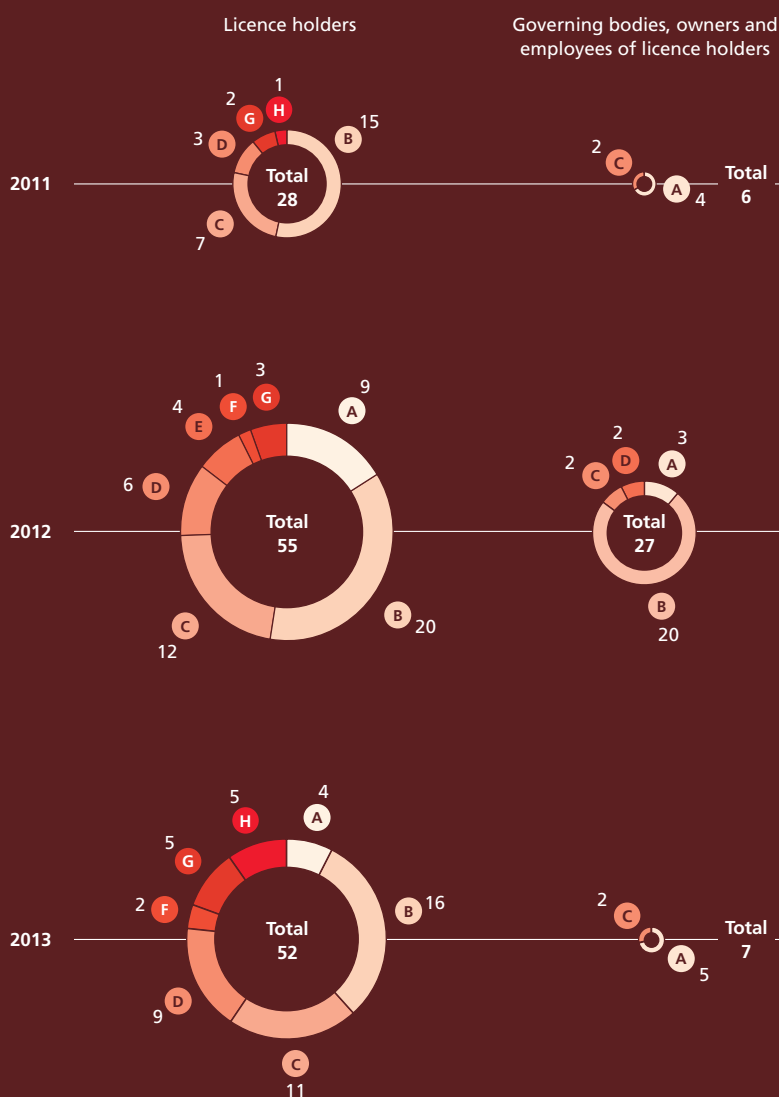
### Measures against companies

- A** Deployment of an investigating agent (I)
- B** Declaration of unauthorised activities
- C** Liquidation
- D** Bankruptcy proceedings (VII)

### Measures against individuals

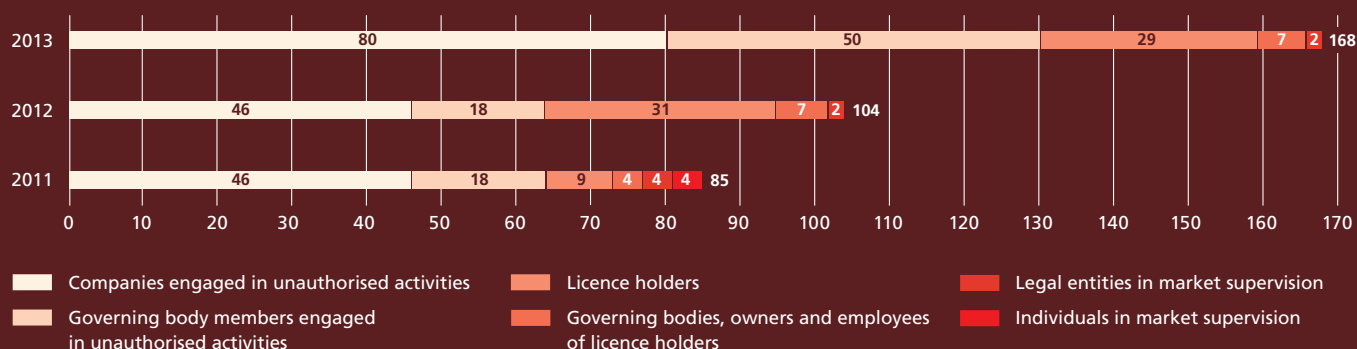
- A** Declaration of participation in unauthorised activities
- B** Ban on activity
- C** Publication (VIII)

## Type and number of measures in the authorised segment

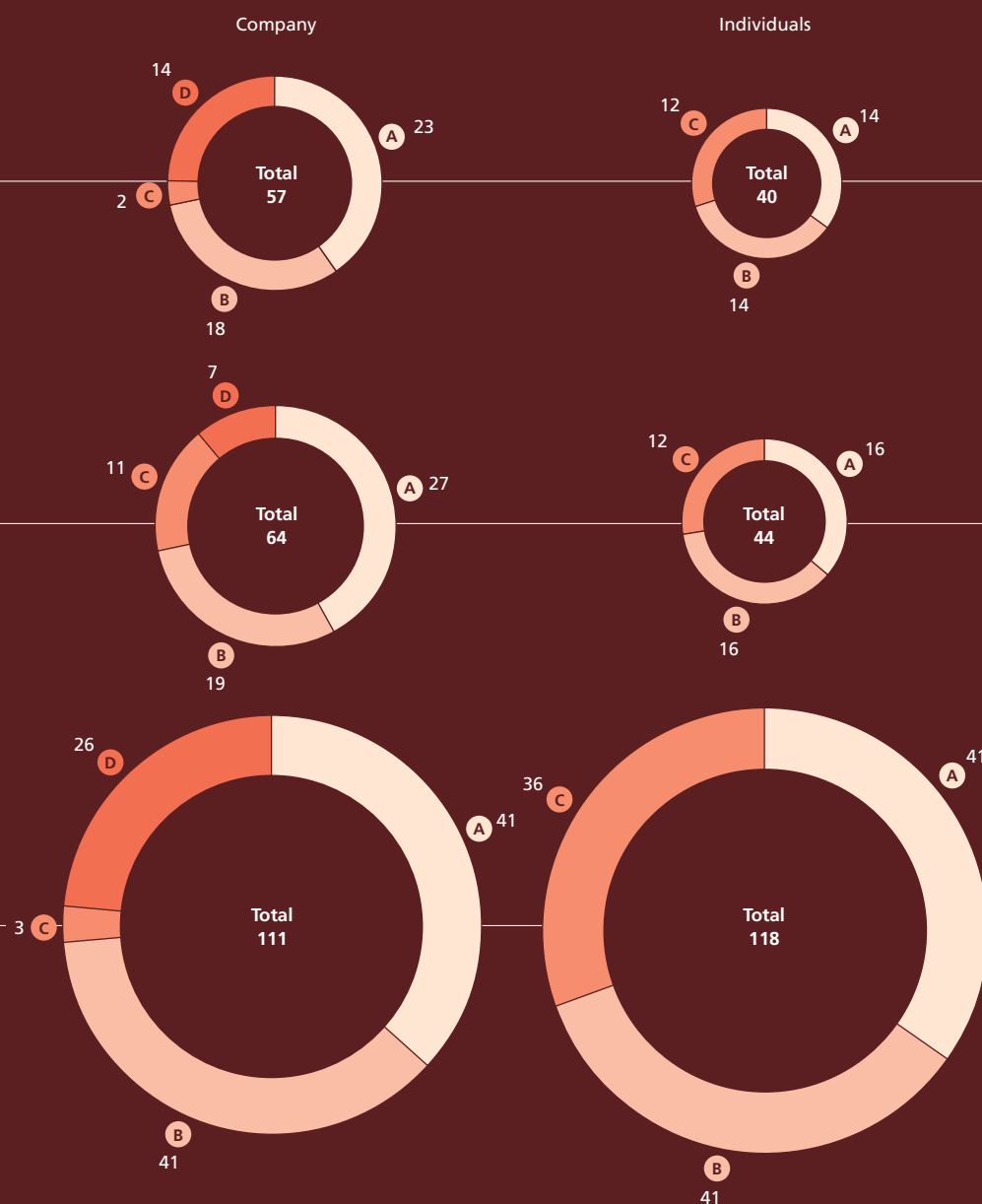


## Number of recipients of rulings by sector and individuals affected

FINMA issues enforcement rulings against companies and individuals in the authorised and unauthorised segments or with regard to market supervision. This chart shows the category and number of enforcement proceedings between 2011 and 2013.



## Type and number of measures in the unauthorised segment



### Notes on method of counting

The number of persons affected is counted (and not the number of rulings). Where different types of measures were applied cumulatively against an individual/entity, e.g. an organisational measure to restore compliance with the law under Article 31 FINMASA as well as an order to disgorge profits, these have been counted separately. However, when a number of measures of the same type were applied to a single individual/entity, e.g. a number of measures to restore compliance with the law, these have been counted only once.

### Notes on individual categories

- I Ordered as a precautionary measure during an investigation.
- II Rulings based on Article 31 FINMASA.
- III As part of a final ruling on the adoption of controls for the purpose of implementing special conditions.
- IV Number of licence holders affected.
- V Number of individual governing body members affected, 17 of which were part of the same proceedings in 2012.
- VI Under Article 33 FINMASA and Article 35a SESTA.
- VII If the opening of bankruptcy proceedings followed a liquidation already ordered by FINMA, this was not counted again for the purposes of this chart.
- VIII As a rule, a ban on activity; see judgment of the Federal Administrative Court 2C.30\_2011/2C.543\_2011 of 12 January 2012, consid. 5.2.2.







# Organisation and staff

- 88 Board of Directors and Executive Board
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## Board of Directors and Executive Board

To secure FINMA's institutional independence, it has been structured by legislators as a public-law institution with its own legal personality. Its governing bodies are the Board of Directors and the Executive Board.

