



SWITZERLAND

DETAILED ASSESSMENT OF IMPLEMENTATION—IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

September 2014

This Detailed Assessment of Implementation on the IOSCO Objectives and Principles of Securities Regulation on Switzerland was prepared by a staff team of the International Monetary Fund. It is based on the information available at the time it was completed on August 20, 2014.

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SWITZERLAND

DETAILED ASSESSMENT OF IMPLEMENTATION

September 2014

IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

Prepared By
**Monetary and Capital
Markets Department**

This Detailed Assessment Report was prepared in the context of an IMF Financial Sector Assessment Program (FSAP) mission in Switzerland during September 2013, led by Charles Enoch, IMF and overseen by the Monetary and Capital Markets Department, IMF. Further information on the FSAP program can be found at

<http://www.imf.org/external/np/fsap/fssa.aspx>

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Glossary

AICPA	American Institute of Certified Public Accountants
AMLA	Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector (Anti-Money Laundering Act)
AOA	Federal Act on the Licensing and Oversight of Auditors (Auditor Oversight Act)
AOO	Federal Ordinance on the Licensing and Oversight of Auditors (Auditor Oversight Ordinance)
APA	Federal Act on Administrative Procedure (Administrative Procedure Act)
AUM	Assets Under Management
BA	Federal Act on Banks and Savings Banks (Banking Act)
BCP	Basel Core Principles
BO	Federal Ordinance on Banks and Savings Banks (Banking Ordinance)
CAO	Federal Ordinance on the Own Funds and Risk Distribution of Banks and Securities Dealers (Capital Adequacy Ordinance)
CartA	Federal Act on Cartels and other Restraints of Competition (Cartel Act)
CCP	Central Counterparty
CEO	Chief Executive Officer
CFC	Committee on Financial Crises
CIS	Collective Investment Scheme
CISA	Federal Act on Collective Investment Schemes (Collective Investment Schemes Act)
CISO	Federal Ordinance on Collective Investment Schemes (Collective Investment Schemes Ordinance)
CISO-FINMA	FINMA Ordinance on Collective Investment Schemes (FINMA Collective Investment Schemes Ordinance)
CO	Code of Obligations
CRA	Credit Rating Agency
DEA	Direct Electronic Access
DFR	Directive on Financial Reporting
DMA	Direct Market Access
ETF	Exchange Traded Fund
Eurex Clearing	Eurex Clearing AG
Eurex Zurich	Eurex Zurich Ltd
FAOA	Federal Audit Oversight Authority
FDF	Federal Department of Finance
FFSA	Federal Financial Services Act
FINMA	The Swiss Financial Market Supervisory Authority
FINMASA	Federal Act on the Swiss Financial Market Supervisory Authority (Financial Market Supervision Act)

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FISA	Federal Act on Intermediated Securities (Federal Intermediated Securities Act)
FMI	Financial Market Infrastructure
FSB	Financial Stability Board
GAAP	Generally Accepted Accounting Principles
GAAS	Generally Accepted Auditing Standards
IAASB	International Auditing and Assurance Standards Board
IFAC	International Federation of Accountants
IFRS	International Financial Reporting Standards
ISA	International Standards on Auditing
ISQC	International Standard on Quality Control
KIID	Key Investor Information Document
LCR	Liquidity Coverage Ratio
MerA	Federal Act on Merger, Demerger, Transformation and Transfer of Assets (Merger Act)
MiFID	Markets in Financial Instruments Directive
MMOU	Multilateral Memorandum of Understanding
MOU	Memorandum of Understanding
NAV	Net Asset Value
NBA	Federal Act on the Swiss National Bank (National Bank Act)
NBO	Federal Ordinance to the Federal Act on the Swiss National Bank (National Bank Ordinance)
OO-FAOA	Ordinance of the Federal Audit Oversight Authority on the Oversight of Audit Firms (Oversight Ordinance FAOA)
OTC	Over-the-counter
PCAOB	Public Company Accounting Oversight Board
RTGS	Real-Time Gross Settlement System
RVOG	Government and Administration Organization Act
SAS	Swiss Auditing Standards
SBA	Swiss Bankers Association
SECOM	Settlement Communication System
SER	SIX Exchange Regulation
SESTA	Federal Act on Stock Exchanges and Securities Trading (Stock Exchange Act)
SESTO	Federal Ordinance on Stock Exchanges and Securities Trading (Stock Exchange Ordinance)
SESTO-FINMA	FINMA Ordinance on Stock Exchanges and Securities Trading (FINMA Stock Exchange Ordinance)
SFAC	Swiss Federal Administrative Court
SFAMA	Swiss Funds and Asset Management Association
SIC	Swiss Interbank Clearing
SICAF	Société d'Investissement à Capital Fixe
SICAV	Société d'Investissement à Capital Variable
SIF	State Secretariat for International Financial Matters

SIX Structured Products Exchange	SIX Structured Products Exchange Ltd
SLS	SSX Liquidnet Service
SSX	SIX Swiss Exchange
SNB	Swiss National Bank
TOB	Takeover Board
TOO	Ordinance of the Takeover Board on Public Takeover Offers (Takeover Offer Ordinance)
VWAP	Volume Weighted Average Price

EXECUTIVE SUMMARY

Switzerland has made progress in addressing the recommendations from the IOSCO assessment of the 2001-02 Financial Sector Assessment Program (FSAP). Major achievements include the establishment of the Federal Audit Oversight Authority (FAOA) to supervise and enforce compliance with audit quality and independence requirements. The Collective Investment Schemes Act (CISA) has also been recently revised, and provides a strengthened framework for regulating and supervising the offering and management of collective investment schemes (CIS). The discussions about the regulation and supervision of independent asset managers are gaining momentum, and the intention is to subject offers of unlisted securities and of some other currently unregulated products to regulation under the upcoming Federal Financial Services Act (FFSA). At the same time, Switzerland is preparing to introduce a new legislative framework for operators of financial market infrastructures and exchanges, also for the purpose of complying with the G-20 over-the-counter (OTC) derivatives commitments.

In supervision, the Swiss Financial Market Supervisory Authority (FINMA) has further developed the risk-based supervisory system that it uses to determine the supervisory approach for each supervised entity. The approach is determined by the entity's potential systemic impact, and its firm level risk. Less systemic and/or less risky entities are subject to less intrusive supervision. In those cases, the supervision continues to largely rely on annual audits conducted by regulatory auditors. FINMA is in the process of gradually increasing the intensity of its own direct supervision for the more systemic and riskier entities. For the entities covered by the scope of the IOSCO assessment, the approaches taken across various FINMA Divisions differ to some extent. For example, all non-bank securities dealers are subject to relatively limited supervision, whereas some other entities solely active in securities markets (such as fund management companies and CIS asset managers) are expected to become subject to more intrusive supervision. In relation to securities markets, FINMA's own supervisory reviews are still largely to be introduced, with the exception of some thematic reviews conducted on banks' securities activities such as investment banking and wealth management.

FINMA's enforcement powers have recently been enhanced through the introduction of specific prohibitions on insider trading and market manipulation in the Federal Act on Stock Exchanges and Securities Trading (Stock Exchange Act, SESTA). This enables FINMA to complement the enforcement of the more narrowly defined criminal market abuse provisions with the use of its administrative enforcement powers. Establishing cooperation with the Office of the Attorney General of Switzerland (Attorney General's Office), to which the criminal enforcement powers were transferred from the cantonal prosecution authorities, has progressed well. Cooperation with the Legal Services of the Federal Department of Finance (FDF) in other areas of criminal enforcement is more established following the signing of a Memorandum of Understanding (MOU) in 2011. Nevertheless, the question remains as to whether the Swiss administrative and criminal authorities as a whole have an appropriate range of sufficiently dissuasive sanctions at their disposal. For example, FINMA can address market abuse by unsupervised entities only through the issuance and possible publication of decrees, and orders for the disgorgement of profits. Therefore,

the authorities need to further explore the possibility of introducing an administrative fining power. If such power is not achievable, the authorities should consider whether the current criminal enforcement powers are a sufficient deterrent.

The Swiss authorities will face a significant challenge in coping with the upcoming securities regulatory overhaul. The planned framework will impact on practically all the areas of FINMA, as it is likely to require the assumption of new tasks in relation to the regulation and supervision of the issuance of unlisted securities, financial market infrastructures, independent asset managers, and conduct of business of banks and securities dealers. New regulatory challenges will also emerge from the international regulatory agenda, including on shadow banking. Given the pace and scope of change, the authorities need to assess the impact of all these changes on the resources and organization of FINMA in anticipation of the legislative process. This will also provide an opportunity to consider on how best to strengthen conduct of business supervision more generally.

INTRODUCTION

1. An assessment of the level of implementation of the IOSCO Objectives and Principles of Securities Regulation (IOSCO Principles) was conducted in Switzerland from September 11 to October 1, 2013. The assessment was made as part of the IMF FSAP by Eija Holttinen, Monetary and Capital Markets Department, IMF. The previous IOSCO assessment of Switzerland was conducted in 2001-02 before the first IOSCO Assessment Methodology had been developed. Comparisons with the prior assessment are discouraged since the process has since been refined to promote consistency and has become progressively more rigorous.

