



How investors can protect themselves against unauthorised financial market providers

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1 Key points

FINMA has three aims in publishing this report:

- Firstly, the report provides information on FINMA's approach to combating the activities of unauthorised and fraudulent financial intermediaries.
- Secondly, it draws attention to ways in which illegal financial intermediaries operate and the methods they use.
- And thirdly, it encourages investors to consider investment decisions carefully before they make them. No one should invest in a financial product that they do not understand (see chapter 5 "[Ten tips for protecting yourself against unscrupulous providers](#)").

What is FINMA's remit and function?

- Collective customer protection: FINMA is tasked with protecting investors, creditors and policyholders and ensuring the proper functioning of the financial markets. Customer protection in this context means the protection of customers as a group: FINMA protects the totality of investors and creditors, not individuals. The financial health (solvency) of supervised companies is key, also for customers.
- Enforcement of authorisation requirements in the financial market: FINMA acts as a kind of "border guard" for the Swiss financial market. It must ensure that activities which require authorisation under financial market legislation are not carried out by providers who, whether deliberately or otherwise, have failed to obtain this authorisation and are therefore operating unlawfully in the financial market.
- Procedure under administrative law: Under financial market law, FINMA is not able to protect individual investors or insured persons. In many cases, investors will already have suffered losses before FINMA can intervene, and the funds invested will have been lost in whole or in part. Investors must seek compensation from the providers in question under civil or criminal law.
- Investigations and proceedings concerning unauthorised market participants: Authorised financial institutions are subject to constant monitoring by FINMA. As far as potentially unauthorised providers are concerned, FINMA does not actively monitor the financial market. It does, however, intervene if there are sufficient grounds to suspect unauthorised activities. Every year, FINMA investigates hundreds of such cases and takes appropriate action against

unauthorised market participants. While information from investors and creditors is important for FINMA, there must be specific evidence that a breach of financial market law has occurred. As a matter of principle, FINMA does not respond to broadly formulated questions regarding a company's integrity.

- Pressing criminal charges: Anyone who pursues an activity requiring authorisation under financial market law but does not have this authorisation is liable to prosecution. In this case FINMA files a complaint with the Criminal Law Division of the Federal Department of Finance, which is responsible for prosecution.

What should investors look out for?

- Warning against promises of unrealistically high returns: The returns promised by unauthorised providers are usually much higher than those offered by authorised and hence supervised providers and are rarely, if ever, realised. In an investment environment in which traditional products such as savings accounts, government bonds or even equities and funds offer meagre returns, the promise of high returns can be very tempting. There is a danger that investors may fall victim to fraudulent providers.
- Careful analysis of providers and offers: Investors should make their investment decisions with due care and attention. They should carefully analyse providers and their offers – and the associated risks – before coming to a decision. Chapter 3 of this report contains ten tips to help investors identify and avoid illegal and fraudulent providers and offers.
- Sources of information on the FINMA website: The "FINMA Public" section of the FINMA website contains information about unauthorised financial service providers. It also contains information about financial literacy and a warning list of companies and individuals who may be carrying out unauthorised services.

2 No return without risk: two case studies

People invest their money in the expectation of generating a return, but there is no such thing as risk-free investment.

For some time now, many asset classes have generated practically no return. Against this background of historically low interest rates, investors may be tempted to entrust their money to providers who promise significantly higher returns. However, the general rule is: the higher the return, the higher the risk. Temptingly high returns are often a sign of a dubious provider. In other words, the higher the promised returns, the more closely investors should scrutinise offers and providers before making an investment decision.

When investors lose money, it is usually because they have entrusted their capital to a company which is operating illegally. This usually takes the form of loans or the sale of worthless shares. Illegal providers – and fraudsters in particular – are extremely inventive and are constantly working on new schemes for relieving unwary investors of their money. The two real-life case studies below illustrate how unscrupulous financial service providers abuse the trust of investors. We have changed the names of the companies involved.