### The Board of Directors

The Board of Directors is FINMA's strategic management body. It directs, supervises and controls FINMA's executive management. It decides on matters of substantial importance, issues ordinances and circulars, and is responsible for FINMA's budget. The Board of Directors bears this responsibility as a collective body. Its decisions are taken by a majority of the votes of the members present.

#### Members of the Board of Directors

|                              |            |
|------------------------------|------------|
| Prof. Anne Héritier Lachat   | Chair      |
| Paul Müller                  | Vice-Chair |
| Bruno Frick                  | Member     |
| Prof. Yvan Lengwiler         | Member     |
| Günter Pleines               | Member     |
| Joseph L. Rickenbacher       | Member     |
| Franz Wipfli                 | Member     |
| Prof. Jean-Baptiste Zufferey | Member     |

On 19 December 2012, the Federal Council appointed Günter Pleines to the Board of Directors; he has been in post since 1 May 2013. Eugenio Brianti resigned from FINMA's Board of Directors at the end of June 2013. On 26 June 2013, the Federal Council appointed Bruno Frick to FINMA's Board of Directors; he has been in post since 1 August 2013.

### Committees of the Board of Directors

The Board of Directors forms an Audit and Risk Committee, a Nomination Committee and a Takeover Committee from among its members. Except where otherwise stipulated, the committees<sup>79</sup> act in an advisory capacity and submit proposals to the Board of Directors. They are headed by a Chair who liaises with the Board of Directors and the Executive Board. In addition to the standing committees, the Board of Directors may form ad hoc committees to prepare business or commission individual members to undertake special tasks.

### The standing committees of the Board of Directors and their members as of 31 December 2013

|                          | Prof. Anne Héritier Lachat | Paul Müller | Bruno Frick     | Prof. Yvan Lengwiler | Günter Pleines | Joseph L. Rickenbacher | Franz Wipfli | Prof. Jean-Baptiste Zufferey |
|--------------------------|----------------------------|-------------|-----------------|----------------------|----------------|------------------------|--------------|------------------------------|
| Audit and Risk Committee |                            |             |                 |                      |                | Chair                  | x            | x                            |
| Nomination Committee     | Chair                      | x           |                 |                      |                | x                      |              |                              |
| Takeover Committee       |                            |             | x <sup>80</sup> | x                    |                |                        |              | Chair                        |

<sup>79</sup> The Takeover Committee is the complaints body for decisions made by the Swiss Takeover Board.

<sup>80</sup> Prof. Anne Héritier Lachat was a member of the Takeover Committee until 5 December 2013.



From left to right:  
Prof. Yvan Lengwiler, Prof. Jean-Baptiste Zufferey, Paul Müller,  
Prof. Anne Héritier Lachat, Joseph L. Rickenbacher, Franz Wipfli,  
Bruno Frick, Günter Pleines.

### The Executive Board

The Executive Board is FINMA's operational management body and is responsible for supervising banks, insurance companies, exchanges and securities dealers as well as other financial intermediaries in accordance with the law and respective strategy. It prepares the necessary files and materials for decisions on items of business that fall within the remit of the Board of Directors, and is responsible for implementing the resolutions of the Board of Directors and its committees.

#### Members of the Executive Board

|                     |                                       |
|---------------------|---------------------------------------|
| Dr Patrick Raaflaub | CEO                                   |
| Mark Branson        | Deputy CEO and Head of Banks division |
| Dr Nina Arquint     | Head of Strategic Services division   |
| Dr René Schnieper   | Head of Insurance division            |
| Yann Wermeille      | Head of Markets division              |
| Dr David Wyss       | Head of Enforcement division          |
| Andreas Zdrenyk     | Head of Operations division           |

Dr Urs Zulauf resigned his post as Head of Strategic Services division on 31 January 2013 and left FINMA on 31 March 2013. The FINMA Board of Directors appointed Dr Nina Arquint, previously Head of the General Secretariat, to the Executive Board and as Head of the Strategic Services division. Nina Arquint has been in post since 1 February 2013.

### Enforcement Committee

The Enforcement Committee (ENA) is a standing committee of the Executive Board with responsibility for making decisions concerning enforcement. Except for matters of substantial importance that are reserved for the Board of Directors, it decides on enforcement rulings as well as initiating and discontinuing important proceedings, in particular against supervised institutions and individuals.

#### Permanent members of the Enforcement Committee

|                     |       |
|---------------------|-------|
| Dr Nina Arquint     | Chair |
| Dr Patrick Raaflaub |       |
| Dr David Wyss       |       |

Where a supervised institution is the subject of enforcement proceedings, the Executive Board member responsible for its supervision joins the Enforcement Committee for that specific case.



From left to right:  
Yann Wermeille, Dr David Wyss, Dr René Schnieper, Dr Nina Arquint,  
Dr Patrick Raaflaub, Andreas Zdrenyk, Mark Branson.

FINMA initiated and implemented a variety of measures on the personnel front in 2013. A competency model was introduced as an evaluation tool for the annual employee performance reviews. Talent management, talent development and succession planning have become fixed items on FINMA's management agenda.

The maximum headcount approved by the Board of Directors for 2013 was 481 full-time equivalent positions. In 2013, FINMA employed an average of 504 employees (2012: 477) across 468 full-time equivalent positions (2012: 442). Approximately 20% of staff work part-time (2012: 19%). For 2014, the Board of Directors has again approved a headcount of 481 full-time equivalent positions.

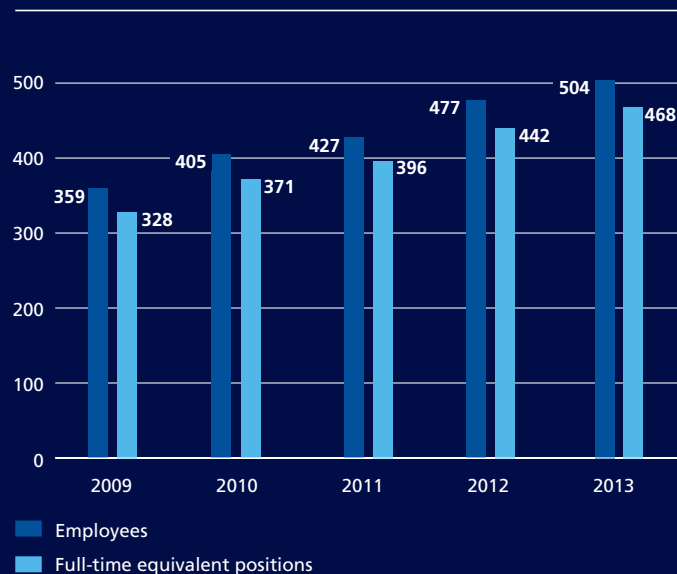
The average age of employees in 2013 was 41, the same as in 2012. Approximately 69% of staff are aged between 30 and 49 (2012: 68%), while 21% are aged 50 or over (2012: 20%), and 11% are young talents (2012: 12%). Senior management positions are held by 214 employees or 42% (2012: 188/38%). The term 'senior management' at FINMA covers all line management and specialist functions in salary bands 1 to 3. Of senior management, 75 employees or 35% have a line management function (2012: 36%), with women accounting for around 19% of line managers (2012: 18%). In 2013, women accounted for 37% of the organisation as a whole (2012: 38%).

At the end of December 2013, staff turnover (excluding retirement) was 11% (previous year: 10%). Employee retention measures, which include secondments, continuing education and developing potential, appear to be working. FINMA remains committed to achieving a good mix of young and more experienced specialists. One consequence of this strategy may be a certain level of staff turnover. FINMA has boosted its attractiveness to younger specialists by enhancing the staff development function and offering other incentives such as secondments to other countries. FINMA expects its younger employees to remain with the organisation for an average of three to four years.

The job market for financial specialists remains stretched. Recruitment costs have risen, and more time is needed in some cases to persuade specialists to continue their career within FINMA. In addition, the salary expectations of experienced professionals are often beyond the scope of the FINMA salary system. Indeed, FINMA quite frequently reaches its limits where the salaries of experienced professionals are concerned.

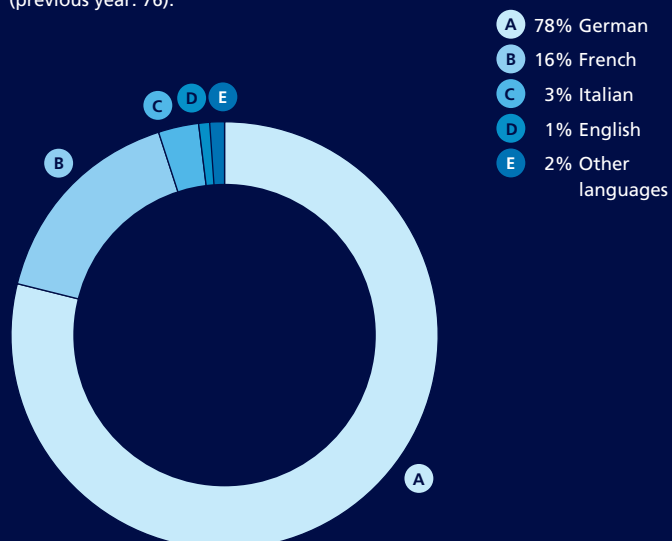
# Selected FINMA staff data

## Average headcount



## Breakdown by language

At the end of 2013, FINMA employed 75 non-Swiss staff (previous year: 76).





A new IT system was successfully rolled out across FINMA in 2013, replacing a range of systems implemented by FINMA's predecessor authorities. The new system provides a solid and unified basis for more efficient business processes.

FINMA's operational strategy ensures that the organisation receives the support it needs to implement its strategy and achieve its objectives through a range of measures over the short to long term. It supports decision-making and priority-setting for planned operational initiatives, projects and measures.

### **Ongoing optimisation of processes**

For all FINMA employees, clear processes form a standard 'language' which defines who has to do what, when and how. At FINMA, disciplined process management is a management responsibility and provides, among other things, the basis for technology and instrumentation decisions. The processes are subject to continuous controls for quality assurance reasons.