INFORMATION AND METHODOLOGY USED FOR ASSESSMENT

2. The assessment was made on the basis of the IOSCO Principles approved in 2010 and the Assessment Methodology adopted in 2011. As has been the standard practice, Principle 38 was not assessed due to the existence of separate standards for securities settlement systems and central counterparties.

3. The IOSCO Assessment Methodology requires that assessors not only look at the legal and regulatory framework in place, but also at how it has been implemented in practice. The ongoing global financial crisis has reinforced the need for assessors to make a judgment about supervisory and other operational practices and to determine whether they are sufficiently effective. Among other things, such a judgment involves a review of the inspection programs for different types of supervised entities, the cycle, scope and quality of inspections, as well as how the relevant authorities follow up on findings, including by using enforcement actions.

4. The assessment was based on several sources. These comprise (i) a self-assessment and additional written responses prepared by the authorities; (ii) reviews of the relevant legislation and regulations; (iii) meetings with the management and staff of FINMA, the State Secretariat for International Financial Matters (SIF), the FDF, the Attorney General's Office, and the FAOA; and (iv) meetings with self-regulatory organizations and market participants, including the SIX Exchange Regulation (SER), SIX Swiss Exchange Ltd (SSX), Swiss Bankers Association (SBA), Swiss Funds and Asset Management Association (SFAMA), banks, securities dealers, fund management companies, asset managers, issuers, audit firms, and retail investor representatives.

5. The assessor wants to thank the Swiss authorities and market participants for their cooperation and willingness to share information. The views of authorities and market participants on the current status and the best way forward for the regulation and supervision of the Swiss securities markets provided an essential input to the conclusions of the mission. In the organizational side, particular thanks go to Mr. Lukas Wyss from FINMA, who coordinated the arrangements for the assessment mission with patience, efficiency and good humor.

INSTITUTIONAL AND MARKET STRUCTURE— OVERVIEW

A. Regulatory Structure

6. FINMA is the supervisory authority responsible for the authorization and prudential and conduct of business supervision of almost all entities covered by the IOSCO assessment.

The exception is audit firms, which fall under the remit of the FAOA. FINMA is also the administrative enforcement authority and, where necessary, conducts restructuring and bankruptcy proceedings. FINMA is organized into six Divisions: Banks, Insurance, Markets, Enforcement, Strategic Services, and Operations.

7. Listing of securities and setting and monitoring compliance with the related disclosure requirements is undertaken by SER, which is the self-regulatory unit of the SIX Group (see Section B). SER and the Swiss based subsidiary of Eurex Group Ltd (Eurex Zurich Ltd) also have other statutory self-regulatory functions, in particular in the area of market surveillance. The Swiss Takeover Board (TOB) has been established to ensure compliance with the rules applicable to public takeover bids, while FINMA maintains a role as the appeal body for the TOB's decisions.

8. FINMA was established on January 1, 2009 through the merger of the Swiss Federal Banking Commission, the Federal Office of Private Insurance and the Anti-Money Laundering Control Authority. FINMA's objectives, tasks and responsibilities are set out in the Federal Act on the Swiss Financial Market Supervisory Authority (FINMASA). The other main Acts covering the scope of the IOSCO assessment are the Federal Act on Stock Exchanges and Securities Trading (Stock Exchange Act, SESTA), the Federal Act on Collective Investment Schemes (Collective Investment Schemes Act, CISA), the Federal Act on Banks and Savings Banks (Banking Act, BA), the Federal Act on the Licensing and Oversight of Auditors (Auditor Oversight Act, AOA), and the Swiss Code of Obligations (CO).

9. The Federal Acts are complemented with related Federal Ordinances issued by the Swiss Federal Council that clarify or supplement the legislative provisions included in the Federal Acts. The relevant authorities, such as FINMA and the FAOA, may also issue their own Ordinances, if so provided in the relevant Act. Ordinances have a binding effect on the relevant market participants. FINMA and the FAOA may also issue Circulars regarding the application of financial market legislation (cf. Art. 7 FINMASA). Although the Circulars are not binding, FINMA may base the orders it issues in individual cases on the policies expressed in its Circulars. Regulatory expectations are also set in standards issued by industry associations that FINMA has endorsed as a

minimum standard – for example, for securities dealers and management of collective investment schemes, FINMA has recognized numerous standards issued by the SBA and SFAMA.¹

10. FINMA cooperates with the FDF, the Swiss National Bank (SNB), the Attorney General's Office and the FAOA to coordinate the activities with shared responsibilities. MOUs have been signed between the authorities to formalize cooperation in relation to financial stability and crisis management (FINMA, the SNB, and the FDF), enforcement (FINMA and the FDF Legal Services), and the planned transfer of FINMA responsibilities for the oversight of regulatory auditors to the FAOA. FINMA is signatory to the IOSCO Multilateral Memorandum of Understanding (MMOU), and has several bilateral MOUs with foreign authorities.

B. Market Structure

Exchanges

11. There are two main securities exchanges in Switzerland: the SSX and SIX Structured Products Exchange Ltd² (SIX Structured Products Exchange) that are both part of the SIX Group. SSX is the primary exchange in Switzerland, offering listing and trading in various financial instruments, including equities, bonds, and exchange traded funds (ETFs). Equity securities can be listed on four market segments (Standards): Main Standard, Standard for Investment Companies, Standard for Real Estate Companies, and Domestic Standard. SIX Structured Products Exchange is specialized in listing and trading structured products. Since the end of June 2013, SIX Structured Products Exchange is fully owned by the SIX Group after its joint venture shareholding by the SIX Group and Deutsche Börse was terminated. The holding company of the group, SIX Group Ltd, is owned by approximately 150 banks that are also the main users of the group's services. The SIX Group also provides central counterparty (CCP) clearing services through SIX x-clear Ltd and operates SIX SIS Ltd., a central securities depository (CSD). It is also possible to clear SSX trades in LCH.Clearnet Limited in the United Kingdom. The Eurex Group has a derivatives exchange subsidiary in Switzerland, Eurex Zurich Limited (Eurex Zurich). The clearing of trades made on Eurex Zurich takes place in Eurex Clearing AG (Eurex Clearing) in Germany. Finally, BX Berne eXchange has a limited authorization to conduct "stock exchange-like business"³ and primarily serves small and medium sized companies, and is a secondary listing location for some SSX listed companies.

12. Key market information on the most important products traded on the SSX is provided in the following table:

¹ These are referred to as self-regulation in Switzerland, but the associations are not self-regulatory organizations in the meaning of Principle 9 of IOSCO Principles, because they conduct only regulatory, but not supervisory and enforcement tasks.

² Until December 31, 2013, the name of SIX Structured Products Exchange Ltd was Scoach Switzerland Ltd. This exchange is referred to with the new name throughout this report.

³ Entities authorized for stock exchange-like business conduct more limited activities than fully fledged exchanges, and are in practice not subject to as stringent regulatory requirements.

Table 1. Switzerland: Key SSX Market Information

	12/2008	12/2009	12/2010	12/2011	12/2012
Shares					
Number of listed shares	338	326	308	291	283
Market capitalization (billion CHF)	864	1,041	1,098	975	1,086
Market capitalization (billion USD)	809	1,006	1,175	1,039	1,187
Market capitalization as percent of GDP	152.2	187.8	191.3	166.1	183.2
New listings	8	7	5	3	4
Annual turnover (billion USD)	1,425	773	883	824	595
Average daily trading volume (number of shares)	118,348,241	82,941,238	71,650,076	74,110,597	63,545,263
Average daily turnover (million USD)	5,676	3,079	3,477	3,245	2,382
Number of trading participants	115	119	117	127	115
Bonds					
Number of listed bonds	1,416	1,429	1,495	1,565	1,624
New listings	368	370	396	402	362
Annual turnover (billion USD)	43	46	47	47	43
Average daily turnover (million USD)	171	182	186	183	172
ETFs					
Number of listed ETFs	150	269	497	645	749
Number of new listings	27	126	295	152	117
Annual turnover (billion USD)	29	35	53	84	58
Average daily turnover (million USD)	114	141	208	330	230

Source: SSX.

13. Eurex Zurich and SIX Structured Products Exchange also conduct significant trading activities, while BX Berne eXchange is much smaller. Eurex Zurich had listed 1,945 derivatives at the end of 2012, and traded a total of 249 million contracts the same year, with an average daily trading volume of 980,436 contracts. At the end of the year, it had 96 trading participants. At the end of 2012, SIX Structured Products Exchange had 32,496 tradable instruments and 119 trading participants, and its yearly trading turnover was approximately USD 34 billion. At the end of 2012, BX Berne eXchange listed 38 shares, and had 10 trading participants. Its total trading turnover in 2012 was USD 54 million.

Securities dealers

14. Provision of securities dealing services is dominated by banks in Switzerland. The total market share of the two largest banks (UBS AG and Credit Suisse AG) is more than 40 percent. They are also significant providers of discretionary asset management services, although reliable statistics on the total value of assets under management (AUM) in Switzerland are not available, because authorization is not required when only asset management services are provided. The following table provides additional information on the division of the market share between banks/securities dealers and non-bank securities dealers.