Geothermal power stations as a sales angle: the misleading advertisements of XYZ Crash AG

According to its literature, XYZ Crash AG was an investor in projects relating to the construction of geothermal power stations in Germany. To attract predominantly German investors for these projects, the company employed a large number of intermediaries, staged costly promotional events and advertised extensively through an attractive website. Potential investors were promised very high returns. From its base in Switzerland, XYZ Crash AG accepted funds totalling several million francs. However, the investments proved worthless and investors lost practically all the money invested.

XYZ Crash AG continued to assert that the first power station would come online in 2013. Customers who placed their trust in XYZ Crash AG invested the surrender values of their pension saving and mortgage contracts, with XYZ Crash AG promising them a multiple of what they could expect to receive if they held the contracts to maturity. In total, XYZ Crash AG raised over 50 million francs from more than 4,000 investors. Even though the company's investment strategy contained no such proposals, much of this money then was channelled to a subsidiary which then passed on ten million dollars to another company as an unsecured loan.

Following complex investigations in Switzerland and abroad, FINMA liquidated several companies in Switzerland, including XYZ Crash AG. FINMA served an advertising ban on the leading figures at the company; this ban was published on FINMA's website for five years.

The machinations of Main Capital Solutions

Henning Blechs Schmid, the owner of Main Capital Solutions, used a Bermuda-based company, which he owned, to buy shares in a number of small companies. He then sold these to investors through a specially founded company with its registered office in Delaware, a US tax haven. What investors did not know was that Blechs Schmid was selling them the shares at a much higher price than he had paid for them, even though the purchase contracts specifically stated that investors would pay the original purchase price for the shares and that Blechs Schmid would only receive 20% of any net profit on the investment.

Once this fraud was detected, the Zurich public prosecutor's office began proceedings against Blechs Schmid and froze the remaining assets. In this case FINMA was able to rely on documents seized by the public prosecutor during a search of Main Capital Solutions' offices in Zurich. It rapidly became clear that the Bermuda-based company was operating out of the Zurich offices of Main Capital Solutions and not from Bermuda. In other words, Main Capital Solutions and the Bermuda-based company were carrying out unauthorised issuing activities from within Switzerland, raising around 60 million francs from around 30 individuals.

FINMA ordered both companies to be liquidated. Since they were illiquid and overindebted, FINMA launched bankruptcy proceedings. In addition, FINMA banned Henning Blechs Schmid, the company's owner, from carrying out any activity requiring authorisation. The ban was published on FINMA's website for a period of five years.

There are many examples of companies which persuade investors to part with their money by means of attractive offers and apparently marvellous returns. It is impossible to overstate the risks posed by such offers which are, of course, too good to be true. Often they turn out to be pyramid schemes or other embezzlement and fraud scenarios promising high returns. Initially, the promised returns may actually be paid out in order to bolster investor confidence. In the end, however, the investments are not repaid. By the time the case becomes known and the authorities become involved, most of the assets have already disappeared. Investors in such schemes often end up losing most of their money. It is then up to the criminal prosecution authorities to take appropriate legal action against those responsible.

3 Tactics used by unauthorised financial market providers

3.1 The sale of worthless shares as a recurring motif

The sale of worthless shares always follows a similar pattern.

What types of companies are usually involved?

FINMA is regularly made aware of cases in which aggressive methods are used to sell shares in alleged start-up companies. The companies in question are often allegedly active in particularly attractive areas of the economy such as alternative energy (wind and solar power), commodities (gold mines, crude oil etc.) or medical technology.

What should potential investors look out for in terms of the purchase price and commission?

The purchase price of the (worthless) shares is generally high compared with their face value. In addition, the sellers usually also charge a substantial commission.

How are potential investors attracted?

The worthless shares are very intensively advertised and marketed. Potential buyers are frequently contacted by telephone and put under massive pressure to buy. The telephone salesmen sometimes operate from foreign call centres. In cold calling scams of this kind, a salesman will claim for example that the company is about to launch an IPO which will increase the value of the shares exponentially. Impressive websites and expensive high-gloss prospectuses from the companies are also used. These are often wrongly interpreted by investors as an indication that the company is a serious proposition.