In 2013, FINMA standardised and simplified its project methodology and governance and streamlined its process management guidelines. Progress was also made in consolidating the three locations in Bern at Laupenstrasse. The plan is to move to the new FINMA headquarters in the first quarter of 2014.

### **New process management system launched**

The introduction of FINMA's new cross-organisational, IT-based process management system means that the foundations have now been laid for stable, secure and clearly defined information and document management. In FINMA's core processes (i.e. licensing, supervision, enforcement and regulation), it is vital that the organisation should have access to and be able to evaluate and assess the right information and data at the right time in a secure and effective way.

FINMA has committed itself to creating the legal, technical and organisational basis for electronic communication in administrative proceedings (i.e. licensing and enforcement) by 1 January 2017 at the latest.

Now the focus is on continuing to develop the new process management system, replacing the few remaining legacy systems and archiving the old collections of information and documents in line with relevant legal requirements and in consultation with the Swiss Federal Archives.

The installation of SAP on 1 January 2014 will make planning, controlling and reporting processes more robust and reliable. This represents another important element in information and document management at FINMA.

### **Technology and security management**

FINMA is obliged to meet exacting security requirements when using new technologies. The key question in this context is whether to buy the required technologies ready-made or to develop them in-house. For FINMA, it is vitally important that the technologies and security features used meet statutory requirements.

In 2013, following a WTO procurement process, FINMA's IT operations were handed over in their entirety (i.e. computer centre, servers and network) to Swisscom IT Services. This means that FINMA is in a position to guarantee stable services in relation to infrastructure, applications and tools, while also meeting stringent security, integrity, performance and availability criteria and keeping pace with changes in technology.

Since its foundation on 1 January 2009, FINMA has grown at a rate similar to other European financial market supervisors. FINMA invests most of its resources in its core tasks of licensing, supervision and enforcement.

The pressure of regulation has risen across the board since the onset of the financial crisis in 2008. Requirements on financial market supervisory bodies have also become more demanding worldwide. In response, FINMA has consolidated its organisation and professionalised its procedures and processes.

### **Professionalisation and the pressure of regulation**

FINMA has introduced a new risk-based supervisory approach that is applied across all supervised sectors. The associated intensification and professionalisation of supervision led to a growth in demand for personnel (see chart on page 96). At the same time, the increase in FINMA's capacities is also due to more stringent statutory requirements. 'Too big to fail' regulations, Basel III, the Swiss Solvency Test (SST) and other national and international norms have led to expansion in all the bodies responsible for monitoring compliance with these regulations.

### **Growth trends in FINMA's divisions**

FINMA has deliberately boosted investment in its Markets division because supervision of collective investment schemes had previously been under-resourced. Increased staffing in areas such as monitoring asset management had also become necessary due to new regulatory requirements following the revision of the Collective Investment Schemes Act (CISA).

Enforcement became a separate division in its own right in April 2011. This made the enforcement of supervisory law an integral part of FINMA's supervisory approach. Of FINMA's three predecessor authorities, only the Federal Banking Commission had developed and implemented enforcement practice.

Relatively few new positions were created in the Banks and Insurance divisions. Supervision of the two large banking groups was slightly intensified and some additional units (e.g. Risk Management, Solvency and Capital, and Team Intensive Supervision) were created or existing units reinforced. The Insurance division supervised the implementation of the Swiss Solvency Test (SST) and intensified its supervision of insurance groups.

### **Growth in line with international trends**

Growth of 30% at FINMA between 2009 and 2012 is broadly in line with growth at comparable supervisory authorities. Over the same period, the considerably larger German Federal Financial Supervisory Authority (BaFin) increased staffing levels by 22%, compared with 30% for the UK's Financial Services Authority (FSA).<sup>81</sup> Moreover, the supervisory functions of the Bank of Ireland more than doubled in size (by 105%) over these four years.

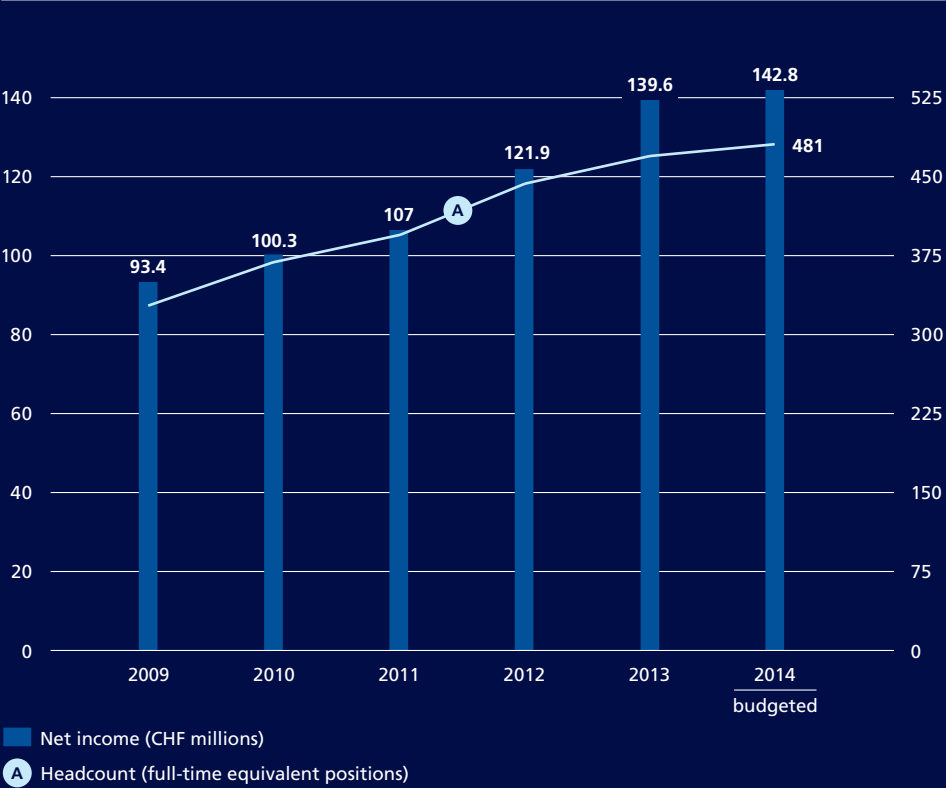
The fact that staffing levels at FINMA are relatively low can be explained in part by Switzerland's supervisory system, which relies to a large extent on external audit firms to carry out some of its supervisory activities. In 2012, external auditors carried out regulatory audits at banks, insurance companies and collective investment schemes at FINMA's request. The workload involved equated to 260 full-time equivalent positions. Assigning external experts as investigating agents relieves FINMA considerably in its supervisory and enforcement activities.

<sup>81</sup> On 1 April 2013, the Financial Services Authority was split into two separate bodies: the Prudential Regulation Authority (PRA), which is part of the Bank of England, and the Financial Conduct Authority (FCA).



# FINMA's staff and budget trends

Trends 2009–2014



### Two thirds of the budget for core supervisory activities

Two thirds of FINMA's annual budget is spent on licensing, supervision and enforcement activities. Support processes account for just under 20% of expenditure, while around 5% goes to management processes and a good 6% of FINMA's budget is spent on projects.

These efforts have resulted in a rise – from CHF 11.5 million to CHF 18.9 million – in annual fee income from proceedings, rulings and other enforcement instruments. Consequently, the proportion of fees collected on the basis of the 'originator pays' principle has risen from 12.3% in 2009 to 15.5% in 2012 (see table below).

### Financing through charges and fees

FINMA finances its activities from two sources. On the one hand, it levies supervision charges which relate directly to the size of the supervised institution (e.g. in terms of total assets, securities turnover and premium income). On the other hand, FINMA – like every other administration body – is required to cover its costs by applying fees based on the 'originator pays' principle wherever possible.

### FINMA's income from 2009 to 2012

| YEAR | FEE INCOME | SUPERVISION CHARGES | OTHER INCOME | TOTAL INCOME | % FEES |
|------|------------|---------------------|--------------|--------------|--------|
| 2009 | 11,518     | 82,015              | -154         | 93,379       | 12.3   |
| 2010 | 15,592     | 84,080              | 623          | 100,295      | 15.5   |
| 2011 | 16,517     | 89,539              | 970          | 107,026      | 15.4   |
| 2012 | 18,871     | 102,381             | 677          | 121,929      | 15.5   |

Fees and supervision charges, in CHF thousands.

In 2012, FINMA introduced selected amendments to its Code of Conduct and updated its regulations on the holding of securities. Compliance with these regulations is now additionally verified by external auditors.

It is vitally important to FINMA that the people who act on its behalf conduct themselves with integrity. To this end, it has issued a Code of Conduct. The aim of the code is to ensure the integrity of the members of FINMA's Board of Directors and employees and to define how conflicts of interest are dealt with.

In mid-2012, FINMA revised its Code of Conduct and defined some of the regulations in greater detail. As a result, FINMA employees are no longer allowed to hold securities issued by supervised institutions, even under a discretionary asset management mandate.

FINMA's revised Code of Conduct now also specifies that an independent external person must verify annually that all members of the Board of Directors and the Executive Board are in compliance with the regulations on securities issued by supervised institutions. Spot checks are carried out on FINMA's other employees. The first compliance check of this kind was carried out in 2013.

Finally, the Federal Council has revised the incompatibility rules for members of the Board of Directors. The new regulations have been incorporated into FINMA's Organisational Rules and specify, among other things, that members of FINMA's Board of Directors are no longer permitted to act in any capacity for supervised institutions. Individuals affected must resign from relevant executive positions by 31 December 2015 at the latest.

## Agents appointed by FINMA

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FINMA has modified its process for working with external agents and defined specific requirement profiles for their mandates.

In order to fulfil its remit, FINMA is permitted under the Financial Market Supervision Act and other financial market legislation to appoint agents to act on its behalf. FINMA makes use of this cost-efficient supervisory tool on a case-by-case basis. FINMA maintains a list of candidates for these mandates.

