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

ANNUAL REPORT 2012

FINMA's MANDATE

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

FINMA aims to protect financial market clients against insolvencies among financial institutions, unfair business practices and unequal treatment in securities markets. FINMA also seeks to protect the functioning of the financial markets, which serves to maintain the stability of the financial system and promote confidence. FINMA's mandate therefore extends beyond safeguarding the financial soundness of any individual institution. Effective protection of clients and market functionality also indirectly enhances the competitiveness and reputation of Switzerland's financial centre.

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

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

FINMA

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Prof. Anne Héritier Lachat,
Chair of the Board of Directors

FOREWORD BY THE CHAIR OF THE BOARD OF DIRECTORS

Staying on course

FINMA has already reached the end of its first strategic period, which ran from 2009 to the end of 2012. In the four years since its foundation, FINMA's primary concerns have been to improve the effectiveness of supervision and establish the new integrated authority. Yet these priorities have not prevented us from setting ourselves ambitious objectives in other areas. The major challenges FINMA has dealt with have been the 'too big to fail' regulatory package, transposition into Swiss law and subsequent implementation of the Basel III regulatory regime, and the full introduction of the Swiss Solvency Test. We tackled these important projects in parallel to our ongoing supervisory activities. We can look back with satisfaction on our first strategic period. FINMA has to a great extent achieved its goals.

Following an analysis of the difficult environment in which both FINMA and the institutions it supervises operate, we approved a new set of strategic goals for the period 2013 to 2016. These give effect to the mandate conferred on FINMA by law, namely to protect creditors, investors and policyholders and ensure the proper functioning of the financial markets. FINMA aims, through its prudential supervision, to strengthen financial stability and crisis resistance and promote integrity and transparency in the business conduct of financial institutions, thereby offering better protection to consumers. We are also committed to focused engagement at the international level and working together efficiently with all major stakeholder groups at the national level. FINMA aims to be an effective authority that is open to dialogue. Where regulatory issues are concerned, our goal is to apply our expertise towards ensuring that regulatory projects are always considered and implemented in line with our supervisory objectives.

FINMA's new strategic goals are neither a revolution nor a radical change of course. However, they consciously take account of the limited resources at our disposal and the need to deploy those resources effectively and economically by focusing on our core mandate: supervision. We conduct our activities in line with a risk-based supervisory approach. FINMA is not in a position to monitor all supervised institutions all of the time. Moreover, our strategic goals are embedded in the overall context of the global financial markets. This is a context that requires not only good cooperation but also recognised regulatory and supervisory standards that contribute to the reputation and competitiveness of the Swiss financial centre.

2012 was an exciting and challenging year. This report is a faithful reflection of our activities and the challenges we faced. 2013 is unlikely to be any easier, and it is therefore essential that everyone continues to play their full part. I should like at this point to thank our staff at all levels as well as my colleagues on the Board of Directors and the Executive Board for their dedication and hard work. Only if we continue to act decisively together can we achieve our ambitious goals and demonstrate that they are far more than mere words.

Prof. Anne Héritier Lachat, Chair
December 2012

INTERVIEW WITH THE CEO

'In challenging situations we need to act swiftly and systematically.'

Is it an illusion, or did FINMA show its 'teeth' more in 2012? In essence, we have pursued the approach we adopted from the outset. There has been no strategy of toughening up our supervisory regime at this stage. We continue to focus on our core task – supervision – backed by a risk-based approach. That means we look more critically at areas where, with the benefit of our observations, knowledge and experience, we believe the most risks are to be found.

In your view then, where do the greatest risks lie at the moment? Extremely low interest rates have become almost a permanent fixture. That is creating immense difficulties, especially for life insurers, but banks are also having to battle to maintain their margins. There are also two other swords of Damocles hanging over us. Swiss financial institutions face major challenges in adapting their business models to the risks they face. And if the eurozone, our most important trading partner, does not find its way back to genuine stability, an escalation of the euro crisis could have a palpable impact on Swiss financial institutions, especially through second- and third-round effects.

The financial sector itself believes that major upheavals lie ahead, with job cuts and market exits. What role will FINMA play in the coming shake-out? FINMA cannot push or guide changes in the sector, let alone prevent them. Our task is to apply the existing regulatory regime in as transparent a manner as possible. Every market participant must understand the precise implications of being licensed and monitored by FINMA. If a 'mishap' occurs and individual companies get into diffi-

Dr Patrick Raaflaub, CEO

culties, we must ensure that this does not result in damage to investors, creditors or policyholders. That task is at the heart of our statutory remit.

But when we look at Supra Assurances's liquidation, the reprimands for KPT and Valiant, the order for disgorgement of profits against UBS in the LIBOR case and of unjustified payments made to KPT managers, it does seem as though FINMA is being more aggressive. I don't see that as FINMA adopting a new style. It may be that the cases were less spectacular and perhaps less numerous in the past, but FINMA has always been consistent in its supervision. In a tense economic situation such as the one we find ourselves in at the moment, we often simply have to act swiftly and systematically using the resources available to us. The legislature has not, for example, given us the power to impose fines; but we can, for instance, order the disgorgement of unjustified profits.

FINMA was granted new powers in 2012, for instance in the restructuring and resolution of banks and insurance companies. Is FINMA preparing for a major 'cull' in the sector? I wouldn't put it as dramatically as that. The Banking Insolvency Ordinance and Insurance Bankruptcy Ordinance are simply more effective instruments that FINMA can use to restructure financial institutions and resolve them where necessary. Where banks are concerned, for example, the Banking Insolvency Ordinance allows us to safeguard some of a bank's key services rather than restructuring the entire institution. It also permits FINMA to make creditors bear some of the losses, for instance by converting bonds into shares. That kind of 'bail-in' approach is in line with an international trend. I might add that Switzerland is one of the first countries to introduce an instrument of this type. Ultimately, the Banking Insolvency Ordinance reduces the risk of the taxpayer having to intervene to cover the bank losses.

FINMA is expanding its range of instruments. The impression is that Switzerland is pushing ahead while other countries are beginning to put the brakes on, especially with major regulatory frameworks such as Basel III and Solvency II. Is there not a danger that Switzerland will become overregulated? No, I don't believe so. Regulation creates the conditions and defines the framework within which a strong, reliable and trustworthy financial centre can operate with good prospects of success. FINMA maintains a very pragmatic approach to regulation. It is an approach based as much as possible on principles, and with such regulations as are necessary – even when supervised institutions occasionally push us to set out our requirements even more precisely and specify everything down to the last detail. It is true that we are somewhat stricter when it comes to compliance with the central prudential criteria of supervision – solvency, capital adequacy, liquidity and risk management. But equally we grant more leeway in terms of individual products, provided that clients are assured of transparency and clarity. Nor are we dogmatic: in view of the low interest rate environment, we have, for example, granted insurance companies a temporary, three-year adjustment to the Swiss Solvency Test.

Listening to your comments, Mr Raaflaub, it is not easy to be confident about the future. When do you think the situation for the Swiss financial sector will finally improve? I expect major changes, and I cannot rule out a degree of shrinkage in the Swiss financial centre in the years ahead. First and foremost, supervised institutions will have to face up to these changes in their daily work, especially when dealing with clients. But despite all the difficulties, I believe that Switzerland's financial centre has a good future ahead of it. With its extensive network of solidly based companies and its generally outstanding service, the financial centre will succeed in opening up new areas of business and maintaining its international importance. Through internationally recognised regulation and supervision, FINMA aims to help make that happen.

STRATEGY AND ENVIRONMENT

Implementation of the strategic goals at a glance

The financial market legislation clearly delineates FINMA's area of activity. It grants FINMA a measure of flexibility that the authority has formulated in seven strategic goals. The first four-year strategic period ended in 2012. Its goals have largely been achieved.

Strategy implementation 2009 to 2012

Strategic goal	Important results
Reducing systemic risks	– Key player in drafting and introducing the 'too big to fail' package of measures – Significantly enhanced activities in connection with the early identification and containment of systemic risks (examples: debt crisis, real estate market) – Formulation and implementation of Basel III liquidity requirements for all banks – Assistance in drafting new capital adequacy requirements for banks in respect of mortgage claims
Improving client protection	– Proposing concrete measures to improve client protection in the production and distribution of financial products – Full introduction of the Swiss Solvency Test (SST) as the main tool for effective client protection in the insurance sector – Orderly market exits of 70 banks and securities dealers as a result of mergers, surrender of licences or liquidation conducted without any harm to clients
Streamlining and optimising regulation	– Key role in the national implementation of the new Basel III standards for banking supervision – Issuing the FINMA Circular 'Capital adequacy and capital planning – banks'[1] to improve the crisis resistance of smaller banks – Introduction of coherent insolvency regulations for banks and insurance companies to protect creditors, investors and policyholders – Revision and implementation of a standardised approach to the optimum use of audit firms

[1] See FINMA Circular 2011/2 'Capital buffer and capital planning – banks' (http://www.finma.ch/e/regulierung/Documents/finma-rs-2011-02-e.pdf).

FINMA was created by the merger of three predecessor organisations: the Swiss Federal Banking Commission (SFBC), the Federal Office of Private Insurance (FOPI) and the Anti-Money Laundering Control Authority (AMLCA). The work of building up the new authority in its first four years included refining and harmonising supervisory approaches and processes. All the supervisory areas were given ambitious goals to fulfil, and to a very large extent they have done so. The first strategic period can therefore be regarded as a success.

Although this in itself is no guarantee of a successful and incident-free future, banks today have more capital of better quality than before. The Swiss Solvency Test (SST) enabled insurance companies to take early action to strengthen their capital base in a difficult environment. Important lessons were learnt from the financial crisis, and these led to corresponding changes in the regulatory framework. Overall, during this strategic period FINMA has succeeded in enhancing the protection offered to creditors, investors and policyholders, and improving the functioning of the financial markets even in turbulent times.

Overall assessment

FINMA has made a major contribution to optimising the regulatory framework with a view to countering systemic risks, and is now able to identify them more rapidly and respond to them better. Additionally, the large banking groups today have more capital of better quality. This has made the Swiss financial centre more resilient against crises.

FINMA has systematically implemented a high standard of licensing practice and put in place an effective supervisory approach in all areas. This has increased the robustness of many financial intermediaries and thus enhanced client protection. In the distribution of financial products especially, FINMA has been actively involved in improving protection for clients by making some specific proposals.

In its regulatory activity, FINMA has consistently pursued the objectives of integrated supervision. Wherever possible and expedient, rules have been harmonised. Examples include the new insolvency ordinances, the standardised Anti-Money Laundering Ordinance and audit reform. Viewed overall, however, the pace of regulation has tended to increase since the financial crisis, which has made it more difficult to achieve the desired streamlining.

Strategic goal	Important results
Effective and efficient supervision	– Implementation of measures to ensure that supervisory activity is more systematically risk-oriented – Closer, more frequent and more direct supervision of institutions in higher risk categories – Refinement and cross-area harmonisation of licensing and supervision – Introduction of new supervisory instruments for more effective supervisory activity (examples: Team Intensive Supervision, rating letter) – Optimisation of internal processes and provision of new instruments to improve the efficiency of supervision
Sustainable market supervision and effective enforcement	– Redesigning enforcement processes and their organisation to enable uniform, efficient enforcement activity – Adjustments in practice concerning the handling of violations of reporting obligations in connection with the disclosure of shareholdings – Exceptional audit of the handling of PEP relationships by banks – Expansion of market supervision and more effective range of sanctions as part of the revision of the Stock Exchange Act
Positioning for international stability	– Continuing central working relationships with the FSB, BCBS and IAIS to play a role in shaping international standards – Substantial progress towards obtaining recognition of Swiss insurance supervision as equivalent to the EU Solvency II Directive – Publication of recommendations on dealing with risks arising from the cross-border financial services business, accompanied by numerous on-site inspections – Progress towards an agreement on the global restructuring and resolution strategy developed jointly with major regulators
Strengthening FINMA as an authority	– Successful merger of the operations and expertise of FINMA's predecessor authorities – Further refinement of operating structures and their alignment with the strategic goals – Development of the specialist career model as an alternative to the management career

Overall assessment

FINMA has reviewed and refined its supervisory approach in all areas. In the individual divisions, new instruments have been introduced that are also being progressively applied in other areas. Additionally, FINMA has improved its own processes and introduced new IT tools. Some of these measures will not be implemented or become effective until the start of the next strategic period.

FINMA has made some progress in this area. A complete redesigning of enforcement processes and organisation has allowed it to intervene professionally and in a standardised manner where necessary. Proceedings are conducted more rapidly, more transparently and in close collaboration with the supervisory areas. A full array of sanctions are used. There is potential for improvement in the duration of proceedings.

FINMA has succeeded in establishing solid working relationships in the relevant international bodies and consolidating its reputation as a capable and reliable partner. The influence exerted by FINMA is disproportionate to its size. A range of agreements that are key to supervisory activity have also been signed. Good progress is being made in obtaining recognition of the equivalence of insurance supervision, despite some delays on the EU side.

FINMA is fulfilling its mandate and has established itself as an independent and credible authority. It has clear management and operational structures. The case-by-case collaboration between the three predecessor organisations has developed into close, sector-related collaboration between staff members focused on the financial market as a whole.

The new strategic goals at a glance

The new strategic goals for the period 2013 to 2016 set out the ways in which FINMA aims to fulfil its statutory mandate in future and which areas it is focusing on. They give FINMA's work a longer-term orientation and lay down guidelines for the further development of financial market supervision. The new strategic goals also clarify the scope and limitations of supervision, thereby making FINMA's actions more predictable.

FINMA has set itself strategic goals in five areas for the period 2013 to 2016. As before, the focus is on prudential supervision of banks, insurance companies and collective investment schemes. FINMA is also working to improve the business conduct of the institutions it supervises. National and international cooperation remains as relevant as ever. One of the core tasks of financial market supervision is also (restrained) regulation. Finally, FINMA has set itself goals for its own development (FINMA as an authority).

Thematically, FINMA's new strategic goals further develop those set for the first strategic period. In some cases, however, focus has been shifted, partly as a response to developments in the market environment. Prudential requirements for financial institutions are clearly defined as the core of the strategy. Now that capital measures are in place, there is greater emphasis on the consequences of the risk-based approach as well as restructuring and insolvency proceedings. In its international cooperation, FINMA will restrict itself to a limited number of core issues and align its regulatory activity even more closely with international standards. Overall, FINMA aims, through a credible and professionally implemented strategy, to provide better protection for financial market clients, thereby also enhancing the reputation of the Swiss financial centre.

The FINMA Board of Directors adopted the new strategic goals on 17 October 2012. They were approved by the Federal Council on 21 November 2012.

Strategic goals 2013 to 2016

Prudential supervision

Strengthening financial stability and crisis resistance through prudential supervision

The stability and crisis resistance of the Swiss financial centre are strengthened through internationally recognised prudential standards and consistent compliance with them. If market exits take place, they do so in a way that is orderly and quick, and result in the least possible damage to financial market clients.

Business conduct

Promoting integrity, transparency and client protection in business conduct

In order to enhance the reputation of the financial centre and promote fair business conduct and integrity on the part of financial market participants, FINMA consistently implements licensing procedures, creates transparency regarding the varying degrees of supervisory intensity and promotes internationally recognised regulations on client and investor protection.

National and international cooperation

Joining forces at the international level and working together efficiently at the national level

In its international activities, FINMA concentrates its resources and uses them to address important core issues. In the context of national cooperation, the information flow is efficient and the decision-making scope of the authorities is clear.

Regulation

Engaging expertise and regulating in light of its supervisory goals

FINMA analyses existing regulations and legal trends from the perspective of financial market supervision, proposes relevant amendments, uses its specialist expertise to support the proposed regulations that are important and highlights its own concerns early and transparently. Within its area of responsibility, FINMA regulates only in so far as this is necessary in light of its supervisory goals.

FINMA as an authority

Effective as an authority and open to dialogue

By using efficient processes, FINMA performs its function with the help of employees who have both competence and integrity. It conducts an open, objective dialogue with its stakeholders and keeps the public informed about its activities.

The economic environment and financial stability

The economy again failed to recover in 2012. Central banks further reduced interest rates that were already at extremely low levels, in part using exceptional monetary policy measures. There is no sign of an end to the phase of zero interest rates, and this increases the risks to financial stability. Supervisory authorities must remain especially vigilant.

The international economy remained weak in 2012: there was little by way of recovery in the industrialised nations, while growth in the emerging economies slowed markedly. The still unresolved issue of the crisis-hit eurozone nations continued to dominate developments.

Expansionary monetary policy

The central banks resolutely pursued their extremely expansionary monetary policy in 2012, though its effectiveness in cushioning the downtrend has so far been limited. It is becoming clear that in the wake of a financial crisis, low interest rates are far less effective in stimulating the economy than they are under normal circumstances. Although there is ample liquidity in the markets, investors remain wary. Switzerland has also been hit harder than expected by the weakness of the global economy. Exports have declined, bringing growth almost to a halt. The first signs of a negative impact can also be seen in the labour market, although limited in extent.

Interest rates continue to fall

The general environment of low interest rates has grown more acute, notably in the economies that are regarded as safe havens by investors: the US, the UK, Japan, Germany and Switzerland. The main central banks' (short-term) interest rates have been close to zero for some time. Uncertainty surrounding the crisis-hit countries of the eurozone persists, and this has spurred the fragmentation of the capital markets. Additionally, the prospect of a protracted phase of weak economic growth and expansionary monetary policy with low interest rates has led to a further decline in long-term rates. This trend is also evident in Switzerland. Yields on short-term and medium-term Confederation bonds have fallen significantly below 1%, and some even slipped into negative territory in the middle of 2012. The yield on a ten-year Confederation bond stood at a little over half a per cent.[2]

Risks to financial stability

The exceptional interest rate situation brings with it major risks to financial stability. All the indicators suggest that the extended period of low interest rates is set to continue for at least another two years. Yet an unexpectedly rapid and sharp rise in interest rates would also be dangerous.

When a large proportion of interest rates is close to zero or even slightly negative, this removes a key economic variable from the equation. Interest rates play a central role in economic decisions, influencing the savings patterns of market participants, investment decisions, the valuation of projects and financial products, and much more. The current zero interest rate environment therefore accentuates the danger of capital being misallocated and risks incorrectly assessed. The low interest rates in the years preceding the financial crisis have now been recognised as an important reason for the build-up of exceptionally large risk positions, thus laying the foundations for the current crisis.

Increasing willingness to take risks

In a low interest rate environment, there are strong incentives for investors and supervised institutions to seek out riskier market segments in their quest for higher yields. The fact that certain equity indices almost returned to pre-crisis levels during 2012 can be interpreted as a sign of this development. Although the appetite for risk is not fundamentally higher, fixed interest rates of the kind normally offered by life insurance companies and pension funds can lead to a search for higher yields and, inevitably, the build-up

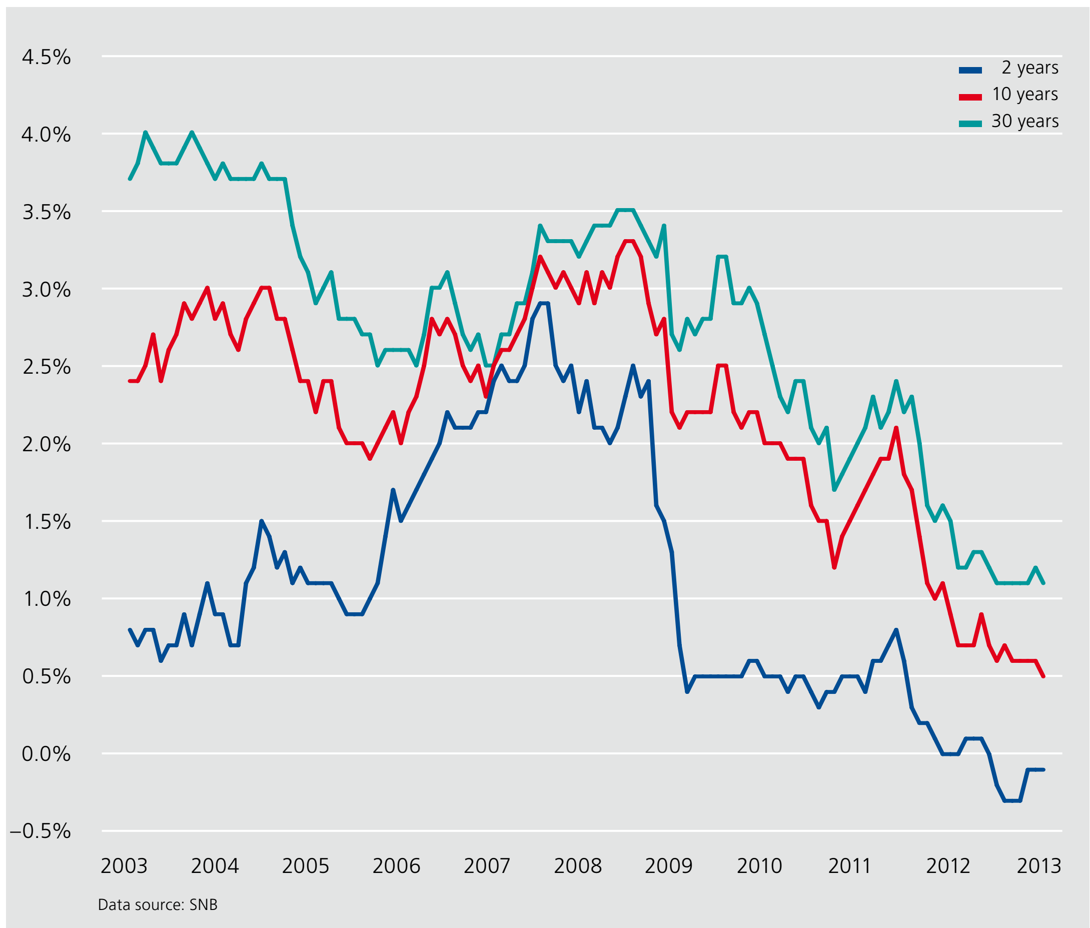
[2] See graph, p. 19.

of risk positions. Rising average life expectancy is further accentuating this trend, because it extends the duration of payment obligations.

Low yields have led to an outflow of capital from money market funds, shrinking what is an important funding base for banks and further exacerbating the situation on the capital market. The interest rate situation affects not just banks' deposit taking but also their lending. Average interest rates on medium- and long-term fixed-rate mortgages declined sharply once again in 2012. Demand for real estate financing remained high, but the net interest income earned by banks is small. The more the yield curve flattens, the less profit financial institutions are able to make from maturity transformation, in other words short-term funding to finance the granting of longer-term loans. In some circumstances, low interest rates can even prompt banks to downgrade the importance of loans that are not being serviced, because the income from them is in any case minimal. The ability of clients to make interest payments and pay down debts may also be overestimated.

This adds up to a challenging economic environment. Supervised institutions may find themselves forced to abandon existing business areas and look for new ways of generating higher returns. The financial crisis of 2008 demonstrated that risks are not identified until after they have become reality. It is therefore incumbent on the supervisory authority to be especially vigilant.

Selected yields on Confederation bonds with different terms to maturity (spot rates at month-end)



Data source: SNB

FINMA in the political context

On a number of occasions in 2012, FINMA was once again required to report on its activities to the government and Parliament. The main emphasis was on the conclusion of FINMA's previous strategy and the drafting of the new one. FINMA was also asked to comment on many different areas of its supervisory activities.

Once a year, FINMA discusses its annual report with the Control Committees (CC) of the Federal Assembly. This is the most important opportunity for dialogue with those responsible for parliamentary oversight. It is used to address not only matters from the previous year, but also topical issues and concerns.

Parliament: supervisory remit and independent decision-making

At the 2012 meeting, the Chair of FINMA's Board of Directors stressed the importance of the authority's independent decision-making. FINMA conducts its activities in an environment shaped by the conflicting interests of various stakeholder groups. Its tasks include granting and withdrawing licences, conducting proceedings, imposing sanctions up to and including liquidation, and much more. It is therefore essential that – like a court – FINMA can reach its decisions independently and without being influenced by those stakeholder groups. Such influence is not in the public interest.

FINMA's CEO also pointed out to the CC the limits of its supervisory activities. The supervisory authority cannot act unless it has an adequate legal basis for doing so: it can neither grant nor withdraw licences, nor can it carry out any other such measures. When FINMA establishes that the legal basis is insufficient in areas central to exercising its mandate, it is obliged to point this out. FINMA has identified a clear need for action in the protection of clients and investors. It has on a number of occasions pointed out the shortcomings in the regulatory framework for client protection.[3]

Another issue was FINMA's investigations into the bankruptcy of Lehman Brothers in September 2008 and its impact on many investors, including those in Switzerland. This formed the subject of a number of enquiries directed to FINMA by its parliamentary overseers in 2012. Widespread debate was triggered by a FINMA paper that became public following a breach of official secrecy, one that was in fact an interim report detailing serious incidents that had prompted FINMA to launch proceedings. The decision had been taken following initial enquiries and on the basis of an interim, summary assessment of the circumstances at the time. FINMA was subsequently obliged to wind up the proceedings because the allegations of regulatory infringements proved impossible to substantiate. This explains the discrepancy between the interim report made public by an act of indiscretion and the final report on the Lehman Brothers affair published by FINMA.

