

FINMA | Annual Report 2014

Supervision, enforcement and regulation

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Overview of banks and securities dealers

2014 saw a further narrowing of margins in interest and commission business and a modest slowdown in growth in the mortgage market. At the same time, cross-border wealth management remained beset with uncertainty because of increasing risks.

In 2014, the environment for banks and securities dealers in Switzerland remained challenging. With interest rates persistently low, interest income was practically unchanged. The debate over bank clients being tax-compliant continues unabated.

International pressure still high

International pressure on cross-border wealth management remained high in 2014, and will continue to preoccupy the financial sector and FINMA in the years to come. Germany, France, Belgium and Argentina have followed the US in launching high-profile criminal investigations, while Israel and India are threatening to do so. FINMA is keeping a close eye on these proceedings, deploying both supervision and, where necessary, enforcement³² to ensure that banks adequately assess, manage and limit their legal and reputational risks in this area.

The programme launched in late August 2013 to resolve the tax dispute³³ between the US and Swiss banks has tied up considerable resources and generated high internal and external costs among banks that registered in category 2, even though no proceedings have yet been concluded. Banks had until the end of December 2014 to register in categories 3 and 4.

A number of institutions recorded asset outflows as they parted company with clients whose tax status was inappropriate or who had filed voluntary declarations in their countries of origin. This trend will intensify in the run-up to the planned automatic exchange of information scheduled to begin in 2017/2018.

Interest rate risks and mortgage growth

In the low interest rate environment, monitoring and managing interest rate risks remains extremely important. FINMA therefore carried out on-site

supervisory reviews at various commercial banks in 2014 to gain in-depth insight into their risk management. The topic is also consistently addressed in regular discussions with bank representatives. If any issues of importance from a supervisory perspective are identified, the institutions concerned are ordered to make either organisational changes or strengthen their capital base as appropriate.

The mortgage market is currently dogged by uncertainty. The low interest rate environment that is principally driving the real estate market remains in place. However, FINMA noted a modest slowdown in mortgage growth in 2014. This is partly attributable to political factors such as the attitude towards immigration and to the implementation of regulatory measures. The Federal Council approved a further increase in the countercyclical capital buffer for residential property from 1% to 2% with effect from the end of June 2014. Following consultations with the authorities, the Swiss Bankers Association also made adjustments to its self-regulatory regime for mortgages, which essentially involved shortening the amortisation period for second tranche mortgages, increasing the amount of the initial down payment and the eligibility of second incomes to cases of joint and several liability, and introducing the lower of cost or market value for real estate evaluations.

FINMA conducted on-site supervisory reviews in 2014 focusing on investment properties, which revealed major differences in the valuations applied by banks. It also carried out mortgage stress tests of banks to highlight the potential losses in the event of a real estate crisis. These raised banks' awareness of the issue and required them to incorporate specific adverse scenarios for the property market in their risk management processes.

³² See "Handling of US legal risks", p. 80.

³³ See FDF press release dated 30 August 2013 (<http://www.efd.admin.ch/dokumentation/medieninformationen/00467/index.html?lang=en&msgid=50049>).

Decline in commission income, operating expenses stable

Despite the positive trend on the equity markets, commission income fell slightly compared with 2013. As in previous years, this was due to the high proportion of liquidity in most client portfolios. Operating expenses were stable. The number of institutions reporting losses remained high, with smaller institutions and those in the process of closing down their business particularly affected.

The tougher environment continues to drive the concentration process in the banking sector. FINMA oversees each market exit but does not engage in structural policy.

Consolidation continued in 2014, driven primarily by low interest rates and tighter margins, which present challenges for the banking sector. Competitive advantages based on taxation are falling away as international tax legislation becomes increasingly harmonised. Managing legal and reputational risks in cross-border financial services is also causing substantial compliance costs. In 2014, six more banks left the market, while another 16 are in the process of exiting voluntarily.

Only one new licence was granted to a banking institution, a UK-based online broker. Over the last decade, the number of banks in Switzerland has fallen by around a quarter. Nevertheless, the business prospects for those that have dealt with their legacy issues and repositioned themselves remain intact. Business volume remained constant overall in 2014 in the Swiss banking sector, which retained its leading position in global private banking.

FINMA oversees market exits

FINMA adopts a neutral approach to the ongoing shake-out in the banking sector and does not actively intervene. However, its protection mandate requires it to monitor each market exit by a bank closely. Once a decision to cease banking operations has been taken, FINMA facilitates the process of release from banking supervision. This can take place as soon as the bank no longer holds any positions requiring protection and any claims by creditors have been satisfied or secured in an equivalent manner. Early exit from supervision is also possible if the remaining clients have expressly agreed to leave their assets with the bank despite it no longer being subject to the Banking Act.

FINMA increasingly faces questions concerning individual client positions and the appropriate method of securing them. Dormant and blocked assets and expired, contested or illiquid claims require novel and practical solutions. FINMA strives to bring proceedings to a swift conclusion, exercising its supervisory powers only as long as is necessary.

Market exits since 2010

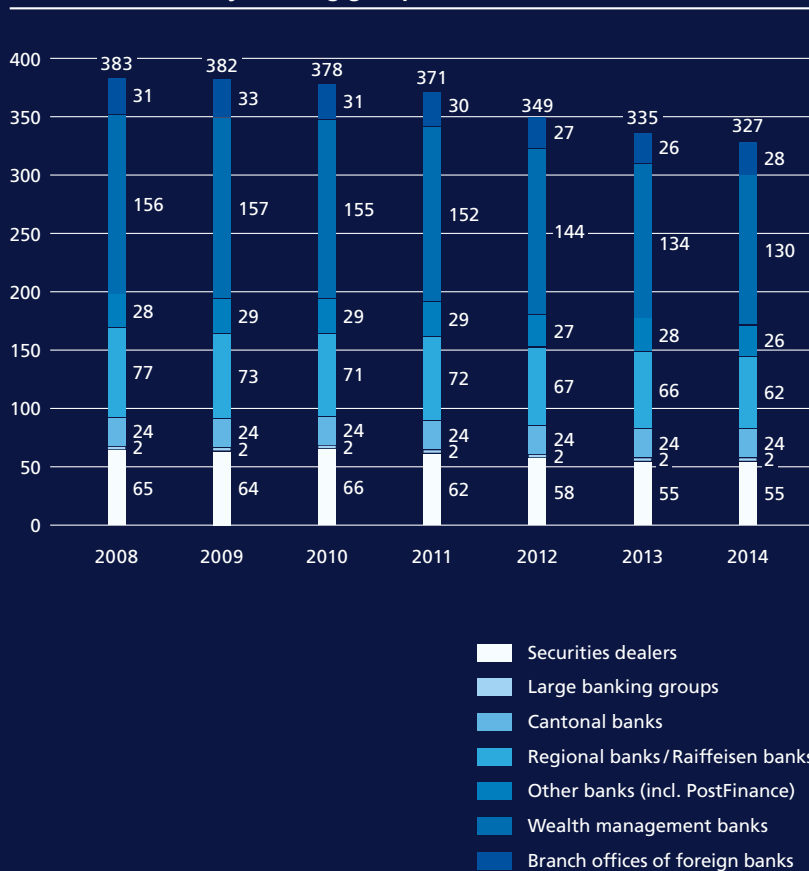
broken down by exit type, supervisory category and domestic/foreign banks

	2014	2013	2012	2011	2010
Mergers*	3 (0)	8 (6)	7 (5)	10 (3)	7 (6)
Category 3 (of which foreign banks)	–	–	1 (0)	–	–
Category 4 (of which foreign banks)	1 (0)	2 (2)	1 (1)	5 (1)	1 (1)
Category 5 (of which foreign banks)	2 (0)	6 (4)	5 (4)	5 (2)	6 (5)
Voluntary cessation of business requiring supervision	5 (2)	7 (6)	9 (6)	9 (6)	3 (1)
Category 3 (of which foreign banks)	–	–	–	1 (0)	–
Category 4 (of which foreign banks)	–	1 (0)	–	–	1 (0)
Category 5 (of which foreign banks)	5 (2)	6 (6)	9 (6)	8 (6)	2 (1)
Voluntary liquidation	3 (2)	1 (1)	3 (2)	3 (1)	2 (1)
Category 3 (of which foreign banks)	–	–	–	–	–
Category 4 (of which foreign banks)	–	–	–	–	–
Category 5 (of which foreign banks)	3 (2)	1 (1)	3 (2)	3 (1)	2 (1)
Revocation of licences	1 (0)	0	1 (1)	1 (0)	1 (1)
Category 5 (of which foreign banks)	1 (0)	–	1 (1)	1 (0)	1 (1)
Total (of which foreign banks)	12 (4)	16 (13)	20 (14)	23 (10)	13 (9)

*Asset deals and mergers were included in the Annual Report 2013.

Consolidation in Swiss banking sector

Number of banks by banking group



Real estate price growth slows slightly after package of measures in 2014

Price growth slowed slightly following the increase in the countercyclical buffer and the somewhat stricter rules on amortisation and central parameters of self-regulation. However, imbalances and the factors driving them persist.

In its Annual Report 2013,³⁴ FINMA highlighted the accumulation of risks resulting from the particularly slow amortisation of Swiss mortgages. With the tax incentives still in place, the problem remains: many borrowers are still making too little use of their available funds to pay down their mortgages. This could lead to affordability problems and even defaults, for example if interest rates rise. An adjustment to the self-regulatory regime in July 2014 sought to better address these risks: second tranche mortgages, i.e. the part of the mortgage with a loan-to-value ratio of more than two thirds of the property's value, now have to be amortised over 15 years rather than 20. Additionally, amortisation must be at least linear: it cannot be left until the end of the 15 years.

Tighter definitions in self-regulation of the mortgage market

Some key definitions in the self-regulatory regime for the mortgage market were also tightened up. The use of interest-bearing loans as down payment by borrowers is now explicitly prohibited. Second incomes can only be factored into the assessment of financial sustainability if they are subject to joint and several liability. The lower of cost or market value of the property is used to calculate the lending ratio, with the most conservative of a number of estimates being applied.

Adequate regulation

Other countries where mortgage growth is strong have specifically tightened up their regulations, in some cases going even further than Switzerland, where there is still uncertainty over the precise effect of the measures introduced and the influence of other factors such as possible changes to immigration regulations. With this in mind, the Swiss measures therefore aim to curb the further accumulation of risks without having too abrupt an impact

on property prices. Adopting a gradual approach, the Federal Council raised the countercyclical buffer in 2014 from 1% to 2% of the risk-weighted assets secured by residential properties in Switzerland. FINMA supported this move.

Slowdown in increase in property prices

The modest slowdown in the increase in property prices that began in 2013 continued in 2014, but averaged out across the country. Property prices are still higher than consumer prices and exceed the growth of the economy as a whole. Nevertheless, as the charts on pages 48 and 49 show, the trend has been more marked in the regions that in some cases recorded above-average growth rates in previous years. Mortgage growth has so far eased less than price rises, and still averages around 4% a year nationwide.

Drivers of the boom still in place

Only time will tell how sustainable this discernible slowdown in the increase in property prices is. In the past, temporary falls in real estate prices have always been followed a few quarters later by renewed accelerations. Moreover, key drivers of the boom continue to make their presence felt. In particular, the low interest rate environment is likely to remain in place in the eurozone – and therefore probably in Switzerland – for some time to come.

Risks persisting

The current easing in growth has not eliminated the historically high price levels shown in the charts on page 49 or the level of mortgage debt reported in the Annual Report 2013.³⁵ This is especially true of investment properties, which are more susceptible to economic developments and where interest and amortisation have to be paid for out of current rental income. If the vacancy rates in a segment or

³⁴ See FINMA Annual Report 2013, "Real estate market remains tight", p. 30 ff.

³⁵ See footnote 34.

region rise, for example due to reduced immigration or structural changes, the financial sustainability of the mortgage can be placed in jeopardy.

FINMA's room for manoeuvre

The slowdown suggests that the measures taken in 2014 are beginning to take hold. Given that risks still remain, FINMA will continue to carry out mortgage stress tests and on-site supervisory reviews of individual banks in 2015 to monitor how self-regulation is being implemented on a case-by-case basis. The results will determine whether further measures are needed. However, it is still too soon to sound the all-clear for Switzerland's real estate and mortgage market.

FINMA also carried out twice-yearly comprehensive loss potential analyses of the large banking groups to simulate the impact of a stress scenario on capital ratios. These were accompanied in 2014 by the European Central Bank stress tests, which revealed that FINMA's analysis is based on stricter assumptions and Switzerland's big banks would have passed the EU test.

Implementation of Basel III in Switzerland

FINMA's regulatory activities in 2014 were once again dominated by national implementation of the Basel III reform package, which introduces adjusted minimum international equity capital and liquidity standards for banks.

As regards equity capital, FINMA oversaw the calculation and disclosure of the leverage ratio in line with international minimum standards. This ratio adds a simple, non-risk-based correction to the risk-weighted equity capital ratios to prevent over-indebtedness in the banking sector and destabilising deleveraging processes. Meanwhile, short-term liquidity requirements were introduced in the form of the liquidity coverage ratio (LCR) which banks are also required to disclose. The revision of the Liquidity Ordinance will also enable FINMA to take short-term adjustment and remedial measures to deal with liquidity problems.

Implementation of the leverage ratio

The leverage ratio in Basel III defines unweighted capital requirements derived from a minimum ratio of a bank's Tier 1 capital to its total exposure, which comprises all of its on-balance-sheet and off-balance-sheet items. In 2014, Switzerland implemented the Basel III rules for calculating total exposure in FINMA Circular 2015/3.³⁶ This was drafted by a national working group, and a test reporting round involving some 40 institutions was undertaken to resolve interpretation issues at an early stage. From 2015, institutions will be required to disclose the leverage ratio in an international observation period. This also necessitated a partial revision of FINMA Circular 2008/22.³⁷ The leverage ratio does not become a mandatory requirement until 2018. The minimum leverage ratio will be set by the BCBS in 2017; during the observation period the requirement is 3%.

Implementation of the liquidity coverage ratio

The revision of the Liquidity Ordinance and the full revision of FINMA Circular 2013/6³⁸ (now FINMA Circular 2015/2³⁹) incorporated the quantitative Basel III requirements on short-term liquidity into Swiss law in the form of the LCR. This ratio, which was definitively set internationally in January 2013, ensures that banks have a liquidity reserve sufficient to deal with sudden liquidity emergencies. Specifically, it requires them to hold a stock of certain high-quality liquid assets that exceeds substantial net cash outflows under a prescribed stress scenario over a 30-day period.

To allow the banking sector to adjust to the new regulation, banks began reporting to FINMA back in 2012. The LCR will be introduced in 2015 with a minimum requirement of 60%, rising progressively to 100% in 2019. Systemically important banks must satisfy the LCR in full from 2015. Disclosure becomes mandatory in the same year. In the next step, beginning in 2015, FINMA will initiate test reporting on the net stable funding ratio (NSFR), which is to be introduced as a quantitative minimum standard from 2018 in accordance with the international Basel III timetable and which will complement the LCR.

