



Eidgenössische Finanzmarktaufsicht FINMA
Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
Swiss Financial Market Supervisory Authority FINMA

Annual Report 2013



FINMA's mandate

The Swiss Financial Market Supervisory Authority FINMA is an institution under public law with its own legal personality. As an independent supervisory authority, FINMA acts to protect the interests of creditors, investors and policyholders and ensure the proper functioning of financial markets.

FINMA aims to protect financial market clients against insolvent financial institutions, unfair business practices and unequal treatment in securities markets. FINMA also seeks to protect the functioning of the financial markets, which serves to maintain the stability of the financial system. Effective protection of clients and market functionality also indirectly enhances the competitiveness and reputation of Switzerland's financial centre.

FINMA acts as an oversight authority of banks, insurance companies, stock exchanges, securities dealers, collective investment schemes, distributors and insurance intermediaries. It licenses the operations of companies in the sectors it supervises. Through its supervisory activities, FINMA ensures that supervised institutions comply with the requisite laws, ordinances, directives and regulations, and continue at all times to comply with licensing requirements. FINMA is responsible for combating money laundering; it provides administrative assistance, imposes sanctions and, where necessary, conducts restructuring and bankruptcy proceedings.

FINMA also supervises the disclosure of shareholdings, conducts proceedings, issues rulings and, where wrongdoing is suspected, files criminal complaints with the Swiss Federal Department of Finance (FDF). Moreover, FINMA supervises public takeover bids and acts, in particular, as complaints body for appeals against decisions of the Swiss Takeover Board (TOB). Finally, FINMA participates in legislative procedures, issues its own ordinances where authorised to do so, publishes circulars concerning the interpretation and application of financial market law, and is responsible for the recognition of self-regulatory standards.


Selected figures for 2013

On-site inspections, referred to as supervisory reviews¹, enable FINMA to gain a close insight into the workings of a financial institution and to promote factual and open dialogue with those subject to FINMA supervision. They allow FINMA to get to know the institution concerned in depth and obtain a broader overview of the market as a whole by comparing individual institutions. The number of supervisory reviews conducted varies from year to year. Both quantitative and qualitative aspects are assessed.


JAN

p. 55
Temporary adjustments to the SST come into force.

MAR



New Collective Investment Schemes Act comes into force.




Parliament approves group requests for administrative assistance where particular patterns of behaviour are involved.

JUN

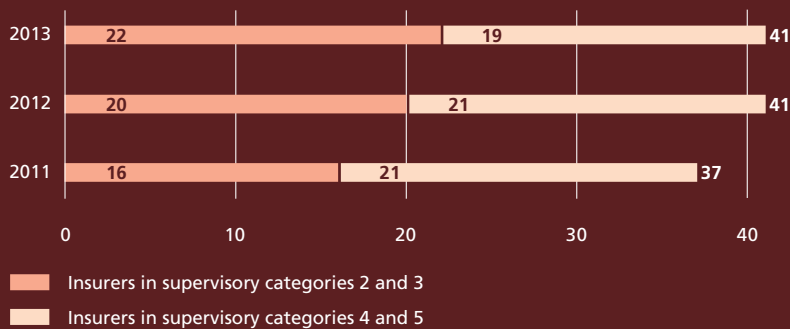
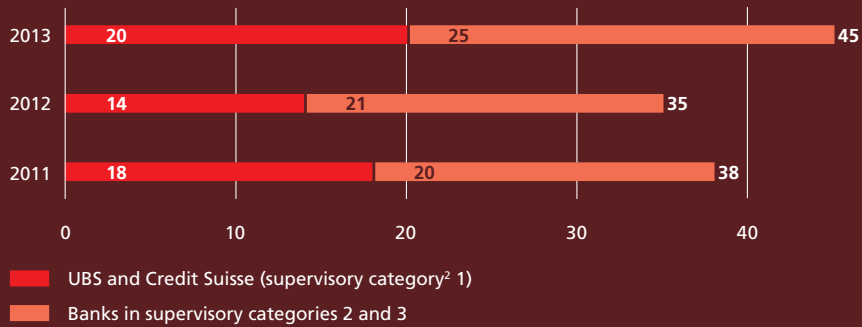
p. 24
RCAP awards high marks to Swiss banking regulation.

p. 48
PostFinance receives banking licence.



National Council rejects Lex USA for the second time.

Supervisory reviews: banks and insurers



In 2013, supervisory reviews of banks focused primarily on issues such as liquidity, mortgage lending, combating money laundering and asset management. No supervisory reviews were carried out on banks in supervisory categories 4 and 5.

In 2013, as in 2012, the main focus in the insurance segment was on auditing technical provisions.

JUL



AUG

p. 43
FINMA publishes position paper 'Resolution of systemically important banks'.

SEPT



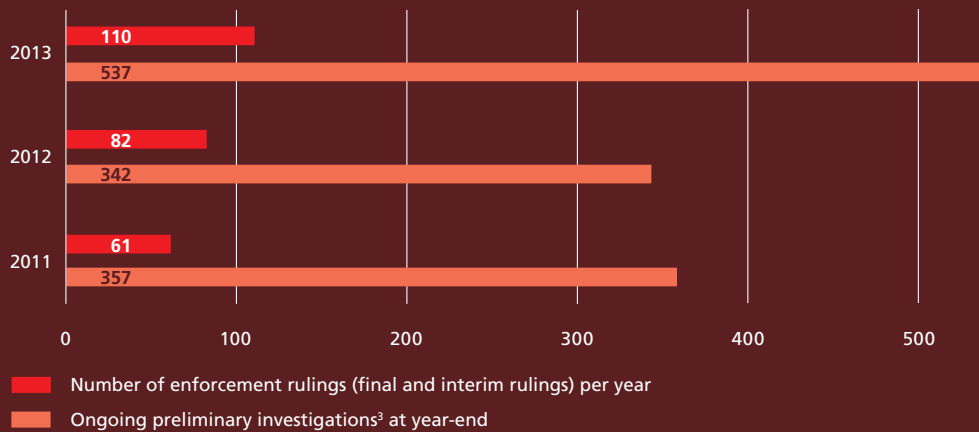
OCT



p. 80

FINMA Circular 'Market conduct rules' comes into force.

Preliminary investigations and enforcement rulings



With expansion of the Enforcement division complete, FINMA is now in a position to carry out targeted enforcement activities in all supervisory areas in line with its supervisory focus, and to handle an increasing number of enforcement proceedings.

¹ See Glossary, p. 114.
² See Appendix, section on Supervisory categories for banks and insurance companies, p. 102.
³ See Glossary, p. 113.

NOV

Zürcher Kantonalbank is classified as systemically important.

p. 56
FINMA announces premium reductions of CHF 240m in supplementary health insurance.

Compromise in the EU: Solvency II for EU insurers to be introduced on 1 January 2016.

DEC

Deadline for Swiss banks to notify the DoJ as to whether they will participate in the US programme.

ECB cuts interest rates to new low of 0.25%.

p. 81
FINMA reprimands a cantonal bank for market manipulation.

p. 41

FINMA issues 'too big to fail' decrees to UBS and Credit Suisse.

Internationally recognised supervisory standards for a sustainable financial centre

Five years after FINMA was created, it is time to take stock of where financial market supervision stands today and also what the future holds. Anne Héritier Lachat, Chair of the FINMA Board of Directors, and the FINMA CEO, Patrick Raaflaub, take a look back and forward.

The merger of FINMA's three predecessor authorities – the Swiss Federal Banking Commission, the Federal Office of Private Insurance and the Anti-Money Laundering Control Authority – took place amidst the early stages of a lengthy crisis. In addition to its day-to-day activities of licensing, supervision, enforcement and regulation, coupled with the task of establishing the new authority's strategy, approach and organisation, FINMA found itself having to work closely with the sector through the financial crisis, the euro and sovereign debt crisis and the paradigm shift in cross-border asset management.

Well placed strategically

The path we have pursued for the last five years has not always been smooth. Together with our employees,

we have achieved some key milestones between 2009 and 2013. We particularly wish to highlight the professionalisation of supervision, the authority's international reputation and its increasingly established role in Switzerland.

We have developed a systematic, risk-oriented supervisory approach that is now firmly anchored in all our divisions. In banking, insurance, financial market infrastructure and collective investment schemes, the large and interlinked institutions are subject to greater supervision than smaller market participants, whose failure would be less dangerous and of less importance to the economy as a whole. The risk-oriented approach enables us to deploy our limited resources where they are most needed.



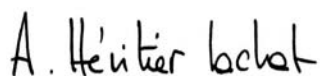
Respected internationally

Thanks to the professionalism of our licensing, supervision and enforcement, FINMA receives good marks in international quality reviews. Where the global standards for the sector are being developed – in the Financial Stability Board (FSB), the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS) and the International Organization of Securities Commissions (IOSCO) – we have become a force to be reckoned with, and one that actively brings the Swiss perspective to bear. Also in the international arena, FINMA works hard to create a solid basis for the Swiss financial sector and its clients, and to maintain its competitiveness.

FINMA's contributions to global standard-setting bodies are taken seriously, for instance, in 2013, our initiative to improve the resolvability of internationally active, systemically important banks. Switzerland has laid the groundwork for the resolution of systemically important financial institutions. The next step, both nationally and internationally, is to address the issue of those banks that are 'too big to fail'. With its two large banking groups, Switzerland has a vital interest in ensuring that a good solution is found. We will continue to play a targeted role in achieving this.

Change brings opportunities

It is clear that Switzerland's financial sector will face major challenges in the years ahead. Financial institutions must rethink their business models, identify new strengths and leave old weaknesses behind them. Change also brings with it new market opportunities. If they are to negotiate this change successfully, Swiss financial market players must be able to compete under the same conditions as their competitors abroad. Switzerland is therefore to some extent compelled to bring its legal framework in line with international standards. This will mean our country giving up a measure of its autonomy, but gaining or retaining access to other markets in return.



Prof. Anne Héritier Lachat
Chair

Where do FINMA's principles fit into this process? We are exacting in terms of prudential standards – equity capital, liquidity and risk management. At the same time, our regulation is based more strongly on principles than is the case in other countries. We regulate more intensively, especially where products and innovations are concerned.

A capable partner at the national level

FINMA is committed to being a capable partner for financial and regulatory issues at the national level. Five years on from FINMA's creation, politicians and the public still have many questions about the authority, its tasks and activities. This shows that there is still scope for us to improve by continuing to implement our strategy diligently and by not allowing ourselves to be driven by day-to-day events.

FINMA is a supervisory authority that is bound by official secrecy and is therefore not at liberty to communicate everything. Refusal to grant approval inevitably invites criticism. An authority that supervises systematically, conducts proceedings and, ultimately, may impose sanctions cannot be surprised if it is criticised. The most important thing is that we perform our supervisory function effectively and consistently, but also in a way that is fair, predictable and open to dialogue.



Dr Patrick Raaflaub
CEO

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FINMA: An overview

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FINMA is an independent supervisory authority that oversees, licenses and supervises banks, insurance companies, stock exchanges, securities dealers and collective investment schemes. Where necessary, FINMA also takes corrective measures. Where its supervisory objectives so require, it can issue ordinances and circulars setting out details of rules at the lowest regulatory level.

With over 300 banks, more than 200 insurance companies and in excess of 6,000 collective investment schemes, Switzerland's financial sector is large by international standards. The legislature has given FINMA the overriding objective of protecting creditors, investors and policyholders and ensuring the proper functioning of the financial markets.

Protecting the collective interest

The protection of creditors and investors is therefore one of FINMA's principal aims. This protection is exercised collectively, for the benefit of creditors and investors as a whole. FINMA is not in a position, under supervisory law, to protect individual investors and policyholders. Where necessary, private individuals must assert their claims against financial institutions through the civil courts.

FINMA ensures that individual institutions remain solvent and, in so doing, protects clients, reinforces the stability of the financial system and indirectly enhances the reputation, efficiency and competitiveness of the financial centre.

Supervision based on licensing

Any person or organisation receiving money from investors, writing insurance policies or launching investment funds requires a licence from FINMA. Inadequate corporate organisation, failure to disclose ownership structures or the inability of management to provide the requisite assurance of proper business conduct will result in a refusal by FINMA to grant a licence.

FINMA's licensing practice protects the integrity of the financial centre and ensures that access to the market is not granted to competitors that fail to comply with the same exacting standards as supervised institutions. Entities engaging in financial market activities

subject to authorisation without obtaining a licence can be liquidated by FINMA.

Supervision: FINMA's core task

At the heart of FINMA's work is prudential, forward-looking supervision. Banks, insurers and other financial intermediaries must have adequate equity capital in place at all times; they must be liquid; and they must have their risks under control. They also have to ensure that their senior managers meet exacting professional and personal standards and are thus able to provide assurance of proper business conduct. FINMA reviews this aspect as part of its prudential supervision.

Risk-oriented, with a stronger presence on site

FINMA focuses its supervisory activities most intensively on the areas where the risks are greatest. It has increased the number of analyses it carries out itself, and also conducts more frequent and more in-depth inspections on site at supervised institutions. This was especially the case in 2013, with the mortgage market (particularly at banks) and the provisions of life insurers coming under scrutiny.

Intensive supervisory dialogue

The supervisory dialogue between FINMA and prudentially supervised institutions is intensive, but official and business secrecy prevents it from being carried on in public. FINMA did not, for example, communicate the temporary additional capital requirements imposed on UBS with effect from 1 October 2013 itself, but instead left it to the bank to announce the resulting equity increase. This is not a rare occurrence. If FINMA concludes that an institution's own estimates are inadequately substantiated or insufficiently conservative, it has the power to intervene and impose corrective measures.

Audit firms: FINMA's 'extended arm'

In Switzerland, an important part of the groundwork in supervision is carried out by audit firms. In 2012, this 'extended arm' of FINMA conducted regulatory audits of banks, insurance companies and collective investment schemes equivalent to some 260 full-time equivalent positions. Collaboration with private auditors was placed on a new footing in 2013, with regulatory audits on behalf of FINMA being separated from financial audits both organisationally and in terms of approach. Additionally, audit firms are required to provide FINMA with a forward-looking risk analysis and more informative reporting.

FINMA's role in enforcing the law

When supervisory law is breached, FINMA takes corrective measures. It conducts enforcement proceedings designed to restore compliance with the law. FINMA has far-reaching powers in this area. It can, for example, impose restrictions on an institution's business activities, order it to implement organisational measures, liquidate companies that are acting without a licence, ban individuals from practising their profession – prohibiting them from taking up a management position at a licence holder – or order the disgorgement of unjustified profits.

However, the legislature deliberately refrained from granting FINMA the power to impose administrative fines, even though this instrument is widely available to authorities supervising the markets at the international level. Similarly, FINMA does not have the investigative powers that other authorities possess when it comes to compulsory measures such as searches and the seizure of evidence.

Regulation only where necessary

The legal framework for the financial sector is set as part of a political process. Parliament and the government adapt international rules and standards

to reflect Swiss circumstances and enact their own laws and ordinances. FINMA, for its part, is charged with ensuring that national regulations and, indirectly, international standards are applied correctly in Switzerland. FINMA provides expert assistance to Parliament, the Federal Council and other authorities, thus ensuring that its own perspective – that of supervisory law – feeds into the discussion. There are only a small number of areas where FINMA itself regulates:

- through FINMA ordinances, which cover details that are too technical or dynamic to be included in Federal Council ordinances or laws, and
- through circulars explaining FINMA's supervisory practice and describing its interpretation of current laws and ordinances.

FINMA also communicates with supervised institutions through a range of channels: FINMA newsletters, FAQs, guidelines and forms provide practical assistance and transparency for the market.

FINMA's independence

Parliament has granted FINMA greater independence than its predecessor authorities. To perform its allotted tasks properly, the financial market supervisory authority must, like the courts, be as free as possible from political influences. The embodiment of this autonomy is FINMA's Board of Directors, whose members are chosen by the Federal Council for their expertise and not on the basis of party-political considerations. Once selected, the directors are bound solely by the law and their mandate. The tasks of the Board of Directors include setting out FINMA's strategic focus, deciding on matters of substantial importance, and overseeing the work of the Executive Board.

Although FINMA acts as an independent authority, it is nevertheless integrated into the political structures of the Swiss state, with all the checks and balances which that implies. FINMA is subject to parliamentary oversight and maintains regular contacts with the Federal Council.⁴ FINMA's rulings can be contested before the courts.

FINMA's independence is based on three pillars:

- Functional independence prevents Parliament or the government issuing instructions to FINMA concerning its supervisory activities. This would be undesirable from a policy perspective.
- The fact that FINMA is financed by fees and duties paid by supervised institutions renders it independent of federal budget constraints.
- FINMA is institutionally independent in that it is established as an institution under public law with its own legal personality.

⁴ See section on FINMA in the political context, p. 14.