Federal Council: current issues and FINMA's strategy

Under the FINMASA, the Federal Council is obliged to approve both FINMA's annual report and its strategic goals. A meeting between FINMA and the Federal Council takes place at least once a year. During the 2012 meeting, the Chair of FINMA's Board of Directors reported to the Federal Council on the annual implementation of the strategic goals and informed the government of the successful conclusion of the first strategic period from 2009 to 2012. The Federal Council also took the opportunity to discuss current issues affecting the financial centre. FINMA's Chair presented to the government the new strategic goals for the period 2013 to 2016, which were approved by the Federal Council on 21 November 2012.

[3] See sections on 'Strengthening client protection', p. 37 f. and 'Revision of the Collective Investment Schemes Act', p. 32 f.

FINMA's dialogue with national associations and institutions

Owing to the broad spectrum of its tasks, FINMA is constantly in contact with a large number of national stakeholder groups. The law stipulates that FINMA must provide information about its supervisory activities but also imposes restrictions, for example where official secrecy overrides other interests. As far as is permitted, FINMA maintains a policy of supplying open and transparent information to supervised institutions, other stakeholder groups and the public at large. Its aim in so doing is to improve the understanding of supervisory and regulatory issues and raise awareness of financial market matters.

Contacts regularly take place in a variety of forms with almost 100 institutions and associations. They include supervisory and criminal prosecution authorities, other authorities and federal bodies as well as the associations of supervised institutions. There are also important contacts with other business, professional and staff associations, as well as consumer protection organisations and ombudsmen in the various supervisory areas.

In 2012, the following main areas were addressed in the various supervisory areas:

Banks

- Cross-border financial services
- Withholding tax agreements and market access negotiations
- Regulation and self-regulation in the mortgage business
- Measures to strengthen client protection
- IT security

Cantonal banks

- Basel III capital adequacy regime
- Real estate market and the Swiss Bankers Association's (SBA) guidelines on mortgage-backed loans
- Cross-border financial services
- White money strategy

Foreign banks

- Withholding tax / double taxation agreements
- Cross-border business and market access
- Intra-group exposures

Insurance companies

- Implementation of SST and temporary adjustments
- Development of Solvency II in Europe
- Implementation of the new supervisory approach
- Recognition of the equivalence of Swiss insurance supervision by the EU

Stock exchanges

- Revised version of the SIX supervisory approach
- Regulatory requirements for financial market infrastructures such as SIX x-clear and SIX SIS in the European context
- Affiliation of SIX SIS to TARGET2-Securities
- New services from SIX Swiss Exchange

Collective investment schemes

- Amendments to the Swiss Funds Association (SFA) Transparency Guidelines
- Amendments to the model prospectus and model fund contract
- Involvement in negotiations with foreign supervisory authorities
- Guidelines for money market funds
- Guidelines on essential information for investors

Audit firms

- Audit reform

FINMA in international dialogue

International standard-setting bodies have become significantly more important. Participation in such bodies enables FINMA to play a role in shaping the international regulatory framework while at the same time representing Switzerland's supervisory interests.

It is in FINMA's interest to play a part in international standard-setting bodies. It cannot, however, involve itself with the same intensity everywhere. The key is to find a sensible balance between a focus on core interests and becoming involved in secondary issues that may, at a later date, have an impact on Switzerland.

Financial Stability Board

The Financial Stability Board (FSB) coordinates the development and maintenance of measures to promote stability between sector-specific standard-setting bodies and liaises with the G-20. Switzerland is represented on the FSB Plenary by the Swiss National Bank (SNB) and the State Secretariat for International Financial Matters SIF, and on the Steering Committee by the SNB. FINMA works closely with both institutions on matters related to the FSB and is represented in a number of working groups. Additionally, FINMA's CEO represents Switzerland in the coordinating Standing Committee on Supervisory and Regulatory Cooperation.

One of the main issues addressed by the FSB in 2012 was the further development of recovery and resolution regulations. The basic requirements for the orderly recovery and resolution of global systemically important banks (G-SIBs) adopted in 2011 were codified and a timetable set for the implementation of measures. Other issues, such as the systemic importance of insurers and other

financial institutions, were examined by the sector-specific committees and submitted to the FSB committees mentioned above.

Basel Committee on Banking Supervision

Switzerland is represented on the Basel Committee on Banking Supervision (BCBS) by FINMA and the SNB. The Head of FINMA's Banks division chairs the High-Level Task Force on Governance Arrangements (TFGA), while a FINMA representative heads the Disclosure Working Group. FINMA staff are also involved in working groups, dealing with issues such as accounting, macroprudential supervision and combating money laundering.

In 2012, the BCBS focused its efforts primarily on finalising the Basel III standards. In particular, it addressed issues related to the liquidity coverage ratio (LCR) and the definition and monitoring of the leverage ratio.[4] A further focal point was improving the capital requirements for the trading book and securitisations. Comprehensive analyses using test portfolios were conducted in collaboration with the banks, with a view to improving understanding of the differences in risk-weighted assets. In light of recent events,[5] the BCBS also pursued its efforts to strengthen the regulatory regime governing banks' operational risks. Work on the rules governing banks' disclosure of the composition of their capital and the capital requirements for bank exposures to central counterparties was also completed.

International Association of Insurance Supervisors

FINMA's CEO sits on the Executive Committee of the International Association of Insurance Supervisors (IAIS). Other members of FINMA staff are involved in committees and working groups at various levels.

At its Annual General Meeting in October 2012, the IAIS adopted revisions to its Insurance Core Principle 9 on Supervisory Review and Reporting. This marked the conclusion of the revision of the 26 core principles for effective insurance supervision and regulation that began in 2003. The IAIS also addressed the criteria for identifying global systemically important insurers (G-SIIs) and measures for limiting their risks. The aim is to have the relevant criteria and measures ready by the G-20 summit in April 2013. The public consultation on the method for identifying potential G-SIIs ended in July 2012; the consultation on the proposed G-SII measures ran until the middle of December 2012.[6]

An important milestone was also reached on the issue of supervision of internationally active insurance groups, with the publication of the second edition of the ComFrame[7] Concept Paper in July 2012. ComFrame is intended to be the integrated, international basis on which national supervisory bodies will in future capture the qualitative and quantitative risks of insurance groups.

International Organization of Securities Commissions

The International Organization of Securities Commissions (IOSCO) aims to enhance the efficiency and transparency of the financial markets. Switzerland is represented on the IOSCO Board by the Chair of FINMA's Board of Directors. Other FINMA staff members are involved in subcommittees. The focus is on secondary markets and collective investment schemes. IOSCO also assesses possible regulatory regimes for previously unsupervised financial institutions and sectors.

The principal issue in 2012 was the development of a method for monitoring and reducing systemic risks in the securities markets. IOSCO focused on the risks emanating from hedge funds and other systemically important financial institutions (SIFIs) outside the banking and insurance sectors, as well as looking at the regulation of financial market infrastructures. Additionally, IOSCO is assessing ways of expanding the standards for international cooperation by revising the IOSCO MMoU. Since 1 January 2013, a list has been kept of countries that do not meet the existing standards. Switzerland, with its 'A' signatory status, satisfies those requirements. In September 2012, following the

[4] See section on 'Changes in banking regulation', p. 44.

[5] See section on 'Importance of controls in securities trading', p. 46 f.

[6] See http://www.iaisweb.org/G-SIIs-988.

[7] Common Framework for the Supervision of Internationally Active Insurance Groups.

irregularities in the setting of LIBOR,[8] IOSCO also set up a task force, in which FINMA is represented by the Head of the Strategic Services division, to develop guidance for financial market benchmarks.

Other forms of international dialogue

With its work on regulation, the EU is becoming an important player for Swiss financial market participants and hence also for FINMA. FINMA liaises regularly with the European supervisory authorities – the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) – as well as experts from the European Commission on current issues related to regulation and supervision.[9]

One form of international dialogue important to supervisory activities in practice is the supervisory colleges, in which the home supervisory authority and guest supervisory authorities of a major international banking or insurance group liaise on specific supervisory issues.[10]

Integrated Financial Supervisors Conference

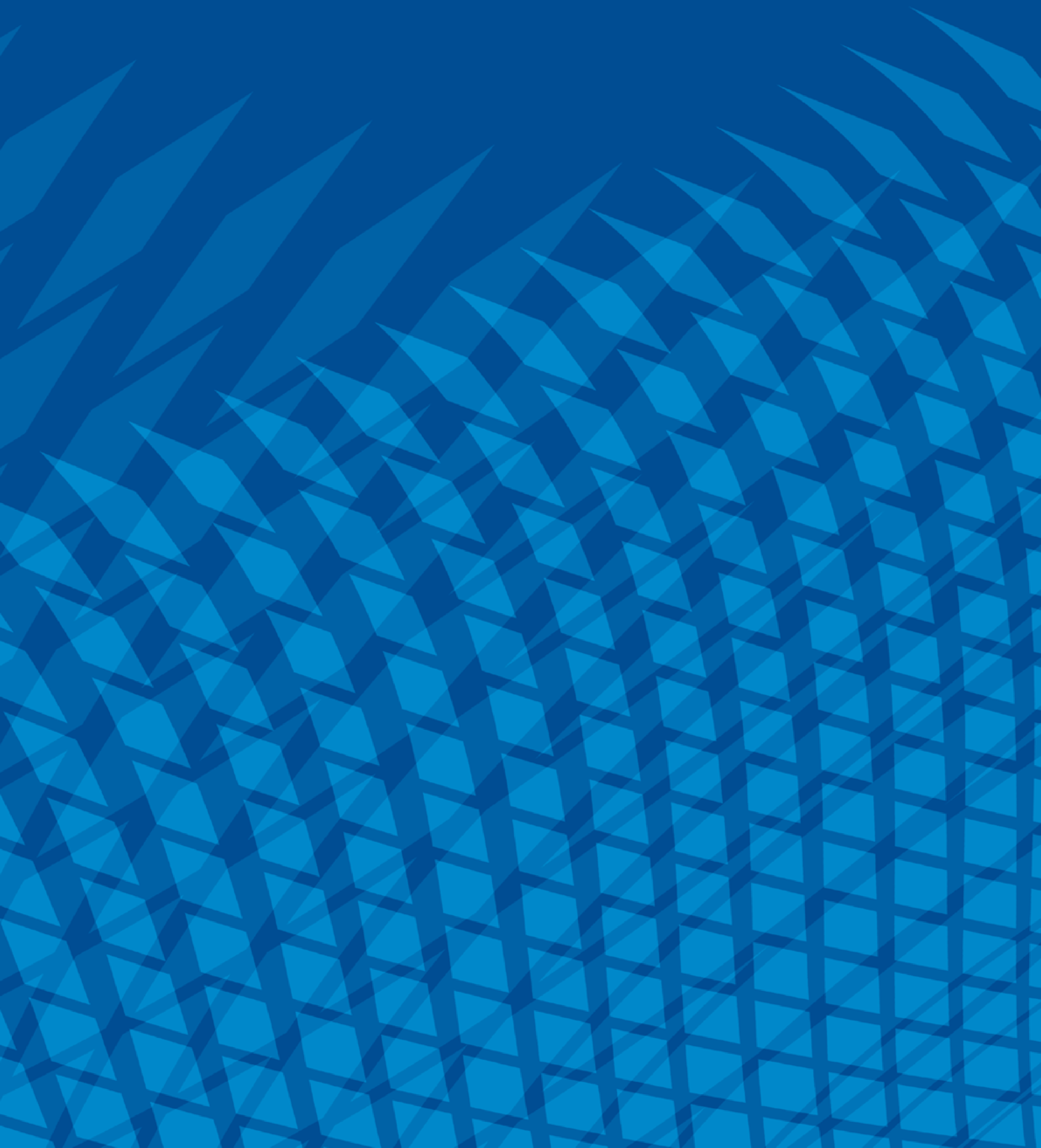
In June 2012, FINMA hosted the 14th international Integrated Financial Supervisors Conference (IFSC). The IFSC is a forum of supervisory authorities that, like FINMA, supervise banks, insurers and markets and, in the process, pursue a cross-sector approach to monitoring the financial markets. The 2012 IFSC was attended by high-ranking representatives of authorities from 16 countries, from Canada, the UK, Germany and Austria to Singapore and Australia. It was an opportunity for the leaders of integrated financial market supervisory authorities to discuss the issue of regulatory arbitrage in informal surroundings.

[8] See sections on 'Enforcement', 'Overview', 'Proceedings against UBS on LIBOR and other interest reference rates', p. 63 f.

[9] See section on 'Complex international supervision of insurance groups' and 'Recognition of equivalence drags on', p. 55.

[10] See section on 'Complex international supervision of insurance groups', p. 55.

KEY THEMES



Measures in the mortgage market

The risks in the real estate and mortgage market remain high. There are still no signs of significant changes in the macroeconomic environment that could point to a trend reversal. FINMA adopted supervisory and regulatory measures in 2012 to respond to the situation.

In 2011, the Swiss Bankers Association (SBA) revised its guidelines governing the examination, valuation and treatment of mortgage-backed loans, and formulated specific qualitative requirements. This self-regulatory measure had little impact on lending activity, and FINMA therefore called for the introduction of more far-reaching quantitative rules.

Quantitative thresholds in self-regulation

A working group consisting of representatives of the Federal Department of Finance (FDF), the SBA and FINMA drafted quantitative minimum standards for mortgage financing. These set out minimum requirements for down-payments from own funds and amortisation, where banks had been adopting an increasingly relaxed approach:

- For new transactions and loan increases, buyers are to contribute at least 10% of the lending value in the form of 'hard' equity, in other words money that does not come from early withdrawals or pledging of Pillar 2 pension assets.
- In future, the mortgage debt is to be paid down to two thirds of the lending value of the property within a maximum of 20 years.

This may not appear especially restrictive on the face of it, given that these requirements were still regarded as 'best practice' just a few years ago. However, against the backdrop of fiercer competition, persistently low interest rates and constantly rising property prices, banks had for some years been increasingly waiving them in their everyday business. This created a new category of buyers who, under normal market conditions, would be unable to afford to purchase a property. The excessive use of pension assets to finance property will also lead to risks in future, as a collapse in property prices would place the pension capital used at risk.

FINMA recognised the SBA's guidelines on minimum requirements for mortgage financing[11] as a supervisory minimum standard. The new minimum equity and amortisation requirements came into force on 1 July 2012.

Higher capital requirements in the ordinance

In parallel with the self-regulatory minimum standard recognised by FINMA, the Federal Council established a link between the guidelines and the Capital Adequacy Ordinance (CAO) for banks. In the CAO, the Federal Council stipulated that a risk weighting of 100% is to be applied to the entire loan amount if the SBA minimum requirements are not complied with. Additionally, the risk weighting for loan tranches in excess of 80% of the lending value was raised from 75% to 100%, sending a clear signal that banks are to be cautious in their lending.

Since 1 July 2012, the CAO has provided the legal basis for a countercyclical capital buffer. The SNB can request the Federal Council to oblige banks to hold additional equity capital. This serves to strengthen the banking sector's resistance to excessive credit growth and its inherent risks. FINMA is to be consulted prior to the SNB submitting its request to the Federal Council.

First effects of the measures taken

Initial reactions from banks and borrowers indicate that the new rules have relatively quickly begun to produce the desired effect. It appears to have become more difficult for individuals with little capital and borderline financial conditions to finance the purchase of property. The banks are still

[11] See 'Guidelines on minimum requirements for mortgage financing' (German version), June 2012 (http://shop.sba.ch/999985_d.pdf).

permitted to offer funding outside the guidelines, but the higher capital requirements make this a far less attractive proposition for them.

Mortgages granted by insurance companies are not covered by these rules. Detailed qualitative and quantitative criteria for mortgage lending by insurers involving tied assets have been in force since 2006.[12] FINMA has insurance companies monitored by audit firms on an annual basis, and carried out extensive on-site inspections in 2010 and 2011. These demonstrated that there is no need for stricter regulation of mortgage lending by insurers.

Stress tests: auditing the mortgage portfolio

Since 2011, FINMA has been carrying out larger numbers of stress tests on banks' mortgage portfolios. The aim is to quantify the losses that arise due to changes in key economic parameters such as interest rates, unemployment, real estate prices and GDP. In the (stress) scenario analysis, macroeconomic parameters are fixed and converted into a potential loss measure based on institution-specific models and a FINMA model. Generally, the plausibility of the scenario and its severity are determined via a comparison with earlier crises in Switzerland and abroad. These scenario analyses provide FINMA with a coherent overview, as they are carried out simultaneously at a number of institutions. FINMA also discusses the institution-specific analyses and their relationship to the capital situation with the supervised institution concerned. In some cases, a comparison of the results from the banks' own stress tests with those based on FINMA criteria indicates that the banks' estimate of potential loss is far lower than FINMA's. The stress tests raise awareness of the need to assess the risks of a real estate crisis, which should influence individual institutions' business decisions.

The cumulative loss potential for a mortgage portfolio over a five-year period in a recession scenario is between 2% and 4% of mortgage lending. In a more extreme scenario, with real estate prices falling by between 30% and 40% in some regions, the potential loss may exceed 5%.

Corrections to the IRB approach for residential mortgages

For some time now, FINMA has observed a continuous decline in the minimum equity requirements for residential mortgages under the internal ratings-based (IRB) approach. The reasons for this lie in the particular features of the model, which is based on internal calculation models and is currently used by three banks, including the two large banking groups. For years there were relatively few defaults, and the losses were correspondingly minor. Because the IRB approach is risk-sensitive and based on historical data, this caused a progressive decline in the capital underpinning.

In its stress test analyses, one thing FINMA noted was that, in the event of an extreme scenario, the current minimum requirements of 8% of the positions risk-weighted according to the IRB were inadequate, from a prudential point of view. With effect from 1 January 2013, FINMA has therefore tightened up the minimum capital requirements for IRB banks in respect of owner-occupied residential properties.[13] The more stringent rules are bank-specific and take account of the existing capital underpinning as well as the risk profile of the residential property portfolio. Independent of the banks' individual situation, they significantly reduce the large discrepancy between the requirements of the IRB approach and those of the standard approach. For the big banks, the stricter rules entail a substantial increase in overall capital requirements, partly due to the 'too big to fail' regime. For this reason, FINMA granted the three IRB banks a transitional period prior to full implementation of the new minimum capital requirements for owner-occupied residential property.

[12] Article 79 para. 1 let. g ISO and FINMA Circular 2008/18 'Investment guideline – insurers' (in particular, margin nos. 282–305).

[13] Based on Article 4 para. 3 BA.

Cross-border financial services

In 2012, FINMA again examined how institutions were handling the risks associated with cross-border financial services. In the course of a number of enforcement proceedings, FINMA concluded that some institutions had breached their supervisory duties owing to shortcomings in their risk management. The case of Bank Wegelin & Co demonstrated how serious the impact of cross-border risks can be.

FINMA set out its expectations of banks in its position paper on 'Legal and reputational risks in cross-border financial services', published on 22 October 2010.[14] The topic was also addressed in numerous supervisory consultations, during which FINMA noted an increase in awareness of the cross-border issue among a majority of supervised institutions. Some institutions, however, limited themselves to capturing, limiting and monitoring supervisory law risks, and in the process often ignored risks arising out of civil, tax or criminal law that can also be highly important from a risk-oriented perspective. In FINMA's view, appropriate risk management requires an integrated approach; this was one reason why it published, on 19 June 2012, a list of answers to frequently asked questions[15] for supervised institutions on the legal and reputational risks in cross-border financial services.

A number of enforcement proceedings

Since 2011, FINMA has instructed various banks to carry out an independent, internal investigation of parts of their cross-border financial services business.[16] Following these, a number of enforcement proceedings were instituted, some of which were completed in 2012. FINMA launched proceedings when there were reasonable doubts as to whether the business policy and organisation were appropriate and the legal and reputational risks were being adequately captured, limited and monitored. The question whether the bank or financial group had exposed itself and its own staff to risks that were no longer acceptable was the assessment benchmark. In a number of rulings, FINMA concluded that certain banks had committed serious breaches of their supervisory duties regarding the assurance of proper business conduct and appropriate administrative organisation. As part of the sanctions imposed, FINMA instructed the banks to carry out a full analysis of the risks in their cross-border business and develop an approach that systematically addressed those risks.

Operational separation of US business at Bank Wegelin & Co

Owing to issues with its US business, Bank Wegelin & Co. was obliged to split up and cease its active operations. In January 2012, Raiffeisen Switzerland purchased the entire operations of the St. Gallen-based private bank with the exception of its cross-border business with US clients. The transaction was prompted by escalating investigations by the U.S. Department of Justice against Wegelin and its business involving suspected undeclared US assets. Shortly after it was concluded, criminal proceedings were filed against Wegelin in the US.

The transaction provided for a legal and operational separation of Wegelin's US business from its other activities. The non-US business was transferred to Notenstein Private Bank Ltd, which was subsequently taken over by Raiffeisen. As a result, only the US business remained with Wegelin, which is currently winding this up. The Raiffeisen Group now has a private-banking subsidiary with locations throughout Switzerland.

The initiative for the transaction came from the companies involved. FINMA's task was limited to auditing the process from a regulatory perspective, ensuring that what remained of Wegelin is in a position to deal financially and operationally with any consequences of the criminal proceedings in the US, and that the new Notenstein Private Bank Ltd is

[14] See http://www.finma.ch/e/finma/publikationen/Documents/positionspapier_rechtsrisiken_e.pdf.

[15] See http://www.finma.ch/e/faq/beaufsichtigte/pages/faq-grenzueberschreitendes-geschaeft.aspx.

[16] See FINMA Annual Report 2011, p. 22 (http://www.finma.ch/e/finma/publikationen/Documents/finma_jb_2011_e.pdf).

integrated in such a way that the Raiffeisen Group is not exposed to any danger of infection in respect of US risks. FINMA imposed corresponding conditions on the transaction and the companies involved.

On 3 January 2013, Wegelin & Co announced that it had concluded a plea agreement with the U.S. Department of Justice in which it has pleaded guilty to breaching US law by opening and maintaining accounts and deposit accounts for US taxpayers. Bank Wegelin has also agreed to pay USD 57.8 million in fines to the US authorities.

FATCA: likelihood of new legal risks

The introduction of the Foreign Account Tax Compliance Act (FATCA)[17] brings with it legal uncertainties that can lead to new legal and reputational risks. FATCA contains US tax law provisions that are applicable outside the US under the Hiring Incentives to Restore Employment Act, which was signed into law on 18 March 2010. Its aim is to ensure that all foreign accounts of persons who are subject to taxation in the US are reported to the US tax authorities (Internal Revenue Service [IRS]), failing which a withholding tax of 30% will be levied on all payments originating from the US. From 2017, this is to be extended to gross sales proceeds and payments not originating from the US. The provisions of FATCA enter into force in phases, starting in January 2013.

Foreign financial institutions (FFIs) such as banks, insurance companies and investment funds must, in principle, have concluded an agreement with the IRS by 31 December 2013 unless they are subject to an exception. In this agreement, they undertake to report their US accounts to the US in detail and to implement FATCA compliance systems.

The implementation of FATCA is resulting in high costs worldwide. There are also uncertainties that could lead to legal and reputational risks for the financial institutions concerned. Switzerland's financial sector, with its extensive network of international ties, is particularly affected. FINMA believes it is essential to identify, monitor and take appropriate measures to limit the risks associated with FATCA.

As part of efforts to secure global application of FATCA, the U.S. Treasury Department has offered countries including Switzerland the option of concluding an agreement providing for an easing of the FATCA rules and increased legal certainty which would ultimately reduce the costs of implementing the Act. In return, contracting states must undertake to create within their countries the conditions for seamless implementation of the FATCA system. Under the Swiss international treaty model with the US, data exchange is to be conducted in future not via central data collection by the state but, normally, between the participating FFIs and the IRS or, in exceptional cases, under group requests within the framework of administrative assistance in tax matters.

Under the leadership of the SIF and with the support of organisations including FINMA, the corresponding agreement on simplified implementation of FATCA has now been drafted, and was initialled on 3 December 2012. This will be followed by the parliamentary approval process and, if required, an optional treaty referendum in Switzerland. In the US, sole power to conclude the treaty lies with the government.

[17] See FINMA Annual Report 2011, p. 23 (http://www.finma.ch/e/finma/publikationen/Documents/finma_jb_2011_e.pdf).

Revision of the Collective Investment Schemes Act

Despite the recent entry into force on 1 January 2007 of the Collective Investment Schemes Act, various regulatory developments – primarily in the EU – led to its revision in 2012.

Various regulatory projects were launched in the collective investment schemes sector in response to the hindsight gained from the financial crisis. On 11 November 2010, the European Parliament passed the AIFM Directive[18], which imposes a mandatory supervision regime on all managers of non-UCITS, i.e. collective investment schemes that are not subject to the EU's UCITS Directive. Managers from third countries such as Switzerland are also subject to the AIFM Directive if they manage a European non-UCITS or distribute a non-UCITS from a third country in the EU.