³⁶ See FINMA Circular 2015/3 "Leverage ratio" (<http://www.finma.ch/d/regulierung/Documents/finma-rs-15-03-d.pdf>, in German).

³⁷ See FINMA Circular 2008/22 "Disclosure – banks" (<http://www.finma.ch/d/regulierung/Documents/finma-rs-08-22-d.pdf>, in German).

³⁸ See FINMA Circular 2013/6 "Liquidity – banks" (<http://www.finma.ch/d/regulierung/Documents/finma-rs-13-06-d.pdf>), replaced by FINMA Circular 2015/2 "Liquidity risks – banks", see footnote 39.

³⁹ See FINMA Circular 2015/2 "Liquidity risks – banks" (<http://www.finma.ch/d/regulierung/Documents/finma-rs-2015-02-d.pdf>, in German).

Implementation based on proportionality

The principle of proportionality allows banks to decide how exactly they will implement the requirements, depending on their size and the nature, scope, complexity and risk content of their business activities. This reduction in complexity for small banks is explicitly set out in, for example, the new liquidity rules at both ordinance and FINMA circular level. FINMA Circular 2015/2 applies to qualitative and quantitative liquidity requirements. The revision incorporated specific details of how the principle is to be applied when allocating liquidity risks to business activities and a reduction in complexity for certain aspects of the LCR.

Changes in banking regulation

Major developments, particularly in international banking regulation, led to various amendments to FINMA circulars in 2014.

FINMA Circular	Regulatory project			Changes	In force from
	Form	Content/subject matter	Aims/reasons		
Accounting – banks (2015/1)	Full revision	Implementing provisions on accounting in accordance with the Banking Ordinance	Full revision of the Banking Ordinance based on the new accounting principles in the Swiss Code of Obligations that came into force on 1 January 2013	Fundamental overhaul of the implementing provisions	1 Jan. 2015
Liquidity risks – banks (2015/2)	Full revision	Liquidity coverage ratio (LCR) under Basel III	Partial revision of the liquidity ordinance concerning the LCR to implement the international Basel III standards	New implementing provisions on the LCR	1 Jan. 2015
Leverage ratio (2015/3)	New regulation	Calculation of the leverage ratio	Implementation of international Basel III standards	–	1 Jan. 2015
Disclosure – banks (2008/22)	Partial revision	Disclosure requirements for the leverage ratio and LCR	Implementation of international Basel III standards	New implementing provisions on disclosure of the leverage ratio and LCR	1 Jan. 2015

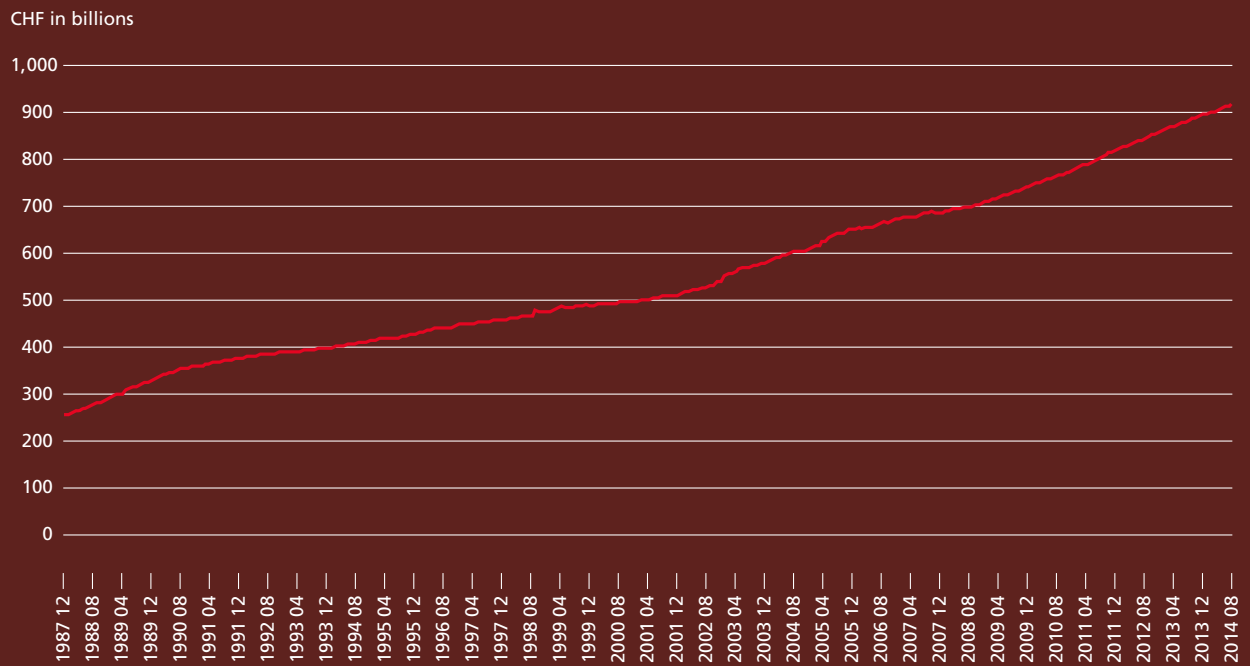
Further adjustments contained in the international Basel III standards are scheduled for implementation in national law over the years ahead and will enter into force between 2016 and 2019. They include revised

disclosure requirements (2016), revised capital requirements related to derivatives, central counterparties and fund units (2017), and new Basel III standards on risk diversification (2019).

At a glance: mortgage and real estate market

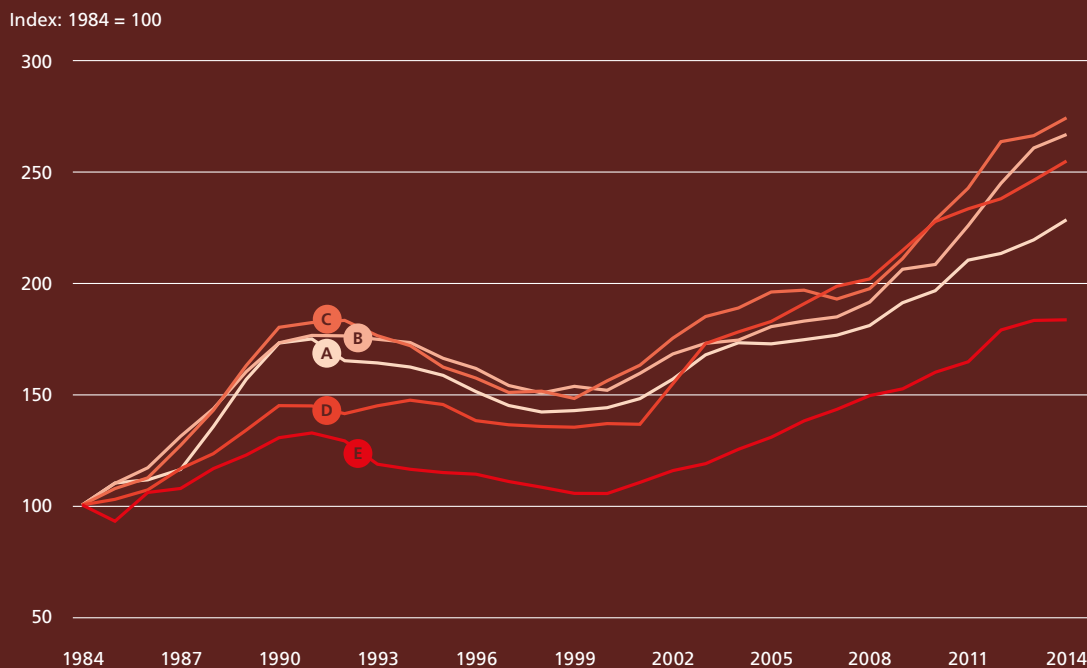
Real estate prices slowed in 2014 in the market regions and segments that had seen particularly high growth rates in previous years. This, however, has not been reflected in the mortgage volume. In the past, such slowdowns in price increases have often been short-lived, especially when drivers such as the current low interest rate environment have persisted. The imbalances built up due to historically high prices remain in place.

Trends in mortgage lending



Source: SNB comprehensive monthly balance sheet (at end of October 2014).

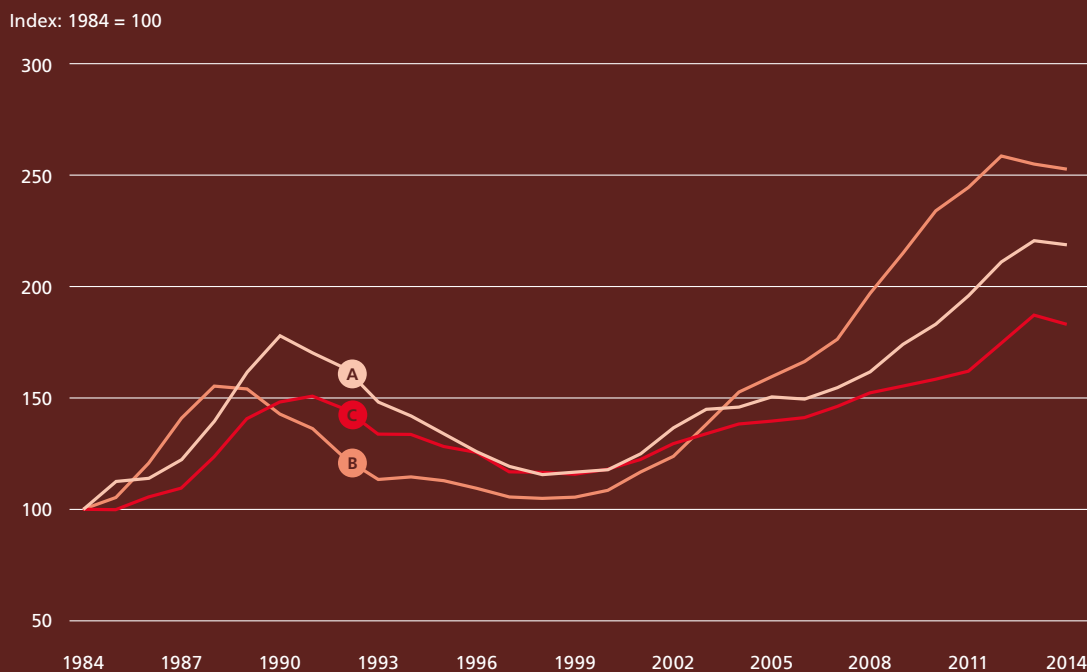
Five market regions reporting continued positive house price growth in 2014



Source: FINMA, based on data from the SNB Monthly Statistical Bulletin (December 2014).

- A Northwest Switzerland
- B Eastern Switzerland
- C Central Switzerland
- D Southern Switzerland
- E Western Switzerland

Three market regions reporting negative house price growth in 2014



Source: FINMA, based on data from the SNB Monthly Statistical Bulletin (December 2014).

- A Zurich
- B Lake Geneva
- C Bern

Overview of insurance companies

Insurance supervision in 2014 was largely determined by persistently low interest rates and international developments. Despite low interest rates, most insurers were adequately solvent without having to rely on temporary SST relief measures. At the international level, FINMA contributed to developing the new IAIS standards, while at the national level it concentrated on reviewing technical provisions and associated processes of the insurers.

The persistent phase of low interest rates continues to pose major challenges for the insurance sector. Life insurers, in particular, are increasingly investing in asset classes that offer higher ongoing returns. FINMA is observing this trend closely and paying special attention to the behaviour of insurers in the real estate and mortgage sectors.

Under the Financial Sector Assessment Program (FSAP)⁴⁰, the International Monetary Fund rated the stability of the Swiss insurance market, along with its regulations and supervision, as generally positive. The FSAP audit led to valuable recommendations which are being used to develop the regulatory and supervisory framework. Their implementation will meet some of the requirements placed on Swiss insurance supervision as regards achieving equivalence with EU Solvency II regulations.⁴¹ This will lead to amendments to current supervisory instruments and the introduction of new instruments (e.g. Own Risk and Solvency Assessment [ORSA]), as well as new disclosure obligations.

In view of global developments and the planned introduction of the Insurance Capital Standard (ICS) for internationally active insurance groups (IAIG)⁴², FINMA has intensified its activities across the board at international level. In particular, it has expanded its relationships with Supervisory Colleges⁴³ for international groups, which have developed into valuable platforms for information exchange among participating supervisory authorities.

Adequate technical provisions, which are essential when it comes to protecting policyholders in Switzerland and abroad, also form the basis for determining the total amount of tied assets that must be held. In view of the challenging market environment, FINMA

has been monitoring that technical provisions are calculated correctly and that the total target amount of tied assets is covered at all times.

Life insurance: diverging trends among individual companies

Most life insurers managed to maintain a generally stable economic situation, despite further declines in interest rates in 2014. At the same time, a number of trends could be observed from one company to the next. The challenges facing management, in particular with regard to risk management, have heightened significantly in view of current market circumstances. Insurers must be able to meet their long-term obligations, some of which include high guarantees, even in very unfavourable market conditions. In such an environment, inadequate risk management processes may lead to serious balance sheet effects which could ultimately compromise the interests of policyholders. This poses particular challenges for very small life insurers who find it difficult to manage their risks adequately, not least because of their limited resources. FINMA is monitoring trends in this sector very closely.

Non-life insurance: good profitability

Four new branch offices of foreign insurance companies were approved in 2014.⁴⁴ Two small non-life insurance companies⁴⁵ were released from supervision, and the insurance portfolio of one of the companies was transferred to Swiss Re.

The results of non-life insurers were positive in 2014, with an average combined ratio⁴⁶ of 94%. Reviews of technical provisions revealed solid reserves among insurance companies across all insurance classes. With respect to solvency, non-life insurers also have a very good average SST ratio of 193%.

⁴⁰ See "Evaluation of the financial centre in Switzerland", p. 22.

⁴¹ See Glossary, p. 115.

⁴² See "FINMA and international standard-setting bodies", section on International Association of Insurance Supervisors, p. 18.

⁴³ See Glossary, p. 115.

⁴⁴ ERGO Insurance Group, Düsseldorf, Zurich branch office; Euler Hermes SA, Brussels, Wallisellen branch office; European Mutual Association for Nuclear Insurance, Evre (Brussels), Zug branch office; UNIQA Österreich Versicherungen AG, Vienna, Zurich branch office.

⁴⁵ NBM-Amstelland Insurance Company AG and Switzerland General Insurance Company Ltd (portfolio transfer).

⁴⁶ See Glossary, p. 113.

Supplementary health insurance: effects of new hospital financing confirmed

In 2013, FINMA reported on the consequences of the new hospital financing scheme,⁴⁷ which was introduced on 1 January 2012 and led to a fall in insurance premiums. Using current figures, FINMA reviewed the effects in detail in 2014. The cost savings announced in 2013 have been confirmed, especially the long-term effects on basic insurance plans (general ward) for all of Switzerland. In the case of semi-private and private hospital plans, some of the savings were cancelled out by inflation. FINMA required some insurers to reduce their rates again for general ward cover for all of Switzerland.