FINMA's main tasks

Licensing

- FINMA is responsible for issuing licences to individuals and legal entities that are active in the regulated financial market.
- Anyone who meets the conditions is entitled to apply for a licence.
- The law provides for various forms of licence, involving everything from intensive, prudential supervision of the institution to a one-time authorisation without subsequent monitoring.

Supervision

- Prudential supervision⁵ is FINMA's core task.
- In its supervisory activities, FINMA is consistently guided by its statutory remit to protect creditors, investors and policyholders and ensure the smooth functioning of the financial markets.
- FINMA follows a risk-oriented approach, deliberately monitoring less risky areas less intensively while taking a much more rigorous line with areas that are crucial to the protection of individuals and critical functions.

Enforcement

- FINMA is charged with investigating possible breaches of financial market legislation and rectifying any shortcomings that are identified. In so doing, it establishes a level playing field for all market participants.
- Enforcement enables FINMA to ensure compliance with supervisory law, order corrective measures to be taken where necessary, or impose sanctions. FINMA does not have the power to issue fines.
- FINMA's rulings can be contested before the courts.

Regulation

- FINMA is committed to internationally compatible and principle-based regulation.
- Where expressly provided for in the legislation, FINMA issues its own ordinances covering details that are very technical or dynamic. FINMA sets out its supervisory practice in circulars.

⁵ See Glossary, p. 113.

Across the board, from resolution plans to the manipulation of foreign currency exchange markets, 2013 was an intensive year for FINMA. Its main activities in financial market supervision in the four quarters of 2013 are summarised below.

FIRST QUARTER REVIEW

Adjustments to the Swiss Solvency Test

FINMA Circular 'Adjustments to the Swiss Solvency Test' came into force on 1 January 2013. Owing to the difficult economic situation and persistently low interest rates, FINMA will permit discounting of in-force policies where the yield curve is subject to counterparty credit risk until the end of 2015. FINMA has also temporarily lowered its intervention thresholds.

Auditing

The revised FINMA Circulars 'Auditing' and 'Audit firms and lead auditors' came into force on 1 January 2013. These establish a more effective framework for the collaboration with audit firms and align it more closely with FINMA's specific supervisory objectives.

Collective investment schemes

The revision of the Collective Investment Schemes Act (CISA) and Collective Investment Schemes Ordinance (CISO) embedded developments in international standards in Swiss regulation, in order to guarantee access to the EU for Swiss financial intermediaries and enhance investor protection. Further adjustments were made to the regulation of products during the legislative process, in response to requests from the market. The revised CISA and the amended CISO came into force on 1 March 2013.

Financial market infrastructures

At the beginning of 2013, FINMA implemented the risk-based supervisory approach in the area of financial market infrastructures. An individual rating was then assigned to each institution at the end of the year on the basis of an assessment. Depending on the supervisory category and rating, FINMA decided on the level of supervision of the institution concerned.

Insurance bankruptcies

FINMA Insurance Bankruptcy Ordinance (IBO-FINMA) came into force on 1 January 2013. It sets out in detail the procedure for insurance company bankruptcies under Articles 53 to 59 ISA and amends some of the regulations governing authorities in this area.

Liquidity of insurance companies

FINMA Circular 'Liquidity – insurers' came into force on 1 January 2013. It lays down the principles for recording liquidity risks and minimum requirements for the nature and content of reporting, and therefore establishes the specific details of the supervisory provisions on the risk management of supervised insurance companies, groups and conglomerates.

SECOND QUARTER REVIEW

BCBS audit programme

As part of its Regulatory Consistency Assessment Programme (RCAP), the Basel Committee on Banking Supervision (BCBS) audits the implementation of the Basel III minimum standards by its member countries. For Switzerland, this process took place in the first half of 2013 and resulted in the country being declared compliant. This is a seal of approval for Switzerland's financial centre.

IMF assessment programme

From May to December 2013, Switzerland underwent the Financial Sector Assessment Programme (FSAP) conducted by the International Monetary Fund (IMF). The programme began in the second quarter of 2013 with an assessment of compliance with the international standards laid down by the IAIS, IOSCO and BCBS. The aim of the FSAP is to assess the stability of a country's financial sector and evaluate the quality of its regulation and supervision. The results of the FSAP are expected to be published in spring 2014.

Finalisation of resolution plans

In 2013, FINMA worked on resolution plans, which provide a basis for the recovery and resolution of financial groups threatened with insolvency. 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 Swiss National Bank (SNB) and the supervisory and resolution authorities in the US and UK for consultation.

Banking licence for PostFinance

Since 26 June 2013, PostFinance has been subject to FINMA supervision as a bank and securities dealer. At the conclusion of the licensing procedure, PostFinance was transferred to ongoing supervision as an institution in category 2.⁶ PostFinance is subject to the same strict supervision as other financial institutions of comparable size and complexity.

Completion and results of SQA II

The second Swiss Qualitative Assessment (SQA II) examined corporate governance, risk management and internal control systems at insurance companies. In general, the results revealed a positive trend with room for further optimisation in some areas.

Responsibility for general market supervision

The revised Stock Exchange Act (SESTA) came into force on 1 May 2013. This made the law governing the stock exchange offences of insider trading and price manipulation more stringent, and also transferred responsibility for criminal proceedings from the cantons to the Office of the Attorney General of Switzerland. General market supervision, meanwhile, falls within FINMA's remit, meaning that FINMA is now accountable to all if it identifies conduct constituting market abuse.

⁶ See Appendix, section on Supervisory categories for banks and insurance companies, p. 102.

THIRD QUARTER REVIEW

Designation of global systemically important insurers

On 18 July 2013, for the first time, the FSB named nine global systemically important insurers (G-SIIs). They do not currently include any insurers domiciled in Switzerland. The decision on which reinsurers are to be regarded as global systemically important is expected to be taken in summer 2014.

IOSCO Board

IOSCO continued its structural reform in 2013 to enable it to continue providing the lead on securities issues in a new operating environment strongly influenced by the G-20 and the FSB. The target is to complete the reform by autumn 2014, simultaneously with the restructuring of the IOSCO Board. FINMA secured its nomination as a member of the future Board in 2013.

ESMA equivalence recognition process

On 3 September 2013, the European Securities and Markets Authority (ESMA) published a positive assessment of the EU equivalence of Switzerland's regulation and supervision of central counterparties (CCPs) domiciled in the country. This confirms the high and internationally recognised standard of Swiss supervision. The formal equivalence decision by the European Commission is expected at the beginning of 2014. The equivalence decision provides a basis for central counterparties from Switzerland to go through the ESMA institution-specific recognition process in order to continue offering services in the EU and for EU participants.

FOURTH QUARTER REVIEW

Market conduct rules

The fully revised FINMA Circular 'Market conduct rules' entered into force on 1 October 2013. It contains details of how FINMA plans to exercise its expanded powers for dealing with insider trading and market manipulation among all market participants. The organisational requirements have also been revised, and now apply to all prudentially supervised institutions.

Basel III

The Basel Committee on Banking Supervision (BCBS) has adopted stricter, across-the-board rules on equity capital and liquidity designed to strengthen the resilience of the banking sector. Implementation of Basel III in Switzerland is governed by a separate Capital Adequacy Ordinance (CAO) issued by the Federal Council. The technical explanations and detailed regulations are set out in FINMA circulars. FINMA updated its circulars on credit risks, market risks, disclosure and eligible capital in the second half of 2013; the updated circulars entered into force on 1 January 2014.

Announcement of separate Swiss legal entities for the two big banking groups

In the event of an improvement in their global resolvability, banks designated systemically important under the 'too big to fail' rules may obtain relief from the special capital requirements applying to them. In its communication with the big banks, FINMA indicated that it views the incorporation of 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.

'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 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.

Systemic importance of Zürcher Kantonalbank

In a decree dated 1 November 2013, the SNB designated Zürcher Kantonalbank as a financial group of systemic importance. 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. FINMA supported this decision.

Investigations into foreign exchange manipulation

FINMA carried out investigations of several Swiss financial institutions during 2013 in connection with possible manipulation of foreign exchange markets. It has worked closely with foreign authorities, as multiple banks around the world are potentially implicated.

Unsecured short selling

Until recently, the laws, ordinances and regulations governing stock exchanges in Switzerland did not contain any rules on short selling.⁷ In 2008, announcements by the former Swiss Federal Banking Commission and SIX Swiss Exchange imposed certain restrictions on this activity. In October 2013, in consultation with FINMA, SIX Swiss Exchange and Scoach Switzerland supplemented their regulations on short selling. Under the new rules, short selling is permitted if the selling party is able to settle the transaction within the deadline set for this, i.e. deliver the securities on time.

⁷ See Glossary, p. 113.

LIBOR, Lex USA, general financial centre issues and the authority's mandate involved FINMA in numerous hearings before the parliamentary supervisory and legislative committees in 2013. In a new departure, FINMA organised briefings for parliamentarians.

At the start of 2013, the issue of LIBOR manipulation attracted the attention of both the supervisory and the legislative committees of the Federal Assembly. FINMA presented its views at a joint hearing with the Control Committees (CCs) and the Finance Committee of the National Council (FC-N), and at a hearing before the Committee for Economic Affairs and Taxation of the National Council (CEAT-N). Also at the start of the year, FINMA provided the CCs with information concerning the transmission of bank employee data to the US. As a result of this information, the CCs' investigations were discontinued.

In April 2013, FINMA complied with its annual obligation to report on its activities to its parliamentary overseers, presenting its 2012 annual report and answering questions on current issues.

The discussion on Lex USA generated an exceptional amount of work ahead of the 2013 summer session. In its capacity as an expert body, FINMA provided information, together with the FDF, at numerous hearings of the CEAT of the Council of States and the National Council.

Parliamentary questions on FINMA's mandate

FINMA was invited to attend the CEAT again in July 2013. This time the subject was parliamentary procedural requests relating to FINMA's mandate itself, and the way in which the authority operates. Criticism of FINMA's work had increased in 2013, and the issue was also raised in Parliament.

FINMA is a relatively young authority that came into being in the midst of the financial crisis. Since then, supervised institutions have had to accustom themselves to more stringent supervision, not least because of the lessons learned from the crisis both nationally and internationally. This brings with it the potential for conflict, and prompted numerous parliamentary procedural requests.

FINMA has always taken constructive criticism very seriously. At the same time, it is also vital that a supervisory authority should be able to draw attention to developments that are leading in a dangerous direction. For this reason, adjustments to FINMA's mandate proposed by politicians with a view to enhancing the competitiveness of the financial centre would lead to conflicts of objectives, since credible supervision and direct promotion of the economy by the supervisory authority are mutually exclusive.

The only way in which FINMA could act directly to support the economy would be to supervise the financial sector less strictly than it does today. Yet deliberately lax supervision would damage the standing of the entire financial centre. Furthermore, a mandate for a supervisory authority to explicitly promote competition is not common practice internationally; it would impede recognition of Swiss regulations.

FINMA already makes an important indirect contribution to promoting the financial centre in a number of matters, often unnoticed by the public and polit-

icians. For instance, by participating in a number of committees, FINMA can take a role in drawing up international standards for financial market regulation. Switzerland already has two authorities – the State Secretariat for Economic Affairs SECO and the State Secretariat for International Financial Matters SIF – whose explicit task is to promote the economy and the financial centre. As part of its statutory remit, FINMA cooperates actively with various federal authorities.

Premium reductions in supplementary health insurance

In 2013, FINMA was for the first time able to make concrete statements on the impact of the new hospital financing scheme on the premiums of the supplementary hospital insurance schemes concerned. After an extraordinary audit of tariffs for all supplementary hospital products, it announced premium reductions of CHF 240 million.⁸ FINMA reported on the issue to the Committees for Social Security and Health of the Council of States (CSSH-S) in January and October 2013, and of the National Council (CSSH-N) in May. In August 2013, FINMA also submitted a report on this matter to the two committees.

Appearances before supervisory committees

The fourth quarter of 2013 also saw a number of appearances before the supervisory committees. The CCs conducted a follow-up to their May 2010 investigation into 'The Swiss authorities under the pressure of the financial crisis and the disclosure of UBS cus-

tomers data to the USA', which included interviewing FINMA representatives. FINMA also attended a hearing before the Finance Delegation (FinDel), focusing on an exchange of views concerning the situation and outlook for the international and Swiss financial markets as well as FINMA's tasks and function.

First-hand information

In 2013, for the first time, FINMA organised briefings for various stakeholder groups, including parliamentarians. At the inaugural event in February 2013, FINMA provided information on its role in supplementary health insurance and the impact of the new hospital financing scheme. In November 2013, FINMA offered its perspective on where Switzerland stands regarding implementation of the 'too big to fail' rules.

The aim of such events is to explain to lawmakers and other interested parties how the supervisory authority applies the powers granted to it by the legislature, and to provide information on the current status of central financial market topics.

⁸ See section on Effects of the new hospital financing scheme, p. 56.

FINMA and its national stakeholders

FINMA maintains contacts with a large number of national institutions and associations. To the extent permitted by law, it pursues a policy of open and transparent communication with supervised institutions, other stakeholders and the public at large.

FINMA maintains regular contact in various forms with almost a hundred institutions and associations. They include supervisory and criminal prosecution authorities, other authorities and federal bodies as well as the associations of supervised institutions. There are also important contacts with business, pro-

fessional and staff associations, as well as consumer protection organisations and ombudsmen in the various supervisory areas. Through active dialogue with its stakeholder groups, FINMA aims to improve understanding of supervisory and regulatory matters and raise awareness of financial market issues.

FINMA debates with academic community members

A number of seminars once again took place at FINMA in 2013 at which university professors⁹ presented the results of their latest research on financial market topics. FINMA's aim in staging these events is to foster debate with the academic community and engage in critical discussion of relevant issues. The seminars also provide an opportunity for FINMA staff to find out about the latest findings of academic research.

⁹ Prof. Thorsten Hens and Prof. Mathias Hoffmann (University of Zurich), Prof. Heinz Zimmermann and Prof. Dietmar Maringer (University of Basel), Prof. Martin Brown (University of St. Gallen), Prof. Sascha Steffen (European School of Management and Technology, Berlin), Prof. Yakov Amihud (New York University).

FINMA conducts institutionalised annual or semi-annual discussions with the most important associations and stakeholder groups of supervised institutions. The main topics covered in 2013 are indicated below.

BANKS

Swiss Bankers Association (SBA)

- AIFMD
- Financial centre strategy
- Situation concerning the US/FATCA
- Retrocessions
- Regulatory projects
- Business continuity management

INSURANCE COMPANIES

Swiss Insurance Association (SIA)

- Swiss Solvency Test (SST): auditing of internal models and further developments
- Use of audit firms
- Regulatory projects
- International trends in supervision, including Solvency II

CANTONAL BANKS

Association of Swiss Cantonal Banks (ASCB)

- Basel III capital adequacy regime
- Real-estate market and SBA guidelines on mortgage loans
- Cross-border financial services / white money strategy

EXCHANGES

SIX Group

- Extension of FINMA's risk-based supervisory approach to financial market infrastructures and assessment
- Equivalence and recognition processes for central counterparties with the EU/ESMA under EMIR
- The Financial Market Infrastructure Act legislative project

FOREIGN BANKS

Association of Foreign Banks in Switzerland (AFBS)

- Final withholding tax / double taxation agreements
- Situation concerning the US
- Licensing practice
- Cross-border business and market access
- Intra-group exposures
- White money strategy
- Regulatory projects
- MiFID

COLLECTIVE INVESTMENT SCHEMES

Swiss Funds & Asset Management Association (SFAMA)

- Adjustments to existing self-regulation to comply with the revised CISA and CISO

AUDIT FIRMS

Swiss Institute of Certified Accountants and Tax Consultants

- Implementation of new instruments for regulatory audits
- Independence of audit firms
- Licensing and supervision of lead auditors and audit firms

Reform of financial market regulation continued at the international level in 2013. Through its participation in various bodies, FINMA actively influences the drafting of international standards.

The efforts to reform financial market regulation launched in the wake of the 2007–2008 financial crisis are still ongoing. International standard-setting bodies coordinated by the Financial Stability Board (FSB) are playing a key role in this process.

FINMA represents Switzerland's interests

International standards do not have direct legal force, but compliance with them is an important reputational factor and often a minimum requirement for maintaining access to foreign markets. Playing an active role in international standard-setting bodies enables FINMA to influence the international regulatory framework and represent Switzerland's supervisory interests.

Financial Stability Board

The Financial Stability Board (FSB) coordinates the ongoing development of stabilising measures between the standard-setting bodies of the individual sectors and also liaises with the G-20. FINMA's CEO represents Switzerland on the coordinating Standing Committee on Supervisory and Regulatory Cooperation and in the Resolution Steering Group. FINMA also works closely with the SIF and SNB, which represent Switzerland on various FSB committees.