	Supervised entities		AUM		Value of securities turnover	
	Number	Market share (In percent)	Billion USD	Market share (In percent)	Million USD	Market share (In percent)
Non-bank securities dealers	58	15.9	8	0.2	58	6.9
Banks/securities dealers	306	84.1	3,585	99.8	787	93.1
Total	364	100.0	3,593	100.0	845	100.0

Source: FINMA.

CIS

15. The fund management industry is also significant in Switzerland, and in addition to Swiss funds, a large number of foreign CIS is distributed in Switzerland. At the end 2012, there were 46 fund management companies and 98 CIS asset managers authorized in Switzerland.⁴ They managed a total of 1,421 funds, out of which 754 were retail funds and 667 were funds for qualified investors. At the same time, the number of the representatives of foreign CIS⁵ was 111, and a total of

⁴ There were also 8 open-ended investment companies (SICAVs) and 33 subfunds of open-ended investment companies.

⁵ See Principle 24 for the tasks of a representative.

5,899 foreign funds had been approved for distribution in Switzerland.⁶ The development of the AUM of the Swiss CIS in the past three years is presented in the following table:

Table 3. Switzerland: Assets Under Management in Swiss Collective Investment Schemes

	2010 (Billion USD)			2011 (Billion USD)			2012 (Billion USD)		
	Retail funds	Qualified investor funds	Total	Retail funds	Qualified investor funds	Total	Retail funds	Qualified investor funds	Total
Securities funds (open)	52	0	52	49	0	49	51	0	51
Real estate funds (open)	22	6	28	23	7	30	26	8	34
Other funds for alternative investments (open)	4	1	5	3	2	5	2	2	5
Other funds for traditional investments (open)	108	313	422	108	332	440	119	402	521
Limited partnership for CIS ¹	0	2	2	0	4	4	0	6	6
Total	186	323	509	183	345	528	199	418	616

Source: FINMA.
¹These are typically private equity funds.

PRECONDITIONS FOR EFFECTIVE SECURITIES REGULATION

16. The CO includes the relevant provisions on company formation, duties of directors and officers, and shareholder rights. At a high level, it also regulates the public offers of securities that are not intended to be listed on a stock exchange. SESTA and related ordinances include requirements on takeover bids, while other change of control transactions are regulated in the Federal Act on Merger, Demerger, Transformation and Transfer of Assets (Merger Act, MerA). Listing and related disclosure requirements are not subject to any statutory provisions, but are dealt with

⁶ A significant number of these foreign funds are managed by Swiss fund management companies and asset managers, but the funds themselves are registered in a foreign jurisdiction, in the majority of cases either in Luxembourg or Ireland.

through the requirements set by the stock exchanges. Significant shareholders of listed companies are subject to a legal, criminally enforceable duty to disclose any transactions leading to material changes in their shareholdings. The transfer of rights attaching to securities is covered in the Federal Act on Intermediated Securities (Federal Intermediated Securities Act, FISA.)

17. The Federal Act on Unfair Competition and the Federal Act on Cartels and other Restraints of Competition (Cartel Act, CartA) prohibit anti-competitive practices, unfair barriers to entry and abuse of a market dominant position. Courts provide the main channel for dispute resolution in Switzerland; the Swiss Federal Constitution guarantees legal equality and requires every person to be treated in good faith and in a non-arbitrary manner by state authorities. The Swiss Civil Procedure Code includes provisions on arbitration.

MAIN FINDINGS

18. Principles for the Regulator. FINMA's regulatory and supervisory responsibilities and objectives are clearly set out in FINMASA. FINMA has a broad range of powers to meet its responsibilities, although its administrative enforcement powers do not include the ability to impose pecuniary fines. FINMA is operationally independent in its day-to-day activities, and subject to appropriate accountability mechanisms. Certain deficiencies in its governance arrangements may have been perceived to undermine its independence, but the FDF and FINMA have recently taken some measures to address those deficiencies. FINMA is self-funded through fees and charges from the industry, but some Divisions are thinly resourced and some are subject to high staff turnover. Appropriate governance and procedural arrangements, consultation practices and staff conduct requirements are in place. Internal processes for monitoring systemic risk are being improved, whereas the process to review the regulatory perimeter relies heavily on following developments in other jurisdictions. Supervised entities are subject to requirements to avoid, manage or disclose conflicts of interest.

19. Principles for self-regulation. Exchanges, as the only SROs in Switzerland, are subject to authorization and a requirement to submit their rules to FINMA for approval. Supervision by FINMA currently relies on meetings, reviews of reports and regulatory audits by audit firms.

20. Principles for enforcement. FINMA has sufficient inspection and investigation powers vis-à-vis supervised entities and other persons, but has outsourced the exercise of these powers to a significant extent to audit firms and investigating agents. Its requirements on the planning of and reporting on audit firms' regulatory audits are in the process of being enhanced. FINMA's own supervisory reviews are very limited. FINMA is active in investigating suspected market abuse and other misconduct, and has imposed a number of administrative sanctions in the past. However, it does not have the power to impose pecuniary administrative fines. For criminal offenses, the responsibilities are divided between the Legal Services of the FDF and the Attorney General's Office. Disciplining issuers is the sole responsibility of the stock exchanges' self-regulatory arms.

21. Principles for cooperation. Subject to FINMA's compliance with additional conditions, IOSCO approved FINMA as a full signatory to the IOSCO MMOU in 2010. FINMA has sufficient

powers to share information with other domestic and foreign authorities. FINMA has provided assistance to numerous requests for information from foreign authorities under the MMOU. Foreign requests for client information may lead to an obligation to notify the client who can then lodge a court appeal against FINMA's decision. The requirement to preserve client confidentiality consumes FINMA time and resources.

22. Principles for issuers. The full disclosure requirements apply only to issuers of listed securities, and the relevant requirements are developed through stock exchange self-regulation and monitored and enforced for compliance by the exchanges. The basic rights of shareholders are addressed in the regulatory framework. In principle, the obligation to make a public tender offer applies above the threshold of 33 1/3 percent of voting rights, unless the company has opted out from the requirement or applies a higher threshold. Acquisitions of large shareholdings in listed companies are required to be disclosed, and non-compliance is subject to criminal enforcement under SESTA. However, compliance with the directors' and senior managers' obligations to report their equity transactions is based only on self-regulation, and can be enforced by SER only vis-à-vis the listed company. Issuers of listed securities can choose between several accounting standards depending on the security issued and the market segment where it is listed. Certain issuers can use Swiss accounting standards, whose establishment is not subject to cooperation with or oversight by public authorities.

23. Principles for auditors, credit rating agencies, and other information service providers. The FAOA is responsible for the oversight of all audit firms carrying out statutory audits of public companies. It performs regular reviews at audit firms, and can stipulate remedial measures in case of non-compliance. Sufficient requirements on auditor independence are in place, but there is no requirement for a public company to have an Audit Committee to oversee the process of selecting and appointing external auditors. Public disclosure of the premature resignation of an auditor is required only on an annual basis. Auditing standards to be used depend on the accounting standards applied. In addition, the Swiss Auditing Standards (SAS), which are aligned with the international ones, always apply. Certain supervised entities are required to use credit ratings for specific regulatory purposes, which requires the credit rating agency (CRA) to be recognized by FINMA, subject to compliance with the IOSCO Code of Conduct Fundamentals for CRAs. However, CRAs are not supervised on an ongoing basis. Supervised entities employing sell-side analysts are subject to the SBA self-regulatory requirements on financial research recognized by FINMA as a minimum standard.

24. Principles for collective investment schemes. All types of CIS and all entities involved in administering them, managing or safekeeping their assets, or distributing their units or shares are subject to authorization on the basis of comprehensive legal and regulatory requirements. FINMA is in the process of enhancing its supervisory approach in this area to complement the regulatory audits. Relevant fund documentation is subject to preapproval by FINMA. The fund management company and custodian have to be separate entities, but can be related parties. Some safeguards to

avoid conflicts of interest are in place, but compliance with the relevant requirements is not sufficiently reviewed. The content of the initial and periodic disclosure requirements is stipulated in the legal framework. There are detailed requirements on the valuation of CIS assets, subscription and redemption of CIS units/securities, and circumstances when redemptions can be suspended. The standard regulatory and supervisory framework for CIS applies also to hedge funds.

25. Principles for market intermediaries. There are comprehensive criteria for authorization of market intermediaries, with the exception of independent asset managers that are not subject to any regulatory requirements in Switzerland. Securities dealers are subject to initial and ongoing capital requirements, including on a consolidated basis. The organizational requirements for securities dealers build on those applied to banks. Regulation of conflicts of interest and conduct of business largely relies on the SBA standards recognized by FINMA as minimum standards. There are appropriate segregation requirements for clients' securities, whereas those applicable to clients' funds are less clear (see Principle 32). Securities dealers and banks' securities activities are subject to relatively limited supervision. FINMA's early warning mechanisms to identify a failing bank or securities dealer focus on the more systemic entities. FINMA does not have a specific plan to deal with a failure, but its powers are set out in legislation and have been used on several occasions. There is a deposit protection scheme in Switzerland, but no equivalent schemes protecting clients' securities from the failure of a securities dealer.