In its evaluation of technical provisions, FINMA's focus in the health insurance sector in 2014 was primarily on longevity risks and accident insurance. FINMA used on-site supervisory reviews and intensified supervision to look in depth at corporate insurance and business practices involving discounting.

Reinsurance: solid financial situation in an increasingly difficult market environment

In 2014, two new medium-size reinsurance companies were licensed.⁴⁸ One reinsurance captive⁴⁹ was released from supervision, and one reinsurer was acquired by a non-life insurer through a merger.⁵⁰

The international market environment remains difficult. Few catastrophe claims, excess capacity in the reinsurance market and an increasing shift of capital to the securities market (for instance, catastrophe bonds) are having a generally negative effect on the reinsurance business. Nevertheless, the general financial situation of reinsurers in Switzerland can be considered solid.

The US-based National Association of Insurance Commissioners (NAIC) recognised Switzerland and six other countries as a qualified jurisdiction for reinsurance supervision. This can be seen as positive for Switzerland as a reinsurance centre because conditions are now in place whereby reinsurance companies from Switzerland can benefit from relaxed provisions and will no longer have to rely solely on their contracts with their US insurers as a means of securing their reserves.

Planned changes in reporting for insurance companies

Regulatory requirements for insurance companies have tightened in recent years. Since the financial crisis, FINMA has increased its emphasis on the information and disclosure obligations of market participants in order to assess risks more efficiently and take appropriate action at an early stage. In view of this, a project has been launched to examine the reports currently submitted to the supervisor. The goal of the project is to involve the insurance industry in revising the content and structure of supervisory reporting. The project will also address the issue of equivalence in the international environment.

⁴⁷ See FINMA Annual Report 2013, "Effects of the new hospital financing scheme", p. 56 f.

⁴⁸ Coface Re SA and Ikano Re Ltd.

⁴⁹ SRV REINSURANCE COMPANY SA.

⁵⁰ XL Insurance Switzerland Ltd acquired Vitodurum Reinsurance Company Ltd.

Review of internal models

FINMA has assessed most of the internal models used for determining solvency under the Swiss Solvency Test. In many cases, approvals were granted on a temporary basis. FINMA is working closely with insurance companies on modifications to their models.

Most insurance companies have requested permission to use an internal valuation and/or risk model. FINMA has audited and made provisional decisions on a majority of the models that have been submitted for review. However, it has identified only a few that qualify for unconditional approval. In many cases, approval⁵¹ was granted on a temporary basis only. The companies in question have been instructed to bring their models into full compliance with supervisory requirements by the end of the set period. FINMA actively supports these companies and hosts regular meetings at which they report on their progress in addressing deficiencies.

On-site supervisory reviews

At the same time, FINMA conducts on-site supervisory reviews, during which a valuation or risk model is demonstrated, completely or in part. This enables FINMA to gather in-depth information about the model and its effectiveness, and helps to determine whether the results of the Swiss Solvency Test (SST) can be used in steering the company.

Managing modifications to the model

Under the Insurance Supervision Ordinance (ISO), important modifications to the model must be approved. FINMA has published guidelines⁵² on how they must be handled. In particular, the guidelines define the concept of "materiality" and describe the process from the initial application phase to the final binding implementation.

Approval process under review

Experience has shown that auditing internal models is very time-consuming, and FINMA is therefore revising the approval process to ensure an efficient and risk-oriented use of resources.

Developing and applying an internal model is often a costly process for insurance companies because it produces only minor benefits in evaluating the risk situation when compared with an adjusted standard model. For efficiency reasons, FINMA is therefore considering whether it may be advisable to increasingly revert to a standard model.

Developments at European level

European insurance companies will also be able to use internal models in the context of Solvency II. The formal requirements for using an internal model are significantly more stringent in Europe than in Switzerland. For example, applications at European level must always include an expert opinion on a model's validity and a comparison of its calculations with those of the standard model. FINMA will continue to follow these developments closely.

⁵¹ FINMA unconditionally approved 10% of cases, conditionally approved 50% and rejected 40%.

⁵² Guidelines of 24 April 2014 on changes to the model for the SST (<http://www.finma.ch/d/beauftragte/versicherungen/schweizer-solvenztest/Documents/wf-modellaenderungen-sst-d.pdf>, in German).

Technical provisions reflect the liabilities an insurance company carries on its balance sheet as a result of its insurance contracts. They must be set in such a way that the company can meet its obligations at any time. FINMA takes a risk-based approach to managing technical provisions.

Technical provisions form the backbone of an insurance company's balance sheet. Insufficient provisions jeopardise the interests of insured persons. For this reason, the Insurance Supervision Act (ISA) states that all insurers must have adequate provisions to cover all of their business activities. The principles for determining technical provisions are laid out in the Insurance Supervision Ordinance (ISO); the details with respect to the type and scope of the technical provisions are defined in FINMA's circulars. Based on the level of required provisions, supervisory law defines how much capital (tied assets) a company must set aside to cover possible claims by policyholders. The insurance company's appointed actuary is responsible for ensuring that adequate technical provisions are in place. The appointed actuary therefore performs a key function and must be approved by FINMA.

FINMA's risk-based approach

To ensure that the 224 supervised insurance companies have adequate provisions, FINMA uses a systematic risk-based approach to supervision with various levels of audit depth and frequency, depending on the nature, size and complexity of the insurance portfolio (see also the charts on pages 54 and 55).

- The basic standardised quantitative audit is carried out by the audit companies. Here the focus is on auditing the technical provisions, which are broken down into need-based provisions (based on best estimates) and security and equalisation reserves.
- In individual cases audits mandated by FINMA examine institution-specific aspects, are significantly more intensive than the basic audit and are closely monitored by FINMA's actuaries.
- Actuarial reserve reviews involve the highest level of complexity and audit depth. They are led by FINMA's actuaries who, where necessary, use new methods to establish market-consistent valuations.

In 2014, 58 actuarial reserve reviews were carried out across all sectors (life, non-life and reinsurance). In its efforts to develop as an organisation, FINMA reviews the focus of its audits regularly and makes adjustments as required. This includes, for example, dealing with companies which are solvent but no longer writing new business, as well as auditing reserves at international level.

At a glance:

technical provisions

Technical provisions form the backbone of a company's balance sheet. Insufficient provisions can jeopardise the interests of insured persons. FINMA uses a variety of procedures to determine whether technical provisions are sufficient. It defines a range of audit depths and complexities, from standardised basic audits to actuarial reserve reviews.

FINMA's multi-level approach to auditing technical provisions

Actuarial reserve reviews

- Conducted by FINMA actuaries
- Independent estimates of selected complex portfolios
- Clarification of special questions on valuation; development of new methods where necessary

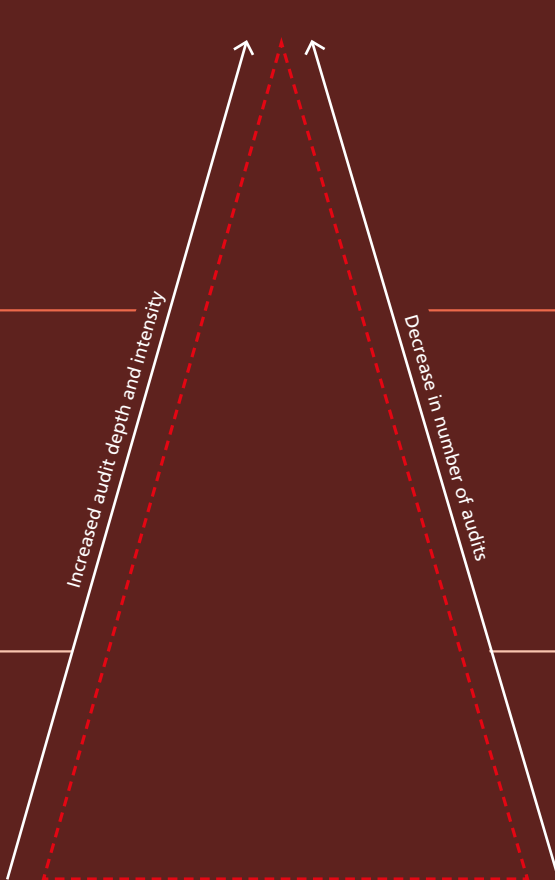
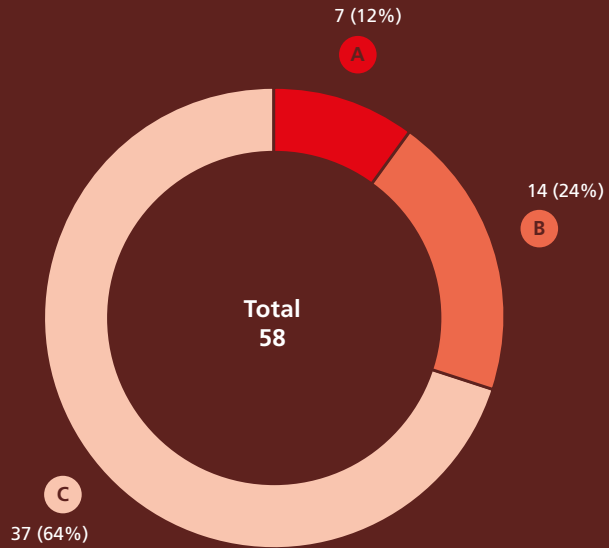
Case-related audits

- Conducted by audit companies in collaboration with FINMA actuaries
- Independent estimates of selected multi-level portfolios
- Clarification of special questions on valuation

Quantitative basic audits

- Conducted by audit companies
- Independent estimates of selected portfolios
- Link to other supervisory topics (e.g. confirmation of total target amount of tied assets)

Number of technical provision audits in 2014



- A Actuarial reserve reviews**
 Actuarial reserve reviews seek to assess the methods, models and parameters for forming technical provisions that are largely close to the market. Interest rate models which forecast future interest rate trends are used to estimate a life insurer's obligations. FINMA ensures that insurance companies only use models that reflect the observed interest rate development. The aim is to avoid situations in which the best estimate of insurance liabilities is inadequate.
- B Case-related audits**
 During its supervisory activities, FINMA can order that certain portfolios undergo technical provision audits. This may be triggered by irregularities identified in the quantitative basic audit. In such case-related audits, FINMA issues an audit mandate and informs the insurance company that an in-depth audit will be carried out. FINMA then informs the insurance company of the findings and, where necessary, proposes corrective measures. These may result in an increase in the company's technical provisions.
- C Quantitative basic audits**
 The quantitative basic audit of technical provisions is conducted by the insurance company's audit firm which uses the standard audit programme for technical provisions developed by FINMA.

In 2014, FINMA enhanced its risk-based supervision of the para-banking sector and financial market infrastructures, while also stepping up its contacts with audit firms. FINMA brings its expertise to bear in major regulatory projects such as the new Financial Market Infrastructure Act and the revision of the anti-money laundering legislation to implement the revised 2012 FATF recommendations.

The former Markets division was split in two in spring 2014. The new Asset Management division is chiefly responsible for licensing, authorising and supervising institutions and products under the Collective Investment Schemes Act (CISA), while the new Markets division supervises financial market infrastructures, combats money laundering and coordinates regulatory audits. Following the bundling of responsibility for supervising audit firms, FINMA's tasks in this area were transferred to the Federal Audit Oversight Authority (FAOA) on 1 January 2015.⁵³

Further development of risk-based supervision in the para-banking sector

FINMA expanded its risk-based supervision of directly subordinated financial intermediaries (DSFIs) during 2014. The Markets division established a new supervisory approach designed to ensure that DSFIs satisfy the licensing conditions at all times, while also complying with and implementing their obligations under the anti-money laundering regulations.

FINMA conducted on-site supervisory reviews of self-regulatory organisations (SROs), examining the extent of their risk-based supervision of affiliated financial intermediaries. Although the fundamental elements were in place in most cases, FINMA concluded that there was still scope for all SROs to expand this approach, and issued appropriate recommendations and requirements.⁵⁴

Financial Market Infrastructure Act

The project to create a Financial Market Infrastructure Act (FMIA), which was launched in 2012 and led by the Federal Department of Finance (FDF), reached an important milestone in September 2014 when the dispatch on the draft law was brought to Parliament. FINMA was actively involved in drawing up the proposed law, which covers both financial market infrastructures and OTC derivatives trading, contributing its expertise from a supervisory perspective.⁵⁵

FATF recommendations

Between 2009 and 2012, the Financial Action Task Force on Money Laundering (FATF) partially revised its standards on combating money laundering and terrorist financing. Although Swiss anti-money laundering regulations are already largely in line with the new FATF standards, the revised recommendations require certain adjustments to be made. Parliament's deliberations are at an advanced stage. Work has begun on the necessary amendments to subordinate regulations, in particular revision of the FINMA Anti-Money Laundering Ordinance (AMLO-FINMA) and the Agreement on the Swiss Banks' Code of Conduct with regard to the exercise of due diligence (CDB).

⁵³ See "Implementation of the revised audit regime", p. 59.

⁵⁴ See "Risk-based supervision of the para-banking sector", p. 58.

⁵⁵ See "Supervision of financial market infrastructures", p. 57.

Supervision of financial market infrastructures

Financial market infrastructures were again the subject of regulatory projects and international equivalence requirements in 2014. In September, the Federal Council approved the dispatch on the Financial Market Infrastructure Act designed to bring regulation of both financial market infrastructures and derivatives trading in line with current market developments and international standards.

In its ongoing supervision of financial market infrastructures, FINMA launched measures to align the structures and organisation of central counterparties (CCPs) and central securities depositories (CSDs) with the revised international standards issued by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO). These represent a substantial evolution in the operating conditions for financial market infrastructures compared with the current provisions of the Banking Act and the National Bank Act, particularly when it comes to addressing the specific risks involved.

Management of liquidity and credit risks

Liquidity and credit risk management was also the subject of ongoing supervision in 2014, with special focus on effectively managing and reducing these risks with regard to interoperability of Swiss and foreign CCPs in both Switzerland and the EU.

Effectiveness of self-regulatory structures

FINMA investigated the effectiveness of self-regulation among exchange operators, focusing specifically on front-line market surveillance. As trading activities are spread over an increasing number of exchanges and are also being conducted over the counter, it is becoming increasingly difficult to obtain the data

needed for market surveillance. Greater cooperation between authorities both nationally and, where appropriate, internationally will be required to maintain and enhance the effectiveness of market supervision.

Financial Market Infrastructure Act

The project launched in 2012 to create a Financial Market Infrastructure Act (FMIA) aims to regulate both infrastructures and OTC derivatives trading. One key aspect has involved comparisons with international regulatory efforts to establish what elements the new Swiss system must contain to ensure equivalence with its international counterparts, specifically parallel projects in the EU.⁵⁶ With a view to creating a uniform regulatory regime, the FMIA will cover not just OTC derivatives trading but also financial market infrastructures including exchanges, CCPs, CSDs and trade repositories. It will also set out recognition conditions for foreign financial market infrastructure providers and foreign trading participants (remote members).

FINMA played an active role in drafting the proposed law via the Federal Department of Finance's financial market infrastructures working group. A key milestone was reached on 3 September 2014, when the Federal Council submitted the dispatch on the draft law to Parliament, where it is scheduled for debate in 2015.