What usually happens with the invested money?

Usually, the companies involved in scams of this kind are no more than shells which have never been operationally active. Usually the money raised is immediately withdrawn from the companies, most of which are liquidated after a certain time. Experience has shown that investors generally suffer a total loss.

Are these fraudsters ever brought to justice?

The individuals behind schemes of this kind usually operate through front men in Switzerland, which means that it is difficult to hold them to account under criminal or financial market law.

How can investors protect themselves against making the wrong investment decisions?

Although any company may sell its own shares, many other activities in the field of share trading require authorisation from FINMA. It is often unclear to investors whether a company needs to be authorised to sell shares or not. Anyone considering buying shares in unknown start-up companies should therefore look at the proposition very carefully. The first port of call should be the Commercial Register. If the company name and registered office change frequently or if there have been numerous capital increases involving shares with very small face values (often referred to as "penny stocks"), this can be a warning sign. We also recommend reviewing the company's financial data to find out whether the share price in any way reflects a corresponding real value in the company.

3.2 Shares with a very small face value as the basis for deception

An over-the-counter listing is often confused with a full stock exchange listing.

The shares that are being sold are sometimes listed on the over-the-counter market. In contrast to a full stock exchange listing, this over-the-counter listing on a German exchange does not mean that the shares are monitored by a stock exchange. The prices of shares with an over-the-counter listing can change extremely rapidly and by large amounts, especially if they are penny stocks with a negligible face value. These shares may be impossible to sell on if they suffer a major fall in price.

3.3 A Swiss security number as a "guarantee"

The fact that an investment product has a security number is no guarantee.

A security number is a unique identifier which is assigned in Switzerland by SIX Financial Information for identifying securities and financial instruments. However, the security number merely confirms that the security in question exists. It does not guarantee that a product is a sound investment proposition. Even an investment fund which is domiciled in the Cayman Islands or Antigua and not authorised for sale in Switzerland can have a

Swiss security number, but the fact that it has a Swiss security number is no guarantee that it will be possible to sell the fund units at a later date.

3.4 Mines – including gold mines – and precious metals as lures

Special caution should be exercised in the case of companies purporting to sell precious metals; not everything that glitters is gold!

It can be difficult for investors to find out if the company in question is operational in any real sense. The internet is open to all, and some companies cannot cover the cheques that their attractive websites write. It is difficult to assess the commercial soundness of mining operations in remote locations. Dubious companies often offer gold and platinum or securities based on these mined precious metals. However, after the investor has purchased the precious metals, which many people still regard as essentially secure, they simply never materialise.

3.5 Sustainable investments as bait

Many providers appeal to the environmental conscience of potential investors.

There is a wide range of sustainable investments, including reforestation projects in South America or Romania and wind farms in Poland. In selecting these themes the providers seek to tap into the desire of many investors to make environmentally useful investments.

In simple terms, whether a reforestation project constitutes an activity requiring authorisation or not depends on whether the customer is assigned a clearly defined number of trees as his or her property which could then be allocated to the customer if the provider becomes bankrupt. If this allocation is not possible and the investor does not therefore own any actual trees, the investment may be a service requiring authorisation or a financial product requiring authorisation. Obviously, it is not easy for investors to assess the situation in each individual case. Investors who are uncertain are advised to contact FINMA (questions@finma.ch) to find out whether the company is authorised or not.

3.6 Debt restructuring as an illusory solution

The services of debt restructuring companies often turn out not to offer a real solution to financial difficulties.

In the financial market there are companies offering to carry out private debt restructuring. Sometimes they ask their customers to make a substantial upfront payment, and the promised loans for settling the debts are then not forthcoming. In such cases it is advisable to contact cantonal debt advice services and to avoid signing contracts with private debt restructurers.

3.7 Cloned websites: a trap for the unwary

FINMA is increasingly seeing counterfeit copies of the websites of authorised companies.

