FINMA: An overview

FINMA's tasks

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.

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.

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.

[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 supervision[5] 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.

2013 in milestones

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.

FINMA in the political context

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 politicians. 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 customer 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, professional 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 professors[9] 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

FINMA and international cooperation

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.