European Commission equivalence recognition processes

Financial market infrastructures face international equivalence requirements in their cross-border business, increasing the need for cooperation with foreign supervisory authorities. Before institutions can complete the European Securities and Markets Authority (ESMA) recognition process under the European Market Infrastructure Regulation (EMIR), the European Commission must recognise the equivalence of Swiss regulation and supervision of CCPs domiciled in Switzerland. Only then can financial market infrastructures continue to provide services in the European Union and to EU participants. ESMA submitted a positive assessment of the equivalence of Swiss regulation and supervision of CCPs to the European Commission in September 2013, but the Commission has yet to take a formal decision on the matter.

⁵⁶ European Market Infrastructure Regulation (EMIR), Central Securities Depositories Regulation (CSDR), Markets in Financial Instruments Directive (MiFID II) and Markets in Financial Instruments Regulation (MiFIR), see also Glossary, p. 113 f.

International standards require supervisory authorities and self-regulatory organisations to adopt a risk-based approach to supervision.

The Financial Action Task Force on Money Laundering (FATF) is an inter-governmental organisation whose core task is to develop international standards for combating money laundering and terrorist financing. Its revised recommendations, adopted in 2012, seek to establish risk-based supervision by the competent authorities of member states, requiring them to identify, assess and understand the risks of money laundering and terrorist financing and to develop specific and targeted measures to mitigate them. Supervisory authorities and bodies such as self-regulatory organisations must subject the financial intermediaries they oversee to a risk analysis, categorise them accordingly and, on that basis, define the supervisory instruments and intensity of supervision to be applied. The analysis may, for example, consider the activities, size and client structure of the financial intermediary or the range of products and services it offers.

Enhancing risk-based supervision of directly subordinated financial intermediaries

The Markets division has developed a new approach to implementing and enhancing the risk-based supervision of DSFIs. It is designed to ensure that they satisfy the licensing conditions at all times, while also complying with and implementing their obligations under the Anti-Money Laundering Act (AMLA) and the FINMA Anti-Money Laundering Ordinance (AMLO-FINMA). The approach consists of a two-stage risk analysis.

The first step is to categorise DSFIs on the basis of the risk inherent in their operations. The para-banking sector engages in activities that carry varying risks of money laundering. Some of these, such as money transmitting and providing services to domiciliary companies based in offshore jurisdictions or wealth management for clients in high-risk countries, involve greater levels of risk.

The second step is to review the controls put in place by the DSFI under AMLA. The annual AMLA audit plays an important role here. This supervisory instrument is implemented by external, authorised AMLA audit firms, thereby extending FINMA's reach. Using a traffic-light system, the results of the risk analysis feed into a rating process, which is run at least once a year and is used to define the degree to which supervisory action is required, specifically the need to use further instruments such as on-site supervisory reviews.

FINMA on-site supervisory reviews of self-regulatory organisations

In its on-site supervisory reviews in 2014, FINMA examined the extent to which self-regulatory organisations under AMLA are conducting risk-based supervision of affiliated financial intermediaries in accordance with the revised FATF recommendations. FINMA found that the fundamental elements of risk-based supervision were already in place at most SROs. In some cases, auditors conducted risk analyses or implemented multi-year audit cycles which allow for intermediaries at lower risk of money laundering to be audited only once every two or three years, thus freeing up resources for the SROs to supervise more intensely those where the risk is higher. However, FINMA identified potential for improving the risk-based approach at all SROs and initiated measures to address this, including more systematic risk analyses and a more graded array of supervisory instruments and intensities appropriate to the level of risk.

Implementation of the revised audit regime

On 1 January 2015, FINMA's powers of supervision over audit firms were transferred to the Federal Audit Oversight Authority. The new instruments introduced in the 2013 audit regime enabled the more efficient use of audit firms in all supervisory areas and improved the quality of information provided to the supervisory authority. Dialogue with audit firms was further intensified in 2014.

In its 2014 summer session, Parliament passed the draft law on the bundling of audit firm supervision,⁵⁷ required to transfer supervision from FINMA to the Federal Audit Oversight Authority (FAOA). FINMA retains responsibility for the content of regulatory audits. It defines their areas, depths and frequency, as well as the auditing principles and the implementing provisions regarding activities that are not compatible with an audit mandate. The transfer of responsibility took effect on 1 January 2015, with the FINMA supervisory team transferring to the FAOA. FINMA continues to enjoy a close and productive working relationship with the FAOA, and the two authorities still exchange information to coordinate their supervisory activities.

Changes to FINMA regulations

Changes to the law necessitated a full revision of the Financial Market Auditing Ordinance (FINMA-FMAO). Until 31 December 2014, this contained provisions on the licensing of audit firms and lead auditors that are now covered by the Auditor Oversight Ordinance (AOO). Wherever possible and expedient, provisions of the FINMA-FMAO were adopted into the AOO. As of 1 January 2015, key principles of auditing are now set out at ordinance level.

The full revision of the FINMA-FMAO also required minor amendments to FINMA Circular 2013/3⁵⁸ which came into effect on 1 January 2015. FINMA Circular 2013/4⁵⁹ was repealed and not replaced.

The move towards risk-based and standardised deployment of audit firms in financial market supervision adopted in 2013 is being maintained. Audit firms extend FINMA's reach, providing expertise and resources. The use of audit firms is similar in all sectors, but takes account of the differences in supervisory approach between the divisions.

The instruments (risk analysis, standard audit strategy, report template) implemented in auditing in 2013 led to greater efficiency in the use of audit firms in all supervisory areas, as well as improvements in the quality of the information provided to FINMA. Both the risk analysis that audit firms are required to compile for each supervised institution and the structured form of reporting have enhanced the efficiency and effectiveness of supervision.

Stronger direction from FINMA

FINMA remains committed to making the most efficient, effective and focused use of audit firms in its supervisory activities, while taking costs into consideration (CHF 115 million for audit year 2013). At the start of 2014, it decided to broaden the instructions, guidelines and reporting templates for audit firms and make them more consistent, while also enhancing its dialogue with firms, and in particular communicating its expectations to them more clearly. These include precise requirements for regulatory audits, which are broken down into individual audit areas and subdivided into audit fields and then audit items. In 2013, FINMA detailed the fields and items for some audit areas of insurance supervision. In 2014, this approach was extended to AMLA audits, with more precisely defined audit items related to compliance with due diligence and organisational requirements under AMLA and the FINMA Anti-Money Laundering Ordinance (AMLO-FINMA). FINMA will be setting out its expectations in other audit areas, harnessing the specific professional expertise of the private sector.

FINMA further intensified its dialogue with audit firms in 2014. It held regular exchanges with both audit firms and the Swiss Institute of Certified Accountants and Tax Consultants,⁶⁰ covering individual supervised institutions, as well as general matters.

⁵⁷ Amendments to the Auditor Oversight Act, the Financial Market Supervision Act and various financial market laws.

⁵⁸ See FINMA Circular 2013/3 "Auditing" (<http://www.finma.ch/d/regulierung/Documents/finma-rs-13-03-d.pdf>, in German).

⁵⁹ FINMA Circular 2013/4 "Audit firms and lead auditors" (repealed).

⁶⁰ See "FINMA and its national stakeholders", section "Key topics discussed with important stakeholder groups", p. 16.

There were annual discussions with the major audit firms on current issues in regulatory auditing, which also addressed individual challenges related to supervised institutions. Talks with the expert committees of the Swiss Institute of Certified Accountants and Tax Consultants on topics including banking audits, insurance companies and the Collective Investment Schemes Act (CISA) focused on the uniform implementation of individual audit instruments, issues of independence, and the interface between external and internal auditors.

Changes in market regulation

The Financial Market Audit Ordinance was revised to take account of changes in the law resulting from the bundling of audit firm supervision.

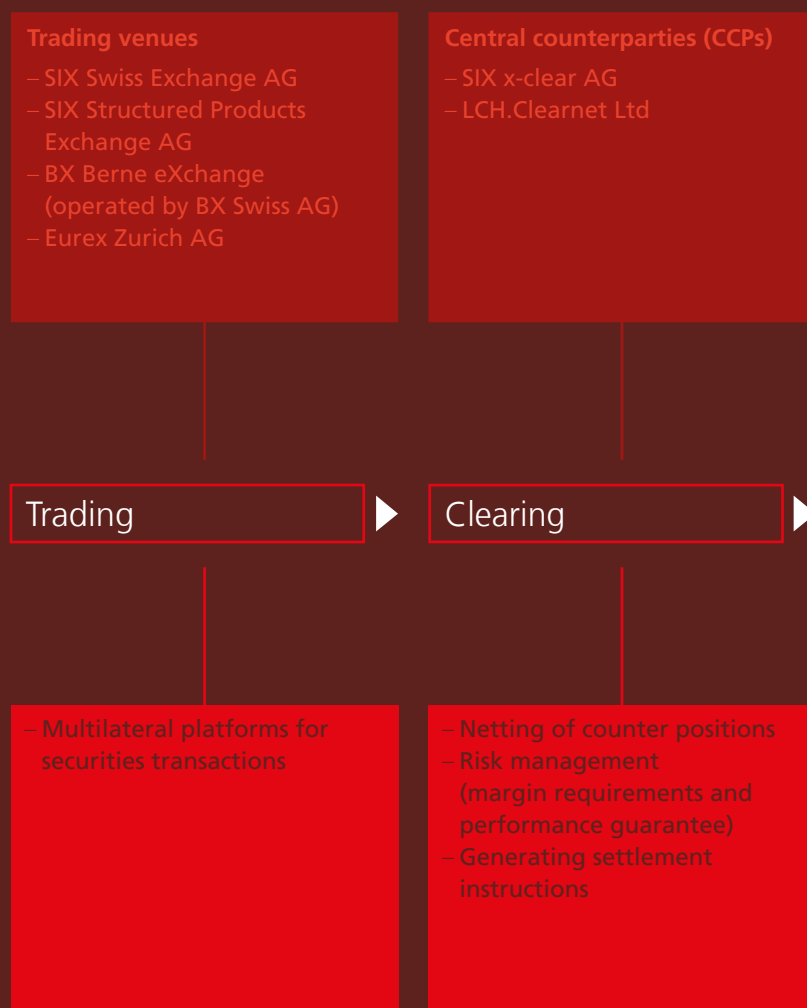
FINMA Ordinance / FINMA Circular	Regulatory projects and decisions on deregulation			Changes	In force from
	Form	Content/subject matter	Aims/reasons		
Financial Market Audit Ordinance (FMAO-FINMA)	Full revision	The revised FINMA-FMAO brings together definitions on the subject matter, structure and conduct of audits. It also contains rules on reporting, information requirements for supervised institutions, a ban on flat-rate compensation, and rules on the auditing of groups and conglomerates.	Following the transfer of supervision of audit firms to the Federal Audit Oversight Authority (FAOA), the FMAO-FINMA sets out the basic elements of the content, conduct and reporting of regulatory audits. The FAOA's Auditor Oversight Ordinance was also fully revised.	<p>The FMAO-FINMA now covers only regulatory audits of institutions supervised by FINMA. Its scope has been extended to include DSFIs.</p> <p>The basic principles of regulatory auditing are set out in the FMAO-FINMA. Following the transfer of audit firm supervision from FINMA to the FAOA, licensing provisions are set out in the FAOA Auditor Oversight Ordinance.</p>	1 Jan. 2015
FINMA Circular "Auditing" (2013/3)	Partial revision	The content of the circular was revised based on the provisions of the FMAO-FINMA.	The circular was amended to remove redundancies and add specific detail in some areas.	<p>The circular sets out precise rules on issues such as incompatibility with an audit mandate.</p> <p>To avoid redundancies, certain margin numbers were deleted from Circular 2013/3.</p>	1 Jan. 2015
FINMA Circular "Audit firms and lead auditors" (2013/4)	Repeal	–	–	FINMA Circular 2013/4 was repealed on 31 December 2014 and not replaced.	1 Jan. 2015

At a glance: financial market infrastructures in Switzerland

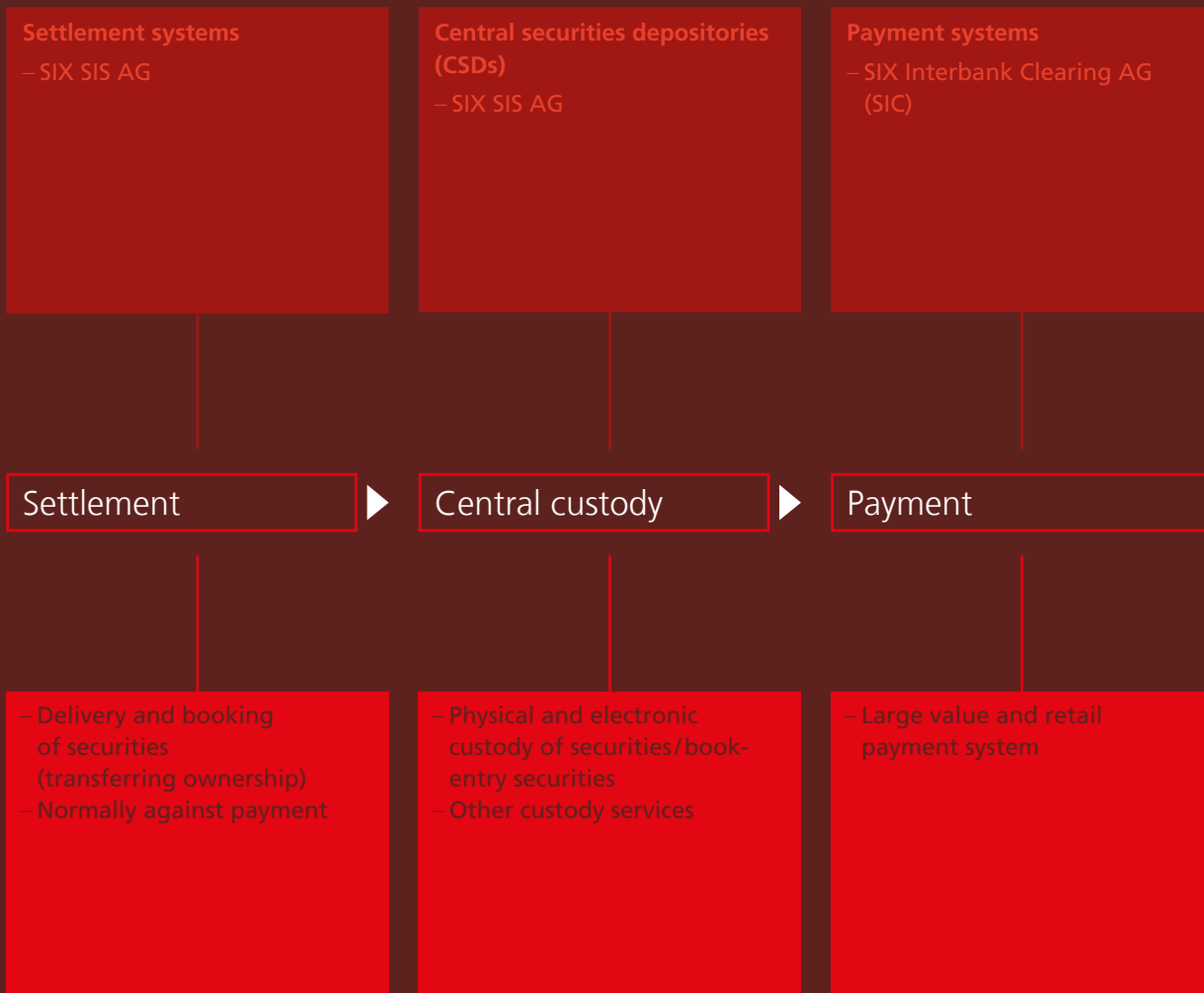
Following its 2014 technical assessment, the International Monetary Fund concluded that Switzerland's financial market infrastructures are appropriately and effectively supervised by FINMA and the Swiss National Bank.