The FSB's work in 2013 included further development of resolution plans and the establishment of principles for the orderly resolution of global systemically important institutions. Together with other states, Switzerland is taking part in a pilot assessment of the resolution method envisaged.¹⁰

Basel Committee on Banking Supervision

Switzerland is represented on the Basel Committee on Banking Supervision (BCBS) by FINMA and the SNB. In 2013, the work of the BCBS once again focused on setting out the details of the Basel III standards, which are not yet fully defined. With regard to liquidity regulations, one principal issue was the drafting of the quantitative requirements for the short-term Liquidity Coverage Ratio (LCR),¹¹ which comes into force on 1 January 2015. Another main topic was the technical details of the Net Stable Funding Ratio (NSFR),¹² which is scheduled for introduction in January 2018 and aims to ensure that banks have a healthy funding profile. With regard to capital requirements, 2013 saw the end of the consultation phase on the implementation of the leverage ratio.¹³ This unweighted capital ratio must be published from 2015 onwards, and complied with starting in 2018. The regime for global systemically important banks (G-SIBs) was completed. The banks concerned will in future be designated as part of an annual process.

In addition to its activities related to Basel III, the BCBS is also continuing its work to improve existing approaches. Here, the controlling of supervisory and implementation activities is becoming increasingly important. Specifically, individual member states are being audited for their compliance with the Basel minimum standards as part of the Regulatory Consistency Assessment Programme (RCAP). Switzerland too underwent this audit in 2013, and was awarded high marks.¹⁴

¹⁰ See section on FINMA undergoes inspections, p. 24.

¹¹ See Glossary, p. 113.

¹² See Glossary, p. 113.

¹³ See Glossary, p. 112.

¹⁴ See section on FINMA undergoes inspections, p. 24.

The implementation of Basel III in the US (US RCAP) will be examined in 2014 by an international BCBS audit team headed by FINMA.

International Association of Insurance Supervisors

FINMA's CEO is a member of the Executive Committee of the International Association of Insurance Supervisors (IAIS). In 2013, the work of the IAIS focused in particular on the identification of global systemically important insurers (G-SIIs) and on measures to limit the risks emanating from them. In July 2013, for the first time, the FSB designated nine insurance companies 'global systemically important'. They do not currently include any insurers domiciled in Switzerland. However, this may change due to the delay in assessing reinsurers and the annual updating of the list of G-SIIs.

With regard to the supervision of internationally active insurance groups, the consultation on the Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) began in October 2013. ComFrame forms the international basis on which national supervisory authorities can record the qualitative and quantitative risks of insurance groups in their entirety. The IAIS is also working to develop a global capital standard for insurance groups (Insurance Capital Standard), which it aims to complete by 2016. ComFrame and the capital standard will undergo field testing from 2014 to 2018. Implementation in the IAIS member states is scheduled from 2019 onwards.

International Organization of Securities Commissions

The Chair of FINMA's Board of Directors represents Switzerland on the Presidents' Committee of the International Organization of Securities Commissions (IOSCO). IOSCO continued its structural reform in 2013 to enable it to continue providing the lead on securities issues in a new operating environment strongly influenced by the G-20 and the FSB. In 2013, FINMA was able to secure its nomination as a member of the IOSCO Board scheduled for renewal in autumn 2014.

Key issues in 2013 included the publication of the principles on financial benchmarks as well as further groundwork on systemically important financial institutions (SIFIs) outside the banking and insurance sector. Also under discussion is the further development of the IOSCO Multilateral Memorandum of Understanding (IOSCO MMoU), which constitutes the international standard for administrative assistance in issues of market integrity and transparency. IOSCO also created a new task force to deal with the increasing challenges faced by supervisory authorities and supervised institutions in implementing various national regulations in connection with cross-border activities.

FINMA's international cooperation in figures

FINMA's representation in international bodies

FINMA was represented in a total of 68 working groups of the four central international standard-setting bodies in 2013.

STANDARD-SETTING BODY	NUMBER OF WORKING GROUPS
FSB	8
BCBS	24
IAIS	20
IOSCO	16
Total	68

Number of FINMA employees in international working groups

Although the number of international working groups is continually increasing overall, FINMA was able to maintain the workload for its international activities at a roughly unchanged level (13% to 14% of headcount in a working group) by focusing its orientation.

	2011	2012	2013
Number of employees	58	60	66
Percentage of average headcount	13.6%	12.6%	13.8%

Issues over administrative assistance

With regard to international standards on cooperation, especially in combating market abuse across borders, Switzerland's legal framework is coming up against its limits. A further complicating factor is that the Federal Administrative Court recently refused to endorse FINMA's interpretation and pointed to the need for a change to the law.¹⁵ The situation is leading to growing criticism from foreign authorities.

Although FINMA succeeded in 2010 in meeting in full the minimum standard for international cooperation required under the IOSCO MMoU, there is a risk that this A signatory status, which is vital to a major financial centre, may be lost. This would lead to the danger of being blacklisted by IOSCO.

There are two main areas of criticism. First, Switzerland's client procedure,¹⁶ which is unique internationally, delays the transfer of information for months and prevents foreign authorities applying for administrative assistance from exercising effective supervision of the market. Second, the specifically Swiss information requirements forming part of the client procedure under Article 38 Sesta mean that the applicant authority does not discover the identity

of the affected party until long after the latter has obtained knowledge of the request for assistance. The Swiss client procedure may therefore under certain circumstances permit financial criminals to destroy evidence before foreign authorities gain access to it, and to conceal illegal profits. Additionally, the Federal Administrative Court judgment requires FINMA routinely to disclose the original request by the foreign supervisory authority to the party affected as part of the right to inspect documents. This breaches one of the fundamental principles of the IOSCO MMoU.

Ultimately, the difficulties concerning international cooperation in financial market supervision could weaken Switzerland's position in its efforts to gain recognition of (EU) equivalence and, in some circumstances, bar Swiss financial intermediaries from access to foreign markets. As part of the ongoing legislative activities, FINMA has therefore submitted to the FDF its case for the inclusion of a standard permitting it to provide administrative assistance in individual cases before notification of the request for assistance has been given to the party affected, and to limit access to the original documents of the applicant authority.

¹⁵ See in particular BVGE 2012/19, consid. 5.2 *in fine*.

¹⁶ See Glossary, p.111.



Main focus of activities

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– developments related to the US
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In 2013, Switzerland underwent two international audit programmes. The country received high marks in the BCBS Regulatory Consistency Assessment Programme (RCAP), which examined the status of its implementation of Basel III. The results of the IMF Financial Sector Assessment Programme (FSAP) are expected to be released in spring 2014.

Under the RCAP, the BCBS examines whether its member states have implemented the Basel III minimum standards. For Switzerland, this process took place in the first half of 2013, and resulted in the country being declared 'compliant' – the highest grade and thus a seal of approval for Switzerland's financial centre.

From Basel I to Basel III

The ability to consistently gauge the solvency of banks on the basis of a small number of regulatory ratios is of central importance, especially for creditors. This requires uniform minimum standards of the kind approved at the international level by the BCBS. The first version of these standards dates back to 1988 and is known as Basel I.

The follow-up to this, Basel II, came into effect in 2007. Since then, banks have been able to employ their own model-based approaches using their own ratings and risk parameter estimates, instead of a standard approach, to determine their capital requirements for credit risks and operational risks.¹⁷ Model approaches for market risks had already been introduced as an extension of Basel I. Basel III came into force in 2013 and in particular imposes more stringent requirements in terms of eligible capital.

Ensuring comparability

The experience of the 2007–2008 financial crisis in particular led to the informativeness and comparability of published regulatory ratios being questioned. Inconsistent quantifications can be attributed to differences in accounting standards and discrepancies in the implementation of the Basel minimum standards by various jurisdictions. In certain cases, a differing interpretation of the rules by the banks or different internal modelling approaches for market and credit risks can lead to a lack of uniformity in assessments. By means of the RCAP, the BCBS aims to strengthen

the resilience of the global banking system, maintain market confidence in regulatory ratios and provide a level playing field for banks operating internationally. The BCBS is pursuing three key objectives:

- The latest set of regulations, Basel III, should be adopted as soon as possible for all banks in a given country.
- National implementation should be consistent with the Basel III minimum standards.
- The regulatory ratios calculated by the banks should also be made comparable as soon as possible.

The BCBS has been carrying out audit programmes to this effect in all its member states since 2012. In 2013, it was Switzerland's turn to have its implementation of Basel III reviewed. The BCBS assessed the Capital Adequacy Ordinance (CAO) and a number of FINMA circulars for compliance with the Basel III minimum standards. An RCAP investigation of Switzerland's implementation of the Basel III liquidity requirements will be carried out at a later date.

Few deviations from the international standard

In its report, the BCBS presented a very positive picture of the status of Swiss regulation overall. Of 14 areas assessed, the BCBS designated 11 as fully Basel III compliant. In three areas covering certain issues related to eligible capital, the design of the IRB approach and disclosure, the BCBS identified some minor deviations from the Basel standards and therefore awarded these areas the second-best grade of 'largely compliant'. However, most of these points are merely formal in nature. The very positive overall rating was subject to the proviso that Switzerland takes timely action to clear up a small number of essentially uncontentious discrepancies in the CAO and FINMA circulars. FINMA explained the upcoming amendments in an FAQ on Basel III published in

¹⁷ Internal ratings-based approach (IRB approach), see Glossary, p. 112.

May 2013. The circulars concerned¹⁸ were subsequently modified and came into force on 1 January 2014. The transitional period runs until 30 June 2014. The small number of changes to the CAO, which have no material impact, were submitted for consultation in the fourth quarter of 2013.

Switzerland also assessed by the IMF

From May to December 2013, Switzerland underwent the IMF's Financial Sector Assessment Programme (FSAP), which aims to assess the stability of a country's financial sector and evaluate the quality of its regulation and supervision. It therefore adopts a broader perspective than the RCAP, and is less focused on individual areas. In addition to looking at regulations, it also examines supervisory practice in greater detail. The last time this extensive review programme was carried out in Switzerland was in 2007. The results of the FSAP are expected to be published in early 2014.

All financial centres that meet the IMF definition of systemic importance are obliged to undergo the FSAP on a regular basis. Participation in the programme is also a prerequisite for membership in the FSB. The FSAP and its reform recommendations are therefore accorded high importance internationally.

Focus on supervision and regulation

The FSAP chiefly examines whether and how banks, insurers and markets comply with international regulatory and supervisory standards.¹⁹ The assessment of Switzerland also considered the risks and vulnerability of the Swiss financial centre and carried out stress tests in the banking and insurance sectors. Finally, Switzerland had also declared its willingness to act as pilot country in undergoing a review of the new FSB rules²⁰ on the resolution of banks.

Working with the FDF, the SNB, other authorities and a number of representatives of the private sector, FINMA played a key role in supplying the information required for the FSAP, using extensive self-assessments and responses to FSAP questionnaires submitted in advance. Together with the results of the stress tests, this then formed the basis for numerous interviews conducted by the IMF delegation with representatives of FINMA, other Swiss authorities and the private sector.

Policy recommendations to follow in 2014

Visits by the IMF delegation took place over a total of seven weeks in September, October and December 2013. In the interviews carried out in September, the IMF representatives chiefly addressed compliance with international supervisory and regulatory standards. The delegation also conducted technical discussions on the performance of stress tests. Switzerland's compliance with the new FSB rules on the resolution of banks was discussed in October, while in December the IMF representatives discussed the policy recommendations, stress test results and a small number of other issues arising from the FSAP. The IMF's reports on the final results of the FSAP will not be released until after publication of FINMA's 2013 Annual Report, so it is not possible to make any definitive statements at this stage.

¹⁸ See section on Changes in banking regulation, p. 49.

¹⁹ BCBS Core Principles for Effective Banking Supervision (see <http://www.bis.org/publ/bcbs230.pdf>), IAIS Insurance Core Principles (see <http://www.iaisweb.org/ICP-online-tool-689>), IOSCO Objectives and Principles of Securities Regulation (see <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD154.pdf>).

²⁰ Key Attributes of Effective Resolution Regimes for Financial Institutions (see http://www.financialstabilityboard.org/publications/r_111104cc.pdf).

In 2013, FINMA once again devoted much attention to the legal and reputational risks to Swiss banks from cross-border financial services. The framework for a solution with the US was set up at the political level, but a similar agreement has yet to be reached with countries such as Germany and France.

When a Swiss bank offers financial services to clients abroad or to clients in Switzerland with ties to foreign countries, it inevitably comes into contact with foreign law. Swiss financial market legislation does not explicitly require financial institutions supervised by FINMA to comply with foreign law, nor does it yet prohibit banks from receiving untaxed money.

A long-standing issue for FINMA

However, supervised institutions are required to capture, limit and monitor their legal and reputational risks appropriately, and to put in place an effective internal control system. This obligation also extends to the risks arising from cross-border financial services, including the issue of taxation. FINMA published a position paper on this topic in 2010 followed, in 2012, by a supplementary FAQ. For some years now, FINMA has addressed this issue in depth, also during its supervisory interactions, and has, for instance, discussed the termination of business relationships with clients whose assets may not have been taxed, and the onboarding of such clients by other institutions.

Making up for the past

On 1 January 2013, bilateral agreements came into force with Austria and the UK which aim to correct past irregularities in taxation and introduce a withholding tax for foreign bank clients that has the effect of discharging their tax liability. No such solution has yet been reached with Germany. The German Parliament rejected an agreement to this effect in December 2012.

In countries such as the US, Germany and France, individuals subject to tax have the option of voluntary disclosure, with a view to putting their own tax situation in order. Clients who do not take up this option may find themselves facing criminal charges. This would have an indirect impact on the banks, since servicing such clients could in many places be construed as aiding and abetting tax offences.

Investigations at over twenty institutions

In 2013, FINMA once again arranged for independent internal investigations to take place at a number of institutions concerning areas of their cross-border financial services business. In all, FINMA has now had such investigations conducted at more than 20 institutions. Enforcement proceedings related to cross-border wealth management were carried out against eight institutions. Where necessary, FINMA ordered targeted measures to be adopted in order to restore compliance with the law.

Individuals subject to proceedings and letters of assurance

When initiating enforcement proceedings against individuals, FINMA normally adopts a cautious approach in line with its enforcement policy,²¹ which was published in December 2009 and updated in November 2011. It focuses primarily on correcting any irregularities identified at supervised institutions. Enforcement proceedings were initiated against certain individuals in response to suspicions of serious breaches of obligations related to cross-border financial services. FINMA would also initiate proceedings against

²¹ See http://www.finma.ch/e/sanktionen/enforcement/Documents/pl_enforcement_20111110_e.pdf.

further individuals if they wished to return to a position at a supervised institution that required them to provide assurance of proper business conduct. In line with its practice, FINMA delivered letters of assurance²² to those concerned.

In further cases, FINMA provided administrative assistance to foreign authorities, carried out supervisory reviews as part of its supervisory activities or, depending on the circumstances and the expediency of investigation, limited itself to monitoring the situation.