26. Principles for secondary markets. Exchanges and exchange-like institutions are required to be authorized. Certain gaps in the legal requirements for exchanges are due to be filled in the upcoming Financial Market Infrastructure Act. The exchanges have the front line responsibility for market surveillance. FINMA is in the process of introducing a new supervisory approach for exchanges intended to enhance its supervision from the current relatively limited level. Sufficient pre- and post-trade transparency requirements apply to trading on the SSX. The recently revised regulatory framework prohibits market abuse through both administrative and criminal provisions. The exchanges' market surveillance units, FINMA and the Attorney General's Office cooperate to investigate and address market abuse under the new framework. There are shortcomings in the cooperation arrangements to monitor open positions and deal with market disruptions, and regulatory and reporting requirements on short selling are limited.

SUMMARY IMPLEMENTATION OF THE IOSCO PRINCIPLES

A. Summary Implementation of the IOSCO Principles—Detailed Assessments

Principle	Grade	Findings
Principle 1. The responsibilities of the Regulator should be clear and objectively stated.	BI	FINMA's regulatory and supervisory responsibilities and objectives are set out in FINMASA, with the protection of creditors, investors and insurers and the proper functioning of the financial markets set as FINMA's primary objectives. There is a pending parliamentary initiative to include the promotion of the reputation and competitiveness of the Swiss financial centre as an equal objective with the current ones. Use of self-regulation is recognized in FINMASA, and continues to play an important role in Switzerland. Subject to stipulated criteria, FINMA can provide exemptions under some financial market acts for transactions and/or market participants. The exemptions granted are not published individually or in summary format. There are inconsistencies in the regulatory treatment of certain economically equivalent products (see Principle 16), and the rules of conduct would also benefit from greater harmonization. Swiss authorities have well functioning cooperation arrangements in place.
Principle 2. The Regulator should be operationally independent and accountable in the exercise of its functions and powers.	BI	FINMA is operationally independent in its day-to-day activities, and subject to appropriate accountability mechanisms vis-à-vis the Federal Council and Parliament. FINMA is funded through fees and charges from supervised entities, and its budget is approved by its Board of Directors. The possibility that members of the FINMA Board of Directors could maintain a Board level position at a supervised entity, even though this was subject to pre-vetting by the Federal Council and strict recusal requirements, was unhelpful from a governance perspective. The conditions for FINMA Board membership were revised in early December 2013, which will prevent such dual roles in future nominations. The current supervised entity board membership by one FINMA Board member will be phased out by the end of 2015. FINMASA does not specify the circumstances enabling the removal of the members of FINMA Board of Directors and Chief Executive Officer (CEO); however, in practice there have been no attempts to remove a FINMA Board member or CEO. FINMA and its staff are subject to adequate legal protection in the discharge of their duties. The administrative procedures that FINMA has to apply provide sufficient procedural protections to persons impacted by FINMA's decisions.

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<p>Principle 3. The Regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.</p>	<p>BI</p>	<p>Overall, FINMA has sufficient powers and authority to meet its responsibilities. However, insufficient resources in some functions appear to limit its ability to be a proactive supervisor. This applies in particular to the Banks Division (see Principle 31). The resource needs are also impacted by the very high staff turnover in some Divisions having responsibility for the areas covered by the IOSCO Principles. FINMA has a set of governance rules and policies, and has focused on documenting its supervisory practices in detailed instructions for staff (see Principles 12, 24, 31 and 34). Swiss authorities are engaged in investor education only to a very limited extent.</p>
<p>Principle 4. The Regulator should adopt clear and consistent regulatory processes.</p>	<p>FI</p>	<p>FINMA has a legal obligation to provide for a transparent regulatory process, consult those affected, and take into account the costs. FINMA uses various ways to solicit views from the public and supervised entities, depending on the nature and urgency of the regulatory project. As a matter of practice, it publishes the comments it receives and its feedback on them. Industry associations do not consult the public on their standards and guidelines, even though they would be recognized as a minimum standard. Publication of FINMA's individual decisions is possible subject to strict legal provisions, and FINMA uses this power cautiously (see also Principle 11).</p>
<p>Principle 5. The staff of the Regulator should observe the highest professional standards, including appropriate standards of confidentiality.</p>	<p>FI</p>	<p>FINMA staff and management are subject to a Code of Conduct and restrictions on holding and trading securities of supervised entities. The Code of Conduct is enforced, and compliance with the holding and trading restrictions has been subject to a review by an independent party. Strict confidentiality and official secrecy provisions apply to FINMA staff and management.</p>
<p>Principle 6. The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate.</p>	<p>BI</p>	<p>The most important tool that FINMA uses to guide discussion on how to monitor, mitigate and manage systemic risk is its quarterly internal Risk Barometer. It addresses systemic risks possibly arising from the securities markets only to a limited extent, but provides a good basis to develop such analysis further.</p>
<p>Principle 7. The Regulator should have or contribute to a process to review the perimeter of regulation regularly.</p>	<p>PI</p>	<p>There are significant gaps in the Swiss regulatory framework compared to the requirements of the IOSCO Principles. In addition to having made a conscious regulatory choice of not policing the perimeter in certain areas, FINMA and the other Swiss authorities appear to lack a holistic, independent process for reviewing the regulatory perimeter. Instead the emphasis is on following regulatory developments in other jurisdictions.</p>
<p>Principle 8. The Regulator should seek to ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed or otherwise managed.</p>	<p>BI</p>	<p>Supervised entities are subject to requirements to avoid, manage or disclose conflicts of interest. Compliance with those requirements is subject to regulatory audits, and non-compliance can be enforced by FINMA. Potential misalignment of incentives by issuers is not addressed beyond general civil law requirements.</p>
<p>Principle 9. Where the regulatory system makes use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, such SROs should be subject to the oversight of the Regulator and</p>	<p>BI</p>	<p>At the moment the exchanges are the only SROs (as defined in Principle 9) in Switzerland. As exchanges, they are subject to authorization, and need to submit their rules to FINMA for approval. The legal requirements for the exchanges' self-regulatory functions are relatively high level and at times subject to interpretation. The self-regulatory functions are subject to regulatory audits, and there is regular engagement with FINMA in terms of meetings and periodic reporting. However, FINMA has</p>

should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.		not conducted any supervisory reviews on the exchanges' SRO functions.
Principle 10. The Regulator should have comprehensive inspection, investigation and surveillance powers.	FI	FINMA has the power to inspect and investigate supervised entities and obtain books and records from them. Sufficient record-keeping requirements on orders, transactions and client identity ensure the usefulness of the data requested. Inspections and investigations can be outsourced to audit firms and investigating agents. Responsibility for conducting real-time market surveillance has been specifically allocated to the exchanges in SESTA. The legislation would not however prevent FINMA from complementing its current ex post analysis with its own real-time market surveillance, if needed.
Principle 11. The Regulator should have comprehensive enforcement powers.	BI	FINMA has administrative enforcement powers vis-à-vis supervised entities and those that conduct securities activities without appropriate authorization. Its investigative and enforcement powers were enhanced in May 2013 by introducing explicit insider trading and market manipulation prohibitions in SESTA. In parallel, FINMA's administrative sanctioning powers to issue and publish a declaratory ruling and require disgorgement of profits were extended to cover breaches of those provisions as well as the failure to comply with the requirement to disclose major shareholdings. FINMA does not have the power to impose pecuniary administrative fines, and it does not normally publish its sanctioning decisions. For criminal violations, the investigative, prosecutorial and judgment power lies with either the Legal Services of the FDF or the Attorney General's Office, depending on the nature of the suspected criminal offense. FINMA can share information with them, and good cooperation has been established in practice. Because issuer disclosure requirements are set through self-regulation, disciplinary powers rest solely with the exchanges and neither FINMA nor the criminal authorities can enforce non-compliance.
Principle 12. The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.	PI	FINMA's use of its inspection power is largely outsourced to regulatory auditors who conduct an annual basic audit in each supervised entity, and additional audits at FINMA's request. On the basis of the recently revised approach on planning of and reporting on audits, FINMA aims at increasing its interaction with auditors and thereby also the usefulness of regulatory audits. FINMA's own supervisory reviews are very limited, and focus on the large banks active in securities markets. FINMA is active in investigating suspected market abuse and other misconduct, and has imposed a number of administrative sanctions in the past. Firms are required to have compliance systems in place to prevent securities law violations.
Principle 13. The Regulator should have authority to share both public and non public information with domestic and foreign	FI	FINMA can share information with other domestic authorities without the need for external approval, subject to compliance with certain conditions on the use of information. In case of a request for information from a foreign authority, FINMA may have to