Objectives of the revision of the Collective Investment Schemes Act

In light of these developments, the Federal Council decided on 11 March 2011 to undertake an urgent revision of the Collective Investment Schemes Act (CISA). The draft version was debated in Parliament in the summer and autumn sessions of 2012 and was passed on 27 September 2012. The revised CISA is scheduled to come into force on 1 March 2013. The stated objectives of this revision are to enhance investor protection, increase the quality of Swiss asset management and improve the competitiveness of the Swiss financial sector.

Changes relating to the management of collective investment schemes

All asset managers of Swiss and foreign collective investment schemes are now mandatorily subject to CISA. Asset managers are exempted who manage an amount of assets below an established threshold for collective investment schemes distributed exclusively to qualified investors. Those exempted may nonetheless voluntarily request to be subject to CISA if this is required by the law of the country in which the collective investment scheme they manage is constituted or distributed. This new regulatory requirement is clear, transparent and in line with international standards. Another novelty of the CISA reform is the right afforded to foreign asset managers to seek authorisation in Switzerland for their Swiss branch. This right goes beyond international standards, makes FINMA's supervisory activity more difficult and could result in a lesser degree of protection for the investors concerned. The impact of this new measure on the improvement of the quality of asset management, one of the principal objectives of the CISA reform, remains to be seen.

Changes relating to the custody of the assets of collective investment schemes

Under the revised CISA, custodian banks may only delegate the custody of the assets of a collective investment scheme to regulated and supervised third-party custodians and central securities depositories. This obligation does not apply to cases where mandatory custody of certain financial instruments in a particular location is imposed by local legal requirements or the very terms of the instruments, rendering such regulated and supervised custody unachievable. The liability regime of a custodian bank in delegating custody has also been reinforced: the custodian bank is now presumed liable for any damages caused by its delegate unless it proves to have taken due care in selecting, instructing and monitoring its delegate. As a result of this new regime, the protection afforded to investors with respect to custody is increased.

Changes relating to the distribution of collective investment schemes

Public investors will also benefit from increased protection in the field of fund distribution. All licence holders and third parties involved in dis-

[18] Alternative Investment Fund Managers Directive (AIFMD).

tribution will now be required to keep written records, and be subject to new obligations regarding transparency, in particular with respect to fees. While the preconditions for the distribution of foreign funds to public investors remain unchanged, i.e. a representative and paying agent must still be appointed and FINMA must still approve the product, CISA now requires the representative and paying agent to obtain FINMA's approval before being allowed to terminate their mandate. Therefore, representatives and/or paying agents cannot simply terminate their mandate upon learning of a foreign fund's particular difficulties. FINMA can thus allow investors to keep a point of contact in Switzerland. In addition, FINMA must now also conclude cooperation agreements with all the foreign supervisory authorities concerned with the funds being distributed, which will enable it to monitor distribution more efficiently. Regarding the distribution of foreign funds to qualified investors, CISA now requires a representative to be appointed as a point of contact for investors in Switzerland.

Changes at the product level

While product regulation was not one of the original aims of the CISA revision, Parliament adopted some changes in this regard. For example, CISA now explicitly provides that the Federal Council may permit single investor funds for regulated insurance entities, public entities and retirement benefit entities with professional treasury facilities. Single investor funds are funds with only one investor which may, under certain circumstances, be managed by that investor. This marks a further dilution of the concept of collective investment schemes. Such investment structures fail to meet two of the four key defining traits of a collective investment scheme, in that they are not managed by a third party and do not take a collective form.

Regarding real estate funds, the current ban on transactions between related parties has also been eased. This ban prohibited real estate funds from transacting assets with related parties. The rationale behind this restriction is that the market value of real estate assets is difficult to determine, and transactions between the fund and related parties present an increased risk that these assets will not be sold or acquired at the prevailing market price. Subject to FINMA's approval, a real estate fund may now transact real estate assets with related parties. The Federal Council is to further define the criteria applicable to granting this exemption in the Collective Investment Schemes Ordinance (CISO).

Consequences for market access unclear

It remains unclear whether the CISA revision will preserve market access to the EU for Swiss asset managers of collective investment schemes. Of particular importance for Swiss asset managers is the ability to continue managing foreign non-UCITS and eventually obtain an EU 'passport' when available in 2015. It remains to be seen whether the EU authorities will consider the revised CISA as equivalent to the AIFM Directive. A further uncertainty stems from the transposition by EU member States of the AIFM Directive into their national laws, which could result in additional requirements imposed on the distribution of investment products originating in third countries.

Temporary adjustments to the Swiss Solvency Test

Given the persistence of very low interest rates and delays in regulatory initiatives outside Switzerland, FINMA decided to relax the provisions of the Swiss Solvency Test (SST) for three years.

The adjustments focus on two key points: first, the interest curve used to discount insurance obligations has been adjusted; and second, the thresholds below which FINMA intervenes and instructs insurers to take corrective action have been lowered. Permitting changes to the interest curve required a revision of the Insurance Supervision Ordinance (ISO) by the Federal Council. FINMA published a circular[19] on this and the temporary lowering of the intervention thresholds. The revision and circular came into force on 1 January 2013.

Move prompted by low interest rate environment

The environment of stubbornly low interest rates is causing serious difficulties for life insurance companies in particular. Financing the fixed interest rate guarantees of current insurance contracts is proving to be a major challenge. FINMA made an initial adjustment to the SST in 2011, when it set a long-term interest rate for the Swiss franc interest curve. This approach borrows from the Solvency II regime and is known as the ultimate forward rate (UFR). In 2012, the measure was extended to the main foreign currencies in the SST.

Interest rates fell markedly once again during 2012. FINMA therefore decided to abandon the rigid rules on the valuation of insurance obligations and to make temporary adjustments to the SST.

More flexible valuation of insurance obligations

Under the ISO, the benchmark for fixing the risk-free interest curves in the SST had been the yields on Confederation bonds. With its partial revision of the ISO with effect from 1 January 2013, the Federal Council has given FINMA the power, during periods of exceptionally low interest rates, to authorise interest curves that are not free of counterparty risks.

The new circular enables FINMA to replace the yields on Confederation bonds – previously the only permitted benchmark for the interest curve – with swap rates. This adjustment has its basis in Solvency II. To avoid creating misdirected incentives in the writing of new business, the adjustments apply only to in-force business. In the interests of transparency, insurance companies must, in addition to the adjusted SST, submit to FINMA shadow accounts from which the adjustments are excluded.

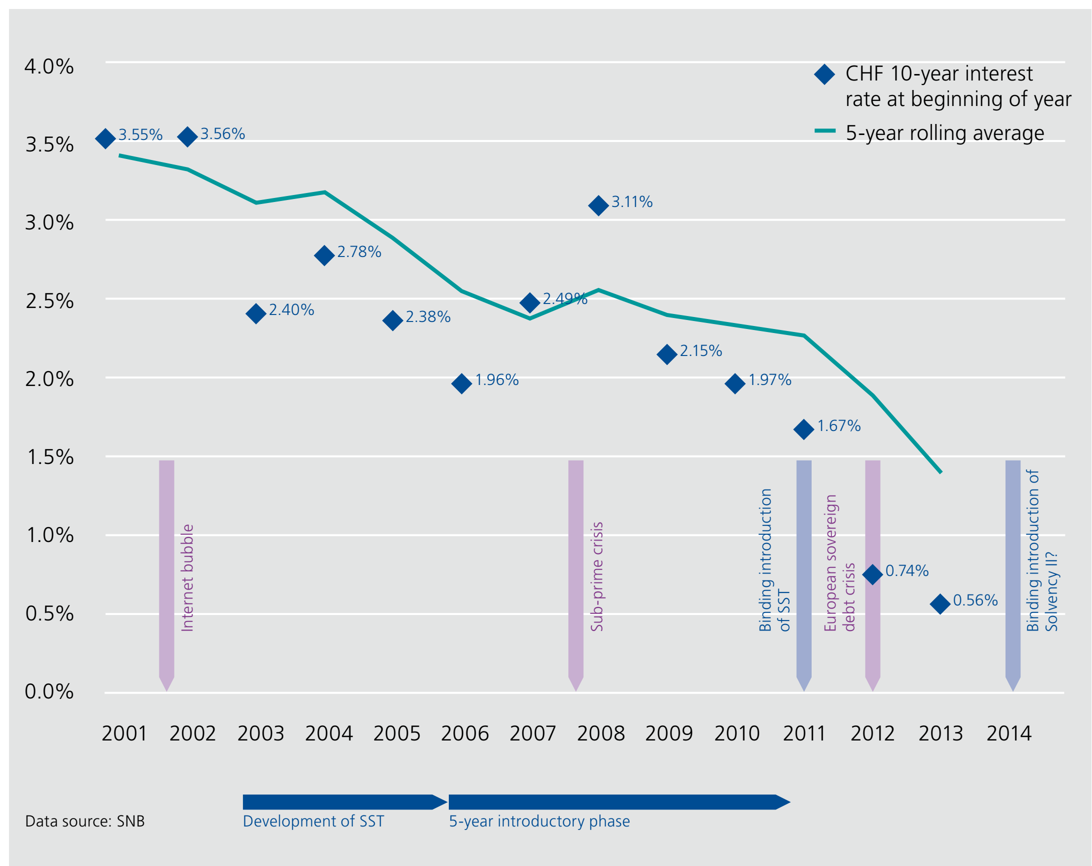
Lower intervention thresholds

As a second measure, FINMA has temporarily adapted the supervisory intervention ladder, forgoing the use of measures that are provided for in the SST in the event that defined thresholds are undershot. Instead, FINMA will allow insurance companies longer deadlines for returning to the target threshold values. For instance, under certain circumstances FINMA will refrain from banning an insurance company from making dividend payments or distributing surplus participation to policyholders if its SST ratio is between 80% and 100%. Additionally, companies with an SST ratio of over 60% may continue to write new business if they adhere to certain conditions.

Both measures provide tangible relief for the companies affected. The rules defined in the circular are scheduled to remain in force for three years. From 2016 onwards, insurers must once again use risk-free interest curves to value all their obligations and the intervention thresholds initially in place will apply.

[19] See FINMA Circular 2013/2 'Adjustments to the Swiss Solvency Test' (German version) (http://www.finma.ch/d/regulierung/anhoerungen/Documents/finma-rs-13-02-d.pdf).

Interest rates in the economic environment and new solvency rules



Reform and harmonisation of auditing

Acting as FINMA's 'extended arm', audit firms are an important pillar of the Swiss supervisory system. FINMA has streamlined the legal basis governing auditing in order to ensure that a uniform approach is applied to auditing all supervised financial institutions.

The aim of FINMA's reform is to harmonise auditing, enhance the value that auditing adds to financial market supervision and improve audit firms' understanding of their role. Accordingly, FINMA will in future exert greater influence on the mandates of audit firms. Functioning as FINMA's 'extended arm', they must act in a uniform manner. On 1 January 2013, the twelve previous circulars on auditing issued by FINMA's predecessor organisations were replaced by two new ones: Circulars 2013/3 'Auditing'[20] and 2013/4 'Audit firms and lead auditors'.[21]

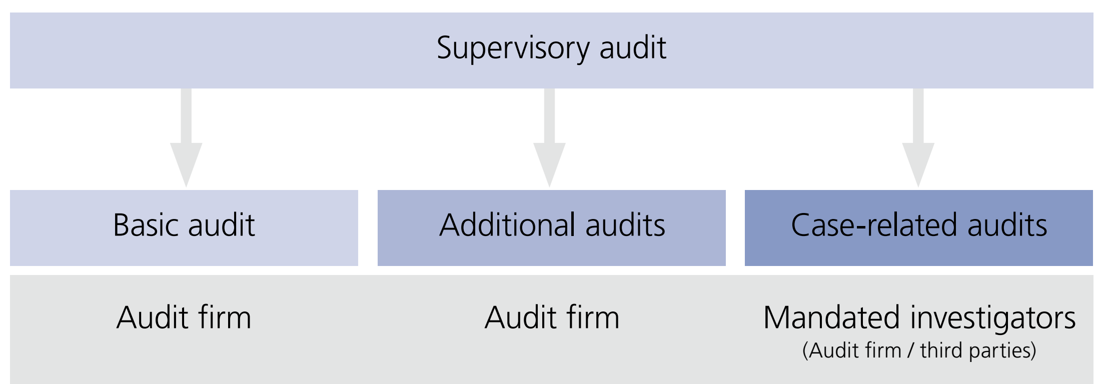
Risk-oriented approach extended to audit firms

FINMA's supervisory approach stipulates that supervision and auditing are to be systematically risk-oriented. FINMA's use of audit firms is guided by this approach. It sets out the intensity of supervision and the supervisory instruments used for each individual supervised institution, as well as the interaction between direct supervision exercised by FINMA and regulatory audits conducted by audit firms.

Audit firms carry out their tasks in the interests of financial market supervision. FINMA now requires audits to adopt a more forward-looking approach. They must deliver to FINMA a risk analysis containing an independent assessment of the risk situation of institutions subject to prudential supervision. FINMA's objective here is to better measure their risk exposure.

Strict separation of regulatory and financial audits

A strict conceptual distinction is now drawn between regulatory and financial audits. When conducting regulatory audits, audit firms must adopt a future-oriented approach, assessing whether supervisory rules have been complied with and whether the conditions are in place for continued compliance in the foreseeable future. Regulatory audits are now modular in construction, thus ensuring a more targeted and risk-oriented use of audit firms:



The basic audit covers the fundamental requirements of supervisory law. It may be supplemented by an additional audit ordered by FINMA when current developments or changes in the risk situation of supervised institutions render this appropriate. Case-related audits are primarily used when specialist expertise is required or a supervised institution is affected by an exceptional event. Audit firms are

[20] See http://www.finma.ch/d/regulierung/Documents/finma-rs-13-03-d.pdf (German version).

[21] See http://www.finma.ch/d/regulierung/Documents/finma-rs-13-04-d.pdf (German version).

expected to provide FINMA with clear statements of the results of their work, as well as assessments of current circumstances relevant to supervision and their potential effects.

Reallocation of supervisory responsibilities

Against this backdrop, and in view of the experience of the last four years, responsibility for overseeing audit firms has also been reorganised. Until now, audit firms have been supervised by FINMA when carrying out regulatory audits, and by the Federal Audit Oversight Authority (FAOA) when conducting financial audits. In future, these separate powers are to be progressively combined within the FAOA.

The boards of directors of the FAOA and FINMA approved a proposal for the reallocation of responsibilities. In June 2012, the Federal Council decided in principle that the entire task of supervising audit firms is to be transferred to the FAOA. The goals of the reform are to eliminate duplication, render structures more efficient, pool specialist knowledge and improve the quality of supervision as well as, ultimately, the entire financial market supervisory system.

Road map for the reorganisation

The transfer of powers from FINMA to the FAOA is split into two stages. The two supervisory authorities have been working more closely together since 1 September 2012. An initial transfer of powers has also taken place on the basis of the existing legal provisions. At the start of September 2012, the FAOA assumed responsibility for supervising financial audits of listed banks, insurance companies and collective investment schemes, as well as other licence holders under the Collective Investment Schemes Act. The remaining powers will be transferred to the FAOA in a second stage, as soon as Parliament has approved the necessary amendments to the law.

Strengthening client protection

In February 2012, FINMA published a position paper[22] on regulating the production and distribution of financial products. FINMA pointed out in this paper that the law as it stands does not adequately protect financial market clients.

In its Distribution Report[23] published in October 2010, FINMA had already noted that current law offers insufficient protection to the clients of financial services providers. In its February 2012 position paper, FINMA proposed the introduction of uniform cross-sector rules of business conduct and product rules for financial services providers to rectify the imbalance in information between clients and providers. In particular, clients should be made aware of the opportunities and risks a financial product entails before they purchase it. FINMA's proposals cover both the production and the distribution of financial products. They are aimed at banks, insurance companies, fund management companies, asset managers and other market participants. The definition of financial products in principle covers all products issued and traded on the Swiss financial market. FINMA also calls for segmentation to be introduced to take account of the differing knowledge and experience of professional and retail clients.

Rules on business conduct and organisation for financial services providers

The central element of the FINMA position paper is a set of uniform rules of business conduct. Before recommending a client to acquire a product, a financial services provider must assess whether the product is suitable for that client. Providers that distribute products to clients without offering advice should still ensure that the product is appropriate for the client. If a client instructs the provider to purchase a product on the client's own initiative

[22] See FINMA position paper on distribution rules, 'Regulation of the production and distribution of financial products' (http://www.finma.ch/e/finma/publikationen/Documents/pos-vertriebsregeln-20120224-e.pdf).

[23] See FINMA Distribution Report 'Regulation of the production and distribution of financial products to retail clients – status, shortcomings and courses of action' (http://www.finma.ch/e/regulierung/anhoerungen/Documents/kernpunkte_bericht_vertriebsregeln_20101110_e.pdf) (Key points in English).

(execution-only), the requirement for an appropriateness test may be waived. Conflicts of interest must be disclosed. The new rules are also designed to create transparency about a provider's services and the associated costs.

Rules on financial products

FINMA believes that financial services providers should provide clients with complete and easily comprehensible product documentation. In particular, providers of standardised financial products such as shares, bonds and structured products are to be required to draw up a prospectus containing all the essential information about the product and the provider and setting out transparently the risks that the purchase of the product entails. FINMA also calls for concise and clearly worded product descriptions to ensure that retail clients better understand complex financial products, such as structured products and unit-linked life insurance, and are informed about the direct and indirect costs associated with them.

Targeted extension of supervision

FINMA believes that a targeted extension of its supervisory powers is necessary to ensure that the proposed rules of business conduct and information requirements are actually implemented in practice. Portfolio managers should only be allowed to exercise their far-reaching powers to decide on the investment of client assets if they possess a licence from FINMA. Additionally, all client advisors must demonstrate their knowledge of the applicable rules of business conduct and their own specialist knowledge through a compulsory test and periodic further training. Providers based outside Switzerland that perform services for Swiss clients must be subject to rules comparable to those applying to Swiss providers.

Improving enforcement

In addition to these new elements of supervisory law, FINMA considers that civil law measures are also needed. Owing to the high costs involved, retail clients in particular often refrain from asserting their claims before the courts. In its position paper, FINMA therefore argues that enforcement of the claims of retail clients against financial services providers should be improved.

Legislative work on a financial services act

Based on the preliminary work carried out by FINMA, in March 2012 the Federal Council instructed the FDF to work with the Federal Department of Justice and Police (FDJP) and FINMA to assess the need for regulatory action and compile a draft for a new financial services act. This draft is scheduled for completion in autumn 2013.

Regulatory developments in the EU and their consequences for Switzerland

The EU is currently in the process of fundamentally revising its system of financial market regulation. This is having a direct and increasing impact on the Swiss financial centre, especially in certain areas where EU law contains equivalence requirements or claims to apply outside the EU.

Since the financial crisis of 2008, the EU has been conducting a comprehensive revision of its financial market regulation aimed at enhancing transparency, improving supervision and enforcement of the rules, bolstering the resilience and stability of the financial sector, fostering a sense of responsibility among market participants and promoting client protection.

EU enacting large number of new individual rules

The EU is amending its legal framework via a large number of individual regulations. Taken together, they amount to a significant tightening of regulation, especially in client protection. Areas that have not previously been regulated – such as shadow banks

and commodities trading – are to be brought within the purview of financial market supervision for the first time. Because the aim is to achieve the highest possible degree of harmonisation in regulation at the EU level, the flexibility in implementation accorded to national governments is decreasing substantially, and a single European rule book is coming into existence. Some legislative processes have already been concluded; in other areas – such as, in banking, the revision of the Capital Requirements Directive IV (CRD IV), needed for implementing the Basel III minimum standards, and, in insurance, the Solvency II Directive – considerable delays are developing.

Third countries must achieve equivalence

Almost all the EU's new regulatory projects contain rules on how the EU is to treat third countries such as Switzerland. They cover improvements to cooperation in supervision, but also market access and regulatory relaxations for companies wishing to do business in the EU. Here, the EU imposes certain conditions: in particular, it must be demonstrated at regular intervals that the third country has regulatory and supervisory standards equivalent to those in the EU, and there must be sufficient cooperation between the supervisory authorities. In some cases, international standards on combating money laundering and terrorist financing as well as tax information exchange must be complied with. This process of expansion and harmonisation is tending to result in stricter rules on EU market access. In return, the third country rules allow certain companies to obtain an EU 'passport' and thus operate throughout the EU's internal market without the third country being obliged to adopt EU law directly. Here are four specific examples of third-country rules:

- The Solvency II Directive requires equivalence in reinsurance supervision and supervision of insurance groups. In return, it grants regulatory relaxations and recognises FINMA's group supervision or waives the requirement for EU group supervision.
- The Alternative Investment Fund Managers Directive (AIFMD) requires equivalent regulation and supervision of depositaries wishing to act as custodians for alternative investment funds within the meaning of the AIFMD.
- Harmonised third-country rules for providing financial services to non-qualified clients in the EU are being discussed as part of the revision of the Markets in Financial Instruments Directive II (MiFID II).
- Requirements on the equivalence of regulation and supervision as well as supervisory cooperation are also contained in the European Market Infrastructure Regulation (EMIR). In particular, this affects central counterparties (CCPs) from third countries that wish to operate in the EU or accept EU market participants as clearing members.

Asserting the extraterritorial application of EU regulations

When the activities of market participants from third countries such as Switzerland may have an impact on the EU, EU regulations in some cases assert their applicability outside the EU itself, despite their lack of territorial connection with the EU. One example is OTC derivatives transactions. Where the impact on the EU financial market may be substantial, there is a requirement for clearing via central counterparties and reporting to trade repositories. Risk-reducing measures must be put in place for derivatives where there is no central clearing. A further example of the claim to extraterritorial application is in the reporting requirements under the ordinance on short selling and certain aspects of credit default swaps (CDSs). In both cases, the EU waives application of its regulations to some extent, provided that regulation and supervision in the third country are deemed equivalent to those in the EU and there is adequate supervisory cooperation. It should be noted that US rules on derivatives also have comparable or even further-reaching extraterritorial effects.

SUPERVISION, ENFORCEMENT AND REGULATION

BANKS AND SECURITIES DEALERS

Overview

Shrinking margins, uncertainty in cross-border business and widespread caution among investors characterised 2012. There are initial signs of a consolidation in Switzerland's banking sector.

The economic environment for banks and securities dealers in Switzerland became even more difficult in 2012. The phase of low interest rates continues, causing a further loss of income for banks in deposit taking and lending. Discussions of cross-border wealth management business and the current tax debate are still unsettling foreign clients. This situation was exacerbated in 2012 by stolen information on clients of Swiss banks increasingly appearing in other countries. Uncertainty on the equity markets and low yields on the bond markets are still making investors extremely cautious. This in turn is further squeezing banks' commission income.

Impact of the euro and sovereign debt crisis

The impact of the euro and sovereign debt crisis in 2012 was felt particularly acutely by banks that have close financial ties to foreign group companies. In a number of cases, FINMA stepped up its monitoring of these institutions, for instance requesting expanded and more frequent reporting of foreign and interbank exposures. Transactions with foreign group companies are tracked closely, enabling rapid intervention if outflows of capital from Switzerland occur.

Pressure on margins in the retail business

The squeeze on margins in the mortgage business remains acute. There is now virtually no scope for further reductions in the interest rates on client deposits. Meanwhile, interest rates on mortgage loans declined further throughout 2012. After a number of years of very low interest rates, increasing numbers of higher-interest, multi-year, fixed-rate mortgages and bond investments are now expiring, and the funds released can only be reinvested at markedly lower interest rates. This is leading to a loss of income which is having a tangible impact on the income statements of banks that are heavily involved in interest business.

Countermeasures such as sharp increases in lending or long-term loans offered at slightly higher interest rates can do no more than marginally improve the earnings situation over the short term. In the medium to long term, however, rapid growth can lead to default and interest rate risks that need to be monitored closely.

Focus on loans, investment policy and client advice

Accordingly, FINMA also focused on monitoring the quality of retail banks' loan portfolios in 2012. In addition to the measures addressing risks in the mortgage market,[24] FINMA conducted supervisory reviews[25] of eight retail banks. Corporate loans were also examined closely. There was a continued emphasis on analysing and monitoring interest rate risks. A new internal warning system enables banks with increased interest rate risks to be identified more precisely. FINMA looked into the risk situation of various banks that attracted attention. In individual cases, it imposed additional capital requirements in response to increased risks. Fortunately, the capital underpinning of the retail banks is relatively good overall.

A further focus of FINMA's supervisory activities was investment advice, with a particular emphasis on banks' compliance with their own investment guidelines, providing information to clients and taking account of the client's risk profile when offering advice. FINMA also subjected internal directives and rules on cross-border financial services[26] to closer examination. It carried out on-site supervisory reviews of 14 wealth management banks. Finally, FINMA carried out investigations into dealings with politically exposed persons (PEPs).[27]

[24] See section on 'Measures in the mortgage market', p. 28 f.