Developments in the relationship with the US

The tax dispute with the US concerned not only FINMA but also politicians. In early 2013, following negotiations with the U.S. Department of Justice (DoJ), the Federal Council submitted to Parliament the Lex USA, which would have permitted any bank affected to regularise its situation vis-à-vis the DoJ. The National Council rejected the proposed law on 19 June 2013. To end the tax dispute between the banks and the US, however, the Federal Council and the DoJ signed a joint statement on 29 August 2013. Simultaneously, the DoJ published a programme under which the banks concerned can, depending on their situation, apply to the DoJ for a non-prosecution agreement²³ or for the issuance of a non-target letter.²⁴

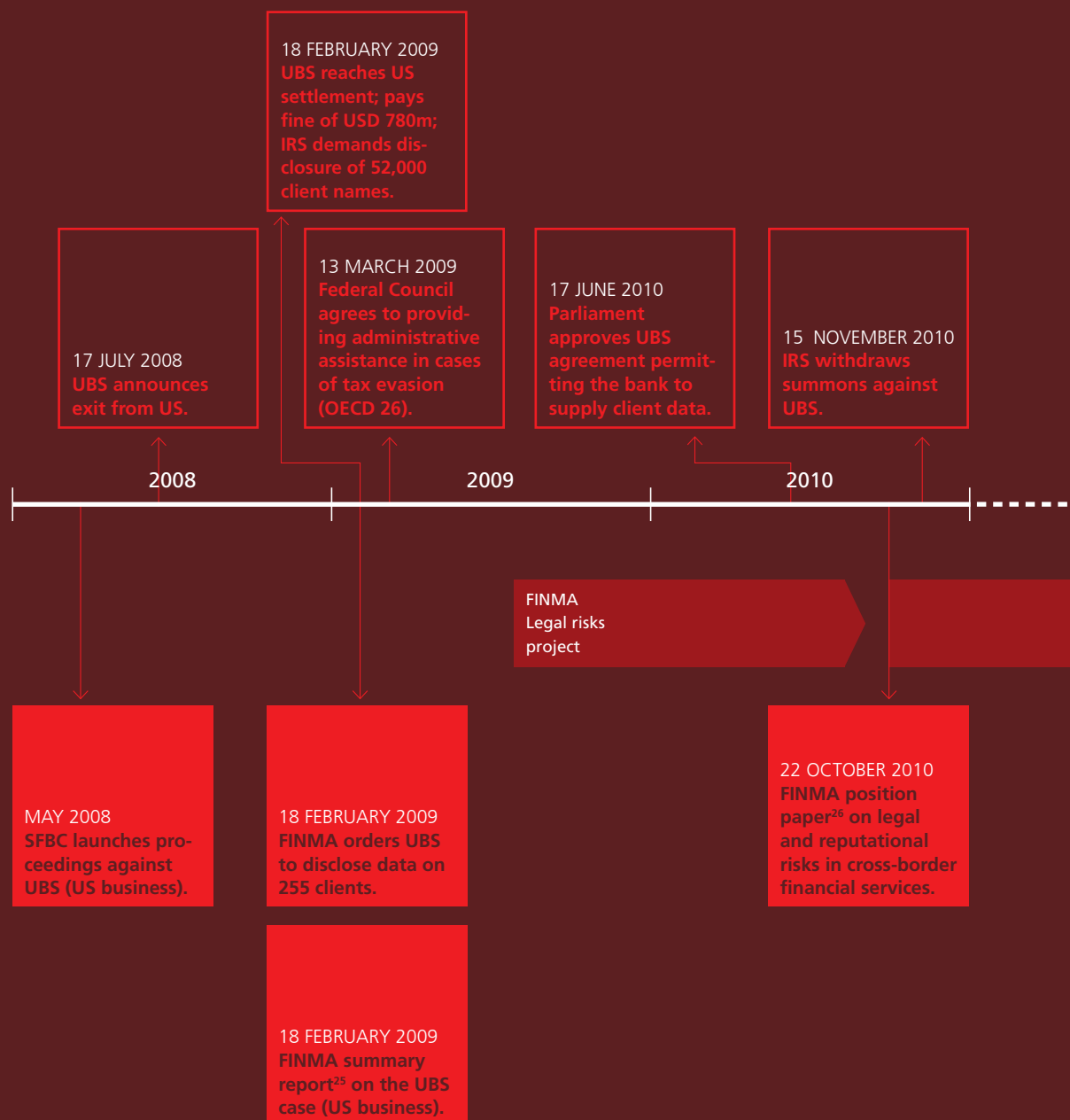
The US programme is open to all Swiss banks and various deadlines apply. It does not apply to banks against which the DoJ had already launched a criminal investigation (category 1). Banks in category 2, which have good reasons to believe that they have violated US tax law, had until 31 December 2013 to request a non-prosecution agreement from the DoJ. They were required to supply the DoJ with information about their relationships with US clients, but not the names of those clients. Institutions in category 2 must additionally pay a fine, the amount of which will be in relation to the volume of untaxed US assets they hold and the date on which the accounts were opened. To comply with their obligation to supply information, the banks may apply to the Federal Council for individual authorisation under Article 271 of the Swiss Criminal Code (CC). Banks which believe that they have not violated US tax law (categories 3 and 4) can report to the US authorities between 1 July 2014 and 31 October 2014 at the latest to request a non-target letter.

²² See Glossary, p. 112.

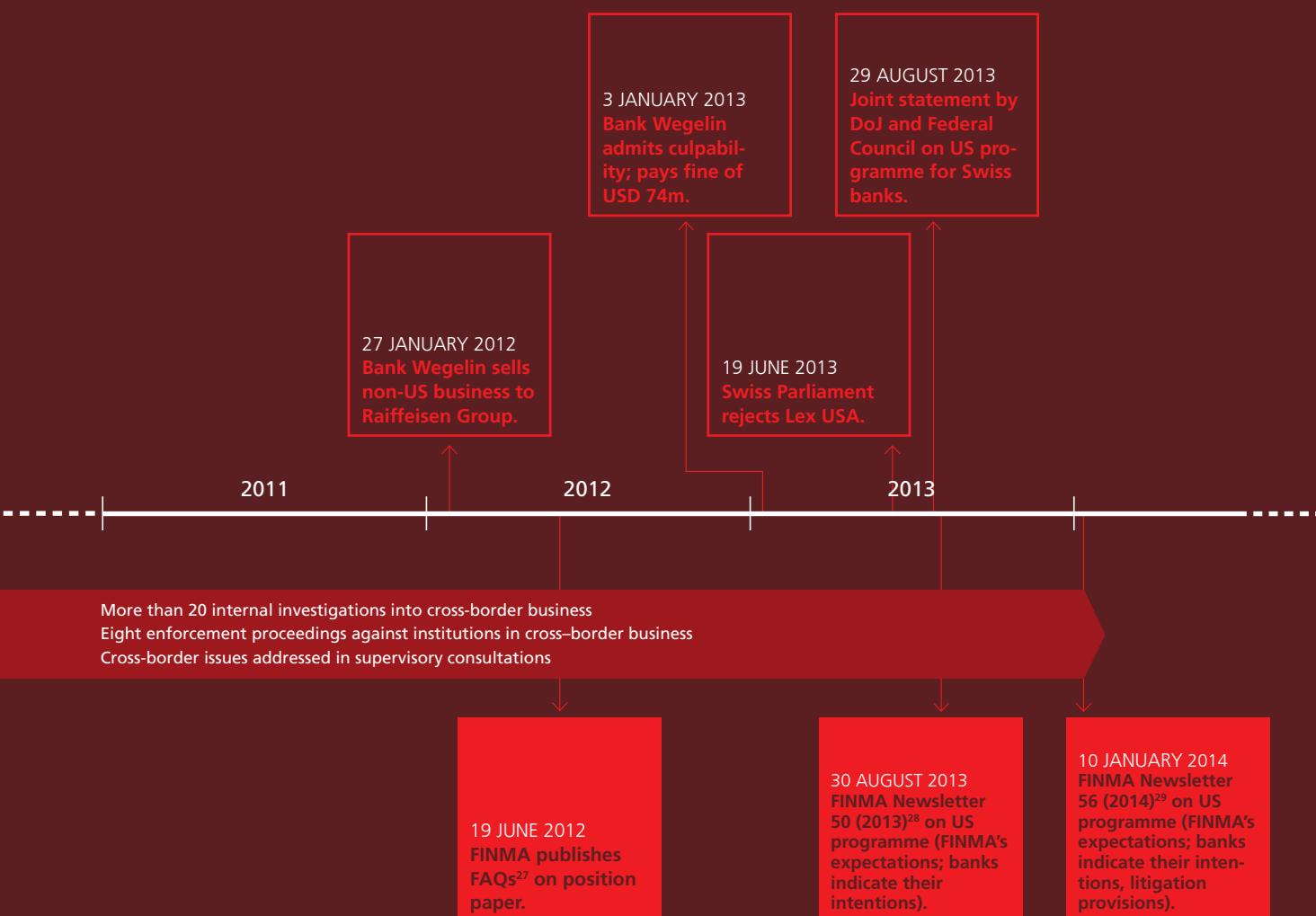
²³ See Glossary, p. 113.

²⁴ See Glossary, p. 113.

At a glance: cross-border issues – developments related to the US



The increase in legal risks in the US cross-border financial services business since 2008 is being followed closely by FINMA. From 2010 onwards, it has conducted several investigations and proceedings related to the cross-border business. Since August 2013, the U.S. Department of Justice (DoJ) programme has provided the opportunity for banks to resolve the issue in a regulated manner.



²⁵ See FINMA Summary report 'EBK investigation of the cross-border business of UBS AG with its private clients in the USA' (<http://www.finma.ch/e/aktuell/pages/mm-ubs-xborder-20090218.aspx>).

²⁶ See FINMA position paper 'Legal and reputational risks in cross-border financial services' (http://www.finma.ch/e/finma/publikationen/Documents/positionspapier_rechtsrisiken_e.pdf).

²⁷ See FAQs 'Legal and reputational risks in cross-border financial services' (<http://www.finma.ch/e/faq/beaufschlagte/pages/faq-grenzueberschreitendes-geschaef.aspx>).

²⁸ See FINMA Newsletter 50 (2013) 'The US programme to end the tax dispute between the Swiss banks and the United States' (German version) (<http://www.finma.ch/d/finma/publikationen/Lists/ListMitteilungen/Attachments/67/finma-mitteilung-50-2013-d.pdf>).

²⁹ See FINMA Newsletter 56 (2014) 'The US programme to end the tax dispute between the Swiss banks and the United States – FINMA's expectations' (German version) (<http://www.finma.ch/e/finma/publikationen/Lists/ListMitteilungen/Attachments/68/finma-mitteilung-56-2014-d.pdf>).

Despite self-regulatory measures and the countercyclical capital buffer, real estate prices and mortgage volumes once again rose in 2013 – somewhat more slowly than before, but still faster than gross domestic product. Excessively slow amortisation and, in some cases, poor financial sustainability of mortgages and investment properties are giving rise to risks.

In summer 2012, the Swiss Bankers Association (SBA) supplemented its self-regulatory regime for granting mortgages. Anyone wishing to buy a property must now supply at least 10% of the lending value in the form of hard equity not drawn from pension entitlements. Additionally, the loan-to-value ratio is to be reduced to two thirds within 20 years. The aim is to prevent mortgage lenders incurring losses in the event of a moderate drop in property prices and buyers making excessive inroads into their pension entitlements. FINMA approved the SBA's new minimum requirements for mortgage financing as a supervisory minimum standard.

Moreover, the Federal Council introduced the countercyclical capital buffer³⁰ in February 2013. As of 1 September 2013, banks are required to hold additional core capital amounting to 1% of their risk-weighted mortgages on Swiss residential properties.

Modest slowdown at a high level

Under the influence of the self-regulatory measures, the countercyclical capital buffer and a slight rise in general long-term interest rates, growth in mortgage volumes fell marginally to below 5% by the middle of the year. However, this is still significantly above the growth in gross domestic product (GDP).

Risks accumulating due to slow amortisation

In the current low interest rate environment, interest payments and amortisation are largely affordable. However, a normalisation of interest rates can quickly lead to financial sustainability squeezes and loan defaults. Unless adequate countermeasures are adopted, the later the upward correction in interest rates, the greater the accumulated risks will be.

A further aggravating factor is that owing to tax incentives, mortgages are only being amortised slowly despite low interest rates. At 140% of GDP, mortgage debt in Switzerland has now reached a very high level (see figure, p. 31) by international standards. Set against this high figure are assets that are often illiquid and are therefore only available to a limited extent to pay down mortgage debt in the short term. More systematic amortisation is therefore a desirable objective.

Dangers of a high vacancy rate

There are also particular risks attached to investment properties, given the historically low gross initial yields. Financial sustainability could be rapidly jeopardised not only if interest rates rose but also if there were high vacancy rates.

Increased inspections by FINMA

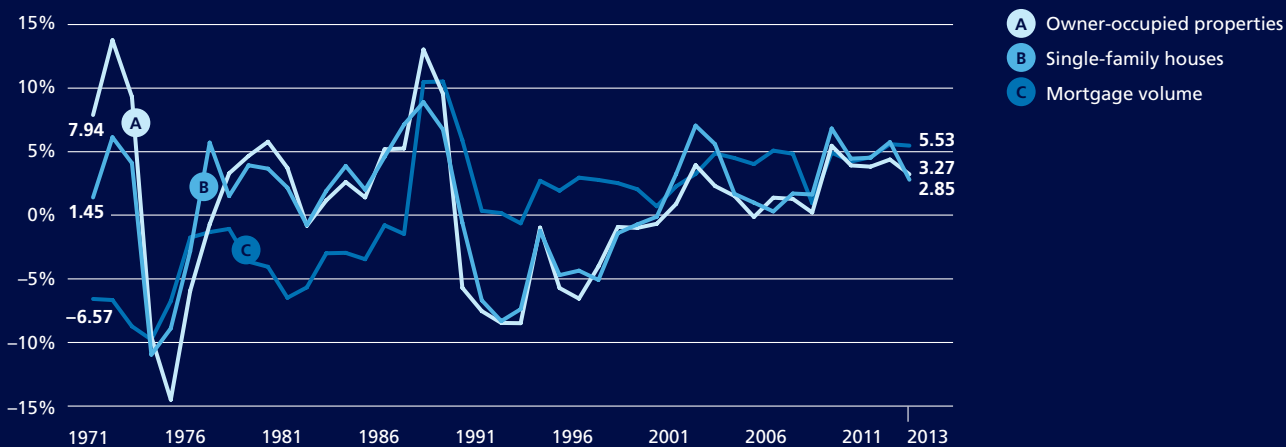
FINMA responded to the increasingly acute risk situation by carrying out supervisory reviews and stress tests specifically focused on the mortgage market. This involved stimulating the impact of a rapid rise in interest rates on income and equity capital based on the assumption of a decline in real estate prices coinciding with a deterioration in the economic environment.

Supervisory reviews were carried out at six banks. To obtain a precise picture of mortgage lending, FINMA focused not only on the financing of owner-occupied properties but also on residential investment properties.

³⁰ See Glossary, p. 111.

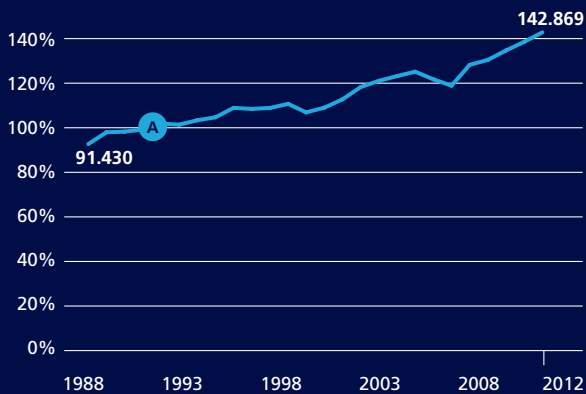
Trends in the Swiss real estate and mortgage market

Swiss real estate prices and mortgage volumes: annual inflation-adjusted growth rates



Sources: SNB Monthly Statistical Bulletin (real estate prices), SNB Monthly Bulletin of Banking Statistics (mortgage volumes) and SNB Historical Time Series (mortgage volumes before 1988).

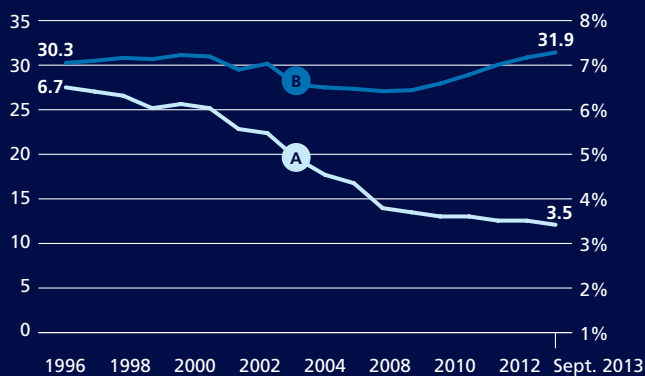
Mortgage volume as a percentage of GDP



Source: SNB Monthly Bulletin of Banking Statistics (mortgage volume), SECO (GDP).

A Mortgage volume as a percentage of GDP

Mortgage exposures and insurers' market share



Source for insurers: FINMA.
Source for banks: SNB Monthly Bulletin of Banking Statistics.

A Insurers' share of mortgage market
B Insurers' mortgage portfolio (CHF in billions)

Swiss insurers in the real estate and mortgage market

FINMA follows closely Swiss insurers' exposure to the country's real estate market, carrying out half-yearly monitoring of their mortgage and real estate portfolios.

Insurers account for less than 4% of the Swiss mortgage market, and mortgages on average add up to just 6% of their capital investments – far less than the 1996 figure of 10%. The loan-to-value ratio of these mortgages averages 52% (gross, excluding collateral), significantly below the limit set by FINMA.³¹ Over 90% of mortgages held by insurers are first-rank, more than 31% include additional collateral, and in excess of 32% are amortised. Faced with

low interest rates, customers are demanding fixed-rate mortgages, and more than 90% of mortgages granted by insurers fall into this category, with an average remaining term of four to five years.

In 2013, insurance companies held real estate valued at CHF 50.5 billion directly in their portfolios, mostly consisting of investment properties. This figure has grown in recent years. In relative terms, however, the proportion of directly held real estate in insurers' total capital investments has fallen slightly over the last five years, and now stands at an average of 11.2% for life insurers and 6% for non-life insurers. When making direct investments in the real estate market, insurers are required to comply with FINMA rules on property types and valuations.

³¹ FINMA Circular 2008/18 'Investment guideline – insurers' permits a maximum loan-to-value ratio of two thirds.

Technical provisions are vitally important in all areas of the insurance industry. In 2013, FINMA again paid particularly close attention to those provisions, especially in the context of life insurance.