In the Financial Sector Assessment Program (FSAP), the International Monetary Fund concluded in its "Technical Note: Oversight, Supervision, and Risk Management of Financial Market Infrastructures",⁶¹ published in September 2014, that financial market infrastructures in Switzerland are well-developed and stable and that supervision by FINMA and the Swiss National Bank is appropriate and effective.

Processing securities transactions (economic representation)



⁶¹ See <https://www.imf.org/external/pubs/ft/scr/2014/cr14270.pdf>.



The creation of FINMA's new Asset Management division in 2014 underscores the sector's central role in the Swiss market.

Since 1 March 2013, all asset managers of foreign as well as Swiss collective investment schemes (CISs) fall within the scope of the revised Collective Investment Schemes Act (CISA). This has heightened the focus on asset management of CISs within FINMA's supervisory activities and led to a sharp rise in the number of asset managers licensed by FINMA. FINMA also made appropriate organisational changes, with a new Asset Management division laying the foundations for even more targeted supervision of the management of CIS assets.

Implementation of the new approach to product authorisation

Since the revision of CISA and the associated Ordinance (CISO), FINMA's responsibility for Swiss open-ended CISs is limited to reviewing the elements of the fund contract that are relevant from a supervisory perspective. The issue of authorisation remains. At the end of 2013, FINMA therefore introduced a new approach designed to speed up the processing of applications by enabling applicants to submit product information in standardised form.

Cooperation agreements with foreign supervisory authorities

Under the revised CISO and CISA, from 1 March 2014 foreign CISs may only be distributed to non-qualified investors in Switzerland if a Memorandum of Understanding has been signed between FINMA and the foreign supervisory authority responsible. The aim of the new rules is to ensure that Swiss investors always receive the information they need and foreign CISs offer a level of transparency equivalent to that of Swiss providers. By 1 March 2014, agreements to this effect had been concluded with the supervisory authorities of all jurisdictions from which CISs are currently distributed in Switzerland.⁶²

Developments in self-regulation

Industry associations also addressed the subject of CISs during 2014, submitting three self-regulatory documents to FINMA for recognition as a minimum standard. In May, FINMA recognised two sets of guidelines issued by the Swiss Funds & Asset Management Association SFAMA: the Distribution Guidelines covering all distributors that distribute CISs to non-qualified investors or foreign CISs to qualified investors, and the Transparency Guidelines on duties regarding the charging and use of fees and costs. Distributors' audit firms are also now required to examine compliance with the duty to report as specified in Article 16 CISA. Meanwhile, the Transparency Guidelines set out the fund providers' duties to provide information to investors and the conditions for granting retrocessions to distributors or rebates to investors.

In October 2014, FINMA recognised the SFAMA Code of Conduct, which combines the previous conduct rules for the Swiss funds industry and CIS asset managers into a single document. The primary aim here was to implement the substantially broader due diligence and disclosure obligations applying to licence holders and their agents following the changes to the legislation. The SFAMA Code of Conduct also requires CISA institutions to apply a salary and remuneration policy that is appropriate to the principle of proportionality, their size and their risk profile. The new Code of Conduct came into force on 1 January 2015, with a one-year transitional period for the necessary implementation work to be completed.

The Swiss Bankers Association (SBA) and the Swiss Structured Products Association (SSPA) also submitted their Guidelines on Informing Investors about Structured Products to FINMA for recognition. These set out minimum requirements for simplified pro-

⁶² See also "Memorandums of understanding at national and international level", p. 110.

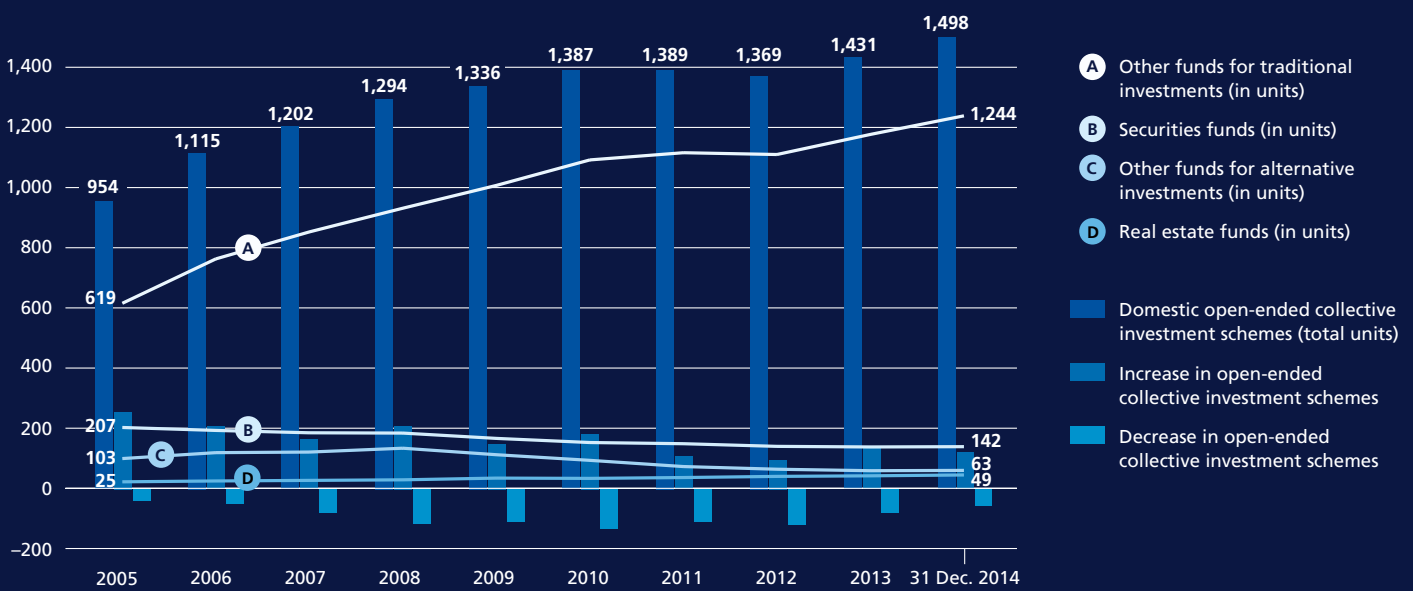
spectuses of structured products. One key change is that information is now divided into three main categories: product description, prospects for profits and losses, and significant risks for investors. The aim is to ensure standardisation of simplified prospectuses. The guidelines were recognised by FINMA in August 2014 and come into force on 1 March 2015. FINMA also amended its FAQs⁶³ on structured products to reflect the new self-regulatory regime.

⁶³ See FAQs “Structured products” (<http://www.finma.ch/e/faq/beaufsichtigte/pages/faq-strukturierte-produkte.aspx>).

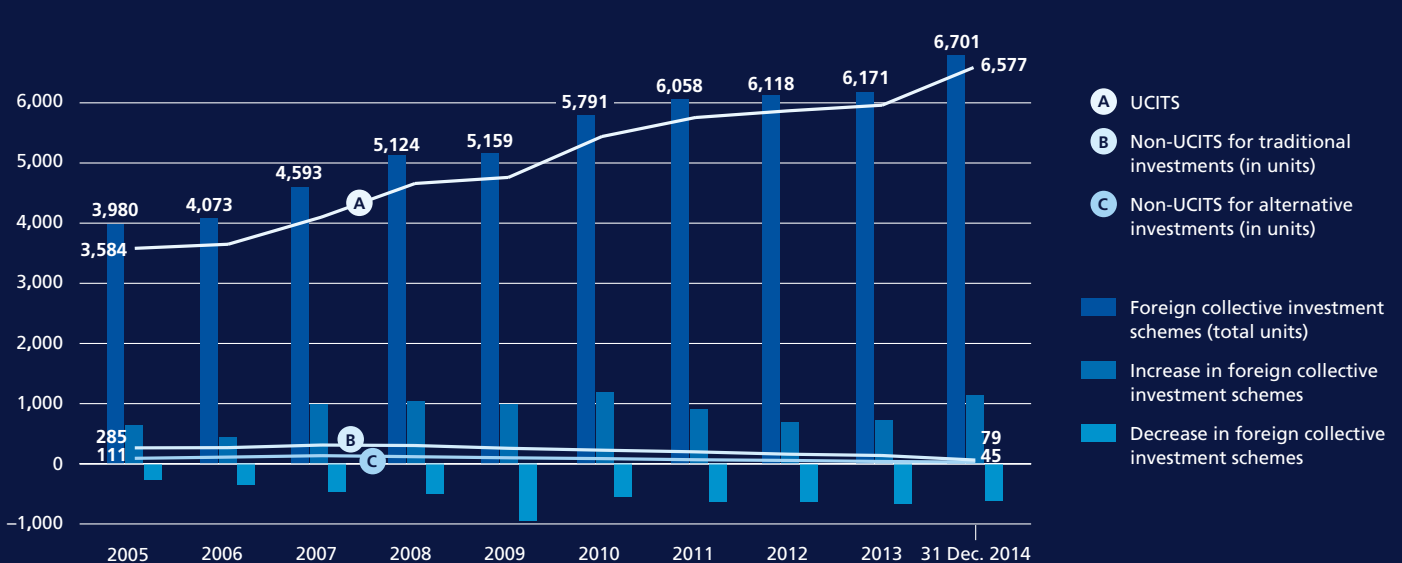
Product trends

The number of open-ended collective investment schemes authorised in Switzerland grew once again in 2014. Other funds for traditional investments remain the most popular category, but there was also a slight increase in securities funds and real estate funds. Among foreign funds authorised for distribution to non-qualified investors in or from Switzerland, UCITS⁶⁴ also gained ground in 2014.

Growth in the number of domestic open-ended collective investment schemes between 2005 and 2014 according to fund type



Growth in the number of foreign collective investment schemes between 2005 and 2014



⁶⁴ See Glossary, p. 115.

Practice in the authorisation of collective investment schemes

Exchange-traded funds no longer exclusively pursue passive investment strategies. FINMA therefore amended its practice during 2014 to permit authorisation of actively managed exchange-traded funds. It also removed a legal uncertainty relating to private investment structures.

FINMA first authorised exchange-traded funds (ETFs) in Switzerland in 2000, but amended its authorisation practice in 2014 to reflect new market structures. With ETFs, a market participant, known as the market maker, is responsible for setting the price daily within a defined spread between the bid and ask price. This ensures liquidity, and the indicative net asset value of the ETF is calculated continually. Conventionally, ETFs pursue a passive investment strategy that replicates an index, while actively managed investment funds seek to outperform a benchmark.

In 2014, FINMA received its first application for authorisation to distribute an actively managed investment fund as an ETF in or from Switzerland. One consequence of active management is that the ETF's asset manager must continually adjust the portfolio to achieve the desired outperformance relative to the index. From a supervisory perspective, transparency of the portfolio and monitoring of compliance with the spread by SIX Swiss Exchange are particularly important. FINMA worked with SIX Swiss Exchange to develop appropriate listing rules, paving the way for the first actively managed ETF to be authorised for distribution in or from Switzerland.

Private investment structures can be qualified investors

Since the partially revised CISA came into force, high-net-worth individuals (HNWIs) must provide their custodian bank with a written confirmation if they wish to be regarded as qualified investors. However, such HNWIs typically make their investments, for example in CISOs, via private structures that normally take the form of trusts or companies. From the asset perspective, such structures and the HNWIs behind them can be regarded as a single entity.

The partial revision of the Act created a legal uncertainty as to whether this written declaration must be provided by the private investment structure or the beneficial owner. In consultation with the Federal Department of Finance, during the revision of the Financial Market Auditing Ordinance (FMAO-FINMA) and Auditor Oversight Ordinance (AOO), FINMA proposed that the CISO text be amended to reflect existing practice. From 1 January 2015, either the HNWI or a private investment structure created for them (and possibly additional HNWIs) can supply the written declaration. However, the HNWIs behind the investment structure must meet the requirements for qualified investors set out in Article 6 CISO.

Further development of supervisory instruments

FINMA extended its supervision of asset management in 2014. For the first time, it carried out on-site supervisory reviews of institutions subject to the Collective Investment Schemes Act and made greater use of case-related audits.

When supervising institutions and products under CISA, FINMA has a wide range of supervisory instruments at its disposal, such as annual regulatory audit reports, risk analyses, standard audit strategies, data gathering and on-site supervisory reviews. It can also carry out case-related audits, which use the same instruments but potentially for a different purpose and with a different intensity or depth, depending on the situation.

Regular supervision

In 2014, FINMA conducted on-site supervisory reviews at 13 CISA institutions, including fund management companies, CIS asset managers, custodian banks and representatives of foreign CISs, focusing on issues such as delegation of tasks, safe keeping of investments and risk management. The reviews took between one and five days, depending on their focus and the size of the institution concerned. Experience to date has been positive, with FINMA gaining in-depth insight into the given institution's organisation, processes and controls. On-site supervisory reviews are also an opportunity to discuss matters in detail with those responsible.

Case-related audits

FINMA further expanded its supervision of CISA institutions during 2014. Case-related audits assess important aspects of an audit, but unlike regular supervisory instruments they normally go into greater depth than on-site supervisory reviews. They are carried out when, for example:

- a supervised institution is affected by an exceptional event;
- specialists are used because expert knowledge is required; or
- the quality of the audit firm carrying out the ordinary audit is in doubt.

In addition to its own audits, FINMA can obtain an independent opinion from an appointed auditor, which may be either an audit firm or an expert in the area concerned.

Case-related audits were carried out at one CISA institution in 2014, centring on loyalty and due diligence obligations, instruction, monitoring and control obligations related to delegated tasks, and conflicts of interest.

Full revision of the FINMA Collective Investment Schemes Ordinance

The FINMA Collective Investment Schemes Ordinance was completely revised to simplify it, give it a clearer structure and bring it in line with changes to national and international regulation. The new version came into force on 1 January 2015.