Scammers have become very skilled in producing websites which very closely resemble the websites of legitimate companies. In the case of websites of companies claiming to be authorised by FINMA, it is therefore advisable to check whether they are in fact the company's website or merely a copy. The website may have been created by an illegally active financial operator who is using the company's name with fraudulent intent. Contact information (phone number and email) or URL address can be used to identify a cloned website and help investors to avoid falling into the hands of fraudsters.

3.8 Offers to recoup losses: another underhand trick

Sometimes investors who have suffered financial losses leap out of the frying pan into the fire. Out of desperation they fall into another trap.

There are financial operators who play on the hopes of investors who have already suffered a loss through fraud. Special care must be taken when someone approaches a victim of fraud professing to know how he or she can recoup their losses. There seem to be lists of the names of such victims circulating in the market and being sold to new fraudsters. Investors who have already suffered losses usually lose out for a second time, either by putting in new money, exchanging the worthless shares or cryptocurrencies for other tempting-sounding products, or paying fees for services that are not subsequently provided.

3.9 Binary options: a supposed source of quick profits

Offers promising quick profits are generally associated with high risks. This is also true of binary options.

Platforms on which so-called "binary options" are traded attract investors by offering quick profits with a small initial investment. Binary options enable investors to bet on the future value or price of a stock, commodity, currency or index. This is a market which includes both legitimate operators and large

numbers of black sheep. The providers of binary options are often domiciled abroad, and not all of them are authorised and supervised in their home country. It is therefore advisable to look closely at providers before deciding to use their services. To avoid losses, investors should take the time to consider whether a product of this kind fits their financial risk profile.

3.10 Network marketing: a dangerous multiplication tool

It is not uncommon for customers to be encouraged to recruit other customers. By doing so, they may unwittingly make themselves liable to prosecution.

It is understandable that dubious financial services providers should want to harness the growing power of social networks to their own ends. Marketing systems in which investors recruit other potential investors via social media and personal networks or refer to corresponding offers at road shows are viewed very critically by all supervisory authorities. Unauthorised financial service providers often use these methods to publicise their offerings and quickly attract large numbers of followers. Investors should be alert to the fact that such offers may be pyramid schemes. Often only the first few participants gain any actual benefit, while the others get no return or even lose their investment. It is also advisable to clarify whether one may in fact be committing a criminal offence by recruiting other investors who then lose their money

Fraudsters use a wide variety of methods and tactics, and their repertoire is constantly being expanded and modified to reflect the latest advances in technology. The watchword in all these cases is the same: If you are in any doubt, steer clear of transactions and offers of this kind.

4 Other activities requiring authorisation

4.1 Virtual currencies (e.g. bitcoin)

More and more goods are being bought online. This trend has now been followed by virtual cash flows: it seems as if they spring up like mushrooms.

For some time now, cash flows have no longer run exclusively through conventional channels such as credit card companies and specialised payment service providers (e.g. PayPal). More recently, so-called virtual currencies (e.g. bitcoin and ether) have emerged. The trade in these cryptocurrencies takes place on a completely decentralised basis, independent of state institutions and banks. Bitcoin, for example, can be

exchanged for real currencies such as euros or dollars on bitcoin exchanges.

Increased risk of fraud, loss and money laundering with virtual currencies

One feature of virtual currencies is that special technical measures are required to identify one's trading partner. As a result, these currencies play a special role in the black economy. Payments made using virtual currencies cannot be reversed. Once the funds have been transferred, they cannot be refunded by a central authority. If the user does not know or cannot identify his trading partner, it is also not possible to contact or sue the seller of the virtual monetary units in the event of problems. Furthermore, the exchange rates of virtual currencies are subject to substantial fluctuation. For these reasons, trading in virtual currencies with unauthorised dealers presents increased risks of fraud, money laundering and outright loss.

Regulatory considerations

Financial market law contains no specific provisions relating to virtual currencies. Nevertheless, trading in bitcoin or other virtual currencies may be subject to authorisation depending on the specific business model.

Companies with business models which involve buying and selling virtual currencies in exchange for legal tender on a commercial basis or which offer platforms on which virtual currencies are exchanged or traded are subject to the Anti-Money Laundering Act (AMLA). Businesses that fall into this category must either affiliate to a FINMA-accredited self-regulatory organisation (SRO) or apply to FINMA for a licence as a directly subordinated financial intermediary (DSFI).