FINMA measures the economic strength of every insurance company on the basis of two key factors. On the one hand, solvency indicates the level of an insurer's equity capital, measured using the Swiss Solvency Test (SST) over a one-year horizon. On the other hand, technical provisions are there to secure the obligations arising from insurance contracts continuously and over the long term.

In order to protect policyholders, it is essential to have sufficient disposable and unencumbered assets, referred to as tied assets, to cover all technical provisions for the full term of the contract. In other words, the level of technical provisions determines the amount of tied assets which would be used to satisfy claims arising from insurance contracts if an insurance company became insolvent.

Life insurers may face gaps in cover

Life insurers offer guarantees that extend over several decades. If, for example, young customers purchase a contract for a retirement pension, they will pay premiums right up to the date of retirement, after which the insurance company will pay them a pension until life's end. The premium and pension amounts are defined when the contract is signed and cannot, as a rule, be changed for almost half a century. The length of this period makes it impossible to factor in all the contingencies that may arise, such as longer life expectancy or an unusually long phase of low interest rates.

Especially in the case of Pillar 2 plans with a statutory pension conversion rate, the current level of actuarial reserves has long been insufficient to fund the new

pensions that have to be paid out each year. Insurance companies close this financing gap by cross-financing using premiums from high-margin death and disability risk contracts and other sources. In the long term, however, the gap in cover will continue to grow, posing a major challenge for life insurers.

FINMA is aware of this problem and paid particularly close attention to it in its oversight of life insurers' technical provisions in 2013. If insurers cannot meet their obligations, FINMA intervenes and instructs the life insurer in question to increase its technical provisions.

No general need for action in non-life insurance

In 2013, FINMA reviewed the processes used by a number of non-life insurers to form technical provisions and also calculated the provisions needed to cover required technical reserves. Findings from these analyses fortunately indicate a need for making changes only in a few exceptional cases. Claims frequency in the private client sector is relatively steady.

Major significance of ageing provisions in supplementary health insurance

In supplementary health insurance, insurers generally waive their right of termination in the event of a claim. This leads to insurance contracts that run for an entire lifetime. Depending on the policyholders' enrolment age, on which the rates are based, the company must accrue technical provisions, referred to as ageing provisions, in advance. These are vitally important, and FINMA therefore has a special focus on them, especially by analysing the technical section of the business plan for every product. In addition,

FINMA demands that technical provisions that are no longer required should be paid out to the insured persons who financed them.

More frequent controls in reinsurance

Reinsurance often covers the whole spectrum of the insurance business, a fact that is reflected in provisions. As of the 2013 accounting year, FINMA will have better information on provisions in the follow-

ing year because FINMA Circular 2011/3³² requires insurance companies to break down their overall portfolio into sub-portfolios. As with the other insurance sectors, FINMA is paying increasingly close attention to provisions in the reinsurance sector. On the one hand, it reviews specific sub-portfolios systematically at predetermined intervals; on the other, it examines special transactions, for example when significant dividends are paid out.

³² See FINMA Circular 2011/3 'Provisions in reinsurance' (German version) (<http://www.finma.ch/d/regulierung/Documents/finma-rs-2011-03-d.pdf>).

Internationally, the trend in the institutional asset management business is towards greater transparency and investor protection. These developments, driven by the regulatory environment, have also led to a steady decrease in the size of the non-regulated institutional asset management segment in Switzerland.

As of the end of 2013, there were 119 authorised asset managers of collective investment schemes, an increase of 20 year-on-year. FINMA authorised a total of 22 asset managers of collective investment schemes in 2013, with just two existing licence holders withdrawing from FINMA's supervision. Meanwhile, one fund management company was newly authorised in 2013.

Across the world, requirements on investor protection and transparency in the institutional asset management segment have been tightened in recent years. This has had a noticeable impact on Swiss asset management, with the non-regulated segment shrinking steadily as a result.

Preserving market access is the driving force

This trend began with the UCITS Directive in the EU, which from February 2007 made asset managers of standardised European undertakings for collective investment in transferable securities (UCITS) subject to supervision. The Swiss Collective Investment Schemes Act (CISA), which came into force on 1 January 2007, also brought asset managers of Swiss collective investment schemes under prudential supervision. With a view to preserving market access, asset managers of foreign collective investment schemes were also given the possibility of voluntarily subjecting themselves to CISA if required to do so under foreign law.

The EU's Alternative Investment Fund Managers Directive (AIFMD), which entered into force in July 2011, also requires managers of European alternative investment funds to be subject to prudential supervision. Managers of foreign funds in Switzerland faced the risk of being unable to continue with their cross-border asset management activities. To close this gap in the regulations and preserve market access, the Federal Council decided to conduct an urgent partial revision of CISA. All asset managers of collective investment schemes are in principle now subject to the revised CISA, which entered into force on 1 March 2013. When the notification period expired at the end of August 2013, 116 companies had reported to FINMA and now have until February 2015 to submit an application for authorisation as an asset manager of collective investment schemes.

National regulation

In addition to the more stringent international regulatory requirements, revisions to national laws have also had an impact on asset management in Switzerland. The revised Ordinance on Occupational Retirement, Survivors' and Disability Pension Plans (BVV 2) entered into force on 1 January 2014, and states that external persons and institutions may only be entrusted with the investment and management of pension fund assets if they are subject to supervision by FINMA or an equivalent foreign financial market supervisory authority. With the decision taken by the Federal Council in May 2013, the Federal Occupational Pensions Regulatory Commission (OAK BV) can

now also declare other persons and institutions as being 'authorised' for the investment and management of pension plan assets. The OAK BV can also issue these asset managers with a provisional licence limited to three years, after which time they must subject themselves to recognised supervision.

Implications for supervision

As a result of the revisions to CISA and BVV 2, institutional asset managers who have previously chosen to operate in the non-regulated segment will have to decide whether they can or want to adjust their business model in line with the changed framework, and if so how to achieve this. In particular, this poses various challenges for institutions that focus predominantly on asset management for private clients in addition to the management of collective investment schemes, and which often offer many other services. FINMA identified organisational weaknesses in large and long-established institutions in particular. The companies in question have extended their area of activity over the course of time to include a wide range of services, but without adjusting their organisation to address the new challenges. In addition to conflicts of interest, this has led to shortcomings such as:

- inadequate corporate governance;
- a lack of separation between investment decisions and controlling functions;
- no appropriate training and insufficient experience in risk management functions.

Specifically and as part of its supervisory activities, this resulted in FINMA contacting the institutions concerned to point out those inadequacies, and imposing special conditions where necessary.

New developments

FINMA has identified an increasing trend towards cooperation between authorised asset managers subject to CISA and institutions that are not yet regulated. The latter are seeking to continue activities that now require authorisation such as managing foreign collective investment schemes or pension fund assets that are under the 'umbrella' of an authorised asset manager, without having to apply for authorisation themselves.

For example, unauthorised asset managers acquire a minority interest in an authorised asset manager, allow themselves to be hired by them on a part-time basis, and thus continue to manage their collective investment schemes or pension funds without being fully integrated in the investment and controlling process. Meanwhile, other services are still performed by the unauthorised institution, for instance, individual asset management for private clients.

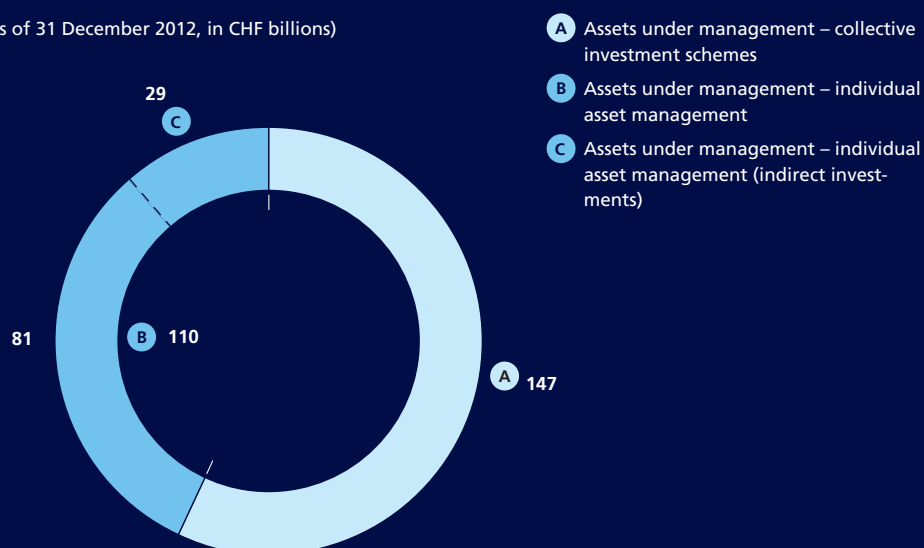
FINMA must ensure that individual asset managers in such cooperation models also have the appropriate organisation required by law, and that the risks are as a whole identified and controlled properly. Following the revision of CISA, consolidated supervision of asset managers is no longer possible, which makes FINMA's task more difficult.

Assets under management

Data collected in 2013 showed that, as of 31 December 2012, authorised CISA asset managers managed assets amounting to CHF 257 billion, of which CHF 147 billion are attributed to Swiss and foreign collective investment schemes, while CHF 110 billion are attributed to individual asset management managed for private and institutional investors. CHF 29 billion of those individually managed assets were reinvested in collective investment schemes managed by asset managers and have also been included in the assets for collective investment schemes (147 billion).

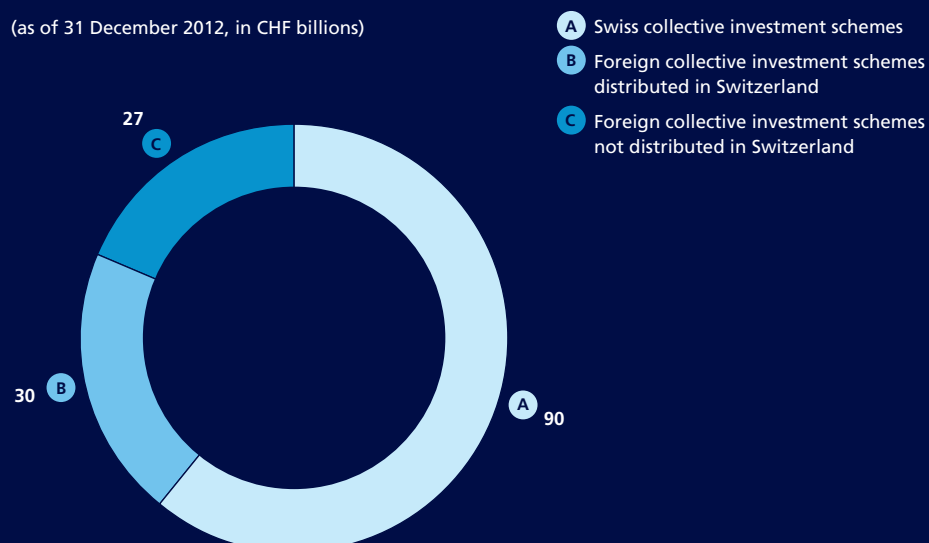
Assets of collective investment schemes and individually managed portfolios

(as of 31 December 2012, in CHF billions)



Assets of Swiss and foreign collective investment schemes managed in Switzerland

(as of 31 December 2012, in CHF billions)





Supervision, enforcement and regulation

- 40 Banks and securities dealers
- 52 Insurance companies
- 62 Markets
- 72 Enforcement



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,³³ 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 2³⁴ 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 decision³⁵ 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 2013/7³⁶, 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.

³³ See section on Cross-border financial services, p. 26.

³⁴ See section on Cross-border financial services, p. 26.

³⁵ See Federal Supreme Court decision 138 III 755.

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

'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.

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.

Retrocessions

In November 2012, FINMA published FINMA Newsletter 41 (2012)³⁷ 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.

³⁷ 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'.³⁸ 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'³⁹ 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 Court⁴⁰ 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'⁴¹ 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, FSA⁴²) 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 paper⁴³ 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 resolution⁴⁴ 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.

³⁸ See http://www.financialstabilityboard.org/publications/r_111104cc.pdf.

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

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

⁴¹ See Glossary, p. 111.

⁴² 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).

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

⁴⁴ 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.

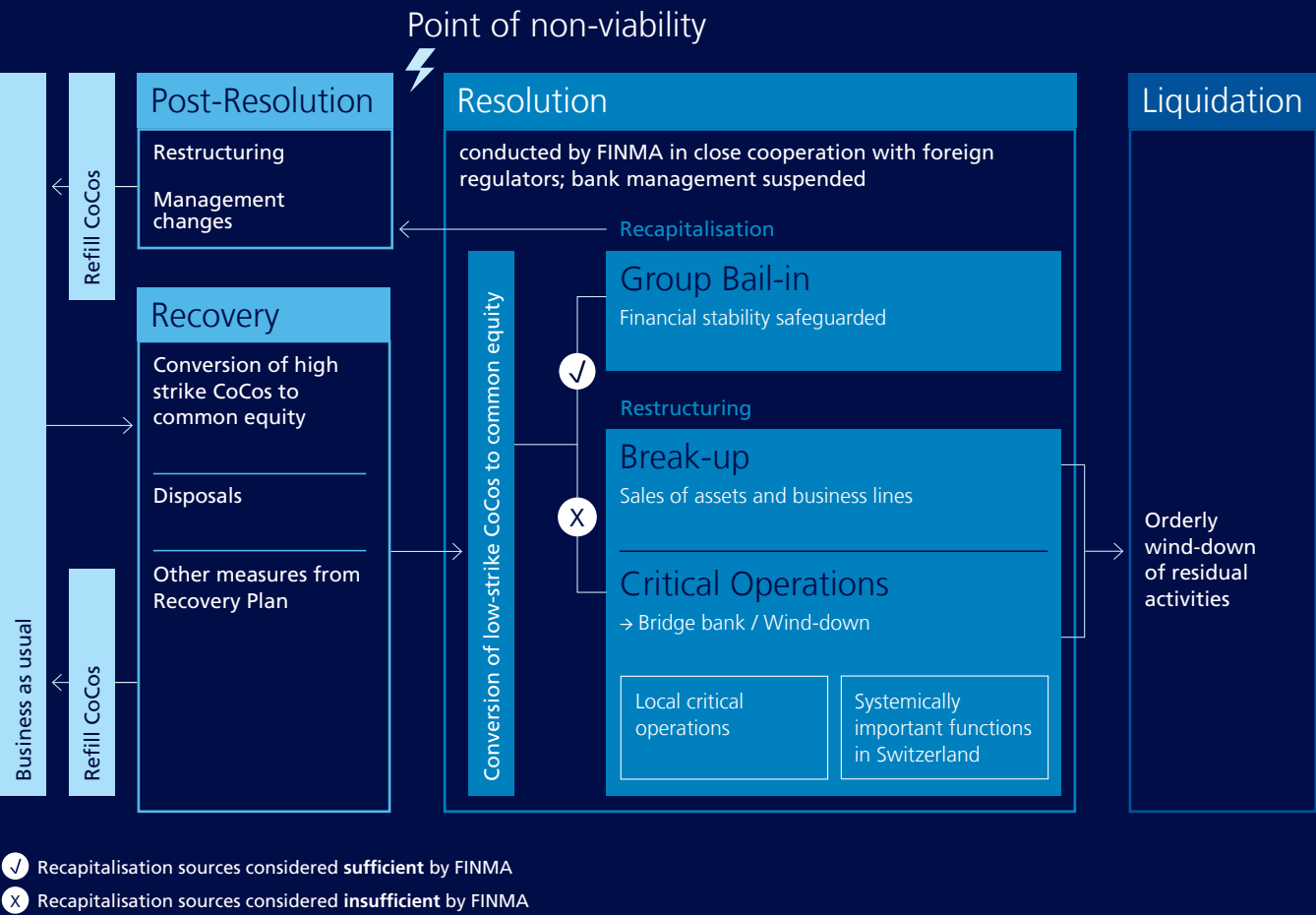
In joint working groups, FINMA discussed recognition of, and cooperation in, the (operational) implementation of the single point of entry resolution strategy, and the expedient structuring of the banks and their debt issuance.

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
Mergers	7 (6)	10 (3)	8 (5)	15 (9)
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)
Voluntary cessation of business requiring supervision	3 (1)	9 (6)	9 (6)	7 (6)
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)
Voluntary liquidation	2 (1)	3 (1)	3 (2)	1 (1)
Category 5 (of which foreign banks)	2 (1)	3 (1)	3 (2)	1 (1)
Revocation of licences	1 (1)	1 (0)	1 (1)	0 (0)
Category 5 (of which foreign banks)	1 (1)	1 (0)	1 (1)	0 (0)
Total (of which foreign banks)	13 (9)	23 (10)	21 (14)	23 (16)

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 2⁴⁵ 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.⁴⁶ 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.