counterparts.		inform the client of the request and issue a formal decree that the client can appeal to the Swiss Federal Administrative Court (SFAC). When approving Switzerland as a full signatory to the MMOU, IOSCO concluded that this procedure complies with the MMOU as long as the information to be disclosed is limited to the minimum facts to support the lawful basis of the request. So far FINMA has been able to comply with this requirement.
Principle 14. Regulators should establish information sharing mechanisms that set out when and how they will share both public and nonpublic information with their domestic and foreign counterparts.	FI	FINMA is signatory to the IOSCO MMOU and has concluded four domestic MOUs. It also has several bilateral MOUs with foreign supervisory authorities. Within the constraints of its need to comply with the requirements of the Swiss law on provision of client information, FINMA has responded to a significant number of information requests.
Principle 15. The regulatory system should allow for assistance to be provided to foreign Regulators who need to make inquiries in the discharge of their functions and exercise of their powers.	BI	FINMA has provided assistance to numerous requests for information from foreign authorities, and is required to assist them in getting access to information during cross-border on-site inspections, to ensure compliance with the Swiss client confidentiality rules. The requirement to protect client information consumes FINMA time and resources, and thereby has an impact on the ability of FINMA to process the requests in the most effective and timely manner possible. The possibility for companies limited by shares to use bearer shares may prevent access to information on their beneficial owners.
Principle 16. There should be full, accurate and timely disclosure of financial results, risk and other information that is material to investors' decisions.	PI	The full disclosure requirements apply only to issuers of listed securities; issuers of publicly offered securities and structured products are subject only to the requirement to prepare a prospectus compliant with the CO or the self-regulatory framework, respectively. Such prospectuses are not reviewed by any public authority or SRO. No data are available to assess the practical significance of these gaps. The obligation to publish semiannual reports applies only to issuers of equity securities, and the deadlines for publishing periodic reports are long compared to the practice in many other jurisdictions. SER reviews listing prospectuses and monitors compliance with periodic and ad hoc disclosure requirements.
Principle 17. Holders of securities in a company should be treated in a fair and equitable manner.	BI	The basic rights of shareholders are addressed in the regulatory framework. Acquisitions of large shareholdings in listed companies are required to be disclosed. The obligation to make a public tender offer applies to those that acquire at least 33 1/3 percent of the voting rights of a listed company, unless the company has opted out of compulsory takeover bids or raised the threshold in its articles of association. The offer prospectus is subject to examination by the TOB. Under SER rules, directors and senior managers have to report their transactions in the issuer's equity securities. However, SER can enforce compliance with this obligation only vis-à-vis listed companies. Disclosure requirements and the obligation to make a public tender offer do not apply to unlisted companies.
Principle 18. Accounting standards used by issuers to prepare financial statements should be of a high and	BI	Issuers of listed securities can choose between several accounting standards depending on whether they issue equity or debt securities and on which SSX Standard their equity securities are listed. In addition to the International Financial Reporting

internationally acceptable quality.		Standards (IFRS) and U.S. Generally Accepted Accounting Principles (GAAP), use of Swiss GAAP FER is possible for the issuers of equity securities listed on the SSX Domestic and Real Estate Company Standards and for all issuers of debt securities. Foreign issuers can also use other accounting standards, subject to the approval of the SER Regulatory Board. Even though the Swiss GAAP FER are not used internationally, audit firms and issuers generally consider their use to be appropriately circumscribed. Swiss GAAP FER are established by an independent foundation that is not subject to cooperation with or oversight by public authorities. SER monitors and enforces compliance with the accounting standards by issuers of listed securities. The audit requirement does not apply to issuers of unlisted equity securities, which is part of the regulatory gap identified under Principle 16.
Principle 19. Auditors should be subject to adequate levels of oversight.	FI	The FAOA is responsible for the oversight of all audit firms carrying out statutory audits of public companies. It has sufficient powers and funding, and has established processes for performing regular firm and file reviews at audit firms to monitor compliance with the quality control and independence requirements. It can stipulate remedial measures in case of non-compliance, and has concluded several enforcement proceedings since its establishment.
Principle 20. Auditors should be independent of the issuing entity that they audit.	BI	The regulatory framework includes sufficient requirements on auditor independence, including monitoring by the FAOA that the provision of non-audit services does not undermine auditor independence. Rotation requirements for auditors are in place. There is however no requirement for a public company to have an Audit Committee or equivalent body to oversee the process of the selection and appointment of external auditors. Public disclosure of the premature resignation of an auditor is required to be made only on an annual basis.
Principle 21. Audit standards should be of a high and internationally acceptable quality.	FI	Depending on the accounting standard chosen, audit firms must comply with the related auditing standards the use of which has been recognized by the FAOA. In addition, the SAS apply, since they include some Swiss specific additions. The revised SAS are aligned with the revised International Standards on Auditing (ISA), and have to be used for the audit of financial statements ending on or after December 15, 2013.
Principle 22. Credit rating agencies should be subject to adequate levels of oversight. The regulatory system should ensure that credit rating agencies whose ratings are used for regulatory purposes are subject to registration and ongoing supervision.	PI	For specific regulatory purposes, certain supervised entities are required to use credit ratings issued by domestic or foreign CRAs recognized by FINMA. Recognized domestic and foreign CRAs have to comply with the requirements included in a FINMA Circular that are largely aligned with the IOSCO Code of Conduct Fundamentals for CRAs. Non-compliance can lead to the revocation of their recognition, in which case their ratings cannot be used for regulatory purposes. However, FINMA does not supervise the one domestic CRA on an ongoing basis due to its limited activities. Supervision of recognized foreign CRAs relies on their respective competent authorities.
Principle 23. Other entities that	BI	Supervised entities employing sell-side analysts are subject to the

<p>offer investors analytical or evaluative services should be subject to oversight and regulation appropriate to the impact their activities have on the market or the degree to which the regulatory system relies on them.</p>		<p>SBA directives on financial research recognized by FINMA as a minimum standard. They address the need to avoid, manage or disclose conflicts of interest and to establish appropriate arrangements to monitor compliance. FINMA does not have any specific processes in place to consider whether other providers of analytical or evaluative services would warrant regulation (see also Principle 7).</p>
<p>Principle 24. The regulatory system should set standards for the eligibility, governance, organization and operational conduct of those who wish to market or operate a collective investment scheme.</p>	<p>BI</p>	<p>All types of CIS and all entities involved in administering CIS, managing or safekeeping their assets, or distributing their units or shares are subject to authorization on the basis of comprehensive legal and regulatory requirements. Relevant conflict of interest and organizational requirements apply, and delegation is subject to detailed requirements tailored to the type of activity delegated. Record-keeping requirements are not sufficiently explicit. FINMA is in the process of enhancing its supervisory approach, building on its general approach to categorizing and rating supervised entities. FINMA has not conducted any own supervisory reviews, but plans to start them in 2014. Regulatory audit reports on CIS and their managers are already required to provide a more comprehensive view on compliance with securities regulatory requirements than those on some other entities covered by the IOSCO Principles.</p>
<p>Principle 25. The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.</p>	<p>BI</p>	<p>CIS can be offered in various legal forms in Switzerland, but in practice most of them are still contractual funds. The relevant fund documentation is subject to preapproval by FINMA, enabling it to ensure that the legal form and structure requirements are complied with. The fund management company and custodian have to be separate entities, but can be related parties. Certain safeguards aiming at avoiding conflicts of interest are in place, and the regulatory auditors review compliance with these requirements, but only every 3-5 years. FINMA itself has not conducted any supervisory reviews focusing on (related party) custody.</p>
<p>Principle 26. Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.</p>	<p>FI</p>	<p>The content of the prospectus to be provided to potential investors is stipulated in detail in the legal framework. FINMA approves the fund contract that includes the key information relating to each fund. The fund contract has to include information on the investment policy of the fund and the calculation of its net asset value (NAV). There are no specific legislative or regulatory deadlines for approving the fund contract, but FINMA applies internal deadlines and publishes information on the actual length of the approval periods. Despite this, market participants had concerns about the length of the approval periods. For certain funds, a simplified prospectus or a Key Investor Information Document (KIID) has to be provided in addition to the prospectus. The initial disclosure documents have to be kept up-to-date, and periodic reporting requirements to investors apply.</p>
<p>Principle 27. Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.</p>	<p>FI</p>	<p>There are detailed requirements on the valuation of CIS assets, subscription and redemption of CIS units/securities, and circumstances when redemptions can be suspended. The valuation of CIS assets is verified by both the custodian and the audit firm. Treatment of pricing errors is covered in SFAMA guidelines in a sufficient manner, although the thresholds for qualifying pricing</p>