The FINMA mandates place different requirements on the agents and demand relevant specialised skills. FINMA has now defined the following standard types of mandate:

- investigations or audits of authorised financial intermediaries;
- investigations into activities conducted without the required licence;
- restructuring and crisis management of authorised financial intermediaries;
- bankruptcy liquidation proceedings and liquidations of supervised institutions.

Providers who are interested in acting as FINMA agents can apply to be added to the list of candidates provided they have the required expertise.

Previous experience with assigning mandates to agents shows that legal certainty is a key priority in this area. Consequently, FINMA will in future only deploy agents on the basis of a ruling. The requirements for fulfilling a FINMA mandate are now defined in a new set of guidelines.





# Appendix

- 102** Supervisory categories for banks and insurance companies
- 104** Financial market regulation: pending projects
- 106** Statistics
- 110** MoUs at the international level
- 110** FINMA's representation in international working groups
- 111** Glossary



## Supervisory categories for banks and insurance companies

Financial institutions supervised by FINMA are assigned to one of six categories depending on their potential risk impact on creditors, investors, policyholders and the Swiss financial centre. As well as being allocated to a risk category, each institution receives a rating that indicates FINMA's assessment of its current state.

On the basis of these two parameters – categorisation and institution rating – the supervisory approaches stipulate the extent of supervision, the use of supervisory instruments and the interplay between direct supervision by FINMA and the

assignment of audit firms for the individual institutions. These measures ensure that the risk orientation of supervisory activities is more systematic and that there is closer scrutiny of institutions that are relevant from a risk perspective.

### Supervisory categories\* for banks

The categories for banks are defined in FINMA Circular 2011/2

'Capital buffer and capital planning – banks'.

| CATEGORY | CRITERIA<br>(IN CHF BILLIONS) |   |       | NUMBER OF INSTITUTIONS |      |
|----------|-------------------------------|---|-------|------------------------|------|
|          |                               |   |       | 2012                   | 2013 |
| 1        | Total assets                  | ≥ | 250   | 2                      | 2    |
|          | Assets under management       | ≥ | 1,000 |                        |      |
|          | Privileged deposits           | ≥ | 30    |                        |      |
|          | Required equity capital       | ≥ | 20    |                        |      |
| 2        | Total assets                  | ≥ | 100   | 2                      | 3    |
|          | Assets under management       | ≥ | 500   |                        |      |
|          | Privileged deposits           | ≥ | 20    |                        |      |
|          | Required equity capital       | ≥ | 2     |                        |      |
| 3        | Total assets                  | ≥ | 15    | 27                     | 27   |
|          | Assets under management       | ≥ | 20    |                        |      |
|          | Privileged deposits           | ≥ | 0.5   |                        |      |
|          | Required equity capital       | ≥ | 0.25  |                        |      |
| 4        | Total assets                  | ≥ | 1     | 65                     | 66   |
|          | Assets under management       | ≥ | 2     |                        |      |
|          | Privileged deposits           | ≥ | 0.1   |                        |      |
|          | Required equity capital       | ≥ | 0.05  |                        |      |
| 5        | Total assets                  | < | 1     | 243                    | 223  |
|          | Assets under management       | < | 2     |                        |      |
|          | Privileged deposits           | < | 0.1   |                        |      |
|          | Required equity capital       | < | 0.05  |                        |      |

\* The sixth category consists of market participants that are not prudentially supervised by FINMA.

### Supervisory categories\* for insurance companies

| CATEGORY | CRITERIA<br>(IN CHF BILLIONS)          | NUMBER OF INSTITUTIONS |      |
|----------|--|------------------------|------|
|          |  | 2012                   | 2013 |
| 1        | –                                      | –                      | –    |
| 2        | Total assets > CHF 50bn or complexity  | 5                      | 5    |
| 3        | Total assets > CHF 1bn or complexity   | 40                     | 41   |
| 4        | Total assets > CHF 0.1bn or complexity | 52                     | 52   |
| 5        | Total assets < CHF 0.1bn or complexity | 125                    | 125  |

\* The sixth category consists of market participants that are not prudentially supervised by FINMA.



## Financial market regulation: pending projects

(status and outlook as of 31 December 2013)

| PROJECT  | REGULATORY LEVEL | STATUS AND NEXT STEPS  |                         |                          |
|--|------------------|------------------------|-------------------------|--------------------------|
|  |                  | HEARING / CONSULTATION | ADOPTED / TO BE ADOPTED | PLANNED ENTRY INTO FORCE |
| Cross-sector   |                  |                        |                         |                          |
| Financial services*  |                  |                        |                         |                          |
| Based on FINMA's position paper published in February 2012, the Federal Council requested the Federal Department of Finance (FDF) in March 2012 to work out the necessary basis to improve client protection in the distribution of financial products.  | law              | Q2/14                  | open                    | open                     |
| Financial market infrastructure*   |                  |                        |                         |                          |
| To safeguard the competitiveness of the Swiss financial centre and strengthen financial stability, Switzerland must implement the G-20 obligations and the Financial Stability Board (FSB) recommendations on OTC derivatives trading as fully as possible and at the same time as other financial centres. Regulation of the financial market infrastructure must also be brought in line with international standards.<br>This draft bill also creates a new competence in the Banking Act allowing FINMA to involve group parent companies in restructuring and resolution. | law              | Q1/14                  | open                    | Q1/15                    |
| Combating money laundering*  |                  |                        |                         |                          |
| In February 2012, the Financial Action Task Force (FATF) adopted a partial revision of the standards for combating money laundering, terrorist financing and, most recently, the financing of weapons of mass destruction. In April 2012, the Federal Council requested an interdepartmental working group under the leadership of the FDF to work out proposals for implementation.   | law              | Q1/13                  | open                    | Q3/15                    |
| White money strategy   |                  |                        |                         |                          |
| The goal is to extend due diligence obligations to all Swiss financial intermediaries to ensure tax compliance. This should be discussed once an automatic exchange of information (AEI) agreement has been concluded with the most important partner states in line with international standards, or once it is clear that no AEI agreement will be concluded in the near future.   | law              | Q1/13                  | open                    | open                     |
| Supervision of audit firms*  |                  |                        |                         |                          |
| Supervision of audit firms conducting financial and regulatory audits is to be combined and concentrated within the Federal Audit Oversight Agency (FAOA).   | law              | Q3/13                  | open                    | open                     |
| Financial Market Auditing Ordinance  |                  |                        |                         |                          |
| Transfer of the supervision of audit firms to the FAOA involves making amendments to the Financial Market Auditing Ordinance (FMAO-FINMA). Currently, optimisation of the audit system is under review.  | ordinance        | Q3/14                  | Q4/14                   | Q1/15                    |

\* See FinWeb web page ([www.sif.admin.ch](http://www.sif.admin.ch) > documentation > finweb) for the content and status of the most important financial sector regulatory projects in which FINMA does not take a leading role.

| PROJECT  | REGULATORY LEVEL       | STATUS AND NEXT STEPS  |                         |                          |
|--|------------------------|------------------------|-------------------------|--------------------------|
|  |                        | HEARING / CONSULTATION | ADOPTED / TO BE ADOPTED | PLANNED ENTRY INTO FORCE |
| Banks  |                        |                        |                         |                          |
| Dormant assets*  |                        |                        |                         |                          |
| Banks are to be allowed to liquidate dormant assets following prior publication, with the proceeds going to the Confederation. Claims of beneficiaries who do not respond to the publication would lapse. The Banking Ordinance is to be fully revised to incorporate the adjustments.   | ordinance              | Q4/13                  | open                    | open                     |
| Accounting*  |                        |                        |                         |                          |
| Legislation on accounting standards was amended by revising the Stock Corporation law. This requires the Federal Council and FINMA to draw up implementing provisions. The Banking Ordinance is to be fully revised to incorporate the adjustments.  | ordinance/<br>circular | Q4/13                  | Q1/14                   | Q1/15                    |
| Leverage ratio   |                        |                        |                         |                          |
| Leverage ratio is to be disclosed starting in 2015. Calculation and disclosure of leverage ratio must therefore be clearly defined.  | circular               | Q3/14                  | open                    | open                     |
| Liquidity – banks  |                        |                        |                         |                          |
| The Basel III liquidity requirements (short-term liquidity ratio [LCR]) are to be implemented in FINMA Circular 2013/6. Changes to the ordinance and the circular will be phased in.   | circular               | Q4/13                  | Q2/14                   | Q1/15                    |
| Insurance companies  |                        |                        |                         |                          |
| Insurance supervision  |                        |                        |                         |                          |
| Practical application of the fully revised Insurance Supervision Act (ISA, in force since 1 January 2006) together with current developments in the market and international trends have revealed a need for change at the regulatory level. Further clarifications are currently under way. The goal is to eliminate contradictions, improve legislation to better protect the interests of the policyholders, and achieve international compatibility. | ordinance              | open                   | open                    | open                     |
| Insurance contracts*   |                        |                        |                         |                          |
| Revision of the Insurance Contract Act (ICA) aims to bring the legal framework in line with changed requirements and provide reasonable and practicable protection for insured persons. Parliament did not approve the draft law published in September 2011 and requested the Federal Council in March 2013 to partly revise it.  | law                    | open                   | open                    | open                     |
| Markets  |                        |                        |                         |                          |
| Collective investment schemes  |                        |                        |                         |                          |
| Following the partial revision of the Collective Investment Schemes Act (CISA), the Collective Investment Schemes Ordinance (CISO) is to be amended.   | ordinance              | Q2/14                  | Q4/14                   | Q1/15                    |

## Supervised<sup>82</sup> financial market participants

### Supervised banks

|   | 2013 | 2012 |
|---|------|------|
| Banks, of which                         | 301  | 305  |
| – under foreign control                 | 101  | 103  |
| – branches of foreign banks             | 31   | 32   |
| Raiffeisen banks                        | 316  | 321  |
| Representative offices of foreign banks | 53   | 48   |