If virtual currencies are accepted with a promise to return them at a later date, this may also make the acquisition of a banking licence necessary. The regulations here essentially apply in the same way as they would to the acceptance of legal tender. Virtual currencies can also constitute public deposits.

Beware of multilevel marketing around virtual currencies

In recent times FINMA has increasingly observed companies which offer to sell investors their (own) virtual currency with the alluring prospect of price gains similar to those experienced in the past with bitcoin. Virtual currencies of this kind are often tied into a so-called "multilevel marketing system". Under this system, if Investor A recruits new investors B and C, he receives commission. If investors B and C in their turn recruit new investors, investor A benefits again. However, exactly how the business model works is often unclear. The virtual currencies in these cases, unlike bitcoin, are often not

managed in a decentralised way. If the companies offering these currencies enter into (conditional) repayment commitments vis-à-vis investors on a commercial basis, they must be authorised by FINMA under the Banking Act. There is often also the possibility that these companies are engaging in activities which are subject to supervision under the Anti-Money Laundering Act. FINMA therefore recommends that potential investors in virtual currencies examine these investments carefully and only enter into them if the provider's business model is comprehensible and transparent. Fraudsters may simply want to exploit the hype around virtual currencies.

4.2 Initial coin offerings (ICO)

Driven by the hype about cryptocurrencies and the associated blockchain technology, a new type of corporate financing using ICOs has developed. Investments in such ICOs involve substantial risks for investors, including total loss.

Capital is procured publicly in digital form on the basis of blockchain technology by means of Initial Coin Offerings (ICO) or Token Generating Events (TGE). The term "ICO" is based on the term "IPO" (Initial Public Offering). In an IPO on the stock exchange, investors buy shares in a company or receive voting rights, but this is not usually the case with ICOs. Here the cash providers, who usually transfer their funds in virtual currencies, receive blockchain-based "coins" or "tokens" which are linked to a specific project or business of the ICO organiser.

ICOs can differ greatly in terms of their technical, functional and economic implementation. This means that it is not possible to state definitively whether ICOs are subject to financial market law requirements or not. It can also be difficult for investors to judge how the invested funds are used by the ICO organiser and which technology or company purpose is to be financed with them.

Investors must be aware that investing in an ICO is a highly speculative venture. Information about the projected returns and prices of the issued coins or tokens is often unreliable. Moreover, in view of current market developments, FINMA cannot rule out the possibility that ICO activities may be fraudulent.

FINMA has published guidelines on the legal classification of ICOs (<https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung/>).

4.3 Crowdfunding

FINMA has noticed that individuals seeking finance and investors are increasingly turning to online platforms instead of banks.

Internet-based crowdfunding platforms act as intermediaries between borrowers and lenders on a private basis. Those who are seeking to raise capital provide information on the crowdfunding platform about the purpose of their venture, how much capital they want to raise, and how much interest they are willing to pay. Anyone who is interested in investing on these terms can then make an offer via the platform.

Do crowdfunding platforms have to be authorised?

Since there is such a huge variety of crowdfunding platforms, there is no easy answer to the question of whether such platforms require authorisation. FINMA must review each business model on a case-by-case basis. In general, if the money raised is only brokered via a platform and is not pooled in an operator's accounts, the platform operator is not subject to any requirement under financial market law. However, those who accept funds via a crowdfunding platform (e.g. borrowers) and fail to comply with the requirements of the Banking Ordinance (BO) must be careful. This can lead to an authorisation requirement (particularly under the Banking Act). A revised version of the Banking Ordinance which entered into force on 1 August 2017 introduced relaxations which are also relevant to crowdfunding. The maximum transfer period for deposits has now been extended to 60 days, which will benefit the platforms. Previously it was seven working days. Furthermore, under certain conditions, companies can now accept deposits of up to one million Swiss francs without authorisation, irrespective of the number of depositors.