[25] See FINMA Annual Report 2011, p. 39 (http://www.finma.ch/e/finma/publikationen/Documents/finma_jb_2011_e.pdf).

[26] See section on 'Cross-border financial services', p. 30 f.

[27] See section on 'Proceedings regarding politically exposed persons', p. 70.

Market consolidation in wealth management

The decline in earnings from wealth management and advisory business over recent years is having an impact on various banking groups. There is no sign of a trend reversal. As a result, the critical mass required to remain profitable over the long term is rising, and increasing numbers of institutions are falling below it. Smaller banks in particular are increasingly withdrawing from banking operations that require a licence, though in some cases continuing to offer advisory services in their asset management business. Foreign banks, too, are giving up their subsidiaries or branches in Switzerland and concentrating their activities on their home market. A market shake-out is also taking place among larger institutions, notably through takeovers and mergers. In 2012, more than a dozen institutions closed down activities requiring a licence, and around a dozen more are in the process of doing so. The closure does not always come at the bank's own initiative. Institutions that are short of capital or have poor earnings prospects, or where there are doubts about their ability to comply with the terms of their licence, are overseen by the Team Intensive Supervision (TIS).[28] The aim is either to restore the institution to a state in which it can continue as a going concern or to agree with it a plan for the cessation of activities that require a licence.

Owing to the economic situation, the number of applications for a banking or securities dealing licence continues to decline. The fall in the number of active banks is not, however, leading to a reduction in workload for the supervisory authority. Assisting an institution during a liquidation, merger or withdrawal from activities requiring a licence consumes a large amount of resources. FINMA's central concern is to protect the creditors until the banking licence is surrendered and the requirement for supervision ceases.

New case law on retrocessions

On 30 October 2012, the Swiss Federal Supreme Court handed down a landmark judgement[29] on retrocessions, stating that trailer fees obtained by banks in their capacity as asset managers essentially belong to clients. In its role as regulator, it does not fall within FINMA's remit to decide and enforce civil law claims between supervised institutions and their clients. However, systematic compliance by supervised institutions with their central duties under civil law is part of the supervisory law requirement for proper business conduct. This means that banks must be organised and run in such a way that overall compliance with their contractual obligations is assured. FINMA communicated its regulatory expectations in this area for all market participants in FINMA Newsletter 41 (2012) 'Supervisory measures – retrocessions'.[30]

[28] See FINMA Annual Report 2011, p. 41 (http://www.finma.ch/e/finma/publikationen/Documents/finma_jb_2011_e.pdf).

[29] Federal Supreme Court's decision 4A_127/2012 of 30 October 2012 (not yet published in the Official Compilation of Federal Legislation at the time of going to press).

[30] See FINMA Newsletter 41 (http://www.finma.ch/e/finma/publikationen/Lists/ListMitteilungen/Attachments/49/finma-mitteilung-41-2012-e.pdf).

Changes in banking regulation

2012 was a year of intense regulatory activity. Many of the laws, ordinances and circulars initiated in response to the financial crisis have now taken shape.

The amendments made to the Banking Act to address the 'too big to fail' problem came into force on 1 March 2012. The Federal Council then decided on amendments to the Capital Adequacy Ordinance and Banking Ordinance that give effect to the technical details of the 'too big to fail' package. Following approval by the Federal Assembly, these came into force on 1 January 2013.

'Too big to fail': Switzerland leads the way

By 2018, the 'too big to fail' regime requires systemically important banks to achieve higher levels of equity capital, meet stricter liquidity requirements and spread their risks better than other banks. They must also organise themselves in such a way that the functioning of the economy is not endangered if they are threatened with insolvency, and that they can be restructured or resolved in an orderly manner.

Accompanying amendments being made to tax law are designed to develop a functioning Swiss capital market and promote contingent convertible bonds (CoCo bonds) in Switzerland. As their name suggests, these convertible capital instruments play a key role in contingency planning for systemically important banks in Switzerland. With these measures, Switzerland has played a pioneering role in the international regulatory response to the financial crisis.

Full implementation of Basel standards

Switzerland has implemented the new international capital requirements of Basel III via the amended Capital Adequacy Ordinance (CAO) and a number of FINMA circulars[31] which also came into force on 1 January 2013. The definition of eligible capital has been revised and the level of capital required increased. The specific liquidity requirements and a maximum leverage ratio are to be introduced in stages by 2018.

The new capital requirements were drawn up in a national working group headed by FINMA in which all the parties directly affected were represented. The amended CAO also incorporates the new standards for required capital for bank exposures against central counterparties and for disclosure of eligible capital that were not published by the BCBS until mid-2012. Swiss implementation of the Basel minimum standards now meets the international requirements in their entirety, signalling the end of the 'Swiss finish'. This was perhaps the most intensely debated aspect of the regulatory project, reflected in the numerous submissions during the public consultation. Institutions have been granted a lengthy transitional period until the end of 2018 to spread the workload involved in switching over to full Basel implementation.

New liquidity ordinance

Another national working group including representatives of all stakeholders also took the first step towards Swiss implementation of the new liquidity requirements of Basel III. The corresponding provisions are to be removed from the Banking Ordinance and set out in a new liquidity ordinance, supplemented by a FINMA circular[32] setting out the specifics of its supervisory practice. Reporting on the new international liquidity coverage ratio (LCR) will be introduced from mid-2013, replacing the existing overall liquidity requirements. The new quantitative information will be complemented by qualitative liquidity risk management requirements to be introduced in 2014. The new liquidity regulations are a project covering a number of years, and the international rules of Basel III will be introduced in phases.

[31] See FINMA press release 'FINMA publishes circulars on implementing Basel III and TBTF requirements', 18 July 2012 (http://www.finma.ch/e/aktuell/pages/mm-rs-umsetzung-b2-tbtf-20120718.aspx).

[32] See FINMA Circular 2013/6 'Liquidity – banks' (http://www.finma.ch/d/regulierung/Documents/rs-liquiditaet-banken-d.pdf) (German version).

Restructuring and resolution of banks

The new Banking Insolvency Ordinance, which came into force in 2012, gives FINMA a legal basis for restructuring banks and resolving them where necessary. During the year, the big banks also submitted plans to FINMA designed to permit stabilisation without assistance from the state.

FINMA has been working on a fundamental modernisation of bank restructuring law for a number of years. Its basis is the revised restructuring provisions of the Banking Act (BA) of 1 September 2011. The implementing provisions of the FINMA Banking Insolvency Ordinance (BIO-FINMA) came into force on 1 November 2012. BIO-FINMA gives the supervisory authority an additional role as a restructuring and bankruptcy authority with the full range of powers needed to restructure and resolve banks, securities dealers and central mortgage bond institutions. The ordinance brings together in a single document the implementing provisions on restructuring and bankruptcy proceedings. It creates greater transparency and reinforces both legal certainty and predictability.

Convertible capital and bridge bank

In addition to an adapted version of the rules on bankruptcy proceedings familiar from the previous FINMA Bank Bankruptcy Ordinance (BBO-FINMA), BIO-FINMA also contains new standards on the restructuring process. A central element of these rules allows creditors to be obliged to share losses through the compulsory conversion of debt into equity or reductions in claims by way of a 'bail-in'. These measures complement the contingent convertible capital that systemically important Swiss banks in particular are obliged to hold in large quantities.

The resulting capital restructuring does not exclude the possibility of additional restructurings. There are clear implementing provisions governing the transfer of individual bank services to a bridge bank. These are designed to ensure that certain bank services, in particular systemically important functions, can be maintained in the event of a crisis.

Faster proceedings

Proceedings overall have been substantially accelerated. FINMA has, for instance, undertaken to coordinate with foreign authorities and bodies. If it is in the interests of the creditors, FINMA may now recognise the bankruptcy decrees and insolvency measures of other countries, even in the absence of reciprocity. This improves financial stability not just in Switzerland, but also in other economies. BIO-FINMA closes a significant gap in banking law, and is a further important step on the road to the credible restructuring of banks.

Big banks' restructuring plans

Practical implementation of the new rules began at the start of 2012 as part of recovery and resolution planning for the two large banking groups. UBS and Credit Suisse submitted recovery plans to FINMA towards the end of the year which set out how they would stabilise the bank in a crisis and keep its operations running without state intervention. The global resolution process for the two banks is coordinated by FINMA. Working with the key foreign supervisory and recovery authorities, it has developed a global resolution strategy that will be implemented in a crisis using an institution-specific resolution plan. Work on these plans for the two large banks is expected to be completed in 2013.

Switzerland is, therefore, one of the first countries to comply with the essential elements of the FSB's 'Key Attributes of Effective Resolution Regimes for Financial Institutions'[33] of October 2011. BIO-FINMA is also largely equivalent to the draft EU directive on a 'Framework for the Recovery and Resolution of Credit Institutions and Investment Firms'.

[33] See http://www.financialstabilityboard.org/publications/r_111104cc.pdf.

Importance of controls in securities trading

In November 2012, FINMA concluded the enforcement proceedings against UBS following the bank's huge losses in autumn 2011 due to the unauthorised activities of one of its traders. In December 2011, FINMA had already published a newsletter setting out its expectations of market participants in relation to managing such risks.

The supervisory authorities reacted swiftly to the announcement by UBS that it had incurred a loss of USD 2.3 billion as a result of unauthorised transactions in its London-based Investment Bank. FINMA and the UK's Financial Services Authority (FSA) demanded an independent investigation of the events by a third party. Based on the results, on 2 February 2012, FINMA and the FSA each announced that they would institute enforcement proceedings against UBS with the aim of reviewing the appropriateness of UBS's trading controls and compliance with the relevant rules. The two proceedings were conducted separately but closely coordinated.

FINMA criticises substantial deficiencies in controls

FINMA and the FSA concluded their proceedings on 26 November 2012. In its investigation, FINMA identified serious deficiencies in UBS's risk management and controls, which meant that the bank was unable to detect or prevent the loss-making trading activities for a considerable period.

As soon as the fraudulent trading activities became known, FINMA ordered preventive measures to limit the operational risks for UBS. These included capital restrictions and a ban on acquisitions by the Investment Bank. Additionally, every significant new business initiative in the Investment Bank had to be approved in advance by FINMA.

To ensure that UBS was taking effective measures to rectify the shortcomings, FINMA imposed further conditions on the bank at the end of the proceedings. An independent investigator was appointed to control progress on the measures taken by UBS and an audit firm engaged to review their effectiveness. FINMA is examining whether UBS should be required to increase its capital backing for operational risks. FINMA published the results of its enforcement proceedings in a summary report[34] dated 21 November 2012.

Clear expectations of market participants

Back in December 2011, FINMA set out its expectations concerning how the management of all banks should in future handle this kind of operational risk.[35] Effective control of trading activities and the prevention of unauthorised activities requires a systematic approach at a number of levels. Protecting against such losses is first and foremost the task of a bank's senior management, which must put in place an effective trading organisation as well as comprehensive risk controls. The system of internal controls and the associated reporting must sound the alarm at an early stage. If control tasks are delegated to outsiders, special precautions must be taken to ensure that controls are correctly and completely carried out at all times.

Control systems ineffective

FINMA instructed all banks with significant trading activities to submit detailed comments on the individual aspects of the FINMA newsletter. This provided a good overview of the existing control systems to protect against unauthorised trading activities.

Differences between banks' actual practice and FINMA's requirements were identified in a number of areas. Although there are a range of controls to detect unauthorised trades, there is often no overall picture of the control system and its results and no regular evaluation of the controls' effectiveness. Often there is an absence of clear and detailed information about which transactions an individual trader is permitted to carry out and which not.

[34] See 'Summary Report: FINMA Investigation into the Events surrounding Trading Losses of USD 2.3 billion incurred by the Investment Banking Division of UBS AG in London' (http://www.finma.ch/d/aktuell/Documents/ubs-summary-report-20121121.pdf).

[35] The latest findings and experience from earlier cases were summarised in FINMA Newsletter 31 'Unauthorised trading – banks' dated 13 December 2011 (http://www.finma.ch/e/finma/publikationen/Lists/ListMitteilungen/Attachments/4/finma-mitteilung-31-2011-e.pdf), which also examined the application of existing FINMA circulars to the risk management of banks in order to prevent unauthorised trades.

Accordingly, FINMA has intensified its supervisory activity in targeted areas. In selected cases, it engaged an audit firm to conduct a precise analysis of the controls in securities trading.

PostFinance receives banking licence

FINMA has issued PostFinance with a licence to operate as a bank and securities dealer. The licence enters into force as soon as all conditions are met, in particular the hiving off of PostFinance into a limited company. PostFinance will be subject to the same strict supervision as other financial institutions of comparable size and complexity.

PostFinance is a separate division of Swiss Post with responsibility for financial services. Over the years, it has developed into an important financial services provider in the Swiss retail market, with a service range including a wide selection of payment, savings, financing, investment and retirement products.

No special status for PostFinance

The Postal Act and the Postal Organisation Act have been revised to take account of current developments. The Postal Organisation Act now provides for PostFinance to be hived off to form a limited company subject to supervision by FINMA. PostFinance submitted its application for a licence as a bank and securities dealer to FINMA in October 2011.

PostFinance must meet the same regulatory requirements as every other financial institution of comparable size and complexity. Neither its background nor the fact that once it is licensed it will still be owned by the Swiss Confederation entitle it to a special status. On this basis, the FINMA Board of Directors issued the licence on 6 December 2012. However, it will not enter into force until all conditions have been met in full.

Strict regulatory requirements

Owing to PostFinance's current business model and its statutory public service function in payment services, particular importance was accorded to the regulatory requirements concerning capital adequacy, risk management, corporate governance and money laundering prevention. To ensure the full maintenance of protection for creditors and investors, FINMA will closely monitor PostFinance's structural and financial relationship with the Swiss Post Group on an ongoing basis.

Lending not permitted

While it is subject to supervision by FINMA, PostFinance is permitted to engage in the full range of activities within the legal framework for banks and securities dealers, provided it meets the necessary requirements. However, the stipulations of the Postal Organisation Act continue to prohibit PostFinance from offering loans.

Swiss Post has been subject to direct anti-money laundering supervision by FINMA since 1 December 2011, which replaced the previous regime of self-regulation within PostFinance. If PostFinance is overseen by FINMA in future as a bank and securities dealer, anti-money laundering supervision will be transferred to normal banking supervision. Swiss Post and its agencies will then act as 'auxiliaries' to PostFinance within the scope of the Anti-Money Laundering Act.

INSURANCE COMPANIES

Overview

In 2012, the prevailing low-interest phase, which shows no signs of coming to an end, was the major issue confronting the Swiss insurance sector. Life insurance companies in particular are under pressure.

As in previous years, the issue of low interest rates dominated discussions across the sector. In fact, the situation intensified in mid-2012. Ten-year yields on Confederation bonds fluctuated between 50 and 60 bps in 2012. Persistently low interest rates have hit life insurance companies particularly hard. Even if insurers modify their offerings and develop products with lower interest guarantees, it is likely to be some years before their balance sheets show any significant improvement. For this reason, FINMA has temporarily relaxed its Swiss Solvency Test (SST) criteria.[36] A comprehensive review of statutory reserves among life insurance companies produced mixed results, with some life insurers applying unrealistically high valuation interest rates. FINMA will intensify supervision in this area and is considering reformulating the applicable circular.[37]

Because of the sovereign debt crisis, Swiss insurers are limiting their direct holdings of government bonds, in particular those issued by the GIIPS[38] countries. Some insurance groups, however, are heavily exposed through their local subsidiaries. While these risks appear to be manageable for these groups from a consolidated perspective, potential knock-on effects are a serious source of concern. If, for example, the sovereign debt crisis were to spread to European banks, many life insurance companies, particularly those holding bonds issued by EU banks, would be badly affected.

International supervision of insurance groups is intensifying year by year. Important considerations in this context are the EU's stress tests, the definition of global systemically important insurers (G-SII) and the supervisory colleges in which the situation of insurance companies is looked at by the various supervisory authorities.[39]

At the European level, the compulsory introduction of Solvency II, originally planned for 1 November 2012, has been delayed until the beginning of 2014. It seems likely, however, that this deadline will also be missed. An additional aggravating factor is the uncertainty regarding the capital requirements and valuation principles that will apply under Solvency II.

Life insurance companies: strengthening risk capacity

FINMA is concerned about the situation of life insurance companies and has therefore stepped up its supervisory activities significantly in order to protect policyholders. Particularly in view of the low interest rate environment, life insurance companies are less and less able to rely on low-risk investments to deliver on the guarantees made to policyholders. Accordingly, the average SST ratio of life insurers fell to 105%. The compulsory introduction of the SST and the corresponding measures taken by insurers have strengthened the capital base and reduced risks. In 2012, the capital markets experienced only minor turbulence, while risk results were good. This allowed life insurance companies to post good profits in 2012. On the other hand, they paid virtually no dividends in 2012, choosing instead to retain profits and shore up their risk-bearing capacity.

Life insurance companies are finding it very difficult to sell new individual life policies because the benefits offered are not especially attractive to new clients. In view of the low interest rates, it has become very difficult to market new products offering guaranteed interest. Although the industry does indeed offer new products with a guarantee, they come with options that reduce the risk for the insurance company.

The occupational pensions sector, on the other hand, continues to enjoy a period of strong

[36] See section on 'Temporary adjustments to the Swiss Solvency Test (SST)', p. 34 f.

[37] See FINMA Circular 2008/43 'Technical provisions – life insurance' (http://www.finma.ch/d/regulierung/Documents/finma-rs-2008-43.pdf) (German version).

[38] Greece, Italy, Ireland, Portugal, Spain.

[39] See section on 'Complex international supervision of insurance groups', p. 55.

demand. However, the high level of guarantees is creating enormous challenges here too. This resulted in some market participants going out of business and transferring their portfolios to other insurers. FINMA approves and monitors such business activities.

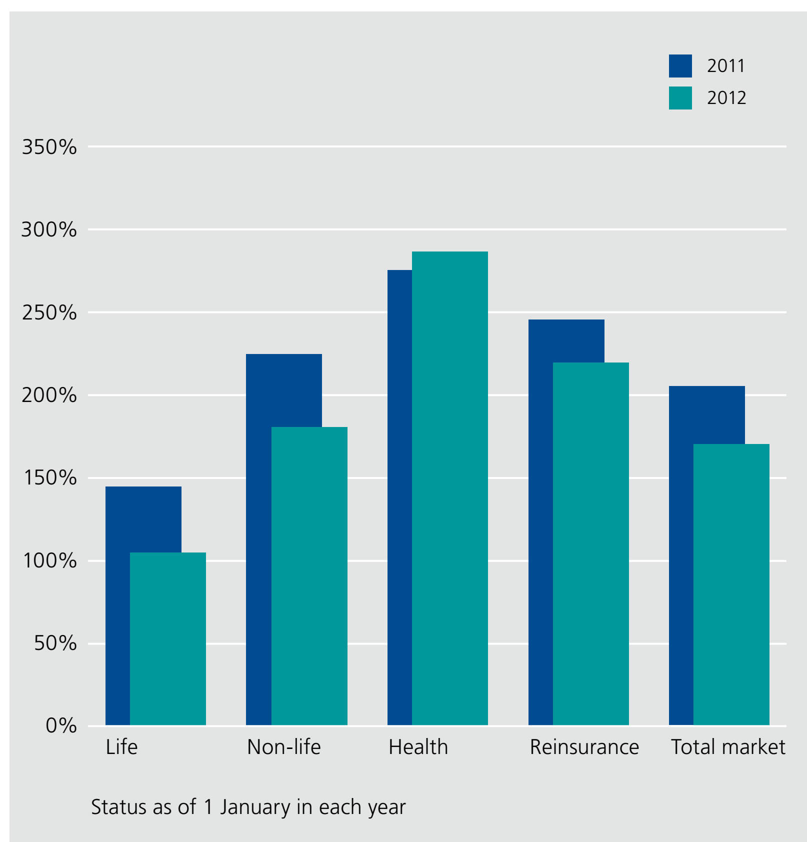
Non-life insurance: good results and strong solvency

Non-life insurers are generally very well positioned. They have managed to post good results despite the difficult environment, with premium growth of approximately 1.5% (adjusted for currency and one-off effects). They are generally well placed in terms of their solvency, with an aggregate solvency ratio of 181%[40] under the SST and 430% under Solvency I. FINMA has carried out random audits of non-life insurers' provisions and identified no serious problems.

The number of non-life insurers under supervision has fallen temporarily: Alba General Insurance Company Ltd and Phenix Insurance Company Ltd were subsumed into Helvetia Group in 2011 and the Polygon branch office dropped out of the insurance business. On the other hand, one Swiss insurance company and one branch office were licensed in 2012, which means that the total number of companies remains at 123.

In its supervision of non-life insurers in 2012, FINMA consistently conducted numerous on-site audits, for instance in cases involving irregularities that were discovered or suspected. Some audits were also carried out on the basis of spot checks. In over 30 audits, FINMA focused on topics such

Trend in SST ratios



Status as of 1 January in each year

[40] Information provided by insurance companies.

as technical provisions, compliance with business plans and the use of derivatives.

In July 2012, the Federal Supreme Court[41] upheld FINMA's decision to grant a licence to GVB Privatversicherungen AG, enabling Gebäudeversicherung Bern to transfer all of its personal insurance contracts to its subsidiary GVB Privatversicherungen AG on 31 December 2012. FINMA conducted these proceedings in close collaboration with the secretariat of the Swiss Competition Commission (COMCO).

Reinsurance companies: a good year

In contrast to 2011, which was marked by an extraordinarily high number of natural disasters, the scale of natural disasters in 2012 was significantly lower. The severest loss event was Hurricane Sandy that hit the US east coast and caused insured losses of around USD 25 billion.[42] The impact of the hurricane for the industry as a whole is unlikely to result in any alarming consequences. Positive developments in claims generally have allowed reinsurers worldwide to boost their profits considerably. All internationally accepted accounting standards indicate that equity capital has continued to rise, reaching an all-time high. However, in a low-interest environment, its effect on the assets side of the balance sheet is overestimated. Higher premium rates have been identified especially in those sectors that were hit by extraordinarily large claims in the previous year.

In terms of solvency, the situation of reinsurance companies in Switzerland remains positive. Although the SST ratio dropped to an average of 220% following substantial claims in 2011, experience shows that Swiss reinsurance companies can easily absorb claims of this magnitude without any risk to their solvency. Nevertheless, some companies clearly underestimated the impact of such events on their balance sheet and subsequently had to adjust their portfolios either by reducing their exposure to natural catastrophes or purchasing additional retrocession cover.

A number of reinsurance companies in Switzerland have been in run-off for several years. In general, this process has produced positive results and the financial situation of the companies in question improved, thanks to reduced exposure, profits from commutation of contracts and other factors. Run-off plans prepared by the companies provide FINMA with an important supervisory instrument that takes account of the individual features of each company in run-off.

All reinsurance companies were obliged to implement FINMA Circular 2011/3 'Provisions in reinsurance' in full by the end of 2012.[43] They were also required to provide FINMA with information and documentation on technical provisions from their business plans by 30 June 2012. Based on this, it became apparent that most companies had not fully met the requirements of the circular at that time.

Health insurance companies: problems with governance and reserves

Supervision of health insurers offering supplementary health insurance under the Insurance Contract Act (ICA) focuses on the products they sell and on the insurers as institutions. As regards products, FINMA approves the rates and the insurance provisions. When supervising individual companies, on the other hand, it audits their regular reports on earnings, solvency and investments. It also carries out risk-oriented analysis and checks. The information gathered gives FINMA a clear picture of where the various supervised institutions stand and enables FINMA to determine its supervisory measures.

Since 2010, FINMA has been systematically monitoring all health insurers' business plans. In its findings, it detected particular problems with products with an entry age guarantee. In some companies, FINMA identified a shortfall in reserves, in which cases the companies had to submit proposals to remedy the situation. In November 2012, FINMA was obliged to liquidate Supra Assurances SA because it had a reserve deficit of more than CHF 500 million. In order to protect the more than 70,000 policyholders who

[41] Federal Supreme Court decision 2C 94/2012 of 3 July 2012.

[42] As estimated by leading reinsurance companies.

[43] See http://www.finma.ch/d/regulierung/Documents/finma-rs-2011-03-d.pdf (German version).

had taken out supplementary health insurance with Supra, FINMA ordered the integration of all Supra's policyholders into Assura SA. In addition, its boards of directors were suspended because of serious corporate governance problems. Assura belongs to the same holding company as Supra.

FINMA conducted several on-site audits focusing primarily on corporate governance and technical reserve issues. In 2012, administrative proceedings against KPT Versicherungen AG and three of its managers were concluded. FINMA banned two former directors from assuming an executive function in the financial services sector for four years and ordered the disgorgement of unjustified benefits. While the ruling against KPT has become legally binding, two former directors have lodged appeals, both of which are currently pending with the Federal Administrative Court. FINMA appointed an external overseer to manage KPT in the interim. The board was reconstituted within a few months and the situation has now stabilised.