### Supervised securities dealers

|  | 2013 | 2012 |
|--|------|------|
| Securities dealers, of which                         | 62   | 59   |
| – under foreign control                              | 15   | 17   |
| – branches of foreign securities dealers             | 14   | 12   |
| Representative offices of foreign securities dealers | 45   | 46   |
| Recognised foreign market participants               | 124  | 127  |

### Supervised stock exchanges

|  | 2013 | 2012 |
|--|------|------|
| Swiss stock exchanges  | 3    | 3    |
| Swiss organisations that are similar to stock exchanges              | 2    | 2    |
| Recognised foreign stock exchanges                                   | 54   | 49   |
| Recognised foreign organisations that are similar to stock exchanges | 4    | 5    |

### Supervised collective investment schemes

|  | 2013  | 2012  |
|--|-------|-------|
| <b>Swiss collective investment schemes</b>                       |       |       |
| Total Swiss collective investment schemes, of which              | 1,447 | 1,383 |
| – open-ended collective investment schemes (under Art. 8 CISA)   |       |       |
| – contractual investment funds and SICAVs                        | 1,431 | 1,369 |
| – of which intended for qualified investors only                 | 694   | 640   |
| – closed-ended collective investment schemes (under Art. 9 CISA) |       |       |
| – limited partnerships and SICAFs                                | 16    | 14    |
| <b>Foreign collective investment schemes</b>                     |       |       |
| Total foreign collective investment schemes, of which            | 6,171 | 6,118 |
| – EU-compatible (UCITS)  | 5,959 | 5,866 |
| – non-EU-compatible (non-UCITS)                                  | 212   | 252   |

<sup>82</sup> Does not necessarily mean 'prudential supervision'.

### Supervised fund management companies, asset managers, representatives and distributors under the Collective Investment Schemes Act

|  | 2013 | 2012 |
|--|------|------|
| Fund management companies                                | 44   | 45   |
| Asset managers   | 119  | 99   |
| Representatives of foreign collective investment schemes | 99   | 109  |
| Distributors under CISA                                  | 293  | 365  |

### Supervised insurance companies and general health insurance companies

|   | 2013 | 2012 |
|---|------|------|
| Life insurance companies, of which  | 23   | 23   |
| – insurance companies domiciled in Switzerland  | 19   | 19   |
| – branches of foreign insurance companies   | 4    | 4    |
| Non-life insurers, of which   | 124  | 123  |
| – insurance companies domiciled in Switzerland (incl. 20 supplementary health insurance providers [2012: 21]) | 80   | 81   |
| – branches of foreign insurance companies (incl. 1 supplementary health insurance provider [2012: 1])         | 44   | 42   |
| Reinsurers (total)  | 62   | 61   |
| – Reinsurers  | 28   | 27   |
| – Reinsurance captives  | 34   | 34   |
| General health insurance companies that offer supplementary health insurance                                  | 14   | 15   |
| Supervised insurance and general health insurance companies   | 223  | 222  |
| Insurance groups (groups and conglomerates)   | 8    | 9    |

### Supervised financial intermediaries

|   | 2013   | 2012   |
|---|--------|--------|
| Total supervised SROs   | 12     | 12     |
| Total directly subordinated financial intermediaries (DSFIs)        | 310    | 380    |
| Total group companies subject to FINMA money laundering supervision | 141    | 141    |
| Total registered insurance intermediaries                           | 14,248 | 13,911 |

### Recognised audit firms and credit rating agencies

|   | 2013 | 2012 |
|---|------|------|
| Total recognised audit firms            | 23   | 102  |
| – of which only for DSFIs               | 19   | 86   |
| Total recognised credit rating agencies | 5    | 5    |

## Licences

### Banks and securities dealers

|   | 2013 | 2012 |
|---|------|------|
| <b>Banks</b>  |      |      |
| Bank licences (Art. 3 BA)   | 1    | 4    |
| Branches (Art. 4 FBO-FINMA)   | 1    | 0    |
| Representative offices (Art. 14 FBO-FINMA)                            | 8    | 6    |
| Additional licences (Art. 3 <sup>ter</sup> BA)                        | 7    | 13   |
| Removed from supervision  | 6    | 4    |
| <b>Securities dealers</b>   |      |      |
| Securities dealer licences (Art. 10 SESTA)                            | 2    | 1    |
| Branches (Art. 41 SESTO)  | 2    | 1    |
| Representative offices (Art. 49 SESTO)                                | 6    | 7    |
| Additional licences (Art. 10 para. 6 SESTA and Art. 56 para. 3 SESTO) | 3    | 2    |
| Removed from supervision  | 1    | 5    |
| Recognition of foreign market participants                            | 5    | 6    |

### Exchanges

|  | 2013 | 2012 |
|--|------|------|
| Recognition of foreign exchanges (incl. organisations that are similar to stock exchanges) | 4    | 0    |

### Collective investment schemes

|                                       | 2013 | 2012 |
|---------------------------------------|------|------|
| Swiss collective investment schemes   | 139  | 90   |
| Foreign collective investment schemes | 721  | 685  |

### Supervised fund management companies, asset managers, representatives and distributors under the Collective Investment Schemes Act

|  | 2013 | 2012 |
|--|------|------|
| Fund management companies                                | 1    | 2    |
| Asset managers   | 22   | 9    |
| Representatives of foreign collective investment schemes | 4    | 5    |
| Distributors under CISA                                  | 13   | 10   |

**Insurance companies**

|  | 2013 | 2012 |
|--|------|------|
| Life insurance companies, of which   | 0    | 0    |
| – insurance companies domiciled in Switzerland                               | 0    | 0    |
| – branches of foreign insurance companies                                    | 0    | 0    |
| Non-life insurers, of which  | 3    | 2    |
| – insurance companies domiciled in Switzerland                               | 0    | 2    |
| – branches of foreign insurance companies                                    | 3    | 0    |
| Reinsurers   | 2    | 1    |
| Reinsurance captives   | 0    | 2    |
| General health insurance companies that offer supplementary health insurance | 0    | 0    |
| Total  | 5    | 5    |
| Insurance groups (groups and conglomerates)                                  | 0    | 0    |

**Financial intermediaries**

|   | 2013 | 2012 |
|---|------|------|
| Insurance intermediaries                                      | 696  | 781  |
| Directly subordinated financial intermediaries                | 5    | 17   |
| Group companies subject to FINMA money laundering supervision | 7    | 12   |

**Audit firms and credit rating agencies**

|   | 2013 | 2012 |
|---|------|------|
| Total rulings on changing audit firms, of which           | 198  | 69   |
| – related to directly supervised financial intermediaries | 165  | 20   |
| Recognitions of audit firms                               | 2    | 4    |
| Cancellations of audit firms                              | 81   | 9    |
| Recognitions of credit rating agencies                    | 0    | 0    |

**Enforcement rulings**

|   | 2013 | 2012 |
|---|------|------|
| Enforcement rulings (final and interim rulings) | 110  | 82   |
| Swiss Takeover Board rulings                    | 1    | 1    |

**Complaints and criminal complaints filed**

|  | 2013 | 2012 |
|--|------|------|
| Complaints against enforcement rulings                 | 24   | 29   |
| Complaints settled                                     | 19   | 35   |
| Complaints filed with criminal prosecution authorities | 79   | 73   |

## MoUs at the international level

| COUNTRY   | FOREIGN AUTHORITY  | FORM | AREA OF APPLICATION   |
|---|--|------|---|
| EEA countries excluding Italy, Croatia and Slovenia <sup>83</sup> | Relevant national financial market supervisory authority                                       | MoU  | Cooperation agreement on the supervision of alternative investment fund managers (AIFMs)  |
| Bermuda   | Bermuda Monetary Authority (BMA)   | MMoU | Supervisory College Agreement for Catlin Group Limited  |
| Bermuda   | Bermuda Monetary Authority (BMA)   | MMoU | Supervisory College Agreement for Allied World Group of Companies   |
| Germany   | Federal Financial Supervisory Authority (BaFin)  | MoU  | Implementation agreements (banks and investment funds) regarding MoU on statutory procedural aspects related to cross-border activities between Switzerland and Germany in the financial sector |
| Ireland   | Central Bank of Ireland (CBI)  | MoU  | Cooperation agreement on investment funds for non-qualified investors   |
| Norway  | Finanstilsynet (Financial Supervisory Authority)   | MMoU | Norway joins the Supervisory College Agreement between Denmark, Finland, Sweden and Switzerland (FINMA and SNB) for SIX x-clear.  |
| USA   | Missouri Department of Insurance, Financial Institutions and Professional Registration (MDIFP) | MoU  | Cooperation agreement on insurance supervision  |

## FINMA's representation in international working groups

### International organisations and committees<sup>84</sup>

#### Financial Stability Board (FSB)

- Standing Committee on Supervisory and Regulatory Cooperation
- Resolution Steering Group

#### Basel Committee on Banking Supervision (BCBS)

- Governors and Heads of Supervision
- International Conference of Banking Supervisors
- Basel Committee on Banking Supervision

#### International Association of Insurance Supervisors (IAIS)

- Executive Committee

### International Organization of Securities Commissions (IOSCO)

- IOSCO Board
- Presidents' Committee

#### Other international forums

- Meeting of four German-speaking nations (banking and insurance)
- Integrated Financial Supervisors Conference
- OTC Derivatives Regulators Group (ODRG)
- Wilton Park Securities Supervision Conference / International Cooperation and Enforcement

<sup>83</sup> These are Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden, United Kingdom.

<sup>84</sup> This list is confined to bodies of which representatives of the Board of Directors and/or Executive Board of FINMA are members. In addition, many FINMA staff members are involved in working groups.

## Alternative Investment Fund Managers Directive (AIFMD)

The EU's Alternative Investment Fund Managers Directive (2011/61/EU) governs the authorisation, ongoing activities and transparency requirements applicable to alternative investment managers who manage and/or distribute alternative investment funds (non-UCITS) in the EU.

## AEI

Automatic exchange of information

## Bail-in

Officially ordered conversion of debt into equity or waiver of claims.