Potential investors should be aware that they are acting at their own risk. They are providing funds under private law; interest paid on the capital and the repayment of the capital as such depend on the intentions and financial circumstances of the capital recipient. Investors should therefore be well informed about the person to whom they are lending. The general principle applies: the higher the promised returns, the higher the risk.

4.4 Online foreign exchange dealers

Ever since 2008, foreign exchange dealers domiciled in Switzerland have been required to hold a banking licence.

At that time, all foreign exchange dealers had more than a year in which to cease operations or submit a licence application to FINMA. Since the threshold for a banking licence is high, most foreign exchange dealers ceased operating in Switzerland. However, FINMA has received increased volumes of customer complaints regarding non-Swiss foreign exchange dealers offering their services via online platforms. These foreign companies frequently have a contact address in Switzerland and use Swiss bank accounts for their transactions.

De facto branch offices in Switzerland

The business model described above can constitute a de facto branch office of a foreign company which must therefore be authorised by FINMA. If FINMA becomes aware of illegal foreign exchange dealing, it takes action. However, if these companies are merely pretending to have a presence in Switzerland in order to exploit the good name of the Swiss financial centre, FINMA cannot proceed directly against them. FINMA publishes the names of such illegal foreign exchange dealers in its [warning list](#).

4.5 External portfolio managers

“Confidence is good, control is better.”

Portfolio managers play an important role in the financial markets. Complaints received by FINMA up to now from clients have shown, however, that there are portfolio managers who have been granted power of attorney for their clients' accounts and custody accounts, but who do not exercise this power of attorney in the best possible way from an investor's point of view.

Licensing by FINMA and supervision by the SO cannot always prevent possible misconduct by a portfolio manager. The guiding principle is therefore: “confidence is good, control is better.” For example, all clients should have their bank statements sent to them directly by their bank and not via the portfolio manager. This gives clients the possibility to check their statements and contact their bank directly if they notice any discrepancies.

Supervision by FINMA cannot prevent asset managers from behaving fraudulently. Investors should always apply the principle that while trust is good, control is better. Customers should have their bank statements sent to them directly by the bank and not via the asset manager. This allows customers to check the asset manager's activities and means that they can contact the bank directly in the event of irregularities.

4.6 Trade in secondary market endowment policies (second-hand policies)

Caution is advised when investing in second-hand policies. As a rule, the providers of these policies are not subject to solvency controls or supervision. These investments are therefore exposed to risks, including the risk of counterparty default, and experience shows that it is difficult for investors to enforce claims against providers through the courts.

The secondary market for endowment policies is one in which policyholders surrender their claims under existing life insurance contracts during the term of the contract and are compensated accordingly. The term “second-hand policies” is also used.

Depending on its legal structure, a foreign insurance company offering such policies to individuals resident in Switzerland may be required to hold a licence (if it is an insurance company) or to be registered as an insurance intermediary (if it acts as an intermediary). However, structures are often seen for which there is no licensing requirement and no supervision in Switzerland.

How does the trade in second-hand policies work? The investor buys the legal rights to a policy from the original policyholder under the terms of a contract. The price paid is based on an expert opinion of the life expectancy of the original policyholder. The purchase price and the expert opinion are the main factors on which the projected success of the investment for the investor depends.

However, the trade in second-hand policies is often structured in such a way that investors have a contract with a third company which operates as a broker or intermediary and not in fact with the foreign insurance company. Investors therefore have no direct claim against an insurance company, but rather against a broker who is usually not subject to supervision either in Switzerland or abroad. This means an increased risk of default. When entering into contracts/policies of this kind, potential investors should always check who their contractual partner is and against whom, where, and at what cost claims can be asserted.