Since the new hospital financing scheme came into effect at the beginning of 2012, FINMA has analysed its impact on benefits and premium levels. Initial findings are still incomplete because many hospitals delayed sending out invoices, especially during the first semester of 2012, due to uncertainties about rates. Before FINMA can order any rate adjustments, it will need reliable data and solid forecasts.

Swiss Qualitative Assessment II

In 2012, FINMA concluded the second Swiss Qualitative Assessment (SQA II), which focused primarily on insurance groups and other insurers in the higher risk categories. In addition to providing substantive assessments to the various insurers, FINMA will publish a market study containing its SQA II findings in 2013. FINMA's observations indicate that insurers generally are paying more attention to corporate governance, risk management and internal controls. However, there is considerable room for improvement in certain areas, such as reporting to the board of directors and building awareness among employees about risk issues and compliance obligations.

Changes in insurance regulation

The most important new regulations introduced in 2012 were the setting out of the legal basis for adjusting the SST, the new ordinance on insurance bankruptcies and the new circular on liquidity for insurers.

In December 2012, the Federal Council changed the provisions on market-oriented valuations of insurance obligations. In line with these provisions, FINMA granted insurance companies temporary adjustments to the SST.[44]

FINMA Insurance Bankruptcy Ordinance

Since 1 September 2011, FINMA has been responsible for instituting and conducting bankruptcy proceedings involving insurance companies. However, since the Insurance Supervision Act (ISA) has only rudimentary provisions for dealing with bankruptcies, FINMA decided to define the process in detail and set it down in the Insurance Bankruptcy Ordinance (IBO-FINMA). The IBO-FINMA, which entered into force on 1 January 2013, aims to enable quick and efficient bankruptcy proceedings and ensure legal certainty. In order to protect policyholders against insolvency risks posed by insurance companies, their claims are satisfied in accordance with the Swiss Debt Collection and Bankruptcy Act (DEBA) before those of first-priority debtors (e.g. employees). In addition, FINMA can authorise the liquidator to distribute the proceeds from tied assets to policyholders even before the schedule of claims becomes legally binding.

Liquidity of insurance companies

Liquidity risk belongs to the core risks that insurance companies must adequately address, contain and monitor. FINMA Circular 2013/5 'Liquidity – insurers'[45] sets out the precise requirements for risk management and defines the principles for identifying and reporting insurers' liquidity risks.

Internal models for the Swiss Solvency Test

FINMA continues to give high priority to testing internal models. By the end of 2012, it reached a decision on two thirds of the insurance companies that want to use an internal model to calculate their SST ratio.

The SST has been in place since 1 January 2011. Many insurance companies want to use a full or partial internal model to calculate their SST ratio. Approximately 70 companies, or roughly half of all insurers subject to the SST, have now submitted their internal model for approval. The requirements to be met by internal models are laid out in the Insurance Supervision Ordinance and FINMA Circular 2008/44 'SST'.[46] The 'Guidelines on examining internal risk models' are used for assessing internal models.[47]

Assessing an internal model is a complex and time-consuming process, and the model must be stable and well-documented if the process is to be efficient. The assessment result can be in the form of an approval, sometimes with certain conditions (e.g. a time limit), or a rejection. In cases where the assessment of the internal model is not yet complete but no obvious weaknesses have been identified, FINMA grants provisional approval of the next year's SST calculations.

About two thirds of the applications received were approved in 2012, mostly with a time limit and linked to certain requirements. FINMA supervises their implementation as part of a model improve-

[44] See section on 'Temporary adjustments to the Swiss Solvency Test (SST)', p. 34 f.

[45] See http://www.finma.ch/d/regulierung/Documents/finma-rs-13-05-d.pdf (German version).

[46] See http://www.finma.ch/e/regulierung/Documents/finma-rs-2008-44-e.pdf.

[47] See http://www.finma.ch/d/beaufsichtigte/versicherungen/schweizer-solvenztest/Documents/wl-pruefungs-konzept-sst-d.pdf (German version).

ment process. Initially, the focus was on a purely document-based assessment. The extent to which the model is embedded in both the organisation and the insurance company's processes is examined subsequently during on-site assessments.

Life insurers and occupational pension schemes

The fact that life insurance companies and Pillar 2 as a system are facing enormous challenges is one of the unavoidable results of the current economic environment.

In Switzerland, Pillar 2 comprises a total of CHF 776 billion of invested capital, of which CHF 157 billion is managed by private life insurance companies subject to FINMA supervision.

Returns on risk-free investments have reached historically low levels. Even the lengthy low-interest phase in Japan in the 1990s – referred to as the 'Japan scenario' – pales against current interest levels.

Sharp decline in premium volumes

Gross premium volumes of Swiss life insurance companies have declined considerably over the past ten years after rising continuously in the 1980s and 1990s (see bar chart).

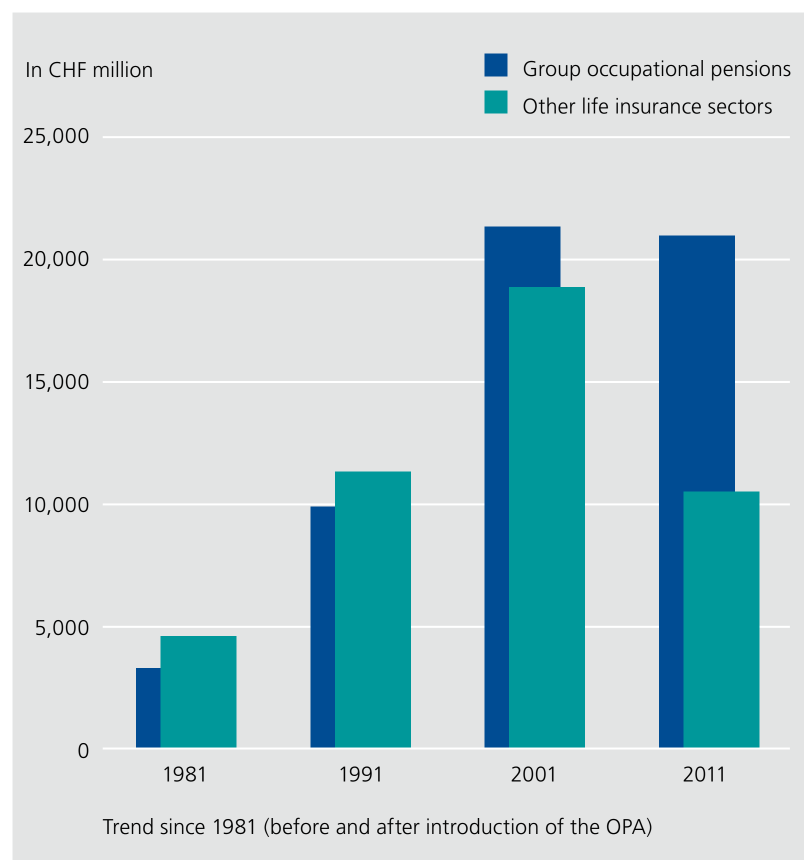
The occupational pension sector managed to maintain its volumes because of its social insurance characteristics and the associated mandatory requirements. Personal pensions, on the other hand, have declined substantially, and business outside Switzerland has shifted almost completely from branch offices to subsidiaries. Group insurance of occupational pensions in Switzerland accounts for almost 70% of the business volume of life insurance companies.

Because Pillar 2 is effectively a social insurance, FINMA closely monitors the institutions that are active in this field, especially with regard to the level and volatility of the insured risks. It focuses in particular on solvency, quantitative and qualitative risk management, and corporate governance of life insurance companies, as well as on safeguarding the assets deposited with these companies.

Group life occupational pension schemes reach critical mass

Liabilities from group life occupational pension schemes have reached CHF 137 billion. Pillar 2 provides cover for 1.6 million employees and pays benefits to more than 200,000 pensioners. For

Gross premium volume of Swiss life insurers



this reason, FINMA regards group life occupational pension schemes as a crucial component of a properly functioning pension system and attaches great importance to disclosing and commenting on the figures derived from its annual analyses. The transparency that results from disclosure by life insurance companies – something that both FINMA and its predecessor, the Federal Office of Private Insurance (FOPI) have promoted for years – has had a positive effect on the conduct of insurance companies.

FINMA creates transparency

FINMA also issues its own detailed report[48] each year in which it describes the environment as well as any socio-economic trends that are of crucial importance to occupational pensions institutions insured with life insurance companies and their policyholders. In particular, it contains key figures on risk premiums, operating costs, returns on investments, valuations of insurance liabilities and policyholders' shares of any surpluses generated. It also identifies potential risks and opportunities.

A separate disclosure schedule[49] gives interested parties a comprehensive overview of key figures from income statements and balance sheets relating, for example, to investments, costs and distribution policies. They identify the strengths and weaknesses of life insurance companies active in the occupational pensions sector, thus enabling comparisons to be drawn with competitors. This is of particular benefit to companies aiming to provide their employees with solid pension cover.

Year by year, FINMA works to improve this disclosure report by requesting more detail where necessary and introducing new requirements.

[48] See 'Occupational pensions with life insurance companies – publication of 2011 figures' http://www.finma.ch/d/beaufsichtigte/versicherungen/betriebsrechnung-bv/Documents/BVG-Offenlegungs-bericht-2011_d.pdf (German version).

[49] See Disclosure schedule 2011 http://www.finma.ch/d/beaufsichtigte/versicherungen/betriebsrechnung-bv/Documents/Offenlegungs-schema_2011_d.xls (German version).

Complex international supervision of insurance groups

In its supervisory function, FINMA concentrates primarily on monitoring large insurance groups and conglomerates. In this context, working with other supervisory authorities around the world has become increasingly important.

The monitoring of insurance groups and conglomerates under FINMA's supervision has had a risk-based focus for some time. Approximately two thirds of FINMA's supervisory activities are focused on the three largest groups and risk areas that FINMA knows from experience require special attention. Risk management and internal control systems grow in importance as structures and transactions become more complex.

Global and European colleges

In the past, international collaboration among supervisory authorities was restricted to an annual meeting of the global supervisory colleges and the regional European colleges of supervisors. The colleges analysed and evaluated the insurance groups in detail from a supervisory perspective. In 2012, FINMA convened physical colleges with Baloise, Helvetia, Nationale Suisse, Swiss Life, Swiss Re and Zurich Insurance Group. Overall, exchange between the supervisory authorities intensified in 2012 due to more frequent bilateral and multilateral contacts.

Rising number of information requests

The number and scope of information requests continue to rise internationally. The European Insurance and Occupational Pensions Authority (EIOPA) in particular is addressing more and more enquiries to FINMA. Until now, FINMA has provided aggregated and anonymous data. However, the number of requests for specific company information has also risen. Before FINMA complies with such requests, it ensures that the data will be used solely for supervisory purposes. It also ensures that the data is handled securely and that confidentiality is guaranteed.

Recognition of equivalence drags on

In 2011, EIOPA analysed whether Switzerland's insurance supervision regime is equivalent to EU supervision standards under the requirements of the Solvency II Directive. Although its findings were positive, the European Commission's formal decision is still pending. Because the introduction of Solvency II in the EU has been delayed until 2014 and the EU's Omnibus II Directive is still pending, the process of establishing equivalence in supervision between Switzerland and EU countries cannot be concluded at this time. EIOPA has expressed one reservation in connection with the disclosure obligations of insurance companies and groups towards the public. At present, these obligations only exist in rudimentary form in Switzerland. FINMA is currently developing an appropriate framework that will specify the disclosure obligations of insurance companies.

MARKETS

Overview

FINMA's Markets division increased its supervision in 2012, particularly over supervised institutions covered by the Collective Investment Schemes Act. It investigated the organisation of foreign funds distributed in Switzerland, carried out checks to verify whether the custodian banks of Swiss funds are performing their monitoring duties properly and looked closer at the investment decision-making processes of Swiss funds.

FINMA stepped up its supervision of both foreign and Swiss collective investment schemes. In the case of foreign funds, FINMA investigated whether they have an organisation equivalent to that of Swiss collective investment schemes and provide a comparable level of investor protection.[50] In the case of Swiss collective investment schemes, FINMA carried out an in-depth examination of custodian banks to ensure that they are properly monitoring fund management companies.[51]

Focus on investment decisions processes

It is of pivotal importance to investor protection that investment decisions within collective investment schemes are made in compliance with the law. In this regard, FINMA focused its attention on funds which are managed by asset managers and which at the same time use the services provided by an investment advisor. The fund management company of a contractual investment fund may delegate investment decisions to a third party provided that this delegation is in the interests of efficient management and that the delegate is a supervised asset manager. By contrast, an investment advisor need not be subject to supervision, may only offer investment recommendations and may not take any investment decisions.

In the course of these reviews, FINMA concluded that the activities of certain investment advisors went beyond mere investment advice. This is the case when the asset manager accepts the investment advisor's proposals without careful, independent analysis, or simply checks that these proposals comply with the provisions of the fund contract. Another example is when the investment advisor had a significant influence on the investment decisions, for example by having a seat on an investment committee with decision-making powers. FINMA took the necessary measures and ensured that the investment advisors concerned will now be exclusively confined to an advisory function.

Increased efforts in combating money laundering

FINMA has also stepped up its supervisory activities in combating money laundering and the financing of terrorism. In the case of self-regulatory organisations (SROs), it conducted several bilateral supervisory consultations in addition to annual on-site checks. These meetings addressed the annual control results of the SROs and provided a platform for addressing and resolving current supervisory issues.

FINMA also examined the discrepancies between the regulations of SROs and FINMA's Anti-Money Laundering Ordinance (AMLO-FINMA). In some cases, FINMA found that the SROs had not incorporated in their regulations the new requirements for financial intermediaries introduced in 2011. This particularly concerned the obligation of a financial intermediary to formulate the criteria followed in identifying business relationships involving increased risk. Such criteria include the complexity of the structures, particularly if domiciliary companies are used. In the case of money or asset transfers, the name and address of the financial intermediary must figure on the payment receipt. FINMA instructed the SROs in question to adapt their regulations accordingly.

[50] See section on 'Foreign collective investment schemes', p. 60 f.

[51] See section on 'Monitoring duties of custodian banks', p. 61 f.

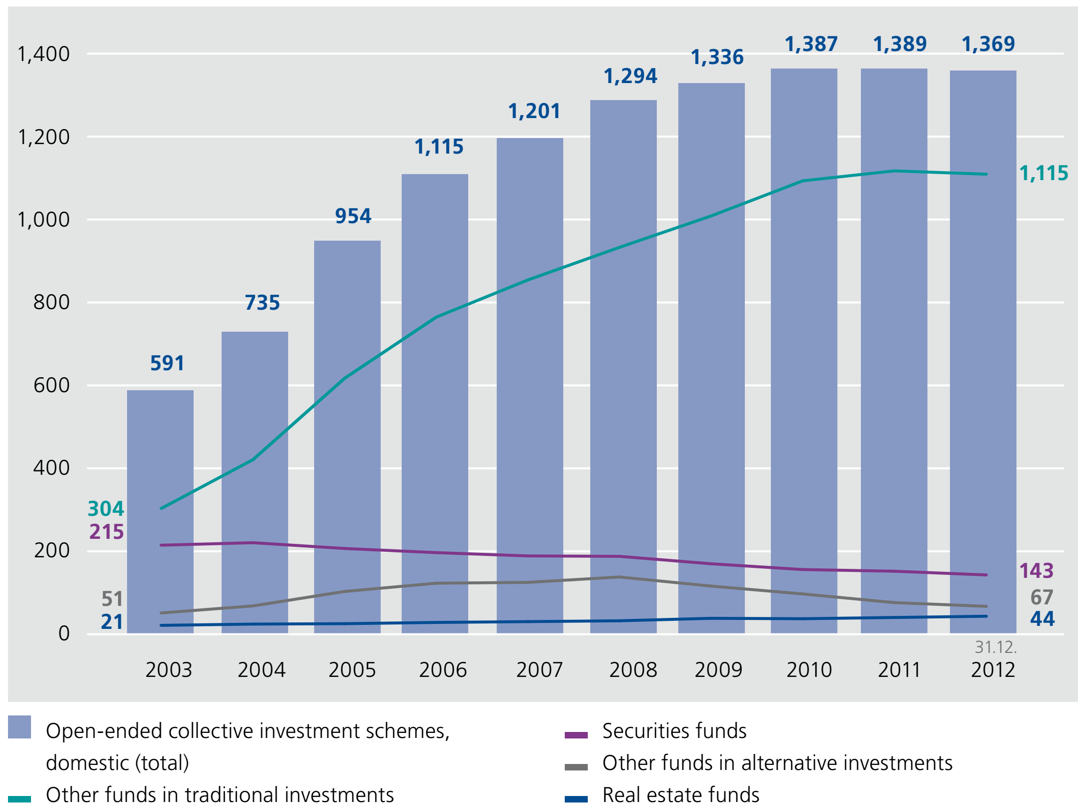
Focus on risk-oriented supervision of stock exchanges

FINMA intensified its supervision of stock exchanges and the post-trading infrastructure sector by establishing more direct contact with supervised entities and by requesting from them more information and greater precision in the information provided. The supervisory processes were centred on a more risk-oriented approach and were brought in line with the supervisory processes applied by FINMA in other areas. The supervised institutions are now allocated to surveillance categories according to their size, complexity and risk. The most important institutions will also be subject to an annual risk assessment using regulatory requirements and international standards that serve as a benchmark. The supervisory processes and the application of surveillance measures set down in FINMASA guide FINMA in its handling of these categories and risk assessments.

Consequences of the partial revision of the Collective Investment Schemes Act (CISA) for asset managers

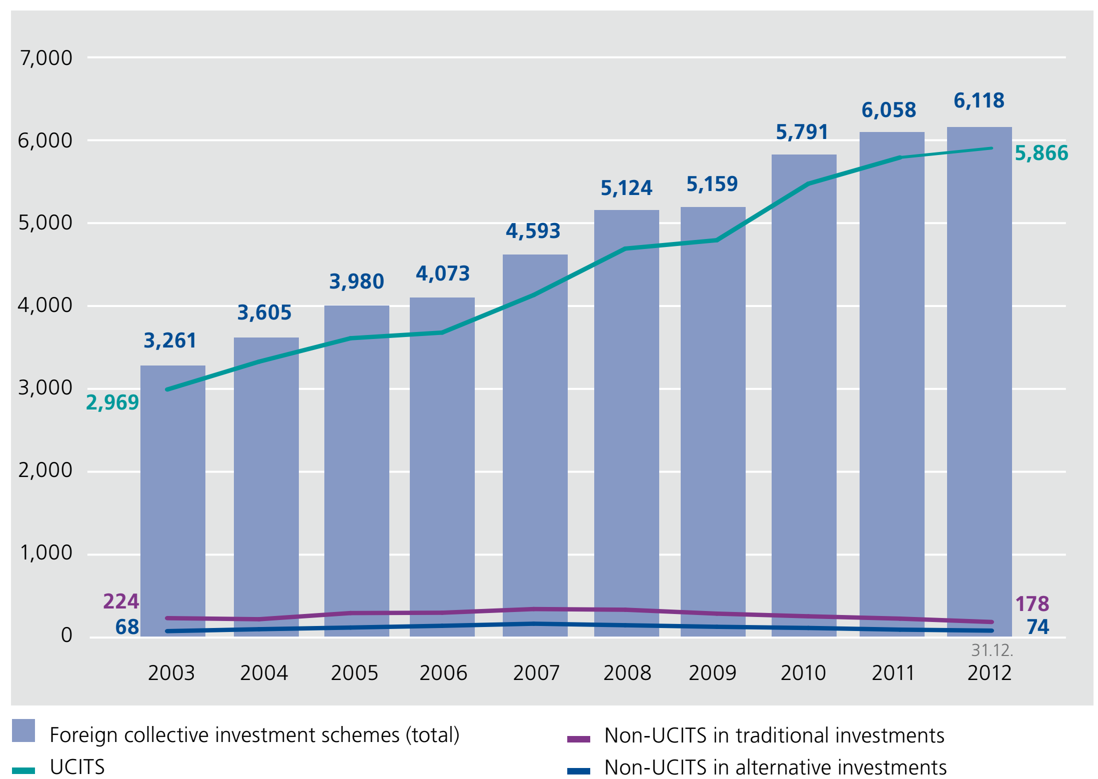
FINMA used various communication channels to inform asset managers of collective investment schemes of the possible consequences of the partial revision of CISA. Expecting a considerable increase in asset manager authorisation applications, FINMA issued precise requirements for such applications and a related timeline for their processing. In addition, FINMA enhanced its organisational capacity to handle authorisation applications. These significant communication efforts led to an improvement in the quality of applications, and faster and more efficient processing by FINMA.

Number of domestic open-ended collective investment schemes between 2003 and 2012 according to fund type



In terms of products, for the first time since 2003 there was a decline in the number of Swiss collective investment schemes, resulting mainly from liquidations. Swiss open-ended collective investment schemes approved in 2012 showed a clear trend towards fixed income strategies.

Number of foreign collective investment schemes between 2003 and 2012



Changes in market regulation

FINMA was entrusted with new powers, and thus new tasks, in the fields of collective investment schemes, stock exchange supervision, and combating money laundering and the financing of terrorism.

Since the entry into force of the provisions on depositor protection on 1 September 2011, FINMA became responsible for initiating and conducting bankruptcy proceedings involving certain licence holders under the Collective Investment Schemes Act (CISA). This responsibility remains to be defined in more detail.

FINMA Collective Investment Schemes Bankruptcy Ordinance

In the collective investment schemes sector, FINMA had already been responsible for bankruptcy proceedings involving fund management companies, limited partnerships for collective investment, investment companies with variable capital (SICAVs) and investment companies with fixed capital (SICAFs). Under the revised CISA scheduled to enter into force on 1 March 2013, FINMA will also be responsible for bankruptcy proceedings involving asset managers of collective investment schemes. Bankruptcy proceedings are to be defined in more detail in the FINMA Collective Investment Schemes Bankruptcy Ordinance (CISBO-FINMA), which will provide for efficient and cost-effective proceedings and give proper consideration to the specific features of the various legal forms of collective investment schemes such as SICAVs. The draft version submitted for consultation on 10 July 2012 was met with broad approval, and the increased transparency – and thus legal certainty – achieved by its implementing provisions was particularly welcomed. CISBO-FINMA is scheduled to enter into force concurrently with the revised Collective Investment Schemes Act on 1 March 2013.

Guidelines for money market funds

Since 1 July 2011, all European money market funds must comply with the 'Guidelines on a common definition of European money market funds'[52] issued by the Committee of European Securities Regulators (CESR)[53]. FINMA recognised the Guidelines for Money Market Funds[54] issued by the Swiss Funds Association (SFA) as a minimum standard. These guidelines entered into force on 1 July 2012, providing standardised requirements in Switzerland and enhancing investor protection. The guidelines apply to securities funds as defined in Article 53 et seq. CISA as well as to other funds for traditional investments as defined in Article 70 et seq. CISA. The fund management companies / SICAVs are required to comply with the guidelines. All money market funds labelled as such must comply with the requirements set down in these guidelines.

Stock exchanges: reform of OTC derivatives

In the wake of the financial crisis, various international bodies – in particular the G-20 and the FSB – undertook to reform over-the-counter (OTC) derivatives with a view to increasing transparency and reducing systemic risk. The key resolution of the G-20 summit held in Pittsburgh in 2009 has consequences for Switzerland. Taking part in a working group comprising various supervisory authorities, FINMA examined the need for new regulation to implement the G-20 decisions. Based on FINMA's work, the Federal Council instructed the FDF on 28 August 2012 to draw up a draft consultation paper. The objective of the Federal Council is to establish in Switzerland a regulatory framework governing OTC derivatives and financial market infrastructures which should be equivalent to regimes existing in other relevant jurisdictions. While certain financial market infrastructures such as stock exchanges are in principle already subject to FINMA supervision, it remains necessary to establish a regulatory and supervisory framework adapted to current risks that

[52] See http://www.esma.europa.eu/system/files/10_049.pdf.

[53] Now the European Securities and Markets Authority (ESMA).

[54] See Guidelines for Money Market Funds issued on 6 June 2012 (https://www.sfa.ch/self-regulation/fund-management?action=download&type=document&id=384) (German version).

is internationally recognised in order to promote the stability of financial markets and adequately protect investors.

Combating money laundering and the financing of terrorism

After more than two years' work, the Financial Action Task Force (FATF) published its revised standards in February 2012. On 18 April 2012, the Federal Council took note of these results and instructed the FDF to set up an interdepartmental working group, of which FINMA is a member. The working group is to draw up proposals for implementing the revised FATF recommendations as well as a draft consultation paper by the first quarter of 2013.

The 40 new FATF recommendations have far-reaching consequences for financial intermediaries. These recommendations take into account the extended mandate of the FATF in combating the financing of terrorism and the proliferation of weapons of mass destruction. One key aspect of the revision of the standards was to include tax crimes in the list of predicate offences of money laundering. The FATF has also adopted a risk-based approach to regulation, requiring countries to assess their risks at the national level and take additional measures where necessary to address higher risks. The FATF also demands greater transparency at the corporate level. Countries must ensure that information is available on the beneficial ownership of a legal entity. The corresponding requirements for financial intermediaries were also specified in more detail. The due diligence obligations incumbent on financial intermediaries in dealing with politically exposed persons (PEPs)[55] at the national level or in international organisations have also been made stricter.