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

⁴⁶ 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) 'Market risks – banks' (08/20) 'Capital adequacy disclosure – banks' (08/22) 'Eligible equity capital – banks' (13/1) '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' ⁴⁷ of June 2011	– Implementation of Basel recommendations on the management of operational risks – 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) ⁴⁸	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 legislation⁴⁹ requires banks to amend their accounting procedures from financial year 2015 onwards.⁵⁰ This revision also governs the liquidation of dormant assets, which every bank will now be allowed to carry out itself. Following the RCAP,⁵¹ 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),⁵² a key component of Basel III that has already been approved internationally, ends in February 2014.

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

⁴⁸ 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>).

⁴⁹ Articles 957 ff. CO.

⁵⁰ For consolidated accounts: from financial year 2016.

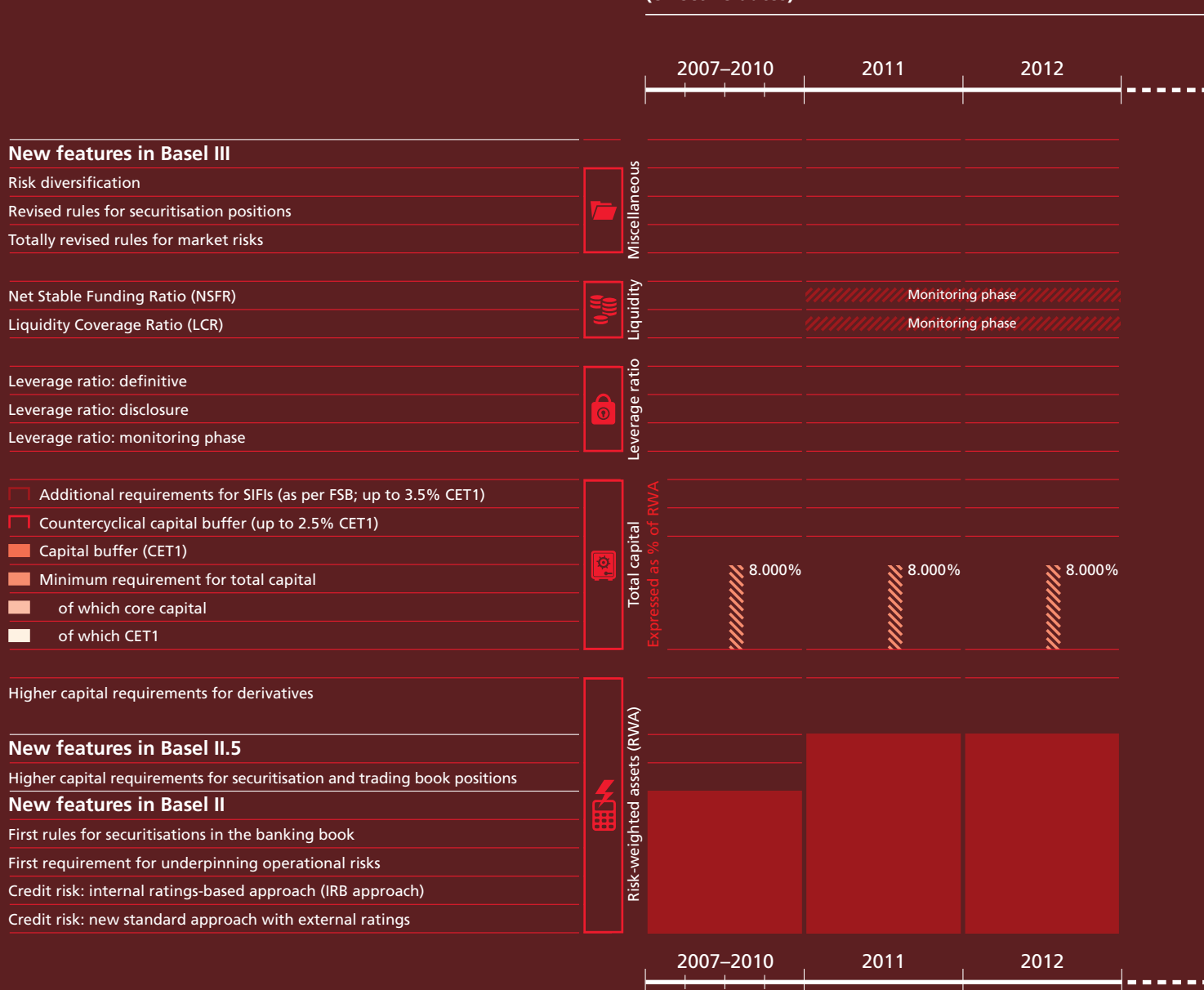
⁵¹ See section on FINMA undergoes inspections, p. 24.

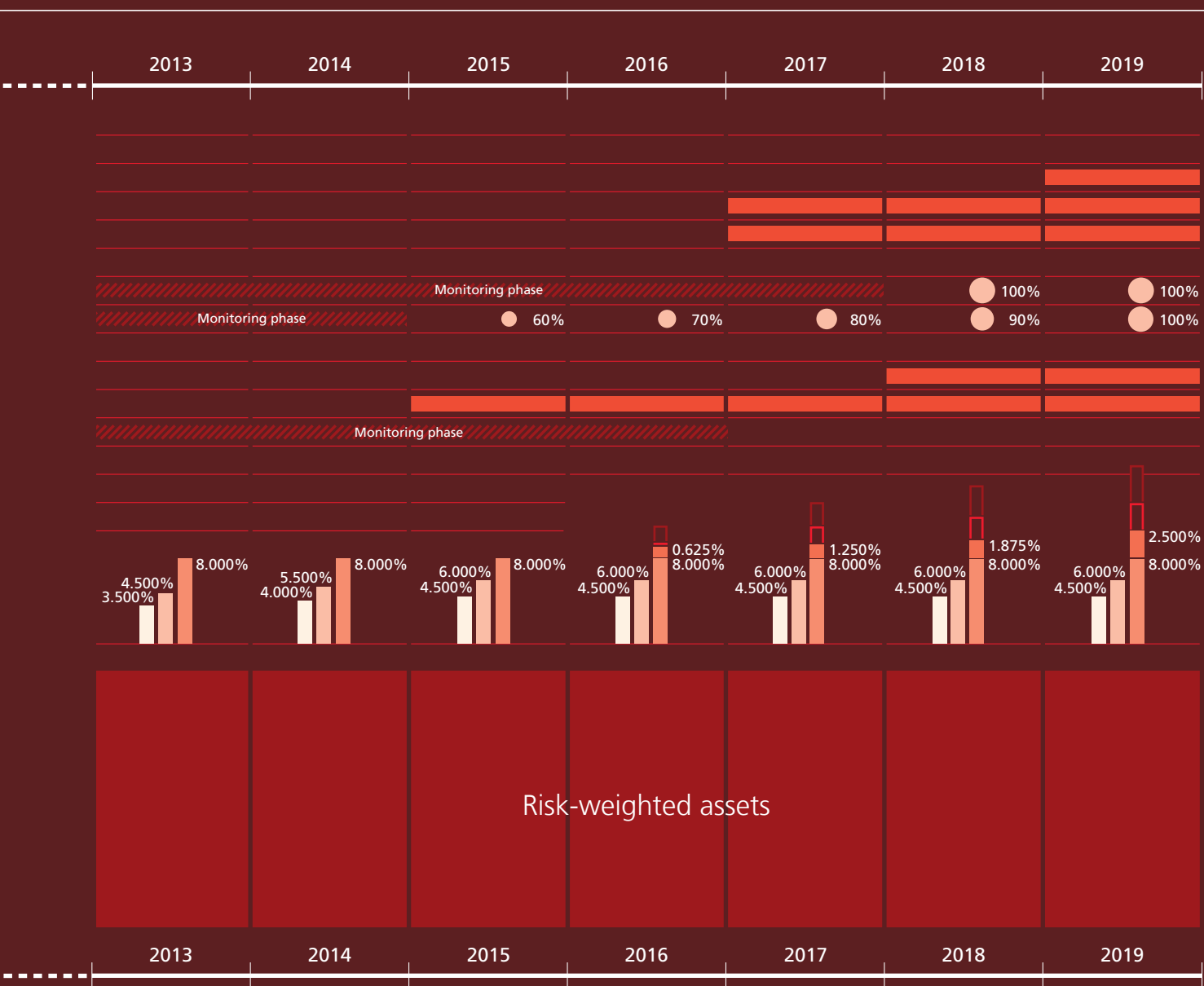
⁵² See Glossary, p. 113.

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 GIIPS⁵³ 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 risks⁵⁴ 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 ratio⁵⁵ 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

⁵³ Greece, Ireland, Italy, Portugal, Spain.

⁵⁴ See Glossary, p. 111.

⁵⁵ 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.⁵⁶

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 colleges⁵⁷ 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.

⁵⁶ See section on Effects of the new hospital financing scheme, p. 56.

⁵⁷ See Glossary, p. 114.

Swiss Qualitative Assessment: SQA II results published

In April 2013, FINMA published the results of the second Swiss Qualitative Assessment (SQA II).⁵⁸ 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.

⁵⁸ 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.

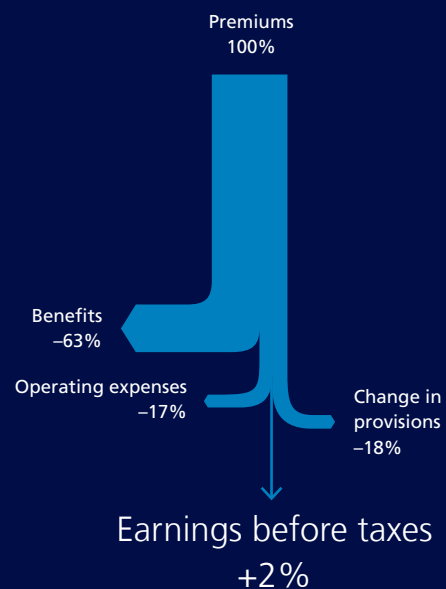
A part of the cost savings will be applied to company profits, a measure that is permitted in the private insurance sector. While reviewing the tariffs, FINMA found that insurers had not calculated any abusively high profit margins. Administrative cost components had also not been raised unreasonably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

The cost trend remains under observation

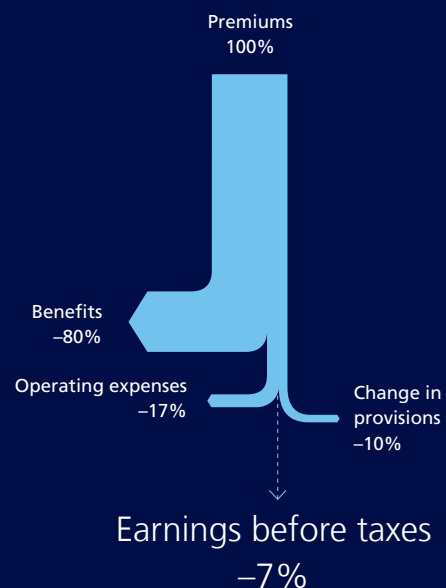
The trend in costs remains unstable, and FINMA is watching the situation closely. There is reason for concern about steadily increasing health costs, stalled negotiations on setting hospital tariffs, temporarily valid cantonal hospital lists and hospital quotas, and the still unforeseeable effects of flat rates per case (SwissDRG⁵⁹).

⁵⁹ 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.⁶⁰ 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,⁶¹ as of September 2014) and to more stringent capital requirements (higher loss absorbency,⁶² 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.

⁶⁰ See IAIS press release of 9 October 2013 on developing a Global Insurance Capital Standard by 2016 at www.iaisweb.org.

⁶¹ See Glossary, p. 113.

⁶² 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 / FINMA CIRCULARS	REGULATORY PROJECTS			IN FORCE 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"> – More precise definition of insurance bankruptcy proceedings, which are only summarised in the Insurance Supervision Act (ISA) – Protection of policyholders – Legal certainty 	1 Jan. 2013
FINMA Circular 13/2 'SST adjustments'	New regulation	<ul style="list-style-type: none"> – Temporary adjustments to the SST until the end of 2015 – Changes in the yield curve when valuing insurance obligations – Changes in the thresholds that, when undershot, call for FINMA to intervene and demand measures 	<ul style="list-style-type: none"> – Continuing low interest environment – Delay in the introduction of new solvency requirements following Solvency II in the EU 	1 Jan. 2013
FINMA Circular 13/5 'Liquidity – insurers'	New regulation	<ul style="list-style-type: none"> – Principles for identifying liquidity risks – Minimum requirements on the type and content of reports on liquidity 	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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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.

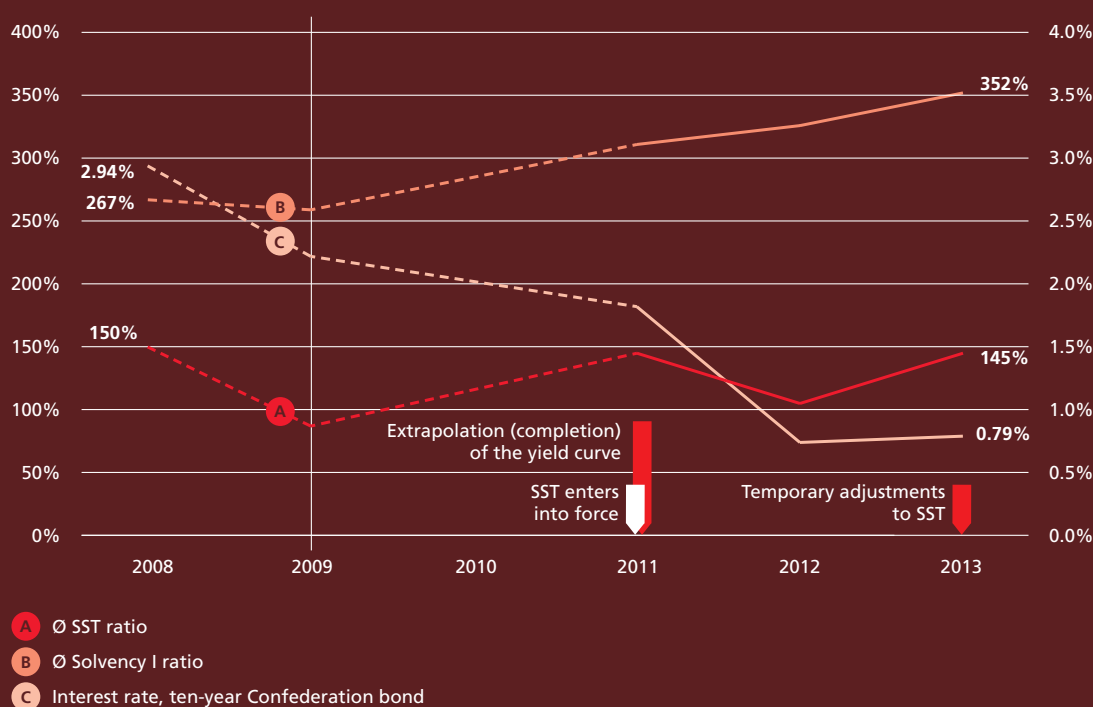
FINMA's role

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

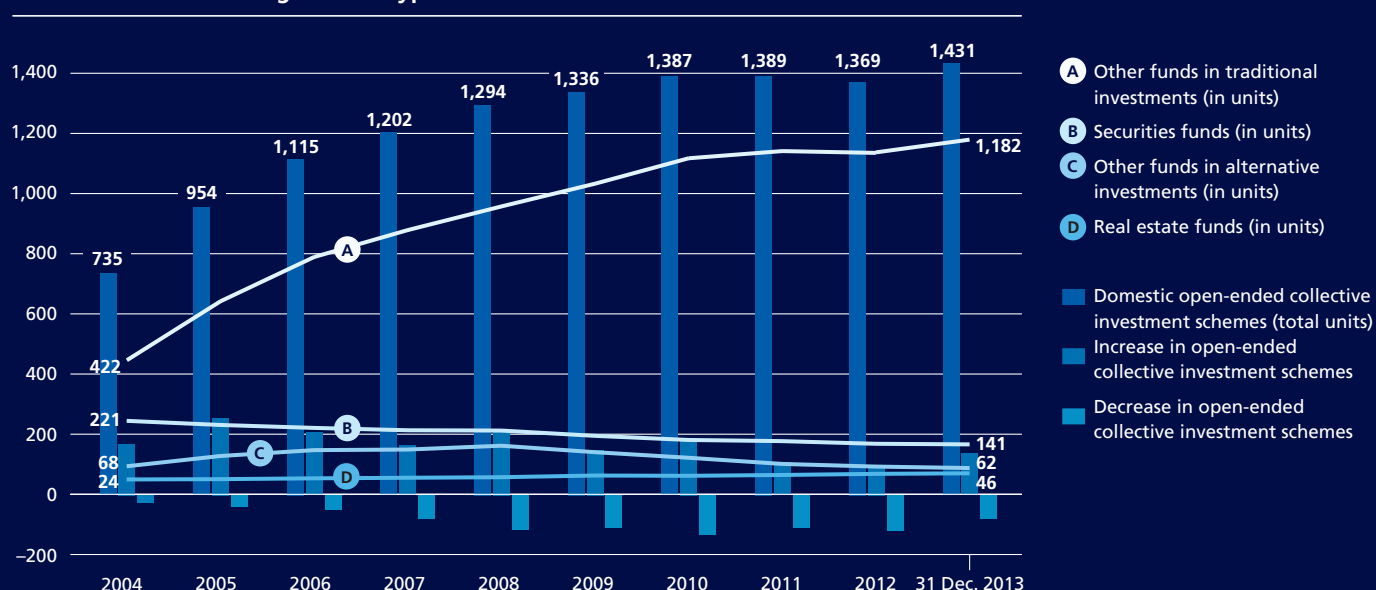
In 2013, FINMA also increased its supervisory activities in the area of money laundering and the financing of terrorism. In the case of self-regulatory organisations (SROs), measures were taken to prevent regulatory arbitrage and ensure the independence of the SROs. FINMA also examined compliance with the provision set down in the Ordinance on the Professional Practice of Financial Intermediation (OPPF)⁶³ 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.