5 Ten tips for protecting yourself against unscrupulous providers

By following ten simple rules, investors can significantly reduce the chance that they will become victims of illegal or fraudulent providers:

1. Take time to consider your investment decisions. Don't allow yourself to be put under pressure. Diversify your investments; don't put all your eggs in one basket.
2. Before you make an investment, do your own research into providers and products, and don't be taken in by glossy brochures or slick telephone marketing. Use Google or other search engines to research providers and products.
3. Check whether the providers are authorised by FINMA. You can find the list of supervised institutions here: www.finma.ch/d/beaufsichtigte. Remember that not every company which is supervised by FINMA is subject to intensive ongoing (i.e. prudential) supervision.
4. Check whether the provider's name appears in the [FINMA warning list](#) or the IOSCO Investor Alerts Portal (www.iosco.org/investor_protection/?subsection=investor_alerts_portal) . If so, FINMA advises that you exercise the utmost caution and restraint.
5. You can check the entry for Swiss providers in the Commercial Register at www.zefix.ch. Frequent changes of company name, address or authorised signatories should make you suspicious.
6. In the case of providers or offers from outside Switzerland, you should always consider who you could turn to if problems arise. How (against whom, where and at what cost) could you assert a claim?
7. You should also make use of relevant internet forums and consumer sites. Posts from worried investors or people who have already suffered losses are a warning sign.
8. Compare the products, returns and commissions with those of other providers. If they are significantly better than those of companies authorised by FINMA, you should exercise caution.
9. Innovative technologies and products (e.g. virtual currencies) can be attractive, but they can also be risky. In reality, major breakthroughs are few and far between. Find out as much as you can, and only invest when you are sure you understand what is being offered.

10. Always remember the fundamental rule of investing, that high returns always mean high risks. The risk of loss is often much more real than the chance of turning a profit.

6 FINMA's tools in the fight against unauthorised financial service providers

6.1 FINMA's mandate

As well as protecting investors, creditors and insured persons, FINMA also monitors the proper functioning of the Swiss financial market.

FINMA's mandate is to protect creditors, investors and insured persons and to contribute to protecting the operational stability of the financial markets. In order to fulfil this statutory mandate, FINMA monitors authorised institutions – banks, stock exchanges (financial market infrastructures), securities dealers, funds (collective investment schemes) and insurance companies. Supervision of other professional financial service providers (e.g. asset managers and companies offering credit or leasing arrangements) is limited to ensuring that they comply with the rules on money laundering.

FINMA is also responsible for enforcing the authorisation requirements and professional disqualifications set out in financial market legislation. In other words, FINMA takes action against individuals and companies which operate without the required authorisation.

FINMA does not have sole responsibility for enforcing the authorisation requirements set out in financial market legislation. It is the job of the criminal prosecution authorities to prosecute those responsible for illegal financial intermediation.

6.2 FINMA's approach

FINMA launches dozens of investigations into unauthorised financial service providers every year.

In order to protect investors as a group, FINMA takes a range of measures against companies and persons operating without authorisation. However, FINMA does not have the resources to systematically and proactively monitor all the "grey areas" on the edges of the authorised and supervised financial sector. FINMA only investigates and intervenes when it becomes aware of an irregularity or an activity that may be illegal (see [Chapter 6.3](#)).

Investigations into unauthorised financial intermediation are generally prompted by complaints and queries from consumers, but may also result from information supplied by criminal prosecution authorities, foreign supervisory authorities, or the media. Information obtained from ongoing FINMA proceedings frequently opens up new avenues of investigation.

Each year FINMA receives several hundred reports, which it pursues with due rigour. However, in view of its limited personnel resources, FINMA must prioritise the reports that it receives. Cases in which information is received from multiple sources or where a great many investors are affected or large sums of money are involved are given priority. FINMA also reacts immediately when someone advertises services using FINMA's protected logo or falsely claims to be authorised by FINMA. The aim here is to prevent investors basing their decisions on incorrect assumptions. FINMA can only investigate specific evidence which suggests that a breach of financial market law may have occurred. As a matter of principle, FINMA does not act on generally formulated suggestions or questions (e.g. "Is Company X legitimate?" or "Should I invest in Company Y?"). How FINMA proceeds depends primarily on the case in question. The first step is to assess whether compliance with the law can be restored without recourse to formal proceedings. This may be the case, for example, if a market participant changes his business model, contracts or advertising, appoints a FINMA-accredited auditor, goes into voluntary liquidation, or obtains the required authorisation from FINMA or a self-regulatory organisation.