Foreign collective investment schemes

Foreign collective investment schemes must have an organisation equivalent to that of Swiss collective investment schemes in order to ensure an equal level of investor protection.

For foreign collective investment schemes to be publicly distributed in or from Switzerland, all their relevant documents, such as the sales prospectus, the articles of association and the fund contract, must receive FINMA's prior approval. FINMA only issues its approval if, among other factors, the foreign fund management company or investment company meet standards equivalent to the provisions of CISA in terms of internal organisation, investor rights and investment policy. The aim and rationale behind this requirement is to ensure that investors in foreign collective investment schemes benefit from an equal level of protection as investors in Swiss collective investment schemes.

Delegation to third parties

The delegation of tasks is a key organisational aspect. If a licence holder delegates tasks to third parties, legal obligations of a prudential nature – such as compliance with capital adequacy requirements – remain applicable only to the licence holder. Therefore, the delegation of tasks to third parties may not be used to circumvent the observance of legal obligations. In particular, large-scale outsourcing, rendering a licence holder tantamount to an empty shell and incapable of meeting its obligations, is not permitted. In Switzerland, a fund management company may delegate specific tasks, but only to properly qualified individuals or entities. The fund management company must also adequately instruct and supervise the chosen delegate, and control the proper execution of the tasks delegated. Furthermore, the management company may only delegate investment decisions to asset managers who are subject to a recognised supervisory regime.

[55] See section on 'Proceedings regarding politically exposed persons', p. 70.

Problematic cases

FINMA received an increasing number of applications from foreign collective investment schemes, the structures of which raised doubts about whether the organisation requirements applicable to the foreign fund management company or fund company were equivalent to the provisions of CISA. FINMA has worked regularly with the foreign supervisory authorities responsible for investigating such cases. The following situations have frequently been encountered:

- A foreign fund management company delegates tasks to third parties, but is not itself adequately staffed on a quantitative and/or qualitative basis to be able to properly select, instruct and monitor these agents.
- A foreign fund management company delegates the investment decisions to a Swiss asset manager. However, the foreign fund management company and the Swiss asset manager both have the same personnel. This raises the question as to whether these fund management companies are able to meet their legal obligations, and whether an appropriate monitoring of the delegates can be accomplished through such a set-up.
- A foreign fund management company appoints a Swiss investment advisor who is, de facto, not only involved in asset management in an advisory capacity, but also actually takes investment decisions. Investment decisions may only be delegated to supervised asset managers.

Monitoring duties of custodian banks

Custodian banks play a key role in protecting the interests of investors in collective investment schemes. Specifically, they have a range of monitoring duties with respect to fund management companies or SICAVs.

The custodian bank plays a pivotal role in protecting investors in collective investment schemes. It is responsible for safekeeping the fund's assets, issuing and redeeming units and ensuring payment transfers. The custodian bank also has key monitoring functions for fund management companies or SICAVs. For example, it must ensure that investment decisions, the calculation of the net asset value (NAV), and the issue and redemption prices of the units comply with the law and the fund regulations. It must also verify that net income is used in accordance with the fund regulations.

Monitoring duties neglected in some cases

A thorough examination of custodian banks revealed an uneven performance of their monitoring duties, and in some cases an insufficient level of independence from fund management companies or SICAVs. FINMA therefore instructed audit firms to conduct an in-depth audit of custodian banks. The audit demonstrated their shortcomings in terms of organisation, lack of resources and inadequate control functions. FINMA instructed the custodian banks concerned to remedy these deficiencies. The custodian banks should therefore be able to perform their monitoring functions more effectively, thus enhancing investor protection.

Custodian banks must be properly organised

For a custodian bank to perform its tasks – and in particular its monitoring functions – its organisation must be appropriate and fit for this purpose. In particular, the custodian bank must employ sufficient and well-qualified staff with signatory powers, and must ensure an adequate replacement in their absence. Custodian bank employees performing safekeeping and monitoring tasks must not concurrently carry out tasks that have been delegated to the custodian bank.

To avoid conflicts of interest, FINMA also requires adequate functional separation and separate work-

places, particularly if the asset management of the collective investment scheme has been delegated to a custodian bank. For instance, when controlling NAV calculations, it is considered insufficient for a custodian bank to rely entirely on the valuations of the fund management company, or to perform only minimal calculations. The custodian bank must in principle carry out checks of the NAVs and the issue and redemption prices of units independently of the fund management company. Plausibility checks of the NAVs are to be carried out each time the NAVs are published.

The custodian bank must also subject the collective investment scheme to in-depth controls, doing so at appropriate intervals given the nature of the fund. To be able to perform these tasks, the custodian bank must be independent of the fund management company or SICAV.

Combating money laundering in CISA and the insurance sector

As part of the revision of the Collective Investment Schemes Act, amendments were also made to the Anti-Money Laundering Act. Fund management companies operating unit accounts or distributing units of a collective investment scheme themselves are now considered financial intermediaries. Non-life insurers are also subject to the Anti-Money Laundering Act if they issue mortgage loans.

In Switzerland, insurers as well as banks issue mortgage loans. However, only life insurers are explicitly subject to the Anti-Money Laundering Act (AMLA), while non-life insurers and supplementary health insurance providers are not.

Insurers issuing loans and mortgages subject to the AMLA

Given that the Anti-Money Laundering Act also covers lending and makes specific reference to mortgages, insurers granting loans and mortgages are subject to its provisions, even if they are not active in the life insurance business. For this reason, the corresponding review and supervisory activities, previously only applicable to and undertaken for life insurers, have been extended to all insurance companies granting loans and mortgages. Compliance with the provisions of the anti-money laundering regulations is audited by an external audit firm licensed by FINMA. The supervision of insurance companies can be carried out either directly by FINMA or via the self-regulatory organisation of the Swiss Insurance Association (SRO-SIA). The SRO-SIA provides FINMA with regular reports on its activities.

Fund management companies and asset managers

The partial revision of the Collective Investment Schemes Act specified in more detail that fund management companies are subject to the AMLA not only if they operate unit accounts, but also if they distribute units of a collective investment scheme. In practice, virtually all fund management companies have usually been considered as falling outside the scope of the AMLA, as they only rarely operate unit accounts. This situation was not only incompatible with international standards, but also represented an unjustifiable inequality in treatment compared with the other companies subject to CISA. Given the absence of transitional provisions, FINMA directly interacted with fund management companies in 2012 to draw their attention to this change. This should enable fund management companies to implement organisational measures required by the AMLA in due course.

ENFORCEMENT

Overview

FINMA's Enforcement division carried out numerous parallel investigations of varying scope during 2012, along with a large number of proceedings against institutions and individuals. The division's headcount was also increased.

Ten additional positions were created in the Enforcement division in 2012. The increased number of staff enabled FINMA to conduct more investigations and proceedings, while shortening the time those proceedings took. In line with its enforcement policy, FINMA made targeted use of the supervisory tools provided for in FINMASA and financial market legislation in all areas of supervision and among all categories of supervised institutions.

Widespread actions to protect investors

External perceptions of FINMA's enforcement activities are largely shaped by the number and quality of the rulings it issues, and the published decisions of the courts considering appeals against those rulings. Even before proceedings are instituted, however, much work is done in cooperation with the supervisory areas. The Enforcement division conducted various proceedings concerning cross-border financial services[56] and took action against several banks that had not satisfactorily fulfilled their duties in respect of identifying PEPs.[57] It also conducted technically challenging proceedings connected to price manipulation and health insurance.

The investigation of the massive losses incurred by UBS through the unauthorised activities of a trader in London revealed serious deficiencies in risk management and the system and control processes at UBS. As a result, FINMA ordered far-reaching supervisory measures against UBS.[58]

Proceedings against UBS on LIBOR and other interest reference rates

In 2012, FINMA concluded its proceedings against UBS in connection with the submission of interest rates, particularly LIBOR.[59]

LIBOR is regarded as the most important global interest reference rate for a range of currencies. It is administered by the British Bankers' Association (BBA). The profits and losses on numerous interest products, such as mortgages and loans, depend on changes in LIBOR. FINMA conducted formal proceedings against UBS with a view to establishing whether the bank had violated Swiss supervisory law when submitting interest rates (in particular LIBOR). It focused on three areas:

- interference with submissions to benefit proprietary trading positions;
- guidance on submissions dictated by reputational considerations during the financial crisis;
- systems and controls governing the submission process.

Simultaneously with the FINMA proceedings, investigations were also carried out by the UK Financial Services Authority (FSA), the U.S. Commodity Futures Trading Commission (CFTC) and the U.S. Department of Justice (DoJ). On 19 December 2012, UBS reached an agreement with those three authorities, undertaking to pay fines amounting to some CHF 1.4 billion. Its Japanese subsidiary UBS Securities Japan Co. Ltd also pleaded guilty to the DoJ on the charge of wire fraud.[60]

On numerous occasions during the period under investigation, UBS traders requested bank staff responsible for submitting interest rates (submitters) to provide lower or higher values in order to benefit proprietary trading positions. Most of the requests were made by one trader who worked in Tokyo from 2006 to 2009. The same trader also contacted employees at third-party banks and independent brokers, thereby seeking to influence the LIBOR submissions of third-party banks. At different stages during the years 2007

56 See section on 'Cross-border financial services', p. 30 f.

57 See section on 'Proceedings regarding politically exposed persons', p. 70.

58 See section on 'Importance of controls in securities trading', p. 46 f.

59 London Interbank Offered Rate.

60 Fraud committed using electronic communications.

and 2008, UBS managers inappropriately gave guidance to submitters, the purpose being to positively influence the perception of UBS's creditworthiness. Substantial failings in the system and control processes for LIBOR submissions prevented these repeated instances of improper interference being detected and the bank from reacting appropriately.

Numerous employees and a limited number of managers were involved in the misconduct outlined above. FINMA did not find any indication of the then top management at UBS being aware of the traders' misconduct or interference with interest rates for reputational reasons.

FINMA concluded its proceedings against UBS on 19 December 2012. The supervisory authority found that UBS had seriously violated Swiss financial market legislation. FINMA reprimanded UBS for severe violation of the organisational and proper business conduct requirements and instructed the bank to implement a series of compliance measures. UBS had already taken various organisational and staff-related measures itself. Under Article 35 FINMASA, FINMA also ordered the bank to disgorge profits amounting to CHF 59 million to the Swiss Confederation.

Other investigations and proceedings in 2012

FINMA conducted countless investigations of varying size that are necessary to protect investors. They included investigations into market conduct. FINMA also intervened where it suspected that unauthorised activities were taking place. These have the potential to cause serious damage to investors. As soon as FINMA detects unauthorised activities, it liquidates the companies concerned or prohibits them from operating.

Crowd funding: 2012 saw a sharp increase in the soliciting of funds via Internet platforms. As long as a financial intermediary restricts itself to brokering donors and does not accept money, its activities do not violate supervisory law. However, anyone receiving money from more than 20 persons on a commercial basis must be authorised by FINMA. FINMA reminds investors that they are acting at their own risk. It advises them to be cautious and recommends that they obtain detailed information about the business partner concerned. In general, the risk increases in proportion to the promised profit.

Sale of penny stocks: A large number of consumer complaints concerned aggressive selling of shares in fictional companies or firms facing imminent bankruptcy. The high commissions demanded by the sellers bore no relation to the intrinsic value of the shares. Where the shares are being placed on the primary market, the sellers are acting as issuing institutions, and are therefore required to be licensed as securities dealers by FINMA.

Online currency traders: During 2012, FINMA noted a steady increase in the number of companies based abroad that give a contact address in Switzerland and offer to carry out foreign exchange transactions for clients via the Internet – without holding the necessary banking licence in Switzerland. Although these firms formally have their registered office abroad, FINMA can intervene if in practice they have a branch office in Switzerland, since de facto this means that they are operating in an area that requires a licence on Swiss territory. If there is no such link to Switzerland, FINMA has no power to act.

AMLA obligations: Violations of duties of due diligence under the Anti-Money Laundering Act (AMLA) caused a great deal of work for FINMA in 2012. Owing to poor organisation or inadequate specialist knowledge, many directly supervised financial intermediaries (DSFIs) have difficulty complying with the AMLA obligations. Some of them ceased their activities. In other cases, FINMA was obliged to step in and resolve the situation by means of administrative proceedings. While banks generally complied with their formal obligations, they failed in many cases to meet their material duties of due diligence.[61] This lack of care entails legal and reputational risks.

Asset managers: Asset managers administering collective investment schemes are often insufficiently aware of their organisational duties and reporting obligations to FINMA. In the cases dealt with during 2012, the desired improvement was achieved in collaboration with FINMA's specialist departments responsible for prudential supervision and without intervention through administrative proceedings.

Overshooting the CHF 5 billion threshold for proprietary traders: Two financial intermediaries regularly exceeded the transaction volume that proprietary traders are permitted to generate without requiring a licence. This constitutes a violation of the licence requirement for securities dealers under stock exchange law. FINMA instituted enforcement proceedings, during which it restated that the CHF 5 billion threshold set out in FINMA Circular 2008/5 'Securities dealers'[62] is indispensable to the effective monitoring of proprietary trading involving very large positions. In both cases, the parties appealed the FINMA rulings. The proceedings are pending before the Federal Administrative Court.

Prohibition on practising: If individuals violate supervisory law, FINMA can prohibit them from practising their profession. FINMA was obliged to take this drastic step against senior officials who had committed serious violations of supervisory rules. FINMA also imposed a prohibition on practising on a former CEO who had neither the specialist knowledge nor the character traits necessary to run a bank.

[61] See section on 'Proceedings regarding illegal activities', p. 68 f.

[62] See http://www.finma.ch/d/regulierung/Documents/finma-rs-2008-05.pdf (German version).

Insolvency proceedings

The impact of the 2008 financial crisis once again led to numerous requests for the recognition of foreign insolvency measures during 2012. FINMA began recognising such bankruptcy decrees and restructuring measures using the new simplified procedure under which assets located in Switzerland can be made available to a bankrupt estate abroad without first having to go through proceedings in Switzerland.[63]

Although FINMA conducted its first insolvency proceedings against insurance companies and collective investment schemes, its enforcement activity in the area of insolvency is focused on unlicensed banks and securities dealers.

Appeals: good success rate for FINMA

Ahead of its public conference for lawyers, FINMA carried out an assessment of court judgements on its own rulings and decisions. The analysis, which covers the period from 2009 to the end of 2012, shows that in the vast majority of cases appeals against FINMA rulings were rejected by the courts. In most instances, therefore, FINMA's decisions and rulings stand the test of scrutiny by judges. Since 2009, the Federal Administrative Court has supported FINMA in at least 80% of the cases; the figure for the Federal Supreme Court is over 70%. Most of the appeals heard by the courts related to enforcement proceedings and rulings on administrative assistance in stock exchange matters.

Disclosure and market investigations

As part of its supervision of the markets, FINMA carried out a large number of investigations into suspected insider trading. Its enquiries revealed a relatively large number of indications of potentially criminal insider activity. Almost all of the suspected cases concerned persons not operating within FINMA's supervisory remit. Criminal complaints were made to prosecuting authorities against 20 individuals.

The change in FINMA's practice on disclosure announced in 2010 – whereby all cases in which there is an objective suspicion of violations of reporting obligations relevant from a criminal law perspective are to be reported, even if trivial – led to a marked intensification of activity in this area. FINMA also concluded many pending cases from the previous year. In total in 2012, FINMA reported to the FDF 47 cases of suspected violations of reporting requirements under stock exchange law.

[63] Article 37g BA.

Changes in regulation

Parliament approved the Federal Council's proposed revision of the Stock Exchange Act[64] without any amendments in summer 2012. The amended provisions are expected to enter into force in the first half of 2013.

The revision of the Stock Exchange Act (SESTA) enacts standards in both supervisory and criminal law that adopt a broader definition of market abuse and introduce new responsibilities. In future, insider trading and market manipulation will be prohibited under supervisory law for all market participants. The ban on market manipulation under supervisory law is broader in scope than the offence as defined under criminal law, encompassing not only fictitious transactions but also genuine ones that are manipulative in character. FINMA is the sole authority in Switzerland responsible for compliance with and enforcement of rules to prevent market abuse. It will focus its efforts in this area on cases where there has been a serious violation of market integrity.

Revision of 'Market conduct rules' circular under way

The Federal Council has been given the power to issue regulations covering the types of conduct permissible under supervisory law. Appropriate amendments are being made to the Stock Exchange Ordinance (SESTO). Against the background of the revisions to the Act and Ordinance, FINMA is also carrying out a fundamental revision of its Circular 2008/38 'Market conduct rules'.[65] By mid-2013, it expects to issue implementing provisions on the defined offences, with which all market participants will be required to comply. The organisational duties to be contained in the revised circular will, as is now the case, be directed only at institutions supervised by FINMA.

New predicate offences for money laundering

The definition of the offence of insider dealing is being expanded, with the creation of predicate offences for money laundering in both the areas of insider trading and price manipulation. The Office of the Attorney General replaces the cantonal authorities as the body responsible for prosecuting these offences. In view of their joint powers in combating market abuse, good cooperation between FINMA and the Attorney General's Office is vital. Initial preparations have already been made.

Changes to aspects of disclosure and takeover law

As part of the revision of SESTA, the scope of the duty to disclose shareholdings and make public takeover offers has been extended. Shareholdings of companies with a registered office abroad but whose equity securities are, in whole or in part, mainly listed in Switzerland must now also be disclosed. The power to suspend voting rights, with the aim of securing compliance with reporting and offer obligations under the Stock Exchange Act, has been transferred from court judges to FINMA and the Swiss Takeover Board (TOB). The control premium for public takeover offers has also been abolished and the number of voting rights required by qualified shareholders to be recognised as parties to proceedings before the TOB has been raised from 2% to 3%. The TOB will amend its ordinance to reflect the higher threshold.

FINMA also approved an amendment to the Takeover Ordinance (TOO) relating to voluntary exchange offers. This ordinance is expected to come into force at the same time as the adjustments to the revised Stock Exchange Act. In the case of a voluntary exchange offer, offerors are now only required to offer full payment in cash if they have, in the twelve months before publication of the offer, acquired equity securities in exchange for cash that amount to 10% or more of the equity

[64] See FINMA Annual Report 2011, p. 60 (http://www.finma.ch/e/finma/publikationen/Documents/finma_jb_2011_e.pdf).

[65] See http://www.finma.ch/e/regulierung/Documents/finma-rs-2008-38-e.pdf.

or participation capital of the offeree company, and/or if they acquire equity securities in the offeree company for cash between the time the offer is published and the time it is implemented. The previous TOB Circular No. 4 'Voluntary public exchange offers'[66] will be abrogated.

Proceedings regarding illegal activities

In addition to its supervisory function at licensed institutions, FINMA is also charged with enforcing financial services providers who do not hold a FINMA licence but are required by law to do so to comply with financial market legislation.

FINMA cannot systematically and proactively monitor individuals and companies that offer financial services without any licence, recognition, permission or registration. For this reason, investigations and interventions are generally carried out only when the authority has been made aware of irregularities or possibly illegal activities. Investigations into the unauthorised offering of financial services are often prompted by requests and complaints from consumers, but may also result from information supplied by criminal prosecution authorities, foreign supervisory authorities, FINMA's own findings from ongoing proceedings or the media.

FINMA prioritises information from the public

FINMA receives several hundred reports of potentially illegal activities every year. Each of them is pursued with the necessary diligence. Given the limited resources at FINMA's disposal, however, it is vital to prioritise the information received. FINMA reacts when there are concrete indications that investors or their money may be at acute risk, for example when business conduct appears unprofessional or unrealistically high returns are promised. This is often the case with fraudulent investment operations. High priority is also accorded to cases where information is received from a number of sources, a very large number of investors are affected or large sums of money are involved. FINMA also consistently reacts when anyone advertises their services using FINMA's protected logo or falsely claims to have a FINMA licence.

Primary goal is to restore compliance with the law

The procedure adopted when dealing with the reports received depends very much on the individual case. The first step is always to assess whether compliance with the law can be restored without recourse to proceedings. This can be done by the company concerned changing its business model, amending contracts or advertising measures, entering voluntary liquidation, obtaining the necessary licence or joining an SRO. In all cases, the company and its business model must appear professional and no investors' assets should appear to be at risk. There must also be no indications of criminality, and those involved must cooperate and provide swift and honest responses. If the desired result cannot be arrived at by agreement, FINMA will consider initiating enforcement proceedings.

Enforcement proceedings when necessary

When there are objective indications that illegal financial intermediation is taking place and clear signs that investors' money is at risk, FINMA initiates enforcement proceedings. FINMA also takes appropriate action when it establishes that it is being lied to, or when someone is uncooperative or even refuses to participate. FINMA can appoint an investigating agent with executive powers to investigate the circumstances on site and ensure that

[66] See http://www.takeover.ch/legaltexts/detail/id/184 and http://www.takeover.ch/legaltexts/overview.

the interests of investors are not further jeopardised. If there are grounds for suspecting not only a violation of financial market law but also criminal offences under ordinary law, FINMA coordinates its actions with prosecutors as far as possible. In selected cases, this cooperation may extend to joint intervention by the authorities involved on site. However, FINMA's primary concern is always to rectify the irregularities and restore compliance with the law.

Publication in the 'negative list'

If, for example, an unlicensed company has no physical presence in Switzerland or the persons responsible are impossible to locate, FINMA is generally unable to carry out its investigations or to order or enforce the necessary measures. In such cases, the company or person is added to the list of unauthorised institutions[67] published on FINMA's website. Before the name of an unauthorised institution is published in this 'negative list', a clear link to Switzerland must be established. For this to be the case, it suffices for the institution to use a fictional Swiss address and/or Swiss telephone number in its correspondence or on its website, or advertise itself using the Swiss flag or images of Switzerland.

[67] See http://www.finma.ch/e/sanktionen/unbewilligte-institute/pages/default.aspx.

Proceedings regarding politically exposed persons

In the wake of the Arab spring, in January and February 2011 the Federal Council ordered the freezing of assets of politically exposed persons from Tunisia, Egypt and Libya. FINMA took the opportunity to review the reporting institutions' compliance with supervisory rules.

The order to freeze assets by the Federal Council prompted FINMA to audit 20 banks for compliance with supervisory rules[68] concerning business relationships with politically exposed persons (PEPs) from Tunisia, Egypt and Libya. FINMA subsequently instituted enforcement proceedings against six institutions.[69]

Shortcomings in the quality of clarifications

During the proceedings, FINMA established that in several PEP relationships, the banks' enquiries into the background of the business relationships or individual transactions had been inadequate. Either they had been too cursory, given the risks that such business relationships entail, or insufficient efforts had been made to assess the plausibility of the information obtained. Two banks completely failed to detect the PEP status of a business relationship: one because it did not have a correct definition of what constitutes a PEP in its internal directives, and the other because it failed to carry out sufficiently careful research.

The proceedings showed that the banks at fault were too trusting, especially of long-standing clients, and were too quick to accept the explanations they offered. As a rule, the institutions concerned had made absolutely no effort to check the statements made by their clients. They have difficulties with the requirement to underpin client information with their own research and assess its plausibility as part of their clarification obligations. When conducting their clarifications – in most cases belatedly – they had generally been satisfied with a relatively low level of probability or a correspondingly low level of credibility.

Proceedings and lessons

In general, the banks cooperated with the enforcement proceedings and acknowledged that they had made mistakes. By the time the proceedings were instituted, most of them had already taken effective measures to improve the identification and handling of PEP relationships. For this reason, FINMA's rulings in all the PEP proceedings were limited to noting the shortcomings.

[68] Article 6 AMLA; Article 12 paras. 3 and 14 AMLO-FINMA.

[69] See FINMA investigation report dated 10 November 2011 'Due diligence obligations of Swiss banks when handling assets of politically exposed persons', (http://www.finma.ch/e/aktuell/Douments/bericht_pep-akl%C3%A4rung_20111110_e.pdf).

Enforcement statistics

The Enforcement division receives numerous indications of violations of supervisory regulations. These result in intervention by way of administrative proceedings. The majority of enforcement proceedings are concluded with a ruling; it is rare for them to be discontinued with or without the imposition of costs. When FINMA issues a ruling, as well as noting that the law has been violated, it often also orders measures to rectify the irregularity or prevent a repetition.

When supervised institutions violate supervisory law, they mainly do so in respect of organisation, assurance of proper business conduct, rules of conduct and duties of due diligence. The financial intermediaries concerned are required to restore compliance with the law.

In proceedings relating to unauthorised financial intermediation, the most common finding is the unauthorised receipt of deposits from the public and/or illegal securities trading. The proceedings bring these activities to an end, in most cases by FINMA ordering the liquidation of the companies concerned.

Measures against individuals often involve a ban on advertising; in particularly serious cases this is also made public. FINMA can also impose prohibitions on practising a profession for a specified period or order the disgorgement of profits.