		errors as significant are relatively high.
Principle 28. Regulation should ensure that hedge funds and/or hedge funds managers/advisers are subject to appropriate oversight.	FI	The standard regulatory framework for CIS applies also to hedge funds (referred to as “other funds for alternative investments”) and their management companies, asset managers, custodians and distributors. FINMA also applies the standard CIS reporting requirements to them, and can obtain additional information when needed. The supervisory approach is subject to the same shortcomings as for other funds, and has been taken into account in the rating of Principle 24.
Principle 29. Regulation should provide for minimum entry standards for market intermediaries.	PI	The Swiss regulatory framework does not currently require independent asset managers that deal in the name and for the account of the client to be authorized, nor does it subject them to any other regulatory requirements. Provision of services on a cross-border basis to Swiss clients is not subject to authorization or notification to the Swiss authorities. Otherwise there are comprehensive criteria for authorization as a securities dealer, and FINMA can prevent entry at the authorization stage or take appropriate measures later as needed. Information on authorized securities dealers is available on FINMA's website.
Principle 30. There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.	FI	Initial capital requirements for banks and securities dealers are differentiated. On an ongoing basis, securities dealers are subject to the same risk-based capital requirements as banks, and an additional requirement to have own funds amounting to at least one quarter of their annual costs. Reporting takes place quarterly, but securities dealers and banks must maintain sufficient capital adequacy on an ongoing basis. Risks from outside the supervised entity are addressed through consolidated supervision.
Principle 31. Market intermediaries should be required to establish an internal function that delivers compliance with standards for internal organization and operational conduct, with the aim of protecting the interests of clients and their assets and ensuring proper management of risk, through which management of the intermediary accepts primary responsibility for these matters.	PI	The organizational requirements (internal control, risk management, and compliance) applicable to securities dealers build on those applied to banks. Conflicts of interest are regulated both through FINMA Circulars and SBA standards. Business conduct is addressed in a more limited extent, but SBA standards recognized by FINMA as minimum standards would enable supervision by FINMA and regulatory auditors. The planned new FFSA is due to address these regulatory gaps. There are appropriate segregation requirements for clients' securities, whereas those applicable to clients' funds are less clear (see Principle 32). Record-keeping requirements are based solely on AMLA. In practice, the non-bank securities dealers and most banks/securities dealers active in securities markets (e.g., as discretionary portfolio managers) are subject to more limited supervision, in particular in relation to their conduct of business, than the other supervised entities covered by the IOSCO Principles. The new regulatory audit framework is expected to lead to more informative audit reports that should assist FINMA in identifying risks in supervised entities, including the smaller ones.
Principle 32. There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and	PI	FINMA uses various mechanisms that are expected to give it an early warning of a potential default by a securities dealer or a bank. These mechanisms focus on assessing risks of the more systemic entities. FINMA does not have a specific plan to deal with

<p>loss to investors and to contain systemic risk.</p>		<p>a failure, but its powers applicable to both banks and securities dealers are clearly set out in the Banking Act (BA) and FINMA has used them on several occasions. Segregation requirements for clients' securities comply with Principle 32, but the regulatory framework does not clearly require securities dealers to segregate clients' funds. Since securities dealers can hold clients' funds deposited for investment purposes, they have to be members of the deposit protection scheme that however covers only up to CHF 100,000 per client. In case segregation requirements are not complied with, there is no investor compensation scheme protecting clients' securities from the failure of a securities dealer.</p>
<p>Principle 33. The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.</p>	<p>BI</p>	<p>Exchanges and exchange-like institutions are required to be authorized. The authorization criteria are relatively high level, and in practice FINMA tailors the requirements to each individual case. There are some OTC trading platforms in Switzerland for trading unlisted shares, but according to FINMA they are not multilateral and trade very low volumes. As a result, they do not fall under the SESTA authorization requirement. Certain gaps in the legal requirements for exchanges are due to be filled in the upcoming Financial Market Infrastructure Act. FINMA approves the exchanges' listing and trading rules, and is therefore able to ensure the appropriateness of the admission criteria for products and participants.</p>
<p>Principle 34. There should be ongoing regulatory supervision of exchanges and trading systems which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.</p>	<p>BI</p>	<p>The exchanges have the front line responsibility for market surveillance, and the SIX Group exchanges' participants are also subject to audits commissioned by SER. FINMA itself does not conduct real-time market surveillance, but investigates improper market conduct on the basis of referrals from the market surveillance units of the exchanges and its own analytical work. FINMA is in the process of introducing a new supervisory approach for exchanges (and operators of financial market infrastructures, FMIs) that is intended to enhance its supervision from the current relatively limited level. In addition to relying on the work of audit firms as well as meetings and other informal contacts with the exchanges, the new approach is expected to lead to FINMA supervisory reviews of at least the most systemically important exchanges/FMI operators.</p>
<p>Principle 35. Regulation should promote transparency of trading.</p>	<p>FI</p>	<p>SESTA includes a high level requirement for exchanges to organize their markets so as to achieve transparency. This is complemented by the rules and practical arrangements of the exchanges. The trading system of the SSX provides sufficient levels of pre- and post-trade transparency of on-exchange trades. The SSX operates a block trading service, but the low volumes in that service do not raise concerns about the volume of dark trading.</p>
<p>Principle 36. Regulation should be designed to detect and deter manipulation and other unfair trading practices.</p>	<p>BI</p>	<p>The recently revised regulatory framework prohibits market abuse through both administrative and criminal provisions, with the latter having a more limited scope of application. The potential for market abuse is monitored by the market surveillance units of the exchanges that refer relevant suspicious activity to FINMA. FINMA in turn cooperates with the Attorney General's Office to determine the best approach to address each case. Since the legislative change came into force only recently, it is premature to draw conclusions on the effectiveness of the new arrangements in terms</p>

		of results from the investigations and sanctions given. The prior arrangements had led to limited results, which may be attributed to limited powers of both FINMA and the criminal authorities.
Principle 37. Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.	PI	Monitoring of open positions on secondary markets is primarily undertaken by the CCPs, although FINMA and the BNP also require certain large exposure reporting and have the general power to take action in various situations. Limited arrangements exist domestically and on a cross-border basis to share information on large exposures in secondary markets. MOUs enable consultation between Swiss and foreign authorities in case of market disruptions, but do not contain sufficient crisis management arrangements. Implementation of segregation and portability requirements by SIX x-clear is planned to be effected by mid-2014. The regulatory and reporting requirements on short selling are limited; assessing the significance of the gaps would benefit from data on settlement fails.
Fully Implemented (FI), Broadly Implemented (BI), Partly Implemented (PI), Not Implemented (NI), Not Applicable (NA)		

B. Recommended Action Plan to Improve Implementation of the IOSCO Principles

Principle	Recommended Action
Principle 1	<ol style="list-style-type: none"> 1. The FDF should ensure that the proposal for the FFSA will include sufficiently harmonized regulatory requirements for economically equivalent products (see also Principle 16). 2. FINMA should consider publishing information on its exemptive decisions, e.g. in summary format.
Principle 2	<ol style="list-style-type: none"> 1. The FDF and/or FINMA should include more specific criteria in FINMASA and/or FINMA Organizational Rules on the removal of the members of FINMA's Board of Directors and CEO.
Principle 3	<ol style="list-style-type: none"> 1. FINMA should ensure that its supervisory resources in all divisions are sufficient to cover the securities activities under their responsibility. 2. FINMA should carefully consider the costs and benefits of the current high staff turnover in some divisions and take any appropriate measures. 3. Swiss authorities should consider enhancing investor education.
Principle 4	<ol style="list-style-type: none"> 1. FINMA should engage with the industry associations to assess the feasibility of conducting public consultations on their standards, in particular in the area of investor protection.
Principle 6	<ol style="list-style-type: none"> 1. FINMA should further develop its Risk Barometer by adding focus on the systemic risks potentially arising from securities markets.

Principles 7 and 23	1. The authorities should develop more robust arrangements to conduct comprehensive analyses of potential risks emerging through unregulated products and entities and to take necessary measures, where appropriate.
Principle 8	1. The authorities should introduce appropriate ways to analyze and, if needed, address the potential misaligned incentives of issuers.
Principles 9, 33 and 34	1. FINMA should ensure that both the exchanges' business activities and their SRO activities are subject to robust supervision, including directly through FINMA supervisory reviews. 2. The FDF should ensure that the upcoming proposal for the Financial Market Infrastructure Act enhances and clarifies the requirements for exchanges' (and other potential trading platforms') self-regulatory responsibilities as well as FINMA's powers in the area of exchange and SRO supervision.
Principle 10	1. Taking into account the possible structural changes in the market (e.g., the volume of SSX/Eurex Zurich cross-market trading, potential establishment of competing trading platforms), FINMA should consider whether, when and how to increase its own market surveillance capacity.
Principle 11	1. The authorities should consider the need for and the legal possibility for introducing administrative fining powers, or alternative ways to ensure a more effective and dissuasive sanctioning regime, including reconsidering the sufficiency of the criminal sanctions for insider trading and price manipulation. 2. The authorities should consider whether relying solely on the exchanges' disciplinary powers provides a sufficient deterrent for issuer non-compliance. 3. FINMA should consider the benefits of adopting a more strategic approach to deciding on the publication of its sanctioning decisions, taking into account the legal limitations.
Principles 12, 24, 31 and 34	1. FINMA should further develop its supervisory approach, and ensure that it covers all supervised entities with similar risk characteristics in a sufficiently harmonized manner across the various Divisions.
Principles 13 and 15	1. The authorities should pursue the abolition of the strict client confidentiality requirements and the requirement to inform the client of foreign authorities' requests for information.
Principles 16 and 18	1. The FDF should ensure that the future FFSA will include disclosure requirements applicable to issuers of all publicly offered securities and structured products comparable to those applicable to issuers of other economically equivalent, regulated products. Annual accounts of all issuers of publicly offered securities should be subject to an audit requirement. 2. FINMA and SER should strengthen the periodic disclosure requirements applicable to issuers listed on the SSX and SIX Structured Products Exchange, in particular by requiring the publication of semi-annual financial statements by all issuers. They are also encouraged to consider whether the current deadlines for the publication of annual and semiannual reports are appropriately benchmarked.