⁶³ Specifically, compliance with Article 1 para. 2 let. f no. 3 OPPFI.

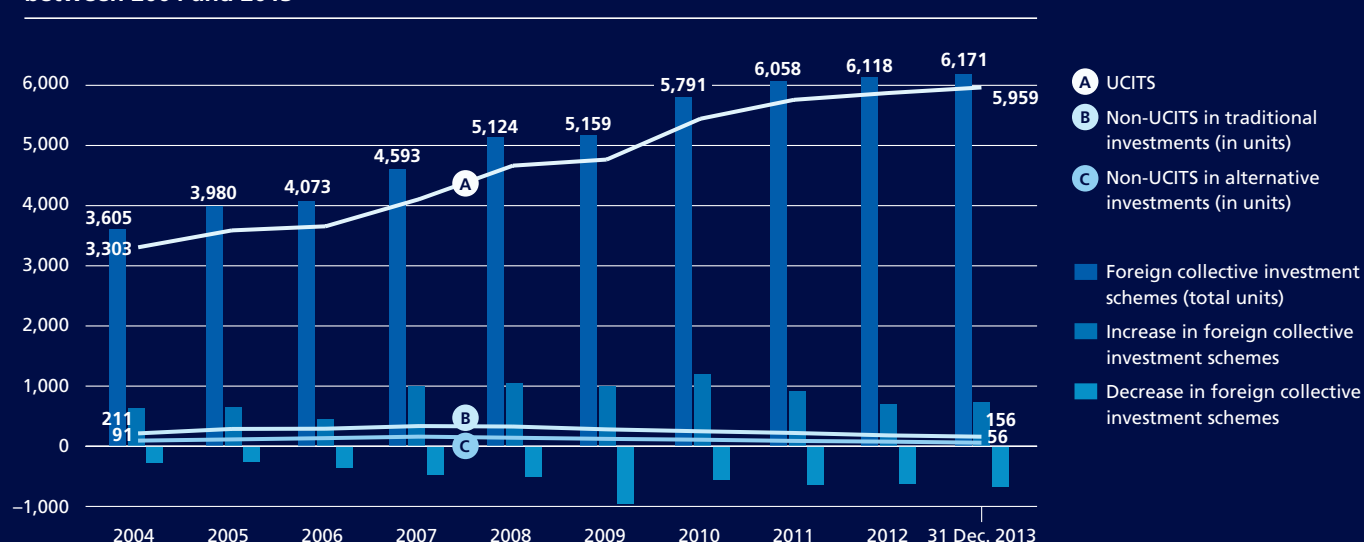
Trends in product volumes

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.⁶⁴

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.

⁶⁴ 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.⁶⁵

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.⁶⁶

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,⁶⁷ 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.

⁶⁵ See section on MoUs at the international level, p. 110.

⁶⁶ See Glossary, p. 111.

⁶⁷ 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 infrastructures⁶⁸ such as central counterparties (CCPs),⁶⁹ 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.⁷⁰ 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.

⁶⁸ See Glossary, p. 112.

⁶⁹ See Glossary, p. 111.

⁷⁰ 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 / FINMA CIRCULARS	REGULATORY PROJECTS			CHANGES	IN FORCE 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

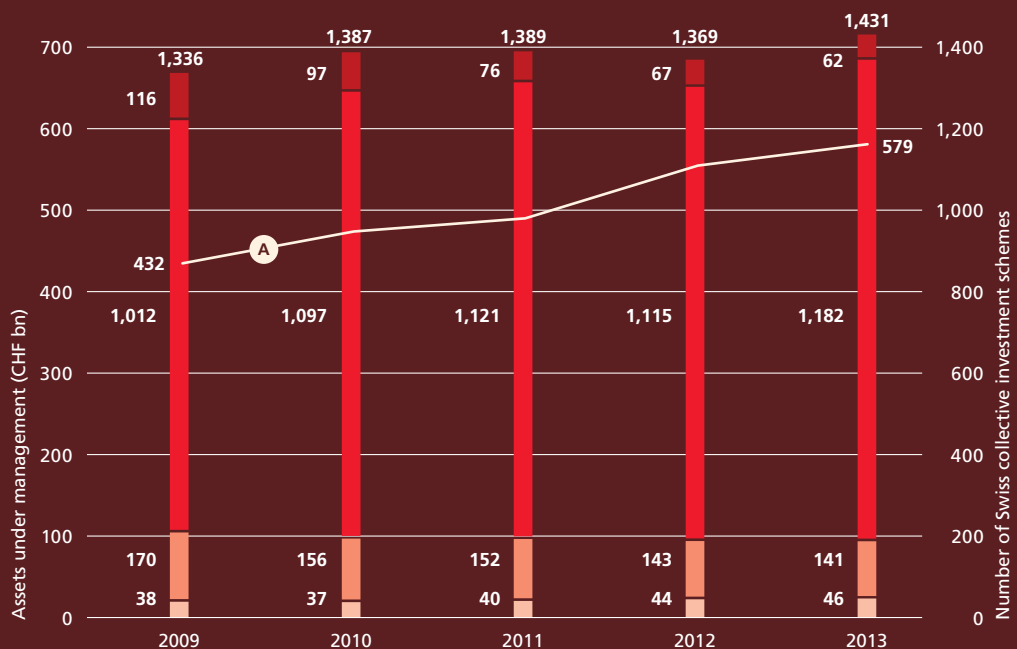
At a glance: the Swiss fund market

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.

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Supervision, enforcement and regulation
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Number of Swiss collective investment schemes and assets under management



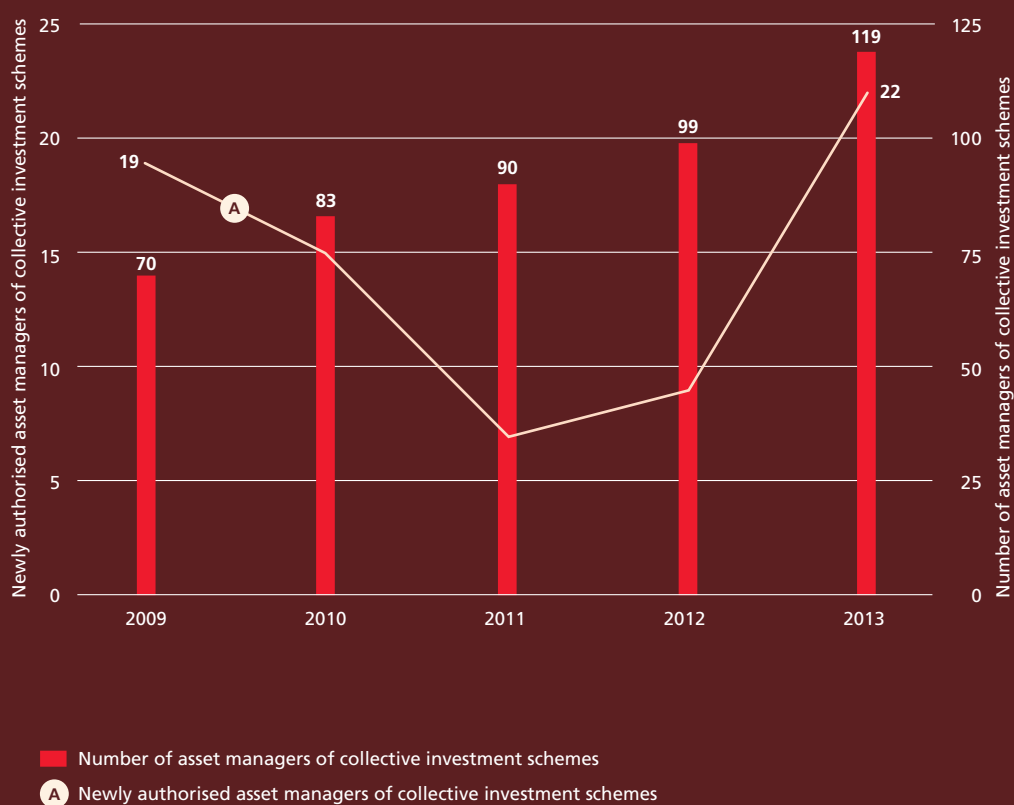
Source Assets under Management: SNB Statistical Bulletin December 2013, D6_1 Swiss Collective Investment Schemes, net assets at quarter-end (31 July 2013).

- 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 rates⁷¹).

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.⁷² 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).

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

⁷² 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.⁷³ 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.

⁷³ See section on Board of Directors and Executive Board, p. 90.

Enforcement statistics

	ONGOING AS OF 1 JAN. 2013	PROCEEDINGS INSTITUTED	PROCEEDINGS CONCLUDED	ONGOING AS OF 31 DEC. 2013
Enforcement proceedings				
– 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
Preliminary investigations	342	740	545	537
Liquidations				
– of licence holders	2	0	0	2
– of companies engaging in authorised activities	29	8	11	26
Bankruptcies				
– of licence holders	10	0	0	10
– of companies engaging in authorised activities	93	34	31	96
Recognition of foreign insolvency measures				
– involving licence holders	9	5	0	14
– involving unauthorised activities	6	0	2	4
Recognition of foreign restructuring measures				
– 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.

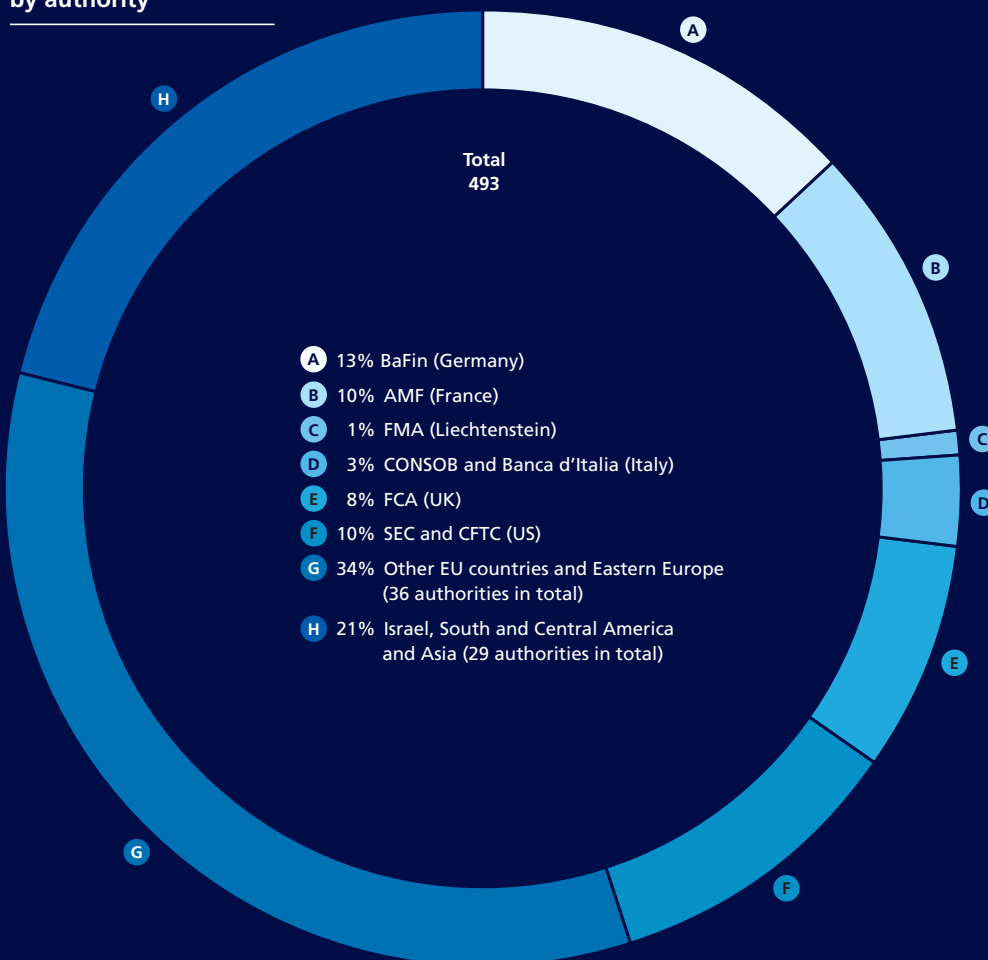
Progress in the Lehman Brothers bankruptcy proceedings

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.

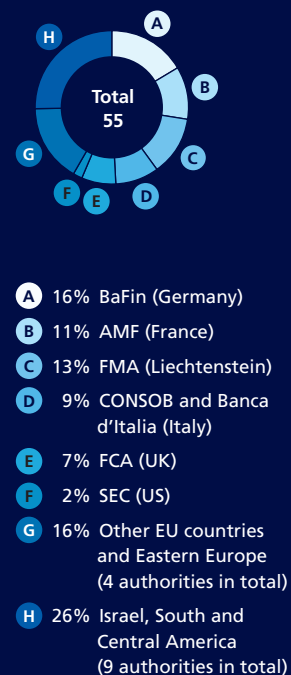
International administrative assistance statistics

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.

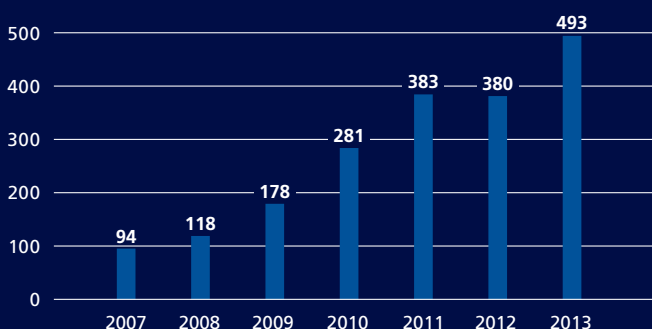
Incoming requests by authority



Outgoing requests by authority



Requests for administrative assistance (2007–2013)⁷⁴



⁷⁴ 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 bitcoin⁷⁵ 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.

⁷⁵ 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'⁷⁶ entered into force on 1 October 2013. The transitional period for supervised institutions to implement the organisational requirements runs until 1 January 2015.

⁷⁶ 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)⁷⁷ 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.

⁷⁷ 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.⁷⁸ 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.