Proceedings: ongoing and changes

	Instituted as of 1 January 2012	Instituted	Completed	Instituted as of 31 December 2012
Enforcement proceedings				
licence holders	25	25	33	17
other	8	24	20	12
Liquidations				
licence holders	1	1	0	2
unauthorised institutions	38	10	19	29
Bankruptcies				
licence holders	9	2	1	10
unauthorised institutions	112	14	33	93
Recognition of foreign insolvency measures				
licence holders	2	7	0	9
unauthorised institutions	3	3	0	6
Recognition of foreign restructuring measures				
licence holders	0	2	0	2
unauthorised institutions	0	0	0	0

FINMA AS AN AUTHORITY

BOARD OF DIRECTORS AND EXECUTIVE BOARD

The Board of Directors

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

Members of the Board of Directors

Prof. Anne Héritier Lachat	Chair
Paul Müller	Vice-Chair
Dr Eugenio Brianti	Member
Prof. Yvan Lengwiler	Member
Charles Pictet	Member[70]
Joseph L. Rickenbacher	Member
Franz Wipfli	Member
Prof. Eddy Wymeersch	Member[71]
Prof. Jean-Baptiste Zufferey	Member

Dr Monica Mächler resigned from her position as Vice-Chair and member of the Board of Directors at the end of September 2012.[72] On 28 September 2012, the Federal Council chose Franz Wipfli to succeed her on the Board of Directors and also appointed Paul Müller, a member of the Board of Directors, as Vice-Chair.[73]

[70] Charles Pictet stepped down as a member of the Board of Directors at the end of October 2012.

[71] Prof. Eddy Wymeersch stepped down as a member of the Board of Directors at the end of December 2012.

[72] See http://www.finma.ch/e/aktuell/pages/mm-ruecktritt-maechler-20120319.aspx.

[73] See http://www.finma.ch/e/aktuell/pages/mm-wahl-vr-finma-20120928.aspx.

From left to right:
Joseph L. Rickenbacher, Prof. Jean-Baptiste Zufferey, Dr Eugenio Brianti, Prof. Anne Héritier Lachat, Charles Pictet, Paul Müller, Prof. Eddy Wymeersch, Franz Wipfli, Prof. Yvan Lengwiler

Committees of the Board of Directors

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

The standing committees of the Board of Directors and their members as of 31 December 2012

	Prof. Anne Héritier Lachat	Paul Müller	Dr Eugenio Brianti	Prof. Yvan Lengwiler	Joseph L. Rickenbacher	Franz Wipfli	Prof. Eddy Wymeersch	Prof. Jean-Baptiste Zufferey
Audit and Risk Committee			•		Chair	•		•
Nomination Committee	Chair	•			•			
Takeover Committee	•			•			•	Chair

The Executive Board

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

From left to right:
Dr David Wyss, Andreas Zdrenyk, Mark Branson, Dr Patrick Raaflaub, Dr Urs Zulauf, Dr René Schnieper, Yann Wermeille

Members of the Executive Board

Dr Patrick Raaflaub	CEO
Mark Branson	Head of Banks Division
Dr René Schnieper	Head of Insurance Division
Yann Wermeille	Head of Markets Division
Dr David Wyss	Head of Enforcement Division
Andreas Zdrenyk	Head of Operations Division
Dr Urs Zulauf	General Counsel and Head of Strategic Services Division

Enforcement Committee

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

Permanent members of the Enforcement Committee	
Dr Urs Zulauf	Chair
Dr Patrick Raaflaub	
Dr David Wyss	

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

Effective 1 July 2012, FINMA introduced selected amendments to both its Code of Conduct and its Organisational Rules. The changes relate to the rules on recusal and incompatibility, the rules governing movement of staff to and from supervised institutions, the rules on shareholdings and the introduction of the right to report abuses.

New standardised recusal rules were introduced for all persons working for FINMA (i.e. employees and members of the Board of Directors) and integrated into the Code of Conduct.

Precise definition of the incompatibility rules for the Board of Directors

Under the previous rules, members of FINMA's Board of Directors were not permitted to be members of the executive board or chair / deputy chair of the board of directors of a supervised institution. Acceptance of any other executive office with a supervised institution required the approval of the Board of Directors. Under the new rules, all executive offices with systemically important or very large supervised institutions are incompatible with membership of the FINMA Board of Directors.

Movement of staff to and from supervised institutions

When members of the board of directors, the executive board or top-level management of a supervised institution move to FINMA, they are permitted for a period of one year to be informed about their former employer's business activities and to take part in relevant discussions, but they may not be involved in decision-making. When a FINMA employee leaves to take up employment with a supervised institution, the new rules specify that he must inform his line manager as soon as he signs the new employment contract. The manager must then decide whether any action, in the form of leave of absence, transfer or recusal, must be taken to prevent conflicts of interest.[74]

Ban on holding securities issued by supervised institutions

FINMA employees are no longer allowed to hold securities issued by supervised institutions for staff participation programmes. Under the new rules, it is also not permitted to hold securities issued by supervised institutions even within the context of a discretionary asset management mandate.[75]

Right to report abuses

The Code of Conduct now includes a right to report abuses, thus bringing official practice at FINMA into line with international standards.[76]

[74] Articles 12 and 15 of FINMA's Code of Conduct (http://www.finma.ch/d/regulierung/gesetze/Documents/finma-verhaltenskodex-d.pdf) (German version).

[75] Article 6 of FINMA's Code of Conduct (http://www.finma.ch/d/regulierung/gesetze/Documents/finma-verhaltenskodex-d.pdf) (German version).

[76] Article 15 of FINMA's Code of Conduct (http://www.finma.ch/d/regulierung/gesetze/Documents/finma-verhaltenskodex-d.pdf) (German version).

STAFF

Headcount and structure

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

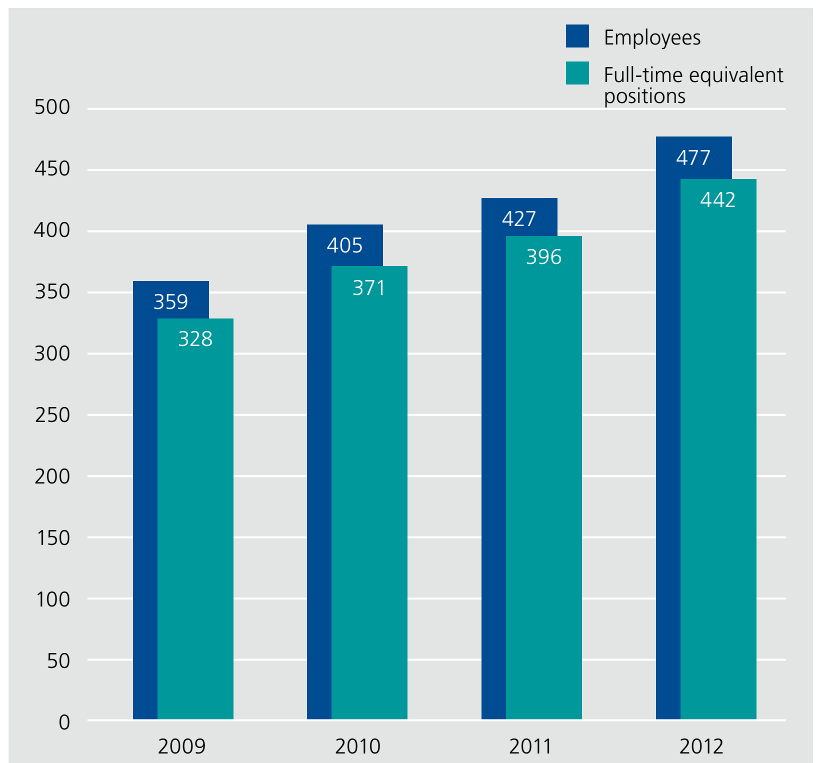
The average age of employees was 41. Approximately 68% of staff are in the 30-49 age range, 20% are aged 50 and over, while 12% are young talents.

Senior management positions are held by 188 employees (38%). The term 'senior management' at FINMA covers all line management functions and specialist functions in salary bands 1 to 3. Of senior management, 36% have a line management function, of which 18% are women. Women accounted for 38% of the organisation as a whole in 2012.

Staff turnover in 2012 (excluding retirement) stood at 10%, which is clearly below the figure for 2011. Measures taken to bind staff through secondments, continuing education and developing potential are worthy of mention. In 2012, FINMA undertook further organisational changes in three of its divisions.

In its human resources strategy, FINMA seeks to achieve a good mixture of staff. Alongside younger

Average headcount

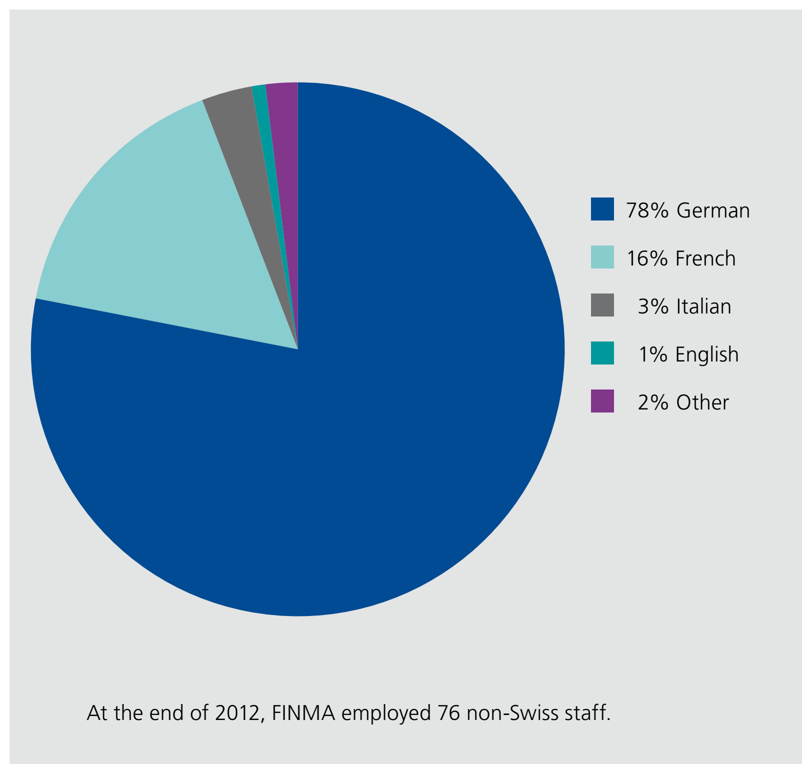


specialists starting out on their career, FINMA needs long-standing supervisory specialists as well as individuals with in-depth practical experience. One consequence of this strategy is a certain level of staff turnover. FINMA expects young graduates to remain with the organisation for a period of three to four years, meaning that turnover in this segment is higher. Here FINMA accepts that younger employees will be looking for new career opportunities after a few years and that FINMA therefore plays a certain role in their training.

Due to the tight job market for finance experts, FINMA is constantly on the lookout for established personalities, in risk management for instance, who are keen to take on a new challenge in the middle of their career. Taking up an appointment with the supervisory authority can represent an important staging post within a career in the financial sector.

In implementing its HR road map,[77] FINMA makes considerable efforts to be an attractive employer and offer development opportunities to employees through targeted initiatives.

Breakdown by language

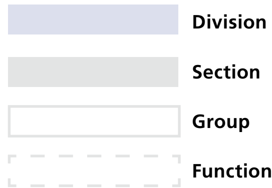


At the end of 2012, FINMA employed 76 non-Swiss staff.

[77] See section on 'Operational development within FINMA', p. 84 f.

ORGANISATION CHART

(status as of 31 December 2012)



Board of Directors
Anne Héritier Lachat
Chair

CEO
Patrick Raaflaub

Banks
Mark Branson

- **Supervision of UBS** – Ursula La Roche
- **Supervision of CS Group** – Michael Loretan
- **Supervision of Wealth Management Banks and Securities Dealers** – Philippe Ramuz-Moser
- **Supervision of Retail, Commercial and Trading Banks** – Thomas Hirschi
- **Risk Management** – Michael Schoch
- **Solvency and Capital** – Reto Schiltknecht
- **Authorisation** – Hansueli Geiger

Insurance
René Schnieper

- **Supervision of Life Insurance** – Eckhard Mihr
- **Supervision of Non-Life Insurance** – Hans-Peter Gschwind
- **Supervision of Health Insurance** – Markus Geissbühler
- **Supervision of Reinsurance** – Stefan Senn
- **Quantitative Risk Management** – Hansjörg Furrer
- **Qualitative Risk Management** – Urs Karlen
- **Supervision of Insurance Groups** – Alain Kupferschmid
- **Insurance Supervisory Law** – Hans-Peter Gschwind

Markets
Yann Wermeille

- **Collective Investment Schemes and Distribution** – Caroline Clemetson
- **Asset Management** – Markus Müller
- **Money Laundering and Market Analysis** – Léonard Bôle
- **Supervision of Asset Management and Collective Investment Schemes** – Yann Wermeille a.i.
- **Supervision of Exchanges** – Andreas Bail
- **Audit Firms and Rating Agencies** – Heinz Meier

Internal Audit
Nicole Achermann

General Secretariat
Nina Arquint

Enforcement
David Wyss

Investigations
Patric Eymann

Proceedings
Regine Kocher-Wolfensberger

Insolvency
Michel Kähr

Operating Services
Silvana Infanti

Strategic Services
Urs Zulauf

International Policy
Urs Zulauf a.i.

International Cooperation
Marco Franchetti

Regulation
Mirjam Eggen

General Counsel's Office
Claudia Fritsche

Legal and Compliance
Renate Scherrer-Jost
Kathrin Tanner

Accounting
Stephan Rieder

Operations
Andreas Zdrenyk

Facility Management and Procurement
Albert Gemperle

Information and Communication Technologies
Daniel Benninger

Finance
Daniel Heiniger

Human Resources
Giovanni Weber

Enterprise Architecture
Wolfgang Hoffmann

Enterprise Risk Management and Internal Control System
Patrick Tanner

Programme and Project Portfolio for Internal Operational Development
Andreas Zdrenyk

Chart showing the sections and groups managed by the division heads

Operational development within FINMA

In 2012, FINMA implemented a range of significant organisational and infrastructure projects aimed at improving its operational effectiveness. IT operations, for example, were outsourced to Swisscom IT Services. Key milestones in human resources management were the drafting of an HR road map and a competency model and the introduction of exit monitoring.

With the foundations of its human resources management (HRM)[78] having been laid in previous years, FINMA introduced a range of additional measures in 2012. An HR road map with clearly defined priorities was produced. One key measure was the optimisation of processes for staff selection, objective setting and performance assessment.

Exit interviews

In 2012, in order to enable those responsible within FINMA to identify HR trends (e.g. in relation to turnover) at an early stage and to react appropriately, FINMA introduced an electronic exit questionnaire. Starting in January 2013, employees who leave the organisation are invited to complete an anonymous online questionnaire giving the reasons for their decision. The process is managed by an external company specialising in this field. The data collection method and the fact that the data is evaluated externally ensure that anonymity is guaranteed.

Exit monitoring is important for employee retention, first because it highlights the underlying causes behind HR trends and, second, because it delivers key indicators for strategic HR controlling. Finally, this tool may make it possible to remove or moderate any negative attitudes that departing employees may have towards their employer.

Training for negotiation

With the launch of a series of seminars entitled 'Challenging discussions: how to manage them' FINMA employees now have the opportunity to practise and improve their communication skills, particularly as regards negotiation. In the course of these seminars employees learn techniques for goal-oriented dialogue, where the emphasis is on dealing with objections and difficult situations.

Organisational and infrastructure projects

In 2012, FINMA pressed ahead with a range of significant organisational and infrastructure projects which are intended to harmonise and stabilise the authority's processes and systems. The aim is to be able to manage stakeholder groups, transactions and documents across the organisation in a way that is more standardised, structured and measurable. The projects in question are expected to be completed in 2013.

Outsourcing to Swisscom IT Services

In January 2012, FINMA's entire operational IT services were put out to tender. These involve running applications, providing computers, printers and telephones, and operating both the network and the computer centre. Four IT providers applied to participate in the WTO call for tenders. Three of them made it through the prequalification phase and qualified for the actual tendering phase. In May 2012, the selected companies duly presented their complete tenders and, in June 2012, the project committee decided to enter into detailed contractual negotiations with Swisscom IT Services. At the end of July 2012 FINMA took the decision to award the contract to Swisscom IT Services. The contract is worth CHF 28.8 million over five years and covers the following key deliverables:

– a transformation project for migrating the infrastructure services previously provided by FINMA itself or the Federal Office of Information Technology, Systems and Telecommunication (CHF 1.9 million);

[78] See FINMA Annual Report 2011, p. 72 (http://www.finma.ch/e/finma/publikationen/Documents/finma_jb_2011_e.pdf).

- annually recurring operational services relating to workplace computers, fixed-line telephony, networks, the computer centre and application operations (CHF 4.5 to 5.5 million p.a.);
- annual development and advisory services in IT operations to be provided on demand (CHF 0.65 million p.a.).

FINMA launched the transformation project at the beginning of September 2012. In an initial step all workplace computers belonging to FINMA staff were replaced. The individual service groups will be migrated to Swisscom IT Services on a quarterly basis by the end of 2013. At the same time the IT infrastructure will be equipped with the latest technical components. Using Swisscom IT Services ensures that the operational quality of the IT infrastructure will be assured and/or improved over the coming years and that enhancements will be introduced to meet future requirements. This will enable FINMA to reduce or even eliminate some operational risks that have become more pressing in past years. FINMA's IT department remains the first point of contact for all questions, problems and requests from FINMA staff.

APPENDIX

FINANCIAL MARKET REGULATION: STATUS AND OUTLOOK

(status as of 31 December 2012)

Project
Cross-sector
Financial services Based on FINMA's position paper published in February 2012, the Federal Council requested the Federal Department of Finance (FDF) in March 2012 to work out the necessary basis to improve consumer protection in the distribution of financial products.
Financial market infrastructure To safeguard the competitiveness of the Swiss financial centre and strengthen financial stability, Switzerland must implement the G-20 obligations and the Financial Stability Board (FSB) recommendations on OTC derivatives trading as fully as possible and at the same time as other financial centres. Regulation of the financial market structure must also be brought in line with international standards.
Combating money laundering In February 2012, the Financial Action Task Force (FATF) adopted a partial revision of the standards on combating money laundering, terrorist financing and, for the first time, financing weapons of mass destruction. In April 2012, the Federal Council requested an interdepartmental working group under the leadership of the FDF to work out proposals for implementation. The Federal Council also plans expanded duties of due diligence to prevent banks and other financial intermediaries from accepting untaxed assets.
Auditing Supervision of audit firms carrying out financial and regulatory audits is to be combined and concentrated within the Federal Audit Oversight Agency (FAOA).
Banks
Dormant assets Banks are to be allowed to liquidate dormant assets following prior publication, with the proceeds going to the Confederation. Claims of beneficiaries who do not respond to the publication would lapse.
Accounting Legislation on accounting standards was amended by revising the Stock Corporation Law. This requires the Federal Council and FINMA to draw up implementing provisions.

Regulatory level	Status and next steps		
	Hearing/ consultation	Adopted	Planned entry into force
law	open	open	open
law	Q2/13	open	open
law	Q1/13	open	open
law	open	open	open
law/ordinance	Q3/09 (law)/ open (ordinance)	open	open
ordinance/circular	open	open	open

Project
Insurance companies
Insurance contracts Total revision of the Insurance Contract Act aims to bring the legal framework in line with changed requirements and provide reasonable and practicable protection for policyholders. The draft law published in September 2011 aims to achieve a better balance between the obligations of insurers and those of policyholders.
Insurance supervision Practical application of the totally revised Insurance Supervision Act (in force since 1 January 2006) together with current developments in market and international trends have revealed a need for change at the regulatory level. Further clarifications are currently under way. The goal is to eliminate contradictions, improve legislation to better protect the interests of policyholders and achieve international compatibility.
Markets
Collective investment schemes Swiss law is to be brought in line with international standards governing the management, safekeeping and distribution of collective investment schemes. The amendments should enhance investor protection, improve the quality of asset management in Switzerland and secure access to EU markets for Swiss financial providers.
Bankruptcy of collective investment schemes FINMA assumed responsibility for insolvencies of collective investments schemes on 1 September 2011. This requires FINMA to issue implementing provisions.
Stock exchange offences and market abuse The revision of the law on the prosecution of stock exchange offences aims above all to extend the definition of the crime of insider trading, enhance the duty to disclose holdings and improve realisation of that duty.

Regulatory level	Status and next steps		
	Hearing/ consultation	Adopted	Planned entry into force
law	Q1/09	open	open
open	open	open	open
law/ordinance	Q3/11 (law)/ Q4/12 (ordinance)	Q3/12 (law)/ Q1/13 (ordinance)	Q1/13
ordinance	Q3/12	Q4/12	Q1/13
law/ordinance	Q1/10 (law)/ Q4/12 (ordinance)	Q3/12 (law)/ open (ordinance)	open

STATISTICS

(status as of 31 December 2012)

Supervised[79] financial market participants

Supervised banks	(2011)	2012
Banks, of which:	(314)	305
– under foreign control	(112)	103
– branches of foreign banks	(34)	32
Raiffeisen banks	(328)	321
Representative offices of foreign banks	(45)	48

Supervised securities dealers		
Securities dealers, of which:	(64)	59
– under foreign control	(18)	17
– branches of foreign securities dealers	(11)	12
Representative offices of foreign securities dealers	(43)	46
Recognised foreign market participants	(142)	127

Supervised stock exchanges		
Swiss stock exchanges	(3)	3
Swiss organisations that are similar to stock exchanges	(2)	2
Recognised foreign stock exchanges	(50)	49
Recognised foreign organisations that are similar to stock exchanges	(6)	5

Supervised collective investment schemes		
Swiss collective investment schemes		
Total Swiss collective investment schemes, of which:	(1,403)	1,383
– *open-ended collective investment schemes (under Art. 8 CISA)*		
– contractual investment funds and SICAVs	(1,389)	1,369
– of which intended for qualified investors only	(643)	640
– *closed-ended collective investment schemes (under Art. 9 CISA)*		
– limited partnerships and SICAFs	(14)	14
Foreign collective investment schemes		
Total foreign collective investment schemes, of which:	(6,058)	6,118
– EU-compatible (UCITS)	(5,754)	5,866
– non-EU-compatible (non-UCITS)	(304)	252

Supervised asset managers and distributors under CISA	(2011)	2012
Asset managers	(90)	99
Distributors	(416)	365

Supervised insurance and general health insurance companies		
Life insurance companies, of which:	(24)	23
– insurance companies domiciled in Switzerland	(20)	19
– branches of foreign insurance companies	(4)	4
Non-life insurers, of which:	(124)	123
– insurance companies domiciled in Switzerland (incl. 21 supplementary health insurance providers [2011: 25])	(78)	81
– branches of foreign insurance companies	(46)	42
Reinsurers (total)	(61)	61
– Reinsurers	(27)	27
– Reinsurance captives	(34)	34
General health insurance companies that offer supplementary health insurance	(16)	15
Supervised insurance and general health insurance companies	(225)	222

Supervised financial intermediaries		
Total supervised SROs	(12)	12
Total DSFIs	(389)	380
Total registered insurance intermediaries	(13,191)	13,911

Recognised audit firms and credit rating agencies		
Total recognised audit firms, of which:	(107)	102
– for DSFIs only	(92)	86
Total recognised credit rating agencies	(5)	5

[79] Does not necessarily mean 'prudential supervision'.