## Basel III

At the end of 2010, the Basel Committee on Banking Supervision (BCBS) adopted stricter, across-the-board rules on equity capital and liquidity designed to strengthen the resilience of the banking sector. The key changes are:

- improvements to the quality, consistency and transparency of the capital base;
- higher capital adequacy requirements for the default risk of derivatives, repurchase agreements and securities financing transactions;
- a new capital requirement for the risk of market value losses on over-the-counter (OTC) derivatives;
- supplementing the risk-based capital requirement with an unweighted leverage ratio;
- measures to reduce procyclicality and promote counter-cyclical buffers;
- measures to combat systemic risk, with particular emphasis on systemically important banks; and
- the introduction of global liquidity standards.

## Basel framework

A multilateral agreement on capital adequacy rules for banks. The first such agreement, Basel I, was passed by the Basel Committee on Banking Supervision (BCBS) in 1988. It was substantially enhanced by Basel II, adopted in 2004. The new framework, derived from the experience of the 2008 financial market crisis, was developed in 2010 and is known as Basel III (see 'Basel III').

## Biometric risks

Risks resulting from changes in human life and the probability of their occurrence, such as (early) death, disability and longevity.

## Bitcoin

An Internet currency whose units are created and managed decentrally in a computer network consisting of bitcoin operators linked together via the Internet, between whom bitcoins can be transferred electronically. Ownership of bitcoins is attested by a cryptographic key.

## Central counterparty (CCP)

An institution that acts as a contractual party between buyer and seller in transactions involving financial instruments.

## Client procedure (international administrative assistance)

If a foreign authority requests FINMA to provide data on Swiss and foreign clients of Swiss financial intermediaries as part of international administrative assistance, these clients may seek to prevent the handover of their data as part of a 'client procedure'. A ruling issued by FINMA in such cases can be contested before the Federal Administrative Court. Client procedures are often requested by those who have carried out transactions on foreign exchanges via a Swiss financial intermediary and are suspected of breaches of market conduct rules and disclosure requirements. The fact that the client procedure involves advance information being provided to those affected and also delays supervisory investigations abroad has attracted criticism internationally.

## Combined ratio

The ratio of claims expenditures (insurance benefits and administrative costs) to premium income, expressed as a percentage.

## Common Equity Tier 1 capital (CET1)

Common equity is loss-absorbing equity capital of the highest quality. CET1 consists of paid-in capital, disclosed reserves and retained earnings.

## Contingent convertible bond (CoCo bond or CoCo)

A form of debt capital that can be converted into equity under certain conditions. It is designed to improve a bank's situation in a crisis or enable its resolution by allowing it to store up additional capital during periods of economic growth that can be accessed as equity in a downturn. Conversion is mandatory once a predetermined trigger point is reached.

## Countercyclical capital buffer

This term refers to temporarily increased capital requirements for banks. It is an instrument introduced in Basel III to curtail excessive lending and has a countercyclical effect. It also aims to improve the resilience of banks to the risks of loss. The buffer amounts to a maximum of 2.5% of a bank's risk-weighted assets.

## Custodian bank

A custodian bank holds fund assets in safekeeping, organises the issue and redemption of units as well as payment transactions for collective investment schemes. It also assesses whether the fund management company or SICAV complies with the law and the fund regulations. It must be a bank within the meaning of the Banking Act.

## Enforcement

The compulsory implementation of supervisory law. Also the name of one of FINMA's six divisions.

## Enforcement proceedings

When it appears likely, as part of prudential supervision and on the basis of preliminary investigations, that FINMA will have to enforce compliance with supervisory law, it intervenes by initiating proceedings under the Administrative Proceedings Act. These are known as enforcement proceedings. On conclusion of these proceedings, FINMA may order action to be taken to restore compliance with the law, and ensure that such action is taken.



**ESMA equivalence recognition process**

In the equivalence recognition process, the European Securities and Markets Authority (ESMA) assesses whether certain areas of regulation and supervision in a third country are equivalent to those of the EU. If they are, regulatory relaxations, closer supervisory cooperation or direct market access to the EU are granted (may also be combined).

**European Market Infrastructure Regulation (EMIR)**

The European Market Infrastructure Regulation (Ordinance [EU] No. 648/2012) creates harmonised regulation of derivatives transactions conducted over the counter. In particular, it requires market participants to conduct clearing via a central counterparty (CCP) and report all derivatives transactions to a trade repository. It also lays down standard conditions for the licensing and supervision of CCPs and trade repositories as financial market infrastructures.

**Financial Market Infrastructure Act (FMIA)**

The financial crisis highlighted that the lack of transparency in the markets for derivatives traded over the counter (known as OTC derivatives markets) can threaten the stability of the entire financial system, owing to the markets' strong international integration and the heavy trading volume and default risks. Since then, international efforts have been set in motion to improve transparency and stability in the OTC derivatives markets. The existing Swiss regulation of financial market infrastructure is no longer appropriate, given financial market developments. To safeguard the competitiveness of the Swiss financial centre and to strengthen financial stability, it is necessary for regulation in the area of financial market infrastructure to be adapted to international standards. In order to secure EU market access, regulation equivalent to that in the EU is to be sought. In August 2012, the Federal Council instructed the Federal Department of Finance (FDF) to prepare a consultation draft.<sup>85</sup>

**Financial market infrastructure**

Under the terms of the future Financial Market Infrastructure Act (FMIA), financial market infrastructures exist at the levels of trading, clearing, settlement and reporting. They include exchanges and similar trading institutions, central counterparties (CCPs) at the clearing level, and securities settlement and payment systems. Accordingly, CCPs and securities settlement and payment systems are referred to as post-trading infrastructures since they involve post-trading processes for settlement. The term now also includes trade repositories for the reporting of derivatives transactions.

**Financial Sector Assessment Programme (FSAP)**

Run by the International Monetary Fund (IMF), the Financial Sector Assessment Programme evaluates the financial stability of a financial centre as well as the quality of its regulation and supervision. The assessment is based in particular on stress tests and the standards for regulation and supervision laid down by the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS) and the International Organization of Securities Commissions (IOSCO).

**Financial Services Act (FSA)**

It became obvious during the financial crisis that client protection is inadequate for certain financial services and products. In March 2012, the Federal Council instructed the FDF, with the assistance of the Federal Department of Justice and Police (FDJP) / Federal Office of Justice (FOJ) and FINMA, to commence work on a project to prepare the legal basis for a new law and submit a consultation draft to the Federal Council. The law is to be drafted on the basis of a cross-sectoral approach, encompassing bank services, insurance services, advisory services, etc.<sup>85</sup>

**General partner**

In a limited partnership for collective investment, 'general partner' denotes the partner who bears unlimited liability. Under the Collective Investment Schemes Act (CISA), the general partner of a limited partnership for collective investment must be a company limited by shares with its registered office in Switzerland.

**Higher loss absorbency**

Enhanced ability to absorb a higher level of (unexpected) losses using equity capital. Higher loss absorbency requirements for global systemically important insurance companies (G-SIIs) are currently under development.

**Internal model (insurance companies)**

System used by an insurance company to quantify the risks in connection with solvency under the SST, based on a company-specific risk profile. Insurance companies may wholly or partly use internal models provided these have been approved by FINMA.

**Internal ratings-based approach (IRB approach)**

Approach to determining the capital requirements for credit risks based on a bank's own ratings and risk parameter estimates. This approach requires approval by FINMA.

**Letter of assurance**

From the beginning of the 1990s onwards, the expression 'letter concerning assurance of proper business conduct' was increasingly used by the Swiss Federal Banking Commission, one of FINMA's three predecessors, in its supervisory practice. This letter is intended to inform an individual who has held a top management position or executive board position at a supervised institution of FINMA's possible reservations about the assurance of proper business conduct requirement following the individual's possible wrongdoing as a result of an irregularity. This letter also states that FINMA will conduct enforcement proceedings to examine the individual's fitness for assuming a future position. The outcome of the proceedings is fully open.

**Leverage ratio**

Ratio of equity capital to debt capital (or often vice versa). As a regulatory provision, the leverage ratio also refers to the minimum requirement for equity capital in relation to the overall exposure. A leverage ratio is not a risk-weighted indicator.

<sup>85</sup> Extract from information provided by the State Secretariat for International Financial Matters (SIF).

**Liquidity Coverage Ratio (LCR)**

This short-term liquidity ratio is a new quantitative liquidity parameter under Basel III. In a predefined stress scenario, it measures highly liquid assets (such as high-quality government bonds) against a net payment outflow. The ratio must be at least 100%.

**Loss absorbency**

A general term for the capacity to absorb (unexpected) losses of a given extent using equity capital.

**Markets in Financial Instruments Directive II (MiFID II)**

In October 2011, the European Commission presented a legislative package revising the Markets in Financial Instruments Directive (MiFID), Directive 2004/39/EC, consisting of a directive and an ordinance. In particular, MiFID contains rules on the organisation and operation of securities exchanges and their participants as well as business conduct rules to protect investors when financial services are provided.

**Net Stable Funding Ratio (NSFR)**

Part of the Basel III framework, the NSFR has a one-year time horizon and has been developed to provide a sustainable maturity structure of assets and liabilities. The aim is to promote resilience over a longer time horizon by creating additional incentives for banks to fund their activities with more stable sources of funding on an ongoing basis. The ratio must be at least 100%.

**Non-prosecution agreement**

An agreement between a prosecuting authority and a company in which the authority acknowledges it will not prosecute the company in connection with a particular form of conduct provided the company meets the conditions set out in the agreement (payment of a fine, cooperation, etc.).

**Non-target letter**

A letter from a prosecuting authority stating that, at the time of writing and on the basis of the information available to the authority, the recipient is not the subject of a criminal investigation.

**Non-UCITS**

Collective investment schemes not subject to the EU's UCITS Directive. See also UCITS (Directive).

**OTC derivative**

OTC derivatives are derivative financial instruments that are traded bilaterally outside an exchange or other regulated market.