Principle 17	1. The authorities should consider strengthening the regulatory requirements for the disclosure of the transactions of listed companies' directors and senior managers to make the requirements directly enforceable vis-à-vis the persons in question. Such requirements should be extended to all issuers that have made a public offer, independent of whether their securities are listed or not.
Principle 18	1. The authorities should consider whether the establishment of Swiss GAAP FER should be subject to cooperation with or oversight by the public sector.
Principle 20	1. The authorities should ensure that listed companies in practice comply with sufficient corporate governance requirements, in particular in relation to the need to establish an independent audit committee or equivalent body. 2. The authorities should introduce a requirement for the prompt disclosure of information on the resignation, removal and replacement of an external auditor.
Principle 22	1. The authorities should consider whether the current model where the domestic CRA is not subject to FINMA ongoing supervision is sufficient going forward.
Principles 24 and 31	1. The authorities should introduce more explicit and comprehensive record-keeping requirements in CISA and SESTA.
Principle 25	1. The authorities should apply further safeguards for related party custody, such as requiring specific, additional regulatory audits and allowing no overlap in directors of related companies.
Principle 26	1. The FDF should consider the costs and benefits of introducing a formal, sufficiently long deadline for the FINMA approval process of fund contracts, with appropriate safeguards enabling FINMA to effectively reject non-compliant proposals.
Principle 27	1. FINMA and SFAMA should consider whether the thresholds for significant pricing errors are too high compared to other jurisdictions.
Principle 29	1. The FDF should ensure that the proposal for the FFSA will introduce a robust regulatory and supervisory regime for independent asset managers that complies with IOSCO Principles 29-32. 2. The authorities should consider whether cross-border provision of securities dealing services to Swiss clients is sufficiently regulated and in particular whether there are sufficient tools to intervene in case of unauthorized service providers.
Principle 31	1. The FDF should ensure that the upcoming FFSA will address the regulatory gaps identified in Principle 31.
Principles 31 and 32	1. The FDF should introduce appropriate legal requirements for the segregation of clients' funds by securities dealers that apply on an ongoing basis and in bankruptcy. 2. The Swiss authorities should consider introducing an investor compensation scheme or equivalent regime to protect clients' securities in case of non-compliance with the segregation requirements.

Principle 37	<ol style="list-style-type: none"> 1. The Swiss authorities should assess whether the current arrangements sufficiently cover exchange of information on trading exposures of common market participants and cooperation in crisis situations. 2. The Swiss authorities should ensure that they have access to sufficient data to assess the impact of short selling as a basis for deciding on any regulatory measures.
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Authorities' response to the assessment

27. The Swiss authorities wish to express their appreciation to the IMF assessment team for the dedication, time and resources committed to this assessment and for the constructive exchange of views for which the assessment has provided the opportunity.

28. We broadly agree with the findings of the report. Regarding certain deficiencies in the area of conduct regulation and supervision (principles 1, 12, 16, 18, 29, 31) as well as in the area of financial market infrastructure regulation (principles 9, 33, 34, 37) we would like to highlight – as is also stated in the report – that there are ongoing legislative projects that were initiated prior to the FSAP review which aim at reshaping the regulatory architecture to be in line with international principles in these areas

29. On some points the Swiss authorities do not share the views expressed in the report and think that these aspects warrant further clarification to reflect the Swiss situation appropriately:

30. Regarding the independence of FINMA (principle 2) the report acknowledges the measures recently taken by the Federal Council to reinforce the Board's independence. However, the report unjustifiably criticizes that the conditions for removal of FINMA BoD members are not sufficiently specific. We would like to point out that the recently published (and priorly already existing) requirements for FINMA BoD members are not just applicable for the appointment but also for the duration of the exercise of the function. The legal clause for removal of BoD members (FINMA Art. 9) refers to these specified conditions for the exercise of the BoD function. In our view this implies that the conditions for the removal of BoD members are sufficiently specified as well. And therefore, given the recent governance changes, we are of the strong opinion that the principle 2 should be rated as "implemented."

31. Regarding the level of FINMA's engagement with banks and securities dealers of lower supervisory categories (principles 12 and 31) we would like to point out that this current allocation of FINMA resources is justified by the prudential risks associated with the respective entities. The current allocation of supervisory resources is based on FINMA's prudentially focused, risk based supervisory approach, in accordance with the regulatory focus of the Swiss legislator. However, the ongoing legislative project for the Federal Financial Services Act will put more emphasis on conduct supervision.

32. Regarding the supervision of credit rating agencies (principle 22) the report does, in our view, not adequately reflect the fact that, with one exception, all credit rating agencies that provide ratings used for regulatory purposes are subject to supervision in their home jurisdiction. The IOSCO methodology explicitly provides for the option for “ongoing supervision [...] not necessarily by the regulator in whose jurisdiction the ratings are used”. Regarding the one domestic CRA it is important to note that the regulatory use of these ratings is very limited in scope, such that the lack of an ongoing supervision by FINMA poses no material risk to investors.

33. Regarding the existing safeguards for related party custody (principle 25), in Switzerland, fund management companies and custodian banks can be related parties. There do exist safeguards and independence requirements between both entities. In this sense, there can be no overlap between the two entities on an operational level including the executive committee. Also, it is not possible to have people responsible for the custodian bank activities within the Board of Directors of the Fund Management Company. Regulatory audits are already in place as to the independence between those two entities. Furthermore, these independence requirements are verified with every approval and authorization within FINMA. Every amendment within the organization of the custodian bank is subject to FINMA’s prior authorization and any amendments within the Fund Management company’s Board of Directors or Executive Committee is also subject to FINMA’s authorization. Therefore, we are of the opinion that compliance with the relevant requirements is sufficiently reviewed.

34. Regarding the lack of coverage by the deposit insurance scheme for losses that are caused by non-segregated securities holdings (principle 32), the Swiss authorities are of the opinion that the Swiss solution provides equivalent protection to the clients of securities dealers: In case of failure of a securities dealer and if the segregated securities do not suffice to cover the claims of the clients, non-segregated securities are segregated ex-post for the clients benefit. The theoretical possibility of the total of available securities being insufficient to cover the clients’ claims is of no practical relevance.

35. The Swiss authorities have already launched a process to systematically evaluate all IMF recommendations in order to assess in detail how, within which timeframe and to what extent the recommendations can and should be implemented.

DETAILED ASSESSMENT

36. The purpose of the assessment is primarily to ascertain whether the legal and regulatory securities markets requirements of the country and the operations of the securities regulatory authorities in implementing and enforcing these requirements in practice meet the standards set out in the IOSCO Principles. The assessment is to be a means of identifying potential gaps, inconsistencies, weaknesses and areas where further powers and/or better

implementation of the existing framework may be necessary and used as a basis for establishing priorities for improvements to the current regulatory scheme.

37. The assessment of the country’s observance of each individual Principle is made by assigning to it one of the following assessment categories: fully implemented, broadly implemented, partly implemented, not implemented and not applicable. The IOSCO assessment methodology provides a set of assessment criteria to be met in respect of each Principle to achieve the designated benchmarks. The methodology recognizes that the means of implementation may vary depending on the domestic context, structure, and stage of development of the country’s capital market and acknowledges that regulatory authorities may implement the Principles in many different ways.

- A Principle is considered **fully implemented** when all assessment criteria specified for that Principle are generally met without any significant deficiencies.
- A Principle is considered **broadly implemented** when the exceptions to meeting the assessment criteria specified for that Principle are limited to those specified under the broadly implemented benchmark for that Principle and do not substantially affect the overall adequacy of the regulation that the Principle is intended to address.
- A Principle is considered **partly implemented** when the assessment criteria specified under the partly implemented benchmark for that Principle are generally met without any significant deficiencies.
- A Principle is considered **not implemented** when major shortcomings (as specified in the not implemented benchmark for that Principle) are found in adhering to the assessment criteria specified for that Principle.
- A Principle is considered **not applicable** when it does not apply because of the nature of the country’s securities market and relevant structural, legal and institutional considerations.

A. Detailed Assessment of Implementation of the IOSCO Principles

Principles for the Regulator	
Principle 1.	The responsibilities of the regulator should be clear and objectively stated.
Description	Responsibilities and powers

	<p>As noted in the introduction, FINMA is the main supervisory authority in Switzerland in relation to the areas covered by the IOSCO Principles. Therefore the discussion in Principles 1-5 focuses on FINMA.⁷</p> <p>According to Art. 1 of FINMASA, FINMA is responsible for the supervision of financial markets in accordance with the following acts (financial market acts):</p> <ul style="list-style-type: none"> A) Mortgage Bond Act; B) Federal Act on Contracts of Insurance; C) CISA; D) BA; E) SESTA; F) Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector (Anti-Money Laundering Act, AMLA); and G) Insurance Supervision Act. <p>FINMA's general objectives and tasks as a supervisory and regulatory authority are set out in Art. 5 and 6 of FINMASA. Art. 5 reads as follows:</p> <p>"In accordance with financial market acts, financial market supervision has the objectives of protecting creditors, investors, and insured persons as well as ensuring the proper functioning of the financial market. It thus contributes to sustaining the reputation and competitiveness of the Swiss financial centre."</p> <p>According to FINMA, the generally accepted interpretation of the second sentence is that it describes the outcome that will be reached as a result of meeting the objectives highlighted in the first sentence. However, there has been some pressure on interpreting the second sentence as another objective of FINMA. In December 2012, a member of the National Council made a parliamentary initiative for changing the second sentence of Art. 5 of FINMASA to read as follows: "FINMA promotes the reputation and competitiveness of the Swiss financial centre." The Committee for Economic Affairs and Taxation of the National Council decided in March 2013 to recommend approving the initiative. The Commission of the Council of States whose recommendation is also needed before the initiative would be submitted to the Chambers for decision has since decided to postpone dealing with the initiative, pending discussions on another initiative relating to FINMA.</p> <p>FINMA's role in regulation is specified in Art. 7 of FINMASA, according to which FINMA exercises its regulatory powers by issuing ordinances, where so provided in financial market legislation, and Circulars on the application of financial market legislation. FINMA only exercises its regulatory powers to the extent required by its supervisory objectives. Art. 7(2) of FINMASA also lists the factors that FINMA has to take into account when exercising its regulatory powers.</p> <p>The costs that the supervised persons and entities incur due to regulation;</p>
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⁷ The responsibilities, powers, independence and accountability of the FAOA have been discussed in Principle 19, while the role of the self-regulatory organizations (SROs) in Switzerland has been addressed in Principle 9.