Licences

Banks and securities dealers

Banks and securities dealers	(2011)	2012
Banks		
Bank licences (Art. 3 BA)	(0)	4
Branches (Art. 4 FBO-FINMA)	(2)	0
Representative offices (Art. 14 FBO-FINMA)	(4)	6
Additional licences (Art. 3ter BA)	(8)	13
Removed from supervision	(7)	4
Securities dealers		
Securities dealer licences (Art. 10 SESTA)	(1)	1
Branches (Art. 41 SESTO)	(0)	1
Representative offices (Art. 49 SESTO)	(10)	7
Additional licences (Art. 10 para. 6 SESTA and Art. 56 para. 3 SESTO)	(4)	2
Removed from supervision	(2)	5
Recognition of foreign market participants	(11)	6

Exchanges

Exchanges		
Recognition of foreign exchanges (incl. organisations that are similar to stock exchanges)	(7)	0

Collective investment schemes

Collective investment schemes		
Swiss collective investment schemes	(103)	90
Foreign collective investment schemes	(907)	685

Asset managers and distributors under CISA

Asset managers and distributors under CISA		
Asset managers	(7)	9
Distributors	(12)	10

Insurance companies

Insurance companies	(2011)	2012
Life insurance companies, of which:	(0)	0
– insurance companies domiciled in Switzerland	(0)	0
– branches of foreign insurance companies	(0)	0
Non-life insurers, of which:	(2)	2
– insurance companies domiciled in Switzerland	(2)	2
– branches of foreign insurance companies	(0)	0
Reinsurers	(1)	1
Reinsurance captives	(1)	2
General health insurance companies that offer supplementary health insurance	(0)	0
Total	(4)	5

Financial intermediaries

Financial intermediaries		
Insurance intermediaries	(641)	781
DSFIs	(22)	17

Audit firms and credit rating agencies

Audit firms and credit rating agencies		
Total rulings on changing audit firms, of which:	(26)	69
– relating to directly supervised financial intermediaries	(8)	20
Recognitions of audit firms	(0)	4
Cancellations of audit firms	(7)	9
Recognitions of credit rating agencies	(0)	0

Rulings

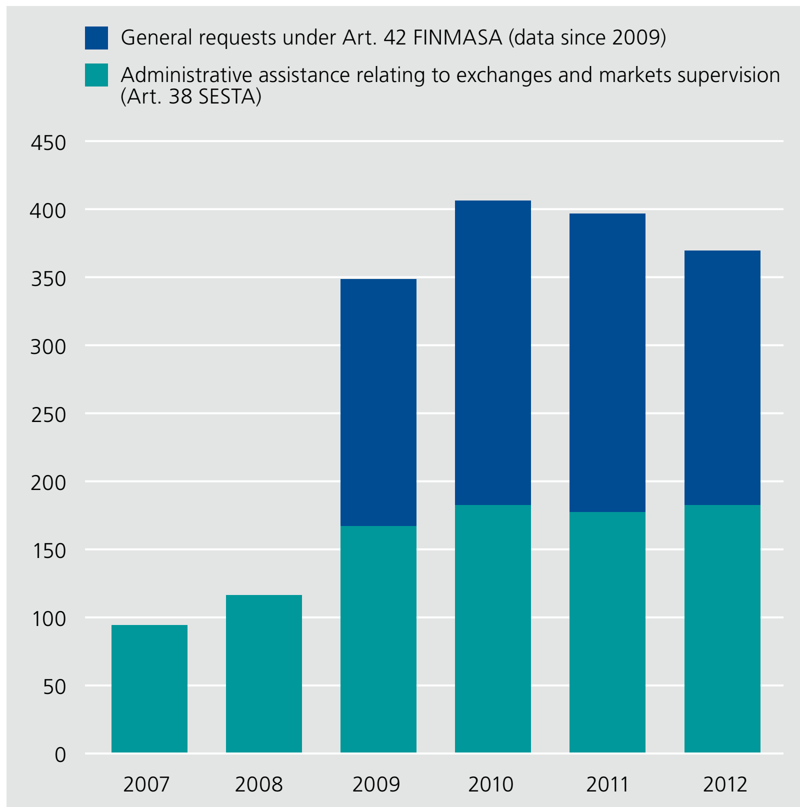
Rulings		
ENA rulings	(51)	58
Swiss Takeover Board rulings	(7)	1

Complaints and requests to initiate criminal proceedings

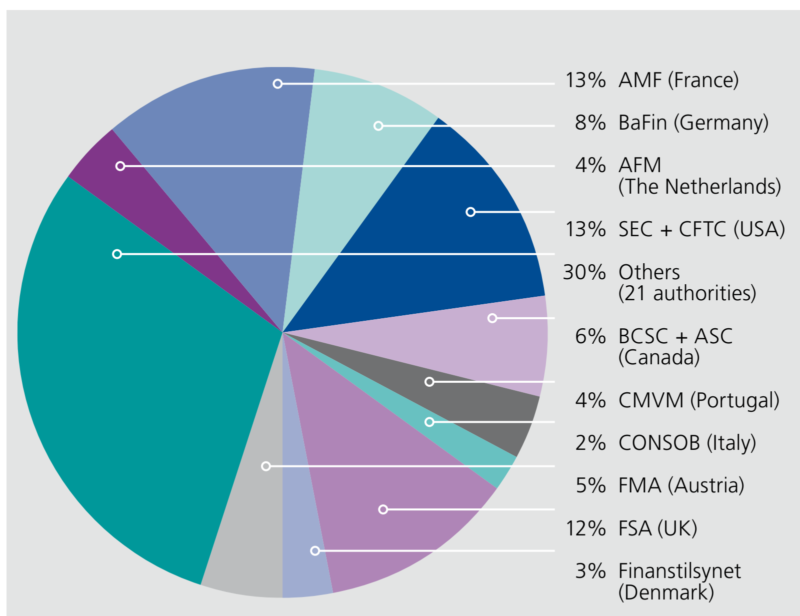
Complaints and requests to initiate criminal proceedings		
Complaints submitted	(29)	29
Complaints settled	(42)	35
Complaints filed with criminal prosecution authorities	(76)	73

ADMINISTRATIVE ASSISTANCE

Requests for administrative assistance 2007-2012



Requests for administrative assistance in stock exchange matters by authority



In 2012, FINMA received 378 requests for administrative assistance from 71 foreign supervisory authorities regarding 278 institutions. Of these requests, 185 concerned possible market abuse and those relating to exchanges and markets supervision were dealt with in accordance with Article 38 SESTA. The remaining requests, for instance those relating to banking and insurance supervision, were governed by Article 42 FINMASA.

The number of requests submitted to FINMA has stabilised. However, requests involving the securities markets in particular can be very complex, which means that proceedings are often long and drawn out. Furthermore, international cooperation between the supervisory authorities is tending to focus more on other issues related to the cross-border activities of financial intermediaries, such as the applicable regulations and legislation, consolidated supervision and financial stability. Also on the increase are requests from foreign supervisory authorities responsible for the consolidated supervision of institutions domiciled in Switzerland that want to audit directly outside their own country.

Despite the restrictive legal framework, foreign supervisory authorities are satisfied with how FINMA deals with requests for administrative assistance relating to exchanges and markets supervision. This is clear from the statistics produced annually by IOSCO.

MoUs AT THE INTERNATIONAL LEVEL

Memoranda of Understanding (MoUs) concluded in 2012			
Country	**Foreign authority**	**Form**	**Area of application**
EU	EIOPA (European Insurance and Occupational Pensions Authority)	MoU	Insurance companies
EU	ESMA (European Securities and Markets Authority)	MoU	Cooperation agreements on alternative investment funds (including hedge funds, private equity and real estate funds)
Ireland	Central Bank and Financial Services Authority (formerly Central Bank of Ireland)	MMoU	Supervisory College XL Group
Italy	ISVAP (Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo)	MMoU	Supervisory College Generali Group
UK	FSA (Financial Services Authority)	MMoU	Supervision and monitoring of ICE Clear Europe Ltd
UK	FSA (Financial Services Authority)	MMoU	Supervision and monitoring of LCH.Clearnet Ltd
USA	Pennsylvania Insurance Department	MMoU	Supervisory College ACE Ltd
USA	SEC (U.S. Securities and Exchange Commission)	MoU	Self-regulatory organisations (EDGA Exchange Inc, EDGX Exchange Inc, International Securities Exchange, LLC)

FINMA's REPRESENTATION IN INTERNATIONAL WORKING GROUPS

International organisations and committees[80]

Financial Stability Board (FSB)

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

Basel Committee on Banking Supervision (BCBS)

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

International Association of Insurance Supervisors (IAIS)

- Executive Committee
- Financial Stability Committee (until August 2012)
- Technical Committee (chair, until August 2012)

International Organization of Securities Commissions (IOSCO)

- IOSCO Board
- Presidents' Committee

Other international forums

- Meeting of four German-speaking nations (banking and insurance)
- Integrated Financial Supervisors Conference
- Multilateral Contact Group on Derivatives Regulation
- Wilton Park Securities Supervision Conference/ International Cooperation and Enforcement

[80] This list is confined to committees of which representatives of the Board of Directors and/ or the FINMA Executive Board are members. In addition, many FINMA employees are involved in various working groups.

GLOSSARY

AIFMD	The EU's Alternative Investment Fund Managers Directive (2011/61/EU) governs the authorisation, ongoing activities and transparency requirements applicable to alternative investment managers managing or distributing alternative investment funds (non-UCITS) in the EU.
Bail-in	Officially ordered conversion of debt into equity or waiver of claims.
Basel framework	A multilateral agreement on capital adequacy rules for banks. The first such agreement, Basel I, was passed by the Basel Committee on Banking Supervision (BCBS) in 1988. It was substantially enhanced by Basel II, adopted in 2004. The new framework, derived from the experience of the 2008 financial market crisis, was developed in 2010 and is known as Basel III (See 'Basel III').
Basel III	At the end of 2010, the Basel Committee on Banking Supervision adopted stricter, across-the-board rules on equity capital and liquidity designed to strengthen the resistance of the banking sector. The key changes are: – improvements to the quality, consistency and transparency of the capital base; – higher capital adequacy requirements for the default risk of derivatives, repurchase agreements and securities financing transactions; – a new capital requirement for the risk of market value losses on over-the-counter (OTC) derivatives; – supplementing the risk-based capital requirement with an unweighted leverage ratio; – measures to reduce procyclicality and promote countercyclical buffers; – measures to combat systemic risk, with particular emphasis on systemically important banks, and – the introduction of global liquidity standards.
Contingent convertible bonds (CoCo bonds or CoCos)	A form of debt capital that can be converted into equity under certain conditions. They are designed to improve a bank's situation in a crisis or enable its resolution by allowing it to store up additional capital during periods of economic growth that can be accessed as equity in a downturn. Conversion is mandatory once a predetermined trigger point is reached.
Credit default swaps (CDSs)	Derivative financial instruments between parties to transfer credit exposure related to various underlying financial instruments.

CRD IV	Proposed by the European Commission in July 2011, Capital Requirements Directive IV is a legislative package designed to strengthen the regulation of the banking sector. It replaces the existing capital requirements directives (Directives 2006/48/EC and 2006/49/EC) with a directive and an ordinance. The Directive governs authorisation to accept deposits, while the Ordinance lays down the supervisory requirements for institutions. CRD IV is also intended to implement the Basel III minimum requirements in the EU.
Custodian bank	A custodian bank holds fund assets in safekeeping, organises the issue and redemption of units as well as payment transactions for collective investment schemes, and assesses whether the fund management company or SICAV complies with the law and the fund regulations. It must be a bank within the meaning of the Banking Act.
EMIR	The European Market Infrastructure Regulation (Ordinance [EU] No. 648/2012) creates harmonised regulation of derivatives transactions conducted over the counter. In particular, it requires market participants to conduct clearing via a central counterparty (CCP) and report all derivatives transactions to a trade repository. It also lays down standard conditions for the licensing and supervision of certain financial market infrastructures.
FATCA	FATCA stands for Foreign Account Tax Compliance Act. This US law was passed on 18 March 2010 as part of the Hiring Incentives to Restore Employment Act (HIRE Act) as an amendment to the Internal Revenue Code (US federal taxation law) and was scheduled to come into force or be implemented worldwide in January 2013, although the withholding tax obligations under FATCA will not commence until January 2014. FATCA contains provisions designed to bring about worldwide exchange of data on US taxpayers. On 3 December 2012, Switzerland initialled an agreement on the simplified implementation of FATCA. Parliament will vote on the agreement in summer 2013.
Financial market infrastructures	The term 'financial market infrastructures' refers to three essential structures in trading, clearing and settlement: exchanges and similar institutions, central counterparties (CCPs), and securities settlement and payment systems. Accordingly, CCPs and securities settlement and payment systems are referred to as post-trading infrastructures since they involve post-trading processes for settlement.
Interbank exposures	Lending or other commitments between banks.

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

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

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

LIBOR
LIBOR stands for London Interbank Offered Rate and is regarded as the most important benchmark for short-term interest rates worldwide. LIBOR is administered by the British Bankers' Association (BBA) and is calculated for ten currencies (Australian dollar [AUD], Canadian dollar [CAD], Swiss franc [CHF], Danish krone [DKK], euro [EUR], pound sterling [GBP], Japanese yen [JPY], New Zealand dollar [NZD], Swedish krona [SEK], US dollar [USD]) and 15 borrowing periods (overnight, 1w, 2w, 1m, 2m, 3m, 4m, 5m, 6m, 7m, 8m, 9m, 10m, 11m, 12m). This means that 150 interest reference rates are calculated and published daily. For each currency, a number of banks determined by the BBA (the panel) submit the interest rates at which they can obtain unsecured funding every day. Each bank on the panel (panel bank) must base its submissions on the following question: 'At what rate could you borrow funds, were you to do so by asking for and then accepting inter-bank offers in a reasonable market size just prior to 11 a.m. [London time]?' The highest and lowest 25% of the panel banks' submissions are excluded from the calculation in a process known as trimming and the remaining submissions are then averaged. The result (fixing) is calculated by Thomson Reuters and published at around 11.30 a.m. London time.

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

MiFID II	In October 2011, the European Commission presented a legislative package revising the Markets in Financial Instruments Directive (MiFID), Directive 2004/39/EC, consisting of a directive and an ordinance. In particular, MiFID contains rules on the organisation and operation of securities exchanges and their participants as well as business conduct rules to protect investors when financial services are provided.
Net asset value (NAV)	The market value of assets held by a collective investment scheme less any liabilities of the scheme (usually expressed on a per share basis).
Non-UCITS	Collective investment schemes not subject to the EU's UCITS Directive. The UCITS Directive sets out Europe-wide standard requirements for collective investment schemes open to public investors. See also UCITS.
Omnibus II	Currently still going through the legislative process, the EU's Omnibus II Directive makes amendments to the Solvency II Directive. It aims to take account of the expanded powers and tasks of EIOPA, which came into being in January 2011, and also provides for changes in the content of the supervisory law requirements for insurers.
OTC derivatives	Derivative financial instruments traded outside an exchange or other regulated market open to the public.
Penny stocks	Shares whose par value is less than one unit of the local currency. In Switzerland, for instance, they are shares with a par value of less than one Swiss franc (or often 0.01 franc). In the US, shares trading at less than five US dollars are regarded as penny stocks. As the volume traded is often extremely low, it is not uncommon for these shares to be the object of speculation. In general, they are highly volatile and are therefore regarded as highly speculative and, owing to the lack of liquidity, extremely risky.
Politically exposed persons (PEPs)	This term covers persons holding prominent public positions abroad: heads of state and government, senior politicians at the national level, senior government, judicial, military or party officials at the national level as well as the senior executives of state-owned companies of national importance. It also extends to persons and companies identified as having close family ties or personal or business connections with such persons. Financial intermediaries are required to monitor business relationships with PEPs particularly carefully.

Post-trading infrastructures

See 'Financial market infrastructures'.

Prudential supervision

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

Recognition of equivalence

The EU Commission assesses whether certain areas of regulation and supervision in a third country are equivalent to those of the EU. If it is the case, regulatory relaxations, closer supervisory cooperation or direct market access to the EU are granted (may also be combined). The concept of equivalence varies in certain points depending on the area of regulation. In insurance supervision, for instance, Switzerland aims at obtaining recognition of Swiss insurance supervision with the EU Solvency II Directive. It concerns, in particular, regulatory relaxations in reinsurance and adjustments to solvency calculations for individual companies. A further objective is the binding recognition of Swiss group supervision for Swiss insurance groups.

Recovery, resolution and resolvability

- Recovery occurs when a company succeeds in stabilising itself, i.e. restructuring, on its own.
- Resolution is the forced restructuring of a company by the authorities.
- Resolvability means the ability of a company to be dissolved or wound up.

Risk-weighted assets (RWAs)

The risk weighting is based on the assumption that not every loan or investment entails the same level of risk. For this reason, less risky positions require less equity to underpin them than more risky ones. Since the introduction of Basel II, RWAs are the central basis for measuring capital ratios.

Shadow banking

A system of loan intermediation as well as liquidity and maturity transformation involving the use of leverage by companies and activities either wholly or partly outside the regulated banking system (e.g. hedge funds, special purpose companies).

Term	Definition
Short selling	Selling financial instruments that the seller does not possess at the time of sale. The seller is not required to obtain the corresponding financial instruments until a later delivery date.
Solvency II	Solvency II primarily refers to EU Directive 2009/138/EC of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II). It is often also used to refer to the economic and risk-based method of assessing the capital adequacy of an insurance company contained in the Directive. In quantitative terms, the EU's Solvency II pursues aims comparable to those of Switzerland's SST.
Standard approach for credit risks (banks)	Approach to calculating capital adequacy requirements for credit risks that does not require authorisation.
Standard model (insurance companies)	Risk model prescribed by FINMA for determining solvency under the SST. There are standard models for life, non-life and health insurance. Reinsurers and insurance groups are required to use internal models.
Supervisory college	Meeting of representatives of international supervisory authorities to discuss the supervisory issues affecting an institution with multinational operations.
Supervisory review	On-site inspection of supervised institutions by FINMA staff. They are used to arrive at an in-depth risk assessment in relation to specific issues, but are in no way a substitute for the auditing activities of regulatory auditors.
Swiss finish	Term used to denote deviations of Swiss regulation from international minimum standards such as the capital adequacy requirements of the Basel Committee on Banking Supervision, typically providing for more stringent regulation.
Swiss Solvency Test (SST)	The SST is a supervisory instrument that uses economic and risk-based principles to measure the solvency of insurers. It was introduced in 2006 when the Insurance Supervision Act was totally revised. It assesses the financial situation of an insurance company on the basis of the ratio of eligible equity (risk-bearing capital) to regulatory capital (target capital). The latter are determined in view of the risks incurred.

Term	Definition
Systemic importance	Systemic risks are risks emanating from individual market participants that jeopardise the stability of the entire economy ('system'). Companies carrying out functions which are indispensable to the economic system, or which cannot be replaced by other companies, are termed 'systemically important'. One example of a systemically important function is the processing of payment transactions by banks.
Third country rules	The EU's third country rules set out the regulatory conditions under which companies having their registered office outside the EU can commence and carry on business operations in the EU or with EU clients. They also cover issues of supervisory cooperation in respect of providers involved in such cross-border business.
Tied assets	Tied assets are designed to secure the claims arising out of insurance contracts. If an insurance company goes bankrupt, the proceeds of the tied assets are used first to satisfy such claims. Only then is any remaining surplus transferred to the bankrupt estate. The value of the capital investments of tied assets must cover the claims arising out of insurance contracts at all times. The Insurance Supervision Ordinance (ISO) and FINMA circulars therefore contain specific provisions on the capital investments of tied assets.
'Too big to fail' (TBTF)	A company is categorised as 'too big to fail' if its collapse would endanger the stability of the entire economy, thereby compelling the state to rescue it. Discussion of the 'too big to fail' issue focuses on the systemic risks emanating from such companies.
UCITS	Undertakings for Collective Investment in Transferable Securities. The UCITS Directive sets out EU-wide standard requirements for collective investment schemes open to public investors.

ABBREVIATIONS

AFM	Autoriteit Financiële Markten (The Netherlands)
AIFMD	Alternative Investment Fund Managers Directive (EU)
AMF	Autorité des marchés financiers (France)
AMLA	Swiss Federal Act of 10 October 1997 on Combating Money Laundering and Terrorist Financing in the Financial Sector (Anti-Money Laundering Act; SR 955.0)
AMLCA	Anti-Money Laundering Control Authority (one of FINMA's predecessor authorities)
AMLO-FINMA	Ordinance of 8 December 2010 of the Swiss Financial Market Supervisory Authority on the Prevention of Money Laundering and Terrorist Financing (FINMA Anti-Money Laundering Ordinance; SR 955.033.0)
ASC	Alberta Securities Commission (Canada)
BA	Swiss Federal Act of 8 November 1934 on Banks and Savings Banks (Banking Act; SR 952.0)
BaFin	Federal Financial Supervisory Authority (Germany)
BCBS	Basel Committee on Banking Supervision
BCSC	British Columbia Securities Commission (Canada)
BIO-FINMA	Ordinance of 30 August 2012 of the Swiss Financial Market Supervisory Authority on the Insolvency of Banks and Securities Dealers (FINMA Banking Insolvency Ordinance; SR 952.05)
CAO	Swiss Federal Ordinance of 1 June 2012 on Capital Adequacy and Risk Diversification for Banks and Securities Dealers (Capital Adequacy Ordinance; SR 952.03)
CC	Control Committees of the Swiss Federal Assembly
CCP	Central counterparty
CDS	Credit default swap
CESR	Committee of European Securities Regulators
CFTC	U.S. Commodity Futures Trading Commission
CHF	Swiss francs
CISA	Swiss Federal Act of 23 June 2006 on Collective Investment Schemes (Collective Investment Schemes Act; SR 951.31)
CISBO-FINMA	Ordinance of the Swiss Financial Market Supervisory Authority on the Bankruptcy of Collective Investment Schemes (FINMA Collective Investment Schemes Bankruptcy Ordinance)
CISO	Swiss Federal Ordinance of 22 November 2006 on Collective Investment Schemes (Collective Investment Schemes Ordinance; SR 951.311)
CISO-FINMA	Ordinance of 21 December 2006 of the Swiss Financial Market Supervisory Authority on Collective Investment Schemes (FINMA Collective Investment Schemes Ordinance; SR 951.312)
CMVM	Comissão do Mercado de Valores Mobiliários (Portugal)
CoCos	Contingent convertible bonds
COMCO	Swiss Competition Commission
CONSOB	Commissione Nazionale per le Società e la Borsa (Italy)
CRD	Capital Requirements Directive (EU)
DEBA	Swiss Federal Act of 11 April 1889 on Debt Enforcement and Bankruptcy (SR 281.1)
DoJ	U.S. Department of Justice
DSFI	Directly supervised financial intermediary
EBA	European Banking Authority
EIOPA	European Insurance and Occupational Pensions Authority
EMIR	European Market Infrastructure Regulation
ENA	FINMA Enforcement Committee
ESMA	European Securities and Markets Authority
FAOA	Swiss Federal Audit Oversight Authority
FATCA	Foreign Account Tax Compliance Act (US)
FATF	Financial Action Task Force
FBO-FINMA	Ordinance of 21 October 1996 of the Swiss Financial Market Supervisory Authority on Foreign Banks in Switzerland (FINMA Foreign Banks Ordinance; SR 952.111)

FDF	Swiss Federal Department of Finance
FDJP	Swiss Federal Department of Justice and Police
FFI	Foreign financial institution
FINMA	Swiss Financial Market Supervisory Authority
FINMASA	Swiss Federal Act of 22 June 2007 on the Swiss Financial Market Supervisory Authority (Financial Market Supervision Act; SR 956.1)
FMA	Austrian Financial Market Authority
FOPI	Swiss Federal Office of Private Insurance (one of FINMA's predecessor authorities)
FSA	Financial Services Authority (UK)
FSB	Financial Stability Board
G-SIB	Global systemically important bank
G-SII	Global systemically important insurer
IAIS	International Association of Insurance Supervisors
IBO-FINMA	Ordinance of 17 October 2012 of the Swiss Financial Market Supervisory Authority on Insurance Bankruptcy (FINMA Insurance Bankruptcy Ordinance; SR 961.015.2)
ICA	Swiss Federal Act of 2 April 1908 on Insurance Contracts (Insurance Contract Act; SR 221.229.1)
IFSC	Integrated Financial Supervisors Conference
IOSCO	International Organization of Securities Commissions
IRB	Internal ratings-based (approach)
IRS	Internal Revenue Service (US tax authority)
ISA	Swiss Federal Act of 17 December 2004 on the Supervision of Insurance Companies (Insurance Supervision Act; SR 961.01)
ISO	Swiss Federal Ordinance of 9 November 2005 on the Supervision of Private Insurance Companies (Insurance Supervision Ordinance; SR 961.011)
LCR	Liquidity coverage ratio
LIBOR	London Interbank Offered Rate
MiFID	Markets in Financial Instruments Directive (EU)
MMoU	Multilateral Memorandum of Understanding
MoU	Memorandum of Understanding
NAV	Net asset value
OPA	Swiss Federal Act of 25 June 1982 on Occupational Retirement, Survivors' and Disability Pension Schemes (Occupational Pensions Act; SR 831.40, commonly referred to as the BVG [German acronym])
OTC	Over the counter
PEP	Politically exposed person
SBA	Swiss Bankers Association
SEC	U.S. Securities and Exchange Commission
SESTA	Swiss Federal Act of 24 March 1995 on Stock Exchanges and Securities Trading (Stock Exchange Act; SR 954.1)
SESTO	Swiss Federal Ordinance of 2 December 1996 on Stock Exchanges and Securities Trading (Stock Exchange Ordinance; SR 954.11)
SFA	Swiss Funds Association
SFBC	Swiss Federal Banking Commission (one of FINMA's predecessor authorities)
SIA	Swiss Insurance Association
SICAF	Investment company with fixed capital
SICAV	Investment company with variable capital
SIF	Swiss State Secretariat for International Financial Matters
SIFI	Systemically important financial institution
SNB	Swiss National Bank
SQA	Swiss Qualitative Assessment
SRO	Self-regulatory organisation
SST	Swiss Solvency Test
TBTF	Too big to fail
TIS	Team Intensive Supervision
TOB	Swiss Takeover Board
TOO	Ordinance of 21 August 2008 of the Takeover Board on Public Takeover Offers (Takeover Ordinance; SR 954.195.1)
UCITS	Undertaking for Collective Investment in Transferable Securities
UFR	Ultimate forward rate
WTO	World Trade Organization

FINMA's CORE VALUES

Systematic supervisory activity

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

Independent decision-making

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

Responsible staff

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

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