The partially revised CISA and CISO came into force on 1 March 2013, introducing new requirements concerning the management, safe keeping and distribution of CISs. Meanwhile, the European Union's Alternative Investment Fund Managers Directive (AIFMD), which came into force at the start of July 2011, harmonises the regulation of asset managers of alternative investment funds and subjects them to prudential supervision. These regulatory developments in Switzerland and the EU necessitated amendments to the FINMA Collective Investment Schemes Ordinance (CISO-FINMA), which contains implementing provisions that flesh out the CISA and CISO requirements.

Aims of the full revision

CISO-FINMA was completely reworked in response to market developments, the objectives being to enhance investor protection in Switzerland through targeted implementing principles and meet the requirements for preserving access to EU markets for Swiss market participants.

Amendments related to derivative financial instruments

Some definitions and terms related to derivative financial instruments were removed from the updated version since they are already commonly known, and further regulatory simplifications were achieved by integrating FINMA Circular 2008/37⁶⁵ into the ordinance.

In addition to the formal changes, the revision also brought the risk assessment process for derivative financial instruments into line with European regulations, allowing for the standardised application of commitment approaches I and II⁶⁶ and the model approach⁶⁷ and making them easier to understand.

When certain investment techniques or OTC derivatives are used, collateral is normally provided to CISs to reduce the associated risks. However, it only offers the desired protection if it is of high quality, diversified, available in the quantity required and therefore capable of being realised. The revised CISO-FINMA ensures this by setting out principles similar to those in European law.⁶⁸

Provisions on master-feeder structures

Master-feeder structures were introduced to the Swiss market on 1 March 2013 when the revised CISO came into force. Under certain conditions, a CIS (feeder fund) can depart from the generally applicable rules on risk diversification by investing at least 85% of its assets in one other CIS (master fund). CISO-FINMA now contains implementing provisions to Article 73a CISO, such as duties of disclosure within master-feeder structures and rules governing the dissolution and liquidation of such structures.

⁶⁵ FINMA Circular 2008/37 "Delegation by fund management companies / SICAVs" (repealed).

⁶⁶ See Glossary, p. 113.

⁶⁷ See Glossary, p. 114.

⁶⁸ See the "Guidelines on ETFs and other UCITS issues" published by ESMA on 18 December 2012 (http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf).

Adjustments relating to institutions

As regards institutions, a significant change is that CISO-FINMA now sets out basic principles for delegation rather than providing a detailed list of eligible tasks. One of the principal aims is to allow individual institutions greater flexibility in designing their business models. The risk management principles for fund management companies, SICAVs and CIS asset managers are also defined more precisely, specifying the separation of tasks within a licence holder's operations and the minimum contents for internal guidelines. There are also new requirements for custodian banks concerning internal guidelines on the organisation of the control function with respect to fund management companies.

Changes in the regulation of asset management

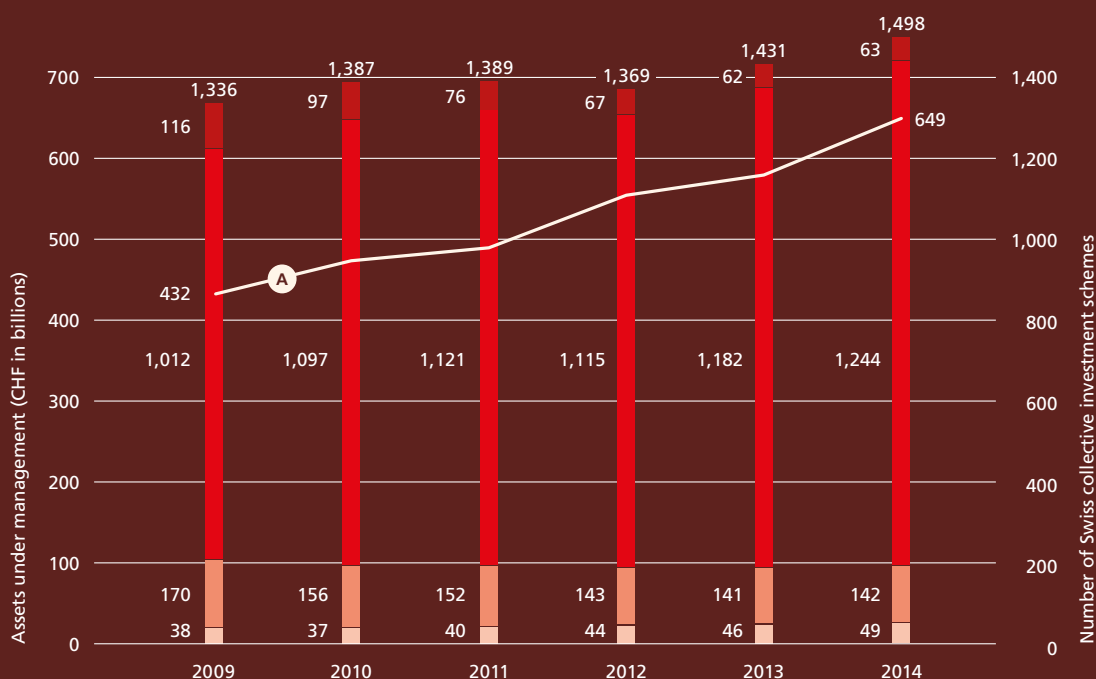
The partial revision of the Collective Investment Schemes Act and associated Ordinance necessitated adjustments to subordinate regulations. The FINMA Collective Investment Schemes Ordinance was amended to reflect national and international regulatory changes. FINMA Circular 2008/37 “Delegation by fund management companies / SICAVs” was repealed with effect from 31 December 2014.

FINMA Ordinance / FINMA Circular	Regulatory projects and decisions on deregulation			Changes	In force from
	Form	Content / subject matter	Aims / reasons		
FINMA Collective Investment Schemes Ordinance (CISO-FINMA)	Full revision	CISO-FINMA sets out specifics of the provisions in CISA and CISO and contains technical implementing provisions. In particular, it lays down requirements concerning the use of derivatives, management of collateral, master-feeder structures, the delegation of tasks, risk management, accounting and auditing.	The partial revisions of CISA and CISO came into force on 1 March 2013. They introduced new requirements concerning the management, safe keeping and distribution of CISs. CISO-FINMA was revised to take account of these revisions and changes to international standards. It is designed to enhance investor protection and preserve access to EU markets.	–	1 Jan. 2015
FINMA Circular “Delegation by fund management companies / SICAVs” (2008/37)	Repeal	The “Delegation by fund management companies / SICAVs” Circular sets out principles for the outsourcing of tasks by fund management companies and SICAVs.	The full revision of CISO-FINMA incorporated a principles-based approach to the delegation of tasks. Circular 2008/37 was therefore repealed when CISO-FINMA came into force.	Repealed	31 Dec. 2014

At a glance: the Swiss fund market

Switzerland's fund market grew once again in 2014, with a further increase in both assets under management and the number of licensed collective investment scheme asset managers.

Number of Swiss open-ended collective investment schemes and assets under management

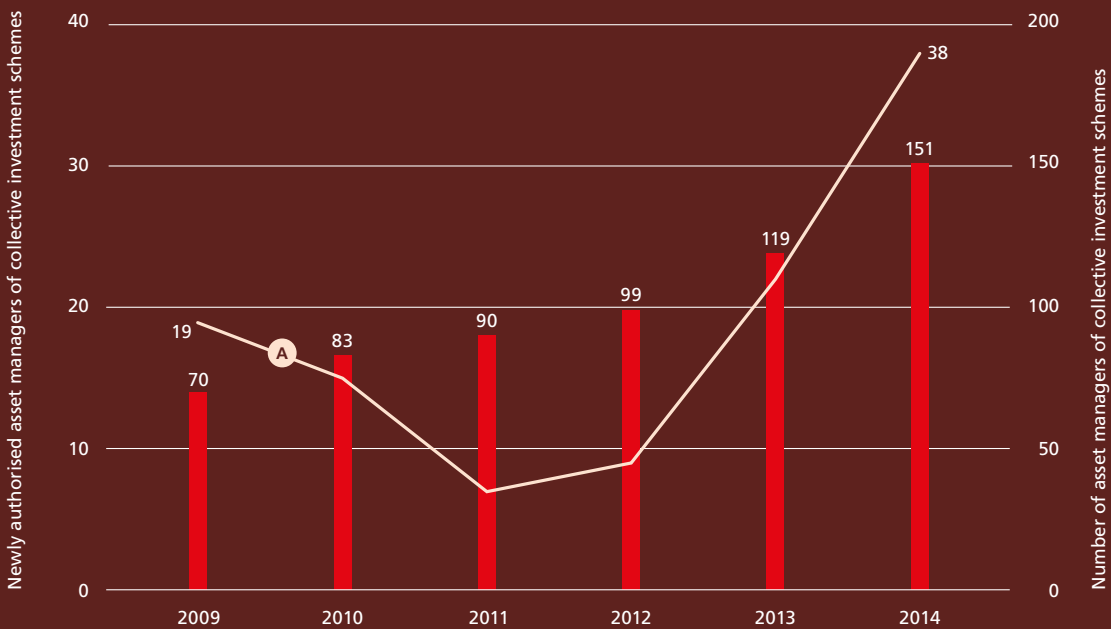


Source: Assets under Management: SNB Monthly Statistical Bulletin December 2014, D61 Swiss Collective Investment Schemes, for distribution in Switzerland, net assets at quarter-end (Q3 2014).

- Other funds for alternative investments
- Other funds for traditional investments
- Securities funds
- Real estate funds
- A Assets under management (CHF in billions)

The trend of recent years continued in 2014. Assets under management in collective investment schemes rose once again, as did the number of authorised open-ended collective investment schemes. Other funds for traditional investments continued to enjoy the strongest growth.

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



- Number of asset managers of collective investment schemes
- A Newly authorised asset managers of collective investment schemes

More licences were granted to CIS asset managers, partly due to changes in the legislation. The revised CISA that came into force on 1 March 2013 introduced a general licensing requirement for CIS asset managers. Existing asset managers have until the end of February 2015 to submit a licence application to FINMA.

In 2014, the Enforcement division conducted several large-scale parallel investigations into cases with an international element. The number of proceedings against ultimate management and employees of licence holders, in particular those focusing on business conduct, also increased.

FINMA's enforcement activities involve sanctioning violations of supervisory law and restoring compliance under procedural law.⁶⁹ FINMA takes enforcement action against licence holders and their employees when the normal supervisory process does not suffice to deal with identified or suspected shortcomings. To protect investors, FINMA also acts against companies engaged in unauthorised activity in the Swiss financial market.

Organisational aspects

FINMA's enforcement activities are directed by the Enforcement Committee (ENA),⁷⁰ which comprises members of the FINMA Executive Board. ENA has delegated to the Enforcement division the tasks of initiating proceedings regarding suspected unauthorised activities, ordering precautionary measures, issuing certain rulings related to insolvency and international cooperation and, most recently, issuing final rulings on unauthorised activities.

Focus on business conduct

The main focus of attention in 2014 was the business conduct of licence holders, especially in relation to market conduct, combating money laundering and due diligence obligations in cross-border services. FINMA identified a number of violations of supervisory law, initiated corrective measures, ordered restrictions on business operations and imposed further measures such as disgorging of profits, ordering industry and activity bans and publishing rulings issued. The unauthorised activities identified mostly involved accepting deposits from the public without the requisite licence, illegal securities trading and illegal financial intermediation. FINMA ordered the liquidation or bankruptcy of the companies in question and the preventive publication of measures taken such as cease and desist orders. The insolvency of Banque Privée Espírito Santo SA domiciled in Pully proved especially challenging.⁷¹

Complex cases

The Enforcement division conducted a number of large-scale proceedings against institutions in 2014, increasingly with an international element. These included BNP Paribas (Suisse),⁷² the Coop Bank because of market manipulation⁷³ and UBS because of manipulation of foreign exchange trading.⁷⁴ Some required extensive investigations of trading data to bring the abuse to light.

Cases of companies operating without a licence also have a growing international component, often involving global structures and holding companies abroad. The structures are increasingly diverse and multi-layered, sometimes including the legal activities of group companies. The division's work was, nonetheless, of uniformly high quality, despite having to conduct wide-ranging investigations into several major cases at the same time, sometimes with tight deadlines.

More proceedings against ultimate management and employees of licence holders

In 2014, FINMA conducted more separate proceedings against ultimate management and employees of licence holders owing to serious violations of supervisory law. Individuals were found responsible for misconduct either by engaging in manipulation themselves or by failing to comply with their due diligence and supervision obligations. Such proceedings are inevitably complex. For example, an industry ban may have a lasting adverse impact on the financial well-being of the individuals concerned, which makes them less likely to cooperate. FINMA's stricter approach is also reflected in its new enforcement policy, under which it takes targeted action against individuals responsible for serious violations of supervisory law.⁷⁵

⁶⁹ See "Enforcement policy", p. 30.

⁷⁰ See "Board of Directors and Executive Board", section on Enforcement Committee, p. 92.

⁷¹ See "Resolution proceedings at banks", section on Insolvency proceedings, p. 85.

⁷² See "Handling of US legal risks", section on Investigations and proceedings related to US legal risks, p. 81.

⁷³ See "Manipulation of exchange rates", section on Examples taken from enforcement practice, p. 83.

⁷⁴ See "Manipulation of exchange rates", p. 82.

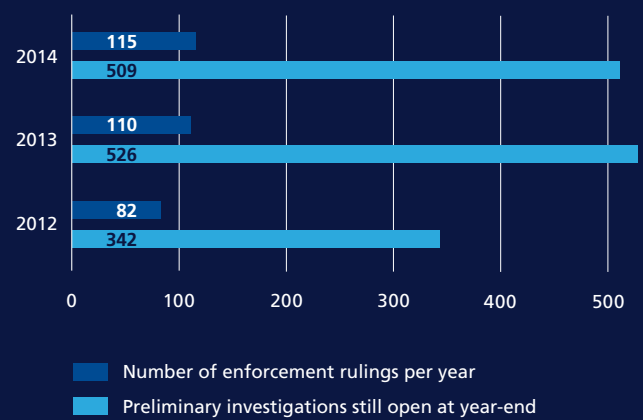
⁷⁵ See "Enforcement policy", p. 30.

Selected enforcement figures

Increasing importance of international cooperation

As cases involving both licence holders and unauthorised companies become more and more international, cooperation with authorities abroad plays a major role. FINMA also receives a steadily growing number of requests for assistance from foreign financial market supervisory authorities and Swiss prosecutors. In 2014, many of these again related to market supervision (insider trading, market manipulation, failure to comply with disclosure obligations) or individuals' compliance with business conduct requirements. The growing complexity of market supervision was reflected in the requests FINMA received.

Preliminary investigations and enforcement rulings⁷⁶



Although the Enforcement division conducted some exceptionally wide-ranging and complex proceedings in 2014 and had to deal with numerous appeals and an increased number of individual proceedings against employees of licence holders, the overall number of enforcement rulings remained practically unchanged compared with the previous year.

⁷⁶Discrepancies arising from the introduction of a new system were corrected retrospectively.