**Preliminary investigation (enforcement)**

FINMA carries out preliminary investigations (also referred to simply as 'investigations') to establish whether there are grounds for initiating formal enforcement proceedings.

**Prudential supervision**

Prudential supervision aims first and foremost to ensure that solvency is guaranteed, adequate risk control is in place and proper business conduct is assured. It thus also contributes indirectly to the financial markets' ability to function and to the competitiveness of Switzerland's financial sector. Prudential supervision of banks, insurance companies and other financial intermediaries is based on the licensing requirement for a specific type of activity, ongoing monitoring of compliance with the licence conditions, and other factors that are subject to regulation.

**Qualified investor**

Under Article 10 para. 3 CISA, qualified investors are supervised financial intermediaries such as banks, securities dealers, fund management companies, asset managers of collective investment schemes, central banks, supervised insurance institutions, public-law bodies, retirement fund institutions and companies with professional treasury services. Wealthy private individuals can also state in writing that they want to be considered as qualified investors; however, they must meet the requirements set out in Article 6 CISO. Investors who have concluded a written asset management contract under Article 3 para. 2 lets. b and c CISA are also considered as qualified investors unless they have specified in writing that they do not want to be considered as such.

**Recovery, resolution and resolvability**

- Recovery denotes the measures taken by a company to stabilise itself without government intervention.
- Resolution denotes restructuring measures or liquidation.
- Resolvability means the ability of a company to be resolved or wound up.

**Regulatory Consistency Assessment Programme (RCAP)**

As part of the RCAP, the Basel Committee on Banking Supervision (BCBS) audits the implementation of the Basel III minimum standards by its member countries. Consistent implementation of Basel III is necessary to enable meaningful comparisons of the capital and liquidity situation of banks using relevant regulatory ratios and to secure a level playing field for all involved players.

**Reinsurance captive**

Own insurance entity whose objective is to insure risks emanating from the group through primary insurers. This alternative form of risk transfer aims at allowing companies to enhance their risk and capital management within the group.

**Short selling**

Selling financial instruments that the seller does not possess at the time of sale.

**Solvency II**

Solvency II primarily refers to EU Directive 2009/138/EC of 25 November 2009 on the taking up and pursuit of the business of insurance and reinsurance (Solvency II). It is also often used to refer to the economic and risk-based method of assessing the capital adequacy of an insurance company contained in the Directive. In quantitative terms, the EU's Solvency II pursues aims comparable to those of Switzerland's SST.

**Standard model (insurance companies)**

Risk model prescribed by FINMA to determine solvency under the SST. There are standard models for life, non-life and health insurance. Reinsurers and insurance groups are required to use internal models.

**Supervisory college**

Meeting of representatives of international supervisory authorities to discuss the supervisory issues affecting an institution with multinational operations.

**Supervisory review**

On-site inspection of supervised institutions by FINMA staff. Supervisory reviews are used to arrive at an in-depth risk assessment in relation to specific issues, but are not a substitute for the auditing activities of regulatory auditors.

**SwissDRG (diagnosis-related groups)**

Treatment cases that are as homogenous as possible on the basis of medical and economic criteria are grouped together. Each hospital admission is allocated to a DRG on the basis of diagnosis and treatment. The groups are the same throughout Switzerland. For each group, a cost weight is calculated that is then multiplied by the basic price to obtain the flat rate per case.

**Swiss Solvency Test (SST)**

The SST is a supervisory instrument that uses economic and risk-based principles to measure the solvency of insurers. It was introduced in 2006 when the Insurance Supervision Act and the Insurance Supervision Ordinance were fully revised, with a transitional period of five years. It assesses the financial situation of an insurance company on the basis of the ratio of eligible equity (risk-bearing capital) to regulatory capital (target capital). The latter are determined in view of the risks incurred.

**Systemic importance**

Systemic risks are risks emanating from individual market participants that jeopardise the stability of the entire economy ('system'). Companies carrying out functions which are indispensable to the economic system, or which cannot be replaced by other companies, are termed 'systemically important'. One example of a systemically important function is the processing of payment transactions by banks.

**Tied assets**

Tied assets are designed to secure claims arising from insurance contracts. If an insurance company goes bankrupt, the proceeds of the tied assets are used first to satisfy such claims. Only then is any remaining surplus transferred to the bankrupt estate. The value of the capital investments of tied assets must cover the claims arising from insurance contracts at all times. The Insurance Supervision Ordinance (ISO) and FINMA circulars therefore contain specific provisions on the capital investments of tied assets.

**'Too big to fail'**

A company is categorised as 'too big to fail' if its collapse would endanger the stability of the entire economy, thereby compelling the state to rescue it. Discussion of the 'too big to fail' issue focuses on the systemic risks emanating from such companies.

**UCITS (Directive)**

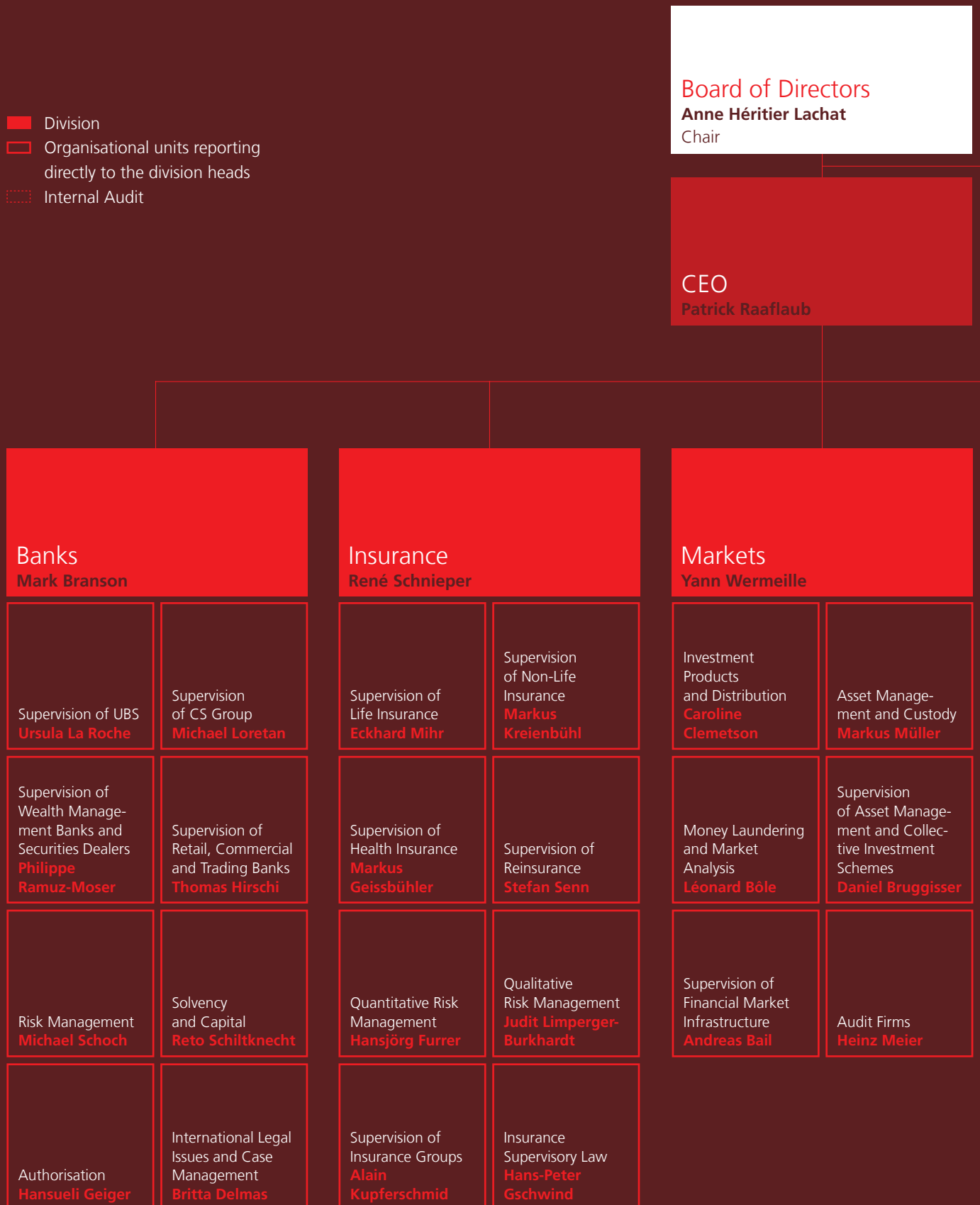
UCITS are Undertakings for Collective Investment in Transferable Securities. The EU's UCITS Directive (2009/65/EU) sets out Europe-wide standard requirements for collective investment schemes open to public investors.