⁷⁸ 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 / FINMA CIRCULAR	REGULATORY PROJECTS			CHANGES	IN FORCE 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

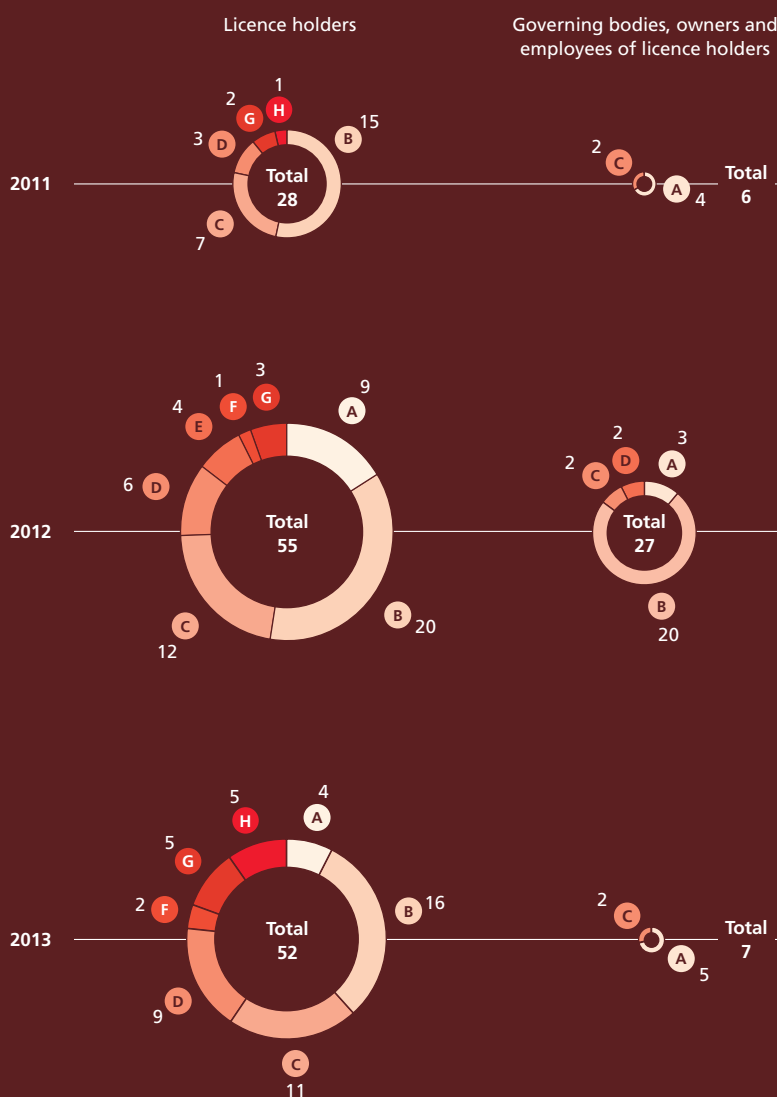
Measures against companies

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

Measures against individuals

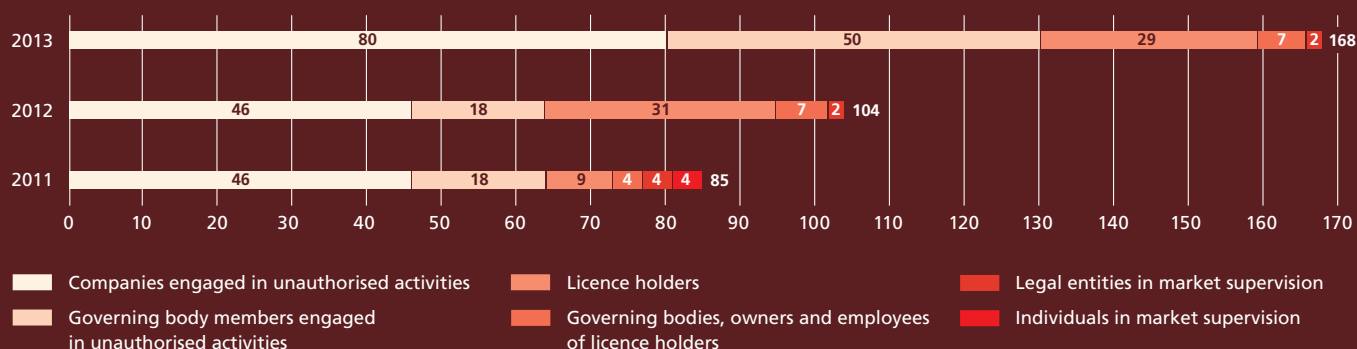
- A** Declaration of participation in unauthorised activities
- B** Ban on activity
- C** Publication (VIII)

Type and number of measures in the authorised segment

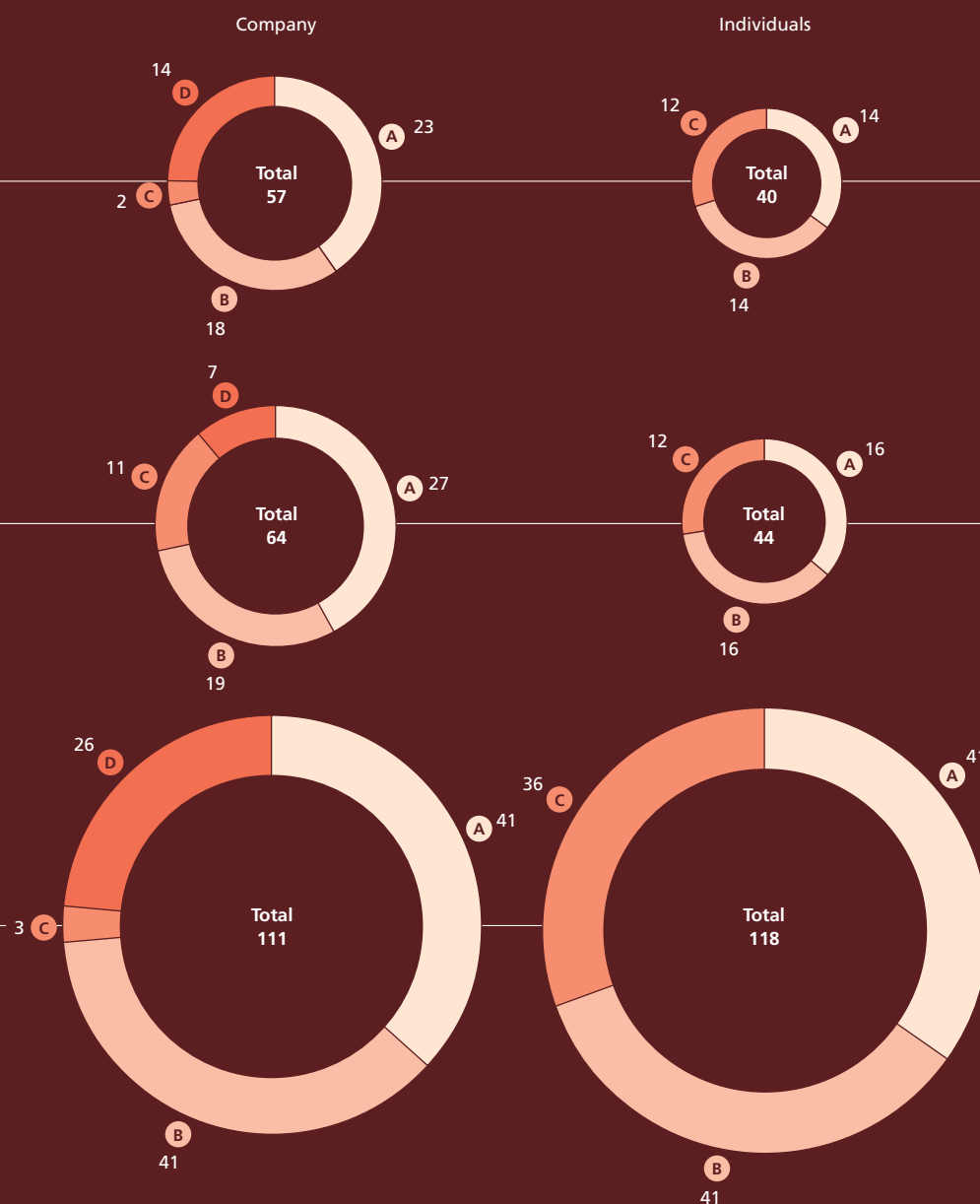


Number of recipients of rulings by sector and individuals affected

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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- 95 Cost trends at FINMA
- 98 Corporate Governance
- 99 Agents appointed by FINMA



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 committees⁷⁹ 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 ⁸⁰	x				Chair

⁷⁹ The Takeover Committee is the complaints body for decisions made by the Swiss Takeover Board.

⁸⁰ 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.

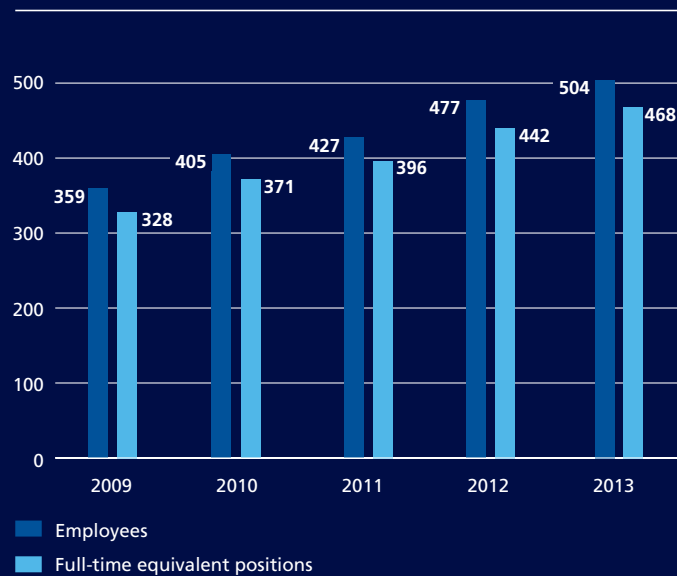
The average age of employees in 2013 was 41, the same as in 2012. Approximately 69% of staff are aged between 30 and 49 (2012: 68%), while 21% are aged 50 or over (2012: 20%), and 11% are young talents (2012: 12%). Senior management positions are held by 214 employees or 42% (2012: 188/38%). The term '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.

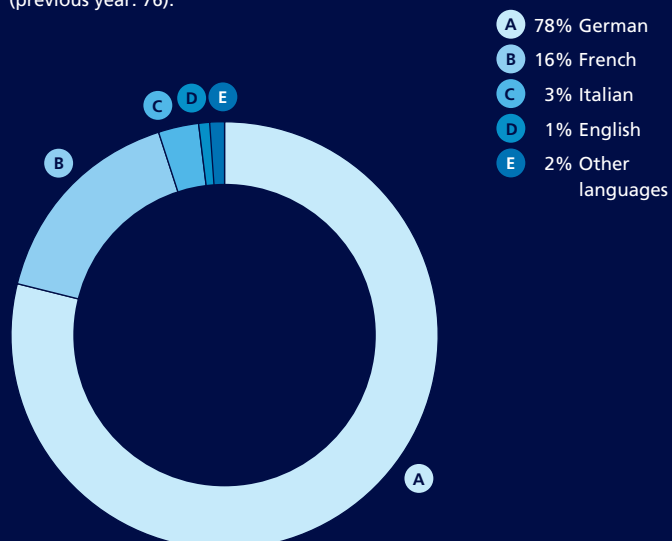
Selected FINMA staff data

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

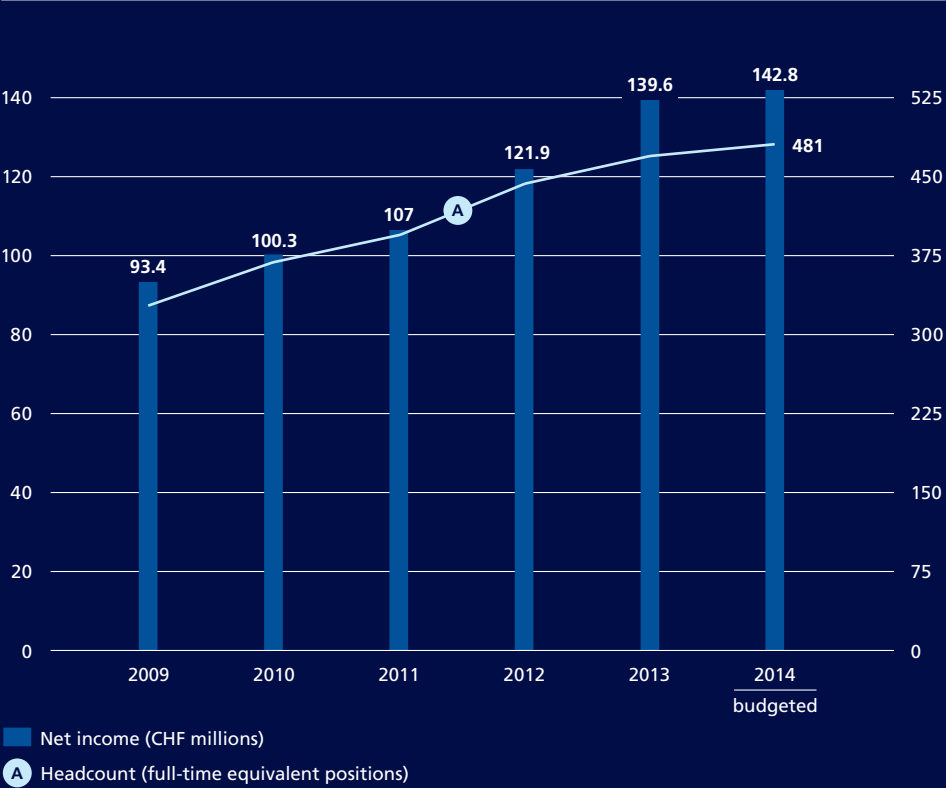
Growth of 30% at FINMA between 2009 and 2012 is broadly in line with growth at comparable supervisory authorities. Over the same period, the considerably larger German Federal Financial Supervisory Authority (BaFin) increased staffing levels by 22%, compared with 30% for the UK's Financial Services Authority (FSA).⁸¹ 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.

⁸¹ 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

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

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- 104** Financial market regulation: pending projects
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- 110** MoUs at the international level
- 110** FINMA's representation in international working groups
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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 (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 (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. 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 > 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/ 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

Supervised⁸² 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
Swiss collective investment schemes		
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
Foreign collective investment schemes		
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

⁸² 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
Banks		
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 ^{ter} BA)	7	13
Removed from supervision	6	4
Securities dealers		
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 ⁸³	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 committees⁸⁴

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

⁸³ 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.

⁸⁴ 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.⁸⁵

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.⁸⁵

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.

⁸⁵ 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.

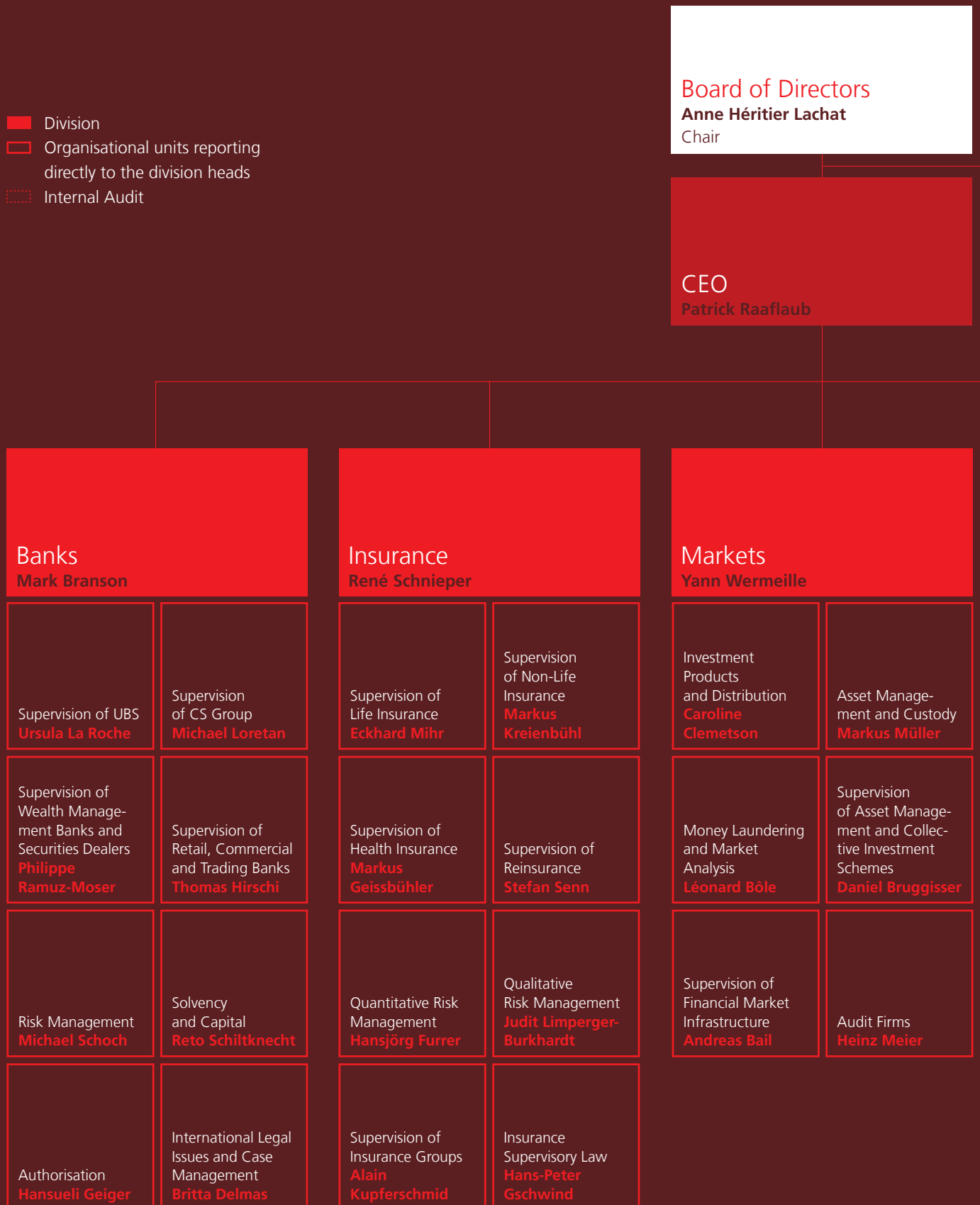
UCITS (Directive)

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

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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