Enforcement statistics⁷⁷

	Outstanding as of 1 Jan. 2014	Proceedings initiated	Proceedings concluded	Outstanding as of 31 Dec. 2014
Enforcement proceedings	42	62	59	45
– in supervision of institutions	15	20	21	14
– conducted separately against employees of licence holders	12	26	16	22
– due to unauthorised activity	15	16	22	9
Preliminary investigations	526	765	782	509
Liquidations	28	16	6	38
– of licence holders	3	3	1	5
– of companies engaged in unauthorised activities	25	13	5	33
Bankruptcies	110	30	29	111
– involving licence holders	10	3	1	12
– of companies engaged in unauthorised activities	100	27	28	99
Recognition of foreign insolvency measures	12	7	1	18
– insolvency measures	12	7	1	18
– involving unauthorised activities	0	0	0	0
Recognition of foreign resolution measures	2	0	0	2
– involving licence holders	2	0	0	2
– involving unauthorised activities	0	0	0	0
Appeal proceedings	41	40	46	35
– Federal Administrative Court	37	29	38	28
– Federal Supreme Court	4	11	8	7

⁷⁷ Discrepancies arising from the introduction of a new system were corrected retrospectively.

Cases involving unauthorised activities by companies and individuals

EXAMPLE

Do crowdfunding models need a licence?

Crowdfunding is a way of obtaining funding from a large number of donors. Project developers use a crowdfunding platform to publicise their projects and seek funding for it. If platform operators collect the funds for their projects in their own accounts in order to pass them on to the developer should the project come about, the operator may be subject to licensing requirements under the banking and anti-money laundering legislation. If project developers seek to obtain funding through third-party capital (in particular loans), this may also require a licence under the Banking Act. To clarify the legal situation in this area, FINMA published a fact sheet on crowdfunding at the end of 2014.⁷⁸

EXAMPLE

Investing in trees

FINMA also conducted preliminary investigations into a number of companies offering the opportunity to invest in trees (such as tropical wood, olive trees or the like) and promising investors income from the sale of the timber or harvests. Depending on how they are structured, such business models may require a licence under the Banking Act. In two cases, FINMA had to initiate enforcement proceedings for illegal banking activity and appointed an investigating agent to examine one of the companies concerned. In other cases, the suspicion of unauthorised activity could not be substantiated, and proceedings were therefore discontinued.

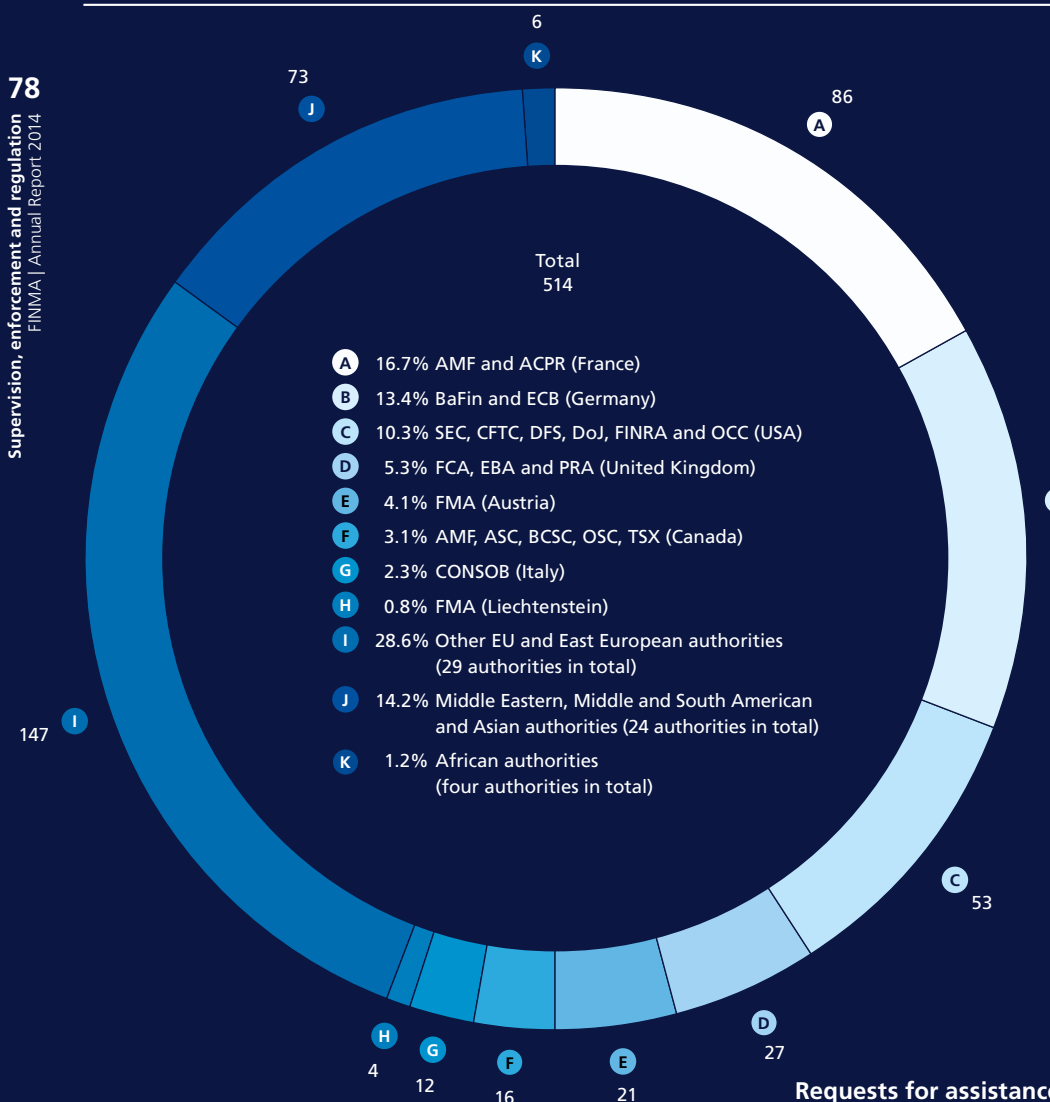
⁷⁸ See FINMA fact sheet "Crowdfunding" dated 1 December 2014 (<http://www.finma.ch/e/finma/publikationen/faktenblaetter/documents/fb-crowdfunding-e.pdf>).

International cooperation

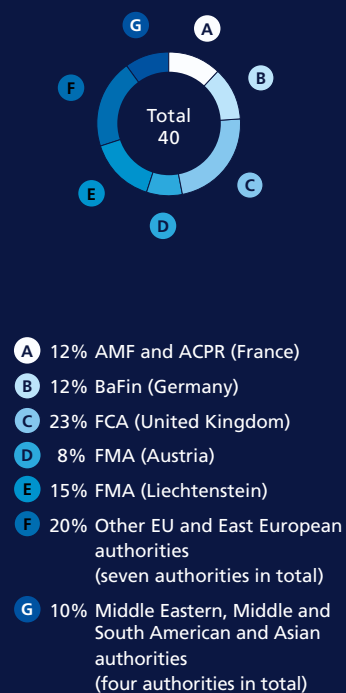
FINMA receives the third largest number of requests for international assistance of any authority worldwide. In the majority of cases it is able to comply with them, though the Swiss "client procedure", which leads to delays and requires those affected to be informed in advance, has prompted criticism.

Incoming requests by authority

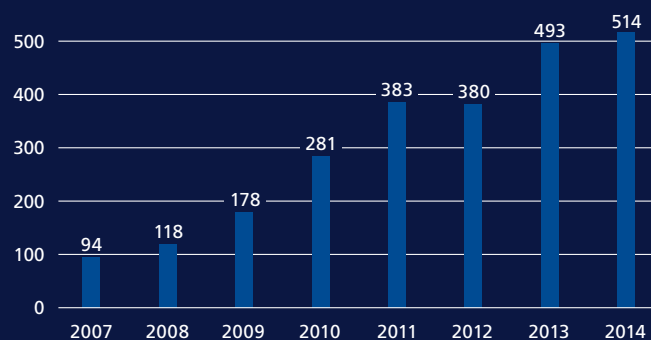
Supervision, enforcement and regulation
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Outgoing requests by authority



Requests for assistance per year (2007–2014)⁷⁹



⁷⁹ The figures for 2009 and 2010 were updated since the previous annual reports.

International cooperation statistics

In its ongoing supervision, FINMA works closely with foreign supervisory authorities. Providing those authorities with adequate assistance is central to the fulfilment of FINMA's statutory mandate and is increasingly key to preserving access to foreign markets for Swiss market participants.

Incoming requests

In 2014, FINMA received 514 requests for assistance from 80 foreign supervisory authorities. Of these, 362 concerned financial intermediaries and 2,240 related to clients. A total of 352 client procedures have been initiated to date and 25 rulings issued. Eleven of those rulings were the subject of appeals to the Federal Administrative Court, which has so far ruled in FINMA's favour in eight cases, with three still outstanding at the end of 2014. FINMA is in third place worldwide in terms of the number of requests received, reflecting the importance of Switzerland as a private banking centre. The statistics compiled each year by IOSCO confirm that FINMA handles the majority of requests to the satisfaction of the foreign supervisory authorities, despite criticism that prior information is given to the parties involved.

Outgoing requests

FINMA submitted 40 requests for assistance to foreign supervisory authorities in 2014, including nine to the UK's FCA, six to Liechtenstein's FMA, five to Germany's BaFin, four to France's AMF, one to the French authority ACPR, and 15 to 12 supervisory authorities in other countries.

Handling of US legal risks

In recent years, FINMA conducted a number of enforcement proceedings on the handling of US legal risks by licence holders, individual members of ultimate management and employees. Where necessary, it ordered measures to restore compliance with the law.

The US tax dispute underscored how important it is for licence holders – whether they are global with offices in the US, or active and domiciled only in Switzerland – to handle their legal risks in the US correctly. US rules are complex and sometimes apply even when the activities involved take place outside US territory. The sanctions threatened by US authorities in response to violations of US law can cause serious problems for the institution or financial group concerned.

Important issue for FINMA

FINMA has closely monitored the sharp rise in legal risks in the US in recent years. It has actively assisted authorised institutions and drawn their attention to the risks. In October 2010, FINMA formulated specific expectations for licence holders' management of legal risks in the US, and emphasised that this would also be reflected in its future enforcement practice.

FINMA also ordered some 20 institutions to conduct an independent internal review of their US asset management business, mainly where there were indications that the institution had a greater risk exposure in the US.

Enforcement proceedings against 12 institutions

The investigations revealed a range of issues. Some banks were deliberately adopting a very risky approach to untaxed US client assets; others were failing to exercise the necessary caution. FINMA initiated enforcement proceedings in a total of 12 cases in which there were indications that management of US legal risks was inadequate under Swiss supervisory law. Nine of these were concluded with a ruling ordering corrective measures. Two were discontinued as the institution concerned surrendered its banking licence, while one was still open at the end of 2014.

Proceedings and business conduct letters against individuals

In line with its prudential approach to supervision, FINMA concentrates on addressing shortcomings identified at licence holders. Enforcement proceedings against individuals are initiated only where there are clear indications that they are personally responsible for violations. Additionally, industry bans do not apply to circumstances that occurred prior to 1 January 2009. FINMA initiated proceedings and ordered measures against ultimate management and employees of licence holders in a small number of cases related to violations of supervisory law in the US business. FINMA would also initiate proceedings against other individuals should they wish to assume a position at a licence holder that is subject to business conduct requirements.

Investigations and proceedings related to US legal risks

EXAMPLE

Cross-border business with private US clients

Between 2011 and 2012, FINMA conducted enforcement proceedings against Credit Suisse. It found that Credit Suisse had violated its duty to identify, limit and monitor the legal and reputational risks involved in the US business, exposing itself and the entire financial group, as well as its employees, to unduly high risks in the US. This also constituted a violation of the business conduct requirements for institutions under Swiss supervisory law. FINMA ordered a number of corrective measures that the bank has since implemented. On 20 May 2014, Credit Suisse announced that it had reached an agreement on the matter with various US authorities. The agreement with the US Department of Justice involved a guilty plea. The bank was required to pay a total of USD 2.8 billion to the US authorities.

EXAMPLE

Transactions with business partners subject to US sanctions

In 2014, FINMA conducted enforcement proceedings against BNP Paribas (Suisse) SA. It concluded that the bank had seriously violated its duty to identify, limit and monitor the risks associated with transactions involving business partners in countries subject to US sanctions, thereby exposing itself to unduly high legal and reputational risks and violating requirements for adequate organisation under Swiss supervisory law. FINMA therefore imposed various corrective measures on BNP Paribas (Suisse) SA. On 1 July 2014, the French parent company BNP Paribas (Group) announced an agreement on the matter with various US authorities. This involved a guilty plea by the group and payment of a fine totalling USD 8.9 billion to various US authorities.

Manipulation of exchange rates

FINMA conducted enforcement proceedings in which it identified foreign exchange manipulation at UBS. It imposed a number of measures, including ordering the bank to disgorge a total of CHF 134 million. FINMA also investigated misconduct in foreign exchange trading at three other Swiss banks.

In summer 2013, reports began to surface alleging market manipulation and secret agreements between banks related to foreign exchange trading. At the end of September 2013, UBS informed FINMA that a targeted internal inquiry had revealed possible indications of manipulation. One month later, FINMA launched an investigation into a number of Swiss financial institutions. This turned into a major operation, owing to the complexity of the material, the large quantities of data involved and the need for close coordination with authorities in Switzerland and abroad.

Proceedings against UBS

In October 2013, FINMA initiated enforcement proceedings against UBS on the grounds of suspected market abuse in foreign exchange trading. It appointed an investigating agent to examine market conduct at the Foreign Exchange division of the UBS Investment Bank in Zurich, as well as to scrutinise the internal management processes and internal organisation of controls. FINMA concluded its proceedings with a ruling on 11 November 2014.

FINMA found that over an extended period of time the bank's employees in Opfikon (Zurich) had repeatedly at least attempted to manipulate foreign exchange benchmarks. In addition, employees acted against the interests of their clients. Risk management, controls and compliance in foreign exchange trading were inadequate. FINMA therefore concluded that UBS had severely violated the requirements for proper business conduct by breaching internal control requirements and through the misconduct manifested by its employees.

FINMA ordered UBS to disgorge illegally generated profits and avoided losses amounting to CHF 134 million. It also imposed restrictions on variable compensation at the Investment Bank and measures to improve organisation and risk management in foreign exchange trading. In addition to the steps taken by UBS itself, FINMA ordered a first set of immediate actions in April 2014. Finally, FINMA appointed a third party to check the full implementation of the measures.

FINMA also initiated enforcement proceedings to establish the extent to which 11 members of staff and managers at UBS were responsible for the manipulation.

Supervisory measures against other banks

FINMA also investigated misconduct in foreign exchange trading at three other Swiss banks. In each case, it found that various traders had communicated with other institutions. However, the investigations did not find any evidence of market abuse, and no enforcement proceedings were initiated. The banks in question had already taken corrective measures themselves, whose implementation FINMA is monitoring.