Formal proceedings can usually be avoided as long as a company, its business model and management team are legitimate and no investor assets are at risk. In addition, there must be no indications of criminality. The executives and companies must cooperate with FINMA and react promptly and honestly. FINMA writes to the companies in question, sometimes invites them to a face-to-face meeting, and demands confirmations.

For recent figures on unauthorised financial intermediaries and FINMA investigations, see the [annual Enforcement report](#).

6.3 Measures taken by FINMA

If FINMA becomes aware of breaches of financial market law, it investigates them.
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If there are specific indications of a serious breach of financial market law and if compliance with the law cannot be restored in any other way, FINMA opens enforcement proceedings against the provider in question and, where appropriate, against natural persons who are implicated. In proceedings of this kind, FINMA uses its statutory powers to establish the facts and take action against the companies and individuals.

In order to establish the facts of the case, FINMA can appoint an independent expert to act as investigating agent and carry out checks at the company's premises. FINMA sets out the responsibilities and powers of the investigating agent in a ruling. It also attempts to secure any customer assets that may remain. If there are grounds for suspecting not only a breach of financial market law but also offences under criminal law, FINMA coordinates its actions with the criminal prosecution authorities in the cantons. Sometimes FINMA and the cantonal authorities may organise joint operations at a company's premises.

If these fact-finding activities indicate that a breach of financial market law has occurred, FINMA issues a final ruling in which it specifies the action required to restore compliance with the law. Where unauthorised providers are concerned, this frequently involves liquidating the company. In this case FINMA appoints a liquidator and monitors his activities. If the company is overindebted or illiquid, bankruptcy proceedings are launched. Either FINMA itself or an external bankruptcy liquidator will wind up the company.

Thereafter, FINMA can ban the natural persons responsible from performing and/or advertising the unauthorised activity. It can also prohibit individuals from practising a particular profession or confiscate profits resulting from a breach of financial market legislation. Excerpts from the final ruling – specifically, prohibitions imposed on advertising or on practising a profession – may also be published as a warning to potential investors. FINMA also files charges of unauthorised activity with the Criminal Law Division of the Federal Department of Finance (FDF).

If unauthorised activity is suspected and if the provider in question fails to meet its obligation to provide information to FINMA, FINMA may be unable in some cases to clarify the suspicions and prescribe or enforce any necessary measures. This may be the case, for example, if the provider has no physical presence in Switzerland but there is nevertheless some connection with Switzerland (e.g. a false Swiss address or phone number on the website or in advertisements or other documentation). In these cases FINMA publishes the names of the companies or individuals on the [FINMA warning list](#) and the blacklist of the International Organization of Securities Commissions (IOSCO). Where appropriate, FINMA will also ensure that access to the company's website and Swiss phone numbers is blocked.

6.4 FINMA's dialogue with investors

Information from the public helps FINMA to protect investors.

FINMA takes reports of unauthorised activity seriously and checks them carefully. Pointers from investors help FINMA to identify illegal providers of financial services and take action against them. However, FINMA can only investigate specific evidence which suggests that a breach of financial

market law may have occurred. Generally formulated reports and questions (e.g. “Is Company X legitimate?” or “Is Company Z authorised?”) are not specific enough to warrant investigation.

Individuals providing information about suspected abuses should not expect FINMA to keep them informed about its investigations and proceedings. Making a report does not confer any right on an individual to become a party to the proceedings. Such individuals must assert their interests in civil or criminal proceedings. As a matter of principle, FINMA does not provide information about its proceedings. Even if specifically asked to do so, FINMA will not confirm, deny or comment on investigations. It reserves the right to correct false or misleading information. FINMA cannot express an opinion on civil law disputes; this is a matter for the civil courts. FINMA does, however, maintain a list of supervised institutions. If investors are uncertain, they can find out from the [FINMA website](#) whether a company or individual has been authorised by FINMA. If uncertainties remain, questions can be directed to questions@finma.ch.