# Organisation chart

(31 December 2013)

- Division
- ▭ Organisational units reporting directly to the division heads
- ▭ Internal Audit



Internal Audit  
**Nicole**  
**Achermann**

## Enforcement

David Wyss

Investigations  
**Patric Eymann**

Proceedings  
**Regine**  
**Wolfensberger**

Insolvency  
**Michel Kähr**

## Strategic Services

Nina Arquint

Regulation  
**Nina Arquint a.i.**

International  
Affairs  
**Rupert Schaefer**

General  
Secretariat and  
Communications  
**Jan Blöchliger**

Accounting  
**Stephan Rieder**

Legal and  
Compliance  
**Renate**  
**Scherrer-Jost**  
**Kathrin Tanner**

## Operations

Andreas Zdrenyk

Facility Manage-  
ment and  
Procurement  
**Albert Gemperle**

Information and  
Communication  
Technologies  
**Daniel Benninger**

Finance  
**Daniel Heiniger**

Human Resources  
**Giovanni Weber**

Change and  
Process  
Management  
**Sascha Rassel**

Enterprise Risk  
Management and  
Internal Control  
System  
**Patrick Tanner**

## Abbreviations

**AEI** Automatic exchange of information  
**AFBS** Association of Foreign Banks in Switzerland  
**AIF** Alternative Investment Fund  
**AIFM** Alternative Investment Fund Manager  
**AIFMD** Alternative Investment Fund Managers Directive (EU)  
**AMF** Autorité des marchés financiers (France)  
**AMLA** Swiss Federal Act of 10 October 1997 on Combating Money Laundering and Terrorist Financing in the Financial Sector (Anti-Money Laundering Act; SR 955.0)  
**AMLO-FINMA** Ordinance of 8 December 2010 of the Swiss Financial Market Supervisory Authority on the Prevention of Money Laundering and Terrorist Financing (FINMA Anti-Money Laundering Ordinance; SR 955.033.0)  
**ASCB** Association of Swiss Cantonal Banks  
**BA** Swiss Federal Act of 8 November 1934 on Banks and Savings Banks (Banking Act; SR 952.0)  
**BaFin** Federal Financial Supervisory Authority (Germany)  
**BCBS** Basel Committee on Banking Supervision  
**BIO-FINMA** Ordinance of 30 August 2012 of the Swiss Financial Market Supervisory Authority on the Insolvency of Banks and Securities Dealers (FINMA Banking Insolvency Ordinance; SR 952.05)  
**BO** Swiss Federal Ordinance of 17 May 1972 on Banks and Savings Banks (Banking Ordinance; SR 952.02)  
**BMA** Bermuda Monetary Authority  
**BVGE** Federal Administrative Court decision  
**BBV 2** Swiss Federal Ordinance of 18 April 1984 on Occupational Retirement, Survivors' and Disability Pension Plans (SR 831.441.1)  
**CAO** Swiss Federal Ordinance of 1 June 2012 on Capital Adequacy and Risk Diversification for Banks and Securities Dealers (Capital Adequacy Ordinance; SR 952.03)  
**CBI** Central Bank of Ireland  
**CC** Swiss Criminal Code of 21 December 1937 (SR 311.0)  
**CCs** Control Committees of the Federal Assembly  
**CCP** Central counterparty  
**CEAT** Committees for Economic Affairs and Taxation of the (Swiss) Federal Assembly  
**CEAT-N** Committee for Economic Affairs and Taxation of the National Council  
**CET1** Common Equity Tier 1 capital  
**CFTC** U.S. Commodity Futures Trading Commission  
**CHF** Swiss franc  
**Circ.** Circular  
**CISA** Swiss Federal Act of 23 June 2006 on Collective Investment Schemes (Collective Investment Schemes Act; SR 951.31)  
**CISBO-FINMA** Ordinance of 6 December 2012 of the Swiss Financial Market Supervisory Authority on the Bankruptcy of Collective Investment Schemes (FINMA Collective Investment Schemes Bankruptcy Ordinance; SR 951.315.2)  
**CISO** Swiss Federal Ordinance of 22 November 2006 on Collective Investment Schemes (Collective Investment Schemes Ordinance; SR 951.311)  
**CO** Swiss Civil Code of Obligations of 30 March 1911 (SR 220)  
**CoCo** Contingent convertible bond  
**ComFrame** Common Framework for the Supervision of Internationally Active Insurance Groups  
**CONSOB** Commissione Nazionale per le Società e la Borsa (Italy)

**CPSS** Committee on Payment and Settlement Systems  
**CSSH** Committees for Social Security and Health of the (Swiss) Federal Assembly  
**CSSH-N** Committee for Social Security and Health of the National Council  
**CSSH-S** Committee for Social Security and Health of the Council of States  
**DEBA** Swiss Federal Act of 11 April 1889 on Debt Enforcement and Bankruptcy (SR 281.1)  
**DoJ** U.S. Department of Justice  
**DRG** Diagnosis-related groups  
**DSFI** Directly subordinated financial intermediary  
**ECB** European Central Bank  
**ECG** Enlarged Contact Group on the Supervision of Collective Investment Schemes  
**EMIR** European Market Infrastructure Regulation  
**ENA** FINMA Enforcement Committee  
**ESMA** European Securities and Markets Authority  
**EU** European Union  
**EEA** European Economic Area  
**FAOA** Swiss Federal Audit Oversight Authority  
**FAQ** Frequently asked question  
**FATCA** Foreign Account Tax Compliance Act (US)  
**FATF** Financial Action Task Force  
**FBO-FINMA** Ordinance of 21 October 1996 of the Swiss Financial Market Supervisory Authority on Foreign Banks in Switzerland (FINMA Foreign Banks Ordinance; SR 952.111)  
**FC** Finance Committees of the (Swiss) Federal Assembly  
**FCA** Financial Conduct Authority (UK)  
**FC-N** Finance Committee of the National Council  
**FDf** Swiss Federal Department of Finance  
**FDIC** Federal Deposit Insurance Corporation (US)  
**FDJP** Swiss Federal Department of Justice and Police  
**Fed** U.S. Federal Reserve System  
**FinDel** Finance Delegation  
**FINMA** Swiss Financial Market Supervisory Authority  
**FINMASA** Swiss Federal Act of 22 June 2007 on the Swiss Financial Market Supervisory Authority (Financial Market Supervision Act; SR 956.1)  
**FMA** Financial Market Authority (Liechtenstein)  
**FMAO-FINMA** Ordinance of 15 October 2008 of the Swiss Financial Market Supervisory Authority on Auditing (FMAO-FINMA; SR 956.161)  
**FMIA** Financial Market Infrastructure Act  
**FOJ** Swiss Federal Office of Justice  
**FSA** Financial Services Act  
**FSA** Financial Services Authority (UK, predecessor authority of the PRA and FCA)  
**FSAP** Financial Sector Assessment Programme  
**FSB** Financial Stability Board  
**FSC** Financial Stability Committee  
**G-20** Group of the 20 leading industrialised and developing economies  
**GDP** Gross domestic product  
**GIIPS** Greece, Ireland, Italy, Portugal, Spain  
**G-SIB** Global systemically important bank  
**G-SII** Global systemically important insurer  
**IAIS** International Association of Insurance Supervisors  
**IBO-FINMA** Ordinance of 17 October 2012 of the Swiss Financial Market Supervisory Authority on Insurance Bankruptcy (FINMA Insurance Bankruptcy Ordinance; SR 961.015.2)

**ICA** Swiss Federal Act of 2 April 1908 on Insurance Contracts (Insurance Contract Act; SR 221.229.1)  
**IMF** International Monetary Fund  
**IOSCO** International Organization of Securities Commissions  
**IPO** Initial public offering  
**IRB** Internal ratings-based  
**IRS** Internal Revenue Service (US)  
**ISA** Swiss Federal Act of 17 December 2004 on the Supervision of Insurance Companies (Insurance Supervision Act; SR 961.01)  
**ISO** Swiss Federal Ordinance of 9 November 2005 on the Supervision of Private Insurance Companies (Insurance Supervision Ordinance; SR 961.011)  
**LCR** Short-term Liquidity Coverage Ratio  
**LIBOR** London Interbank Offered Rate  
**MDIFP** Missouri Department of Insurance, Financial Institutions and Professional Registration  
**MiFID** Markets in Financial Instruments Directive  
**MMoU** Multilateral Memorandum of Understanding  
**MoU** Memorandum of Understanding  
**NSFR** Net Stable Funding Ratio  
**OAK BV** Swiss Federal Occupational Pensions Regulatory Commission  
**OCC** Office of the Comptroller of the Currency (US)  
**ODRG** OTC Derivatives Regulators Group  
**OPPI** Ordinance of 18 November 2009 on the Professional Practice of Financial Intermediation (SR 955.071; German acronym VBF)  
**ORSA** Own Risk and Solvency Assessment  
**OTC** Over the counter  
**PRA** Prudential Regulation Authority (UK)  
**RCAP** Regulatory Consistency Assessment Programme  
**RWA** Risk-weighted assets  
**SBA** Swiss Bankers Association  
**SEC** U.S. Securities and Exchange Commission  
**SECO** Swiss State Secretariat for Economic Affairs  
**SESTA** Swiss Federal Act of 24 March 1995 on Stock Exchanges and Securities Trading (Stock Exchange Act; SR 954.1)  
**SESTO** Swiss Federal Ordinance of 2 December 1996 on Stock Exchanges and Securities Trading (Stock Exchange Ordinance; SR 954.11)  
**SESTO-FINMA** Ordinance of 25 October 2008 of the Swiss Financial Market Supervisory Authority on Stock Exchanges and Securities Trading (FINMA Stock Exchange Ordinance; SR 954.193)  
**SFAMA** Swiss Funds & Asset Management Association  
**SFBC** Swiss Federal Banking Commission (one of FINMA's predecessor authorities)  
**SIA** Swiss Insurance Association  
**SICAF** Investment company with fixed capital  
**SICAV** Investment company with variable capital  
**SIF** Swiss State Secretariat for International Financial Matters  
**SIFI** Systemically important financial institution  
**SNB** Swiss National Bank  
**SQA** Swiss Qualitative Assessment  
**SRO** Self-regulatory organisation  
**SST** Swiss Solvency Test  
**TOB** Swiss Takeover Board  
**UCITS** Undertaking for Collective Investment in Transferable Securities  
**WTO** World Trade Organization



# FINMA's core values

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## Systematic supervisory activity

FINMA acts as a supervisory authority, protecting financial market clients and the smooth functioning of the Swiss financial sector. It performs its supervisory tasks using the instruments of licensing, supervising, enforcement and regulation. In so doing, it pursues a risk-based approach that ensures continuity and predictability. FINMA fosters dialogue with supervised institutions, authorities, professional associations and other key institutions both nationally and internationally.

## Independent decision-making

FINMA is functionally, institutionally and financially independent, and performs a sovereign function in the public interest. It operates in an environment characterised by the diverging interests of various stakeholders. It preserves its autonomy and acts on the basis of its statutory remit, reaching its decisions independently and in a manner appropriate to the circumstances.

## Responsible staff

FINMA's staff combine responsibility, integrity and the ability to deliver results. They are independent, highly flexible and adaptable. FINMA's staff are skilled and able to cope with resistance and challenging situations. They take account of changes in their operating environment and respond with concrete measures that are both timely and appropriate.

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