Examples taken from enforcement practice

EXAMPLE

Supervisory law sanctions against market manipulation

Market manipulation was a focal point of FINMA's market supervision in 2014. It conducted a number of investigations into issuers trading in their own equity securities. FINMA Newsletter 52 (2013)⁸⁰ sets out FINMA's expectations on what it considers a good standard to maintain in trading own equity securities to make liquidity available under the new market manipulation provisions. In the case of the Coop Bank, FINMA issued a ruling that the bank had manipulated its share price by making selective, targeted support purchases over a number of years. The bank was ordered to take measures. Other significant investigations related to cases of order book manipulation involving entering large numbers of orders, thereby sending misleading signals and manipulating the market.

EXAMPLE

Industry and activity bans against ultimate management and employees of authorised institutions

FINMA issued an order banning the former CEO of the Coop Bank, who was principally responsible for market manipulation by the institution, from acting in a management capacity for three years. Industry and activity bans resulting from market manipulation were also ordered against a member of ultimate management and two client advisors at another bank. FINMA also intervened against ultimate management and employees of authorised institutions in other areas, imposing industry bans on two senior bank employees who had seriously violated their due diligence and supervision obligations owing to a business relationship with an external asset manager. A further ban was imposed on a former member of ultimate management who had been personally responsible for a bank's cross-border client business model that violated due diligence obligations.

⁸⁰ 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>).

Resolution proceedings at banks

FINMA intervenes when banks are at risk of insolvency, ordering resolution proceedings where there is a reasonable prospect of their success. This requires the bank to draw up a resolution plan.

Where the legal conditions are met, FINMA is responsible for ordering insolvency measures for banks. It can impose protective measures, carry out resolution or order bankruptcy.

Considerations when ordering resolution

FINMA is not obliged to wait for a formal declaration of insolvency, but can intervene when a bank is at risk. There is no clearly defined, objective point at which this occurs. FINMA has substantial discretion in assessing if or when the threat of insolvency exists and what measures it will impose. The issues it considers include whether, on the basis of specific and documented circumstances, grounds for insolvency are more likely than not to occur soon, and will lead to major problems that the bank will not be able to remediate itself. Finally, the benefits of FINMA intervention must outweigh any disadvantages for the bank's position that may result from an insolvency measure.

Resolution proceedings can also only be initiated if resolution is practicable within the necessary time frame and, once completed, the bank will be able to comply with the licensing and other legal conditions. There must be the prospect that creditors will be better positioned as a result of resolution than they would be in bankruptcy. Another consideration is that resolution proceedings under the Banking Act can normally be carried out rather quickly.

Consequences of resolution measures

When resolution proceedings are initiated, FINMA immediately makes this public and appoints a resolution agent, or assumes this function itself. The resolution agent's primary task is to draw up a resolution plan setting out the basic elements of the resolution, the future capital structure and the business model of the bank. The minimum requirements for the plan's content are set out in detail in the law, and are high overall. If action needs to be taken that affects the rights of those involved, in particular conversion of debt into equity or reductions of claims, the rights of equity investors and creditors of contingent convertible capital are considered first. Only if those measures do not suffice may other creditors' rights be curtailed.

Once FINMA has approved the resolution plan, the measures take effect immediately. If the information required for the plan is available in advance, resolution proceedings can also be initiated.

Insolvency proceedings

EXAMPLE

Progress in major bankruptcy proceedings

The most important settlement in the Lehman Brothers Finance AG bankruptcy proceedings took effect on 21 March 2014. Further settlements substantially reduced the number of outstanding appeals against the schedule of claims. The second instalment payment for the claims admitted was made in June and the third in December. In the bankruptcy of Aston Bank SA, the Ticino public prosecutor's office released a large sum of money to the bankrupt estate in April 2014. In a ruling dated 30 April 2014, FINMA again appointed an external bankruptcy liquidator. The protected deposits were paid out by September 2014, and finalisation of the schedule of claims also began.

EXAMPLE

Bankruptcy proceedings against Banque Privée Espírito Santo SA

In July 2014, in response to increasing financial problems at the Portuguese Espírito Santo Group, the Swiss-domiciled Banque Privée Espírito Santo SA sold off significant parts of its client portfolios to CBH Compagnie Bancaire Helvétique SA and entered voluntary liquidation. These measures substantially reduced its total assets and number of clients. FINMA subsequently found that the bank was over-indebted and initiated bankruptcy proceedings against it on 19 September 2014. One of the first steps taken by the appointed bankruptcy liquidator was to repay the privileged deposits. It was not necessary to involve the depositor protection scheme. Enforcement proceedings initiated by FINMA against the bank at the end of August 2014 relating to distribution of the group's financial products were still under way at the end of 2014.

At a glance: enforcement measures

The Financial Market Supervision Act has granted FINMA greater enforcement powers than its predecessor authorities. The charts below show how FINMA uses these powers.

Licence holders

Measures against licence holders

- A** Appointment 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 members of ultimate management (IV)
- F** Disgorgement of profits
- G** Licence withdrawals
- H** Liquidation /bankruptcy proceedings
- I** Publication of rulings

Measures imposed against ultimate management, owners and employees

- A** Declaratory ruling / reprimand
- B** Suspension and removal (V)
- C** Industry and activity bans (VI)
- D** Disgorgement of profits

Unauthorised activities

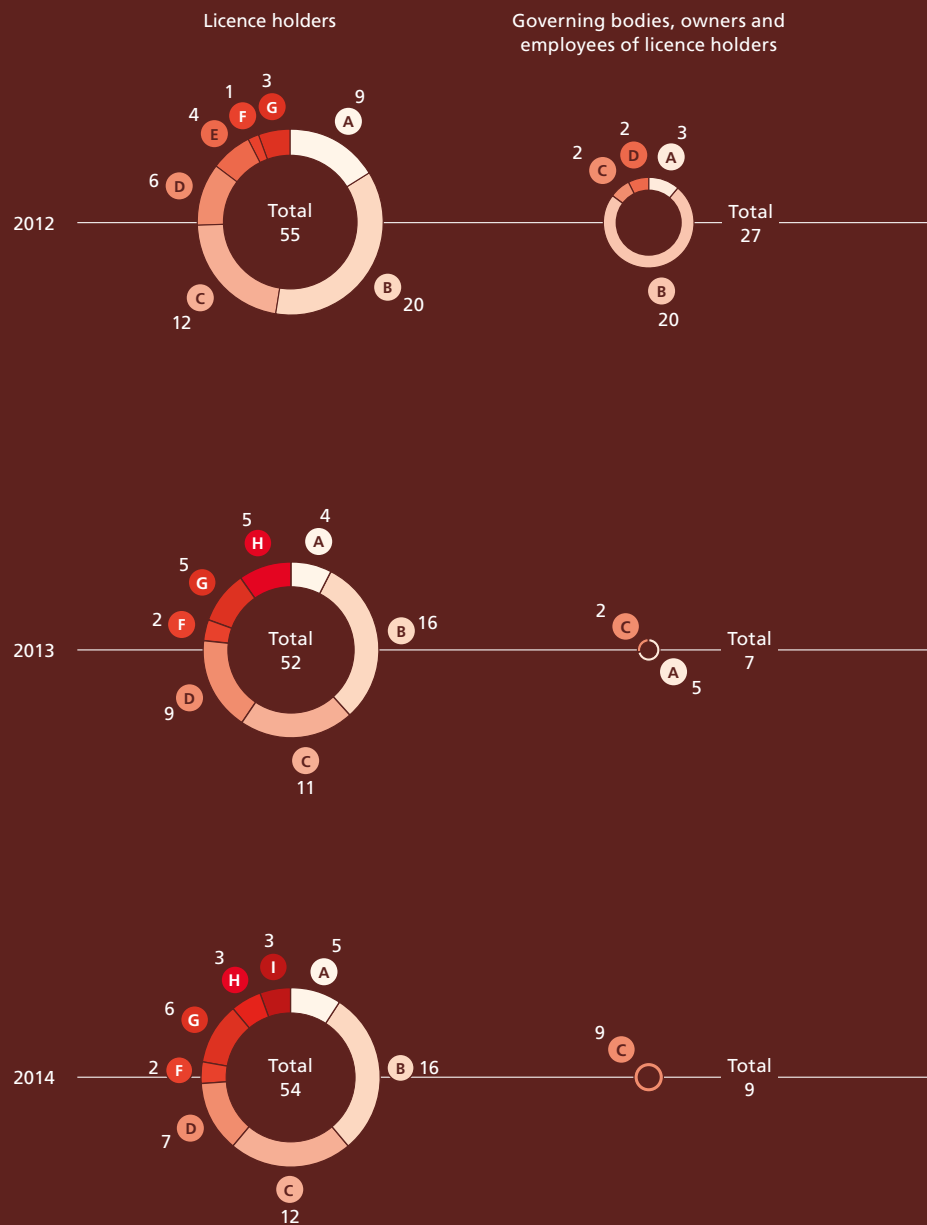
Measures against companies

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

Measures against individuals

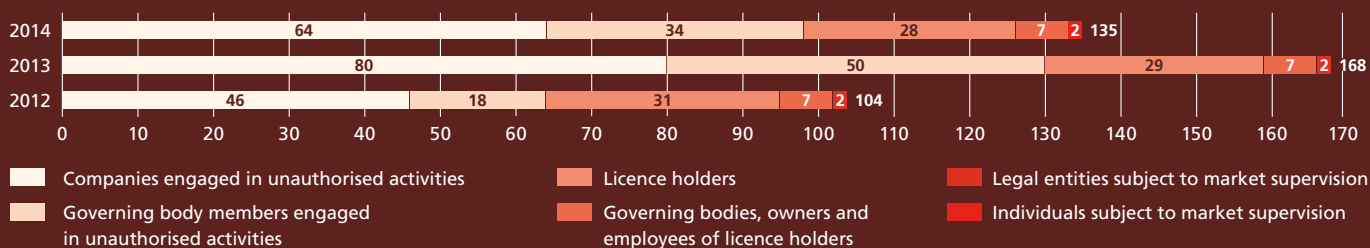
- A** Declaration of involvement in unauthorised activities
- B** Cease and desist orders
- C** Publication of rulings (VIII)

Type and number of measures: licence holders



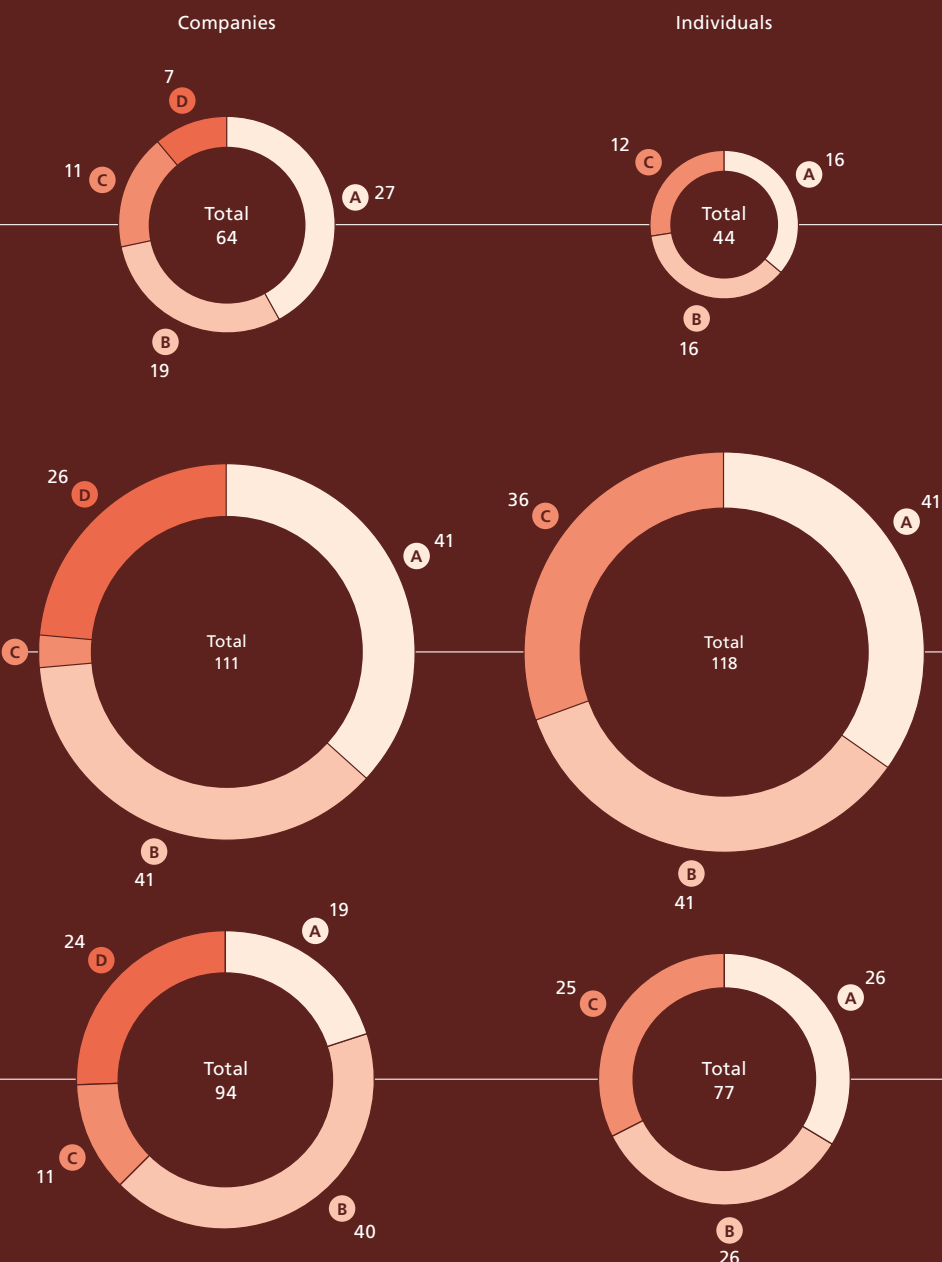
Number of addressees of rulings according to sector and parties affected

In terms of authorised and unauthorised activities, FINMA issues enforcement rulings against companies and individuals that are subject to financial market supervision. This chart shows the category and number of enforcement proceedings between 2012 and 2014.



Although the number of rulings was almost the same as in 2013,⁸¹ the number of addressees issued with rulings involving authorised and unauthorised activities was lower in 2014. On average, there were fewer rulings directed at a number of parties (legal entities and individuals) simultaneously.

Type and number of measures: unauthorised activities



Method of counting

The number of parties 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.

Individual categories

- I Ordered as a precautionary measure during an investigation
- II Rulings based on Article 31 FINMASA
- III In a final ruling on adopting controls to implement special conditions
- IV Number of licence holders affected
- V Number of ultimate management members affected, 17 of which were involved in the same proceedings in 2012
- VI Under Article 33 FINMASA and Article 35a SESTA
- VII If initiation of bankruptcy proceedings followed a liquidation already ordered by FINMA, this was not counted again in this chart
- VIII Generally cease and desist orders; see Federal Administrative Court decision 2C.30_2011/2C.543_2011 of 12 January 2012 consid. 5.2.2.

⁸¹ See "Statistics", section on Enforcement rulings, p. 109.