	<p>The effect that regulation has on competition, innovative ability and the international competitiveness of the Swiss financial centre; The various business activities and risks incurred by the supervised persons and entities; and The international minimum standards.</p> <p>Art. 7(3) of FINMASA notes that “FINMA supports self-regulation and may recognize and implement the same as a minimum standard within terms of its supervisory powers.” According to FINMA, this formulation does not mean that FINMA is obliged to support self-regulation, even though in practice self-regulation is still extensively used in Switzerland (see Principle 9). Art. 7 continues by noting that FINMA provides for a transparent regulatory process and the appropriate participation of the parties concerned, issues guidelines on the implementation of these principles and, in doing so, acts after having received the opinion of the FDF.</p> <p>FINMA has various administrative means to enforce its powers. FINMA’s own administrative measures are complemented with the provisions for criminal sanctions for various offences as described in Chapter 4 of FINMASA and in the relevant financial market acts (see Principles 11, 12 and 36).</p> <p>Interpretation of authority</p> <p>FINMASA prescribes that FINMA must issue guidelines on its implementation of the principles of regulation. FINMA published the Guidelines on Financial Market Regulation in April 2010. They specify, among other things, that the regulatory process must be transparent and that all those affected must be given an appropriate say in developments. In issuing Circulars, FINMA makes its expectations of the application of financial market legislation transparent. The relevant legislation and guidelines are made public on FINMA’s website.</p> <p>In certain cases stipulated in the relevant sectoral Acts, FINMA can also provide exemptions from the requirements of the Acts (see e.g. Principles 24 and 33). This exemptive power has been used. The individual exemptions, or even summaries of them, are not made public.</p> <p>Consistency of regulation</p> <p>As described in Principle 16, securities offered to the public that are not listed are not subject to the same regulatory framework as listed securities. In addition, unlisted structured products are exempted from regulation if they are issued, guaranteed or “secured in an equivalent manner by a Swiss bank, an insurance company or a securities dealer or a foreign institution subject to equivalent supervision”. Since in practice they compete with structured CIS, which are subject to extensive regulatory requirements, this inconsistency does not appear to be justified. According to information provided by the FDF, the intention is to remove both of these inconsistencies in the FFSA that is currently under preparation.</p> <p>In addition, Swiss financial market acts do not contain a general duty for financial services providers to obtain information on the experience and knowledge of a client before a transaction is concluded, and to warn the client if a transaction is not appropriate for them (see Principle 31). The FFSA is intended to contain streamlined and harmonized disclosure rules for different types of financial products and introduce consistent business conduct rules.</p> <p>Regulatory overlaps and related communication and cooperation</p> <p>In the areas where the responsibilities of FINMA overlap with those of other domestic authorities, FINMA has the power to transmit information and documentation that are not in the public domain to those authorities under the conditions provided in FINMASA and the financial market acts (see</p>
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	<p>Principle 13).</p> <p><i>FINMA and the SNB</i></p> <p>Central counterparties and securities settlement systems are authorized and supervised by FINMA under the BA. These operators of systemically important financial market infrastructures (FMI) are also overseen by the SNB on the basis of Art. 19–21 of the Federal Act on the Swiss National Bank (National Bank Act, NBA). Following consultation with FINMA, the SNB laid down its requirements for the systemically important FMIs in the Federal Ordinance to the Federal Act on the Swiss National Bank (National Bank Ordinance, NBO). FINMA and the SNB coordinate their activities (Art. 21 NBA) in this area and FINMA obtains the SNB’s view before issuing a decision (Art. 34a SESTA).</p> <p>FINMA and the SNB concluded an MOU in March 2010 on their cooperation in the area of financial stability. It describes the fields of mutual interest and regulates the respective responsibilities for the assessment of the soundness of systemically important banks and/or the banking system, for regulations that have a major impact on the soundness of banks, and for contingency planning and crisis management. In line with the MOU, there is a Steering Committee composed of the members of the SNB Governing Board and FINMA Chairman, Vice-Chairman and CEO that determines the strategic priorities in the fields of mutual interest. The Steering Committee meets as often as necessary and at least twice a year. Operational issues are discussed in a Standing Committee on Financial Stability that meets as often as necessary and at least four times a year. The Standing Committee is co-chaired by the Head of the SNB’s Department II and the CEO of FINMA, and its other members are determined by the co-chairs.</p> <p>In addition to the formal cooperation under the MOU, there is informal operational cooperation between FINMA and the SNB in many areas, in particular in the supervision and oversight of systemically important FMIs.</p> <p><i>FINMA, the SNB and the FDF</i></p> <p>Another MOU between domestic authorities was signed in January 2011 by FINMA, the SNB and the FDF. While it also addresses the exchange of information on matters relating to financial stability and financial market regulation, the most important area covered by this MOU is the cooperation between the authorities in the event of a crisis having the potential to threaten financial market stability. The exchange of information and views is expected to cover at least the following topics:</p> <ul style="list-style-type: none"> A) The macroeconomic environment; B) The situation in the financial markets and the banking sector; C) The national regulatory initiatives concerning the financial markets and the banking sector; D) International regulatory initiatives and standards concerning the financial markets and the banking sector (in particular from the Basel Committee on Banking Supervision); and E) Challenges and risks facing the Swiss financial centre. <p>The exchange of information on matters relating to financial stability and financial market regulation takes place at least twice a year between the State Secretary of the FDF, the CEO of FINMA and the Vice Chairman of the SNB Governing Board. The FDF is responsible for organizing the discussions, and draws up the agenda in consultation with the other parties.</p> <p>The FDF, FINMA and the SNB have also set up a joint crisis management organization and work</p>
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	<p>together to prepare crisis management tools. Strategic coordination of the crisis management organization and of any intervention is performed by a Steering Committee composed of the Head of the FDF (Chair), the Chairman of the SNB Governing Board and the Chairman of FINMA. Meetings are held whenever necessary.</p> <p>The MOU also sets up the Committee on Financial Crises (CFC) that is responsible for coordinating preparatory efforts and for crisis management. CFC members also attend the Steering Committee meetings. The CFC is made up of the CEO of FINMA (Chair), the State Secretary of the FDF, the Vice Chairman of the Governing Board of the SNB, and the Director of the Federal Finance Administration. In non-crisis times, members meet once or twice a year as a rule; during a crisis, they meet whenever necessary. In principle, FINMA chairs the CFC unless, instead of FINMA’s supervisory and insolvency measures, the Confederation’s or the SNB’s measures take precedence for combating the crisis. In this case, the Steering Committee can transfer the leadership of the CFC to the FDF or the SNB.</p> <p><i>FINMA and the TOB</i></p> <p>FINMA appoints the members of the TOB, and appeals against TOB decisions may be lodged with FINMA (Art. 33c SESTA). The rules issued by the TOB must be submitted to FINMA’s approval (Art. 23 SESTA). (See Principle 17).</p> <p><i>FINMA and the FAOA</i></p> <p>Art. 28(2) of FINMASA and Art. 22(1) of the AOA note that FINMA and the FAOA provide each other with all the information and documents that each need to enforce the relevant legislation and to coordinate their supervisory activities in order to avoid duplication. The responsibilities between FINMA and the FAOA are clearly defined, and any remaining overlaps will be removed once the authorization and supervision of audit firms with regards to their role as regulatory auditors will be transferred to the FAOA (see Principles 10 and 19).</p> <p><i>FINMA and the prosecution authorities</i></p> <p>In the area of investigations and enforcement, the responsibilities of FINMA and the prosecution authorities (FDF Legal Services and the Attorney General’s Office) may overlap in certain cases. This applies in particular to the investigations of market abuse (see Principles 11, 12 and 36). However, cooperation arrangements (including an MOU between FINMA and the FDF Legal Services, see Principle 10) are in place. Cooperation between FINMA and the FDF Legal Services has intensified in the last two years, and a good level of cooperation has been established between FINMA and the Attorney General’s Office.</p> <p><i>FINMA and the SROs</i></p> <p>The responsibilities of the exchanges as SROs are described in Principle 9. The areas requiring cooperation between the exchanges and FINMA relate primarily to the requirement for the exchanges to inform FINMA of any suspicion of a breach of law or any other irregularities (Art. 6 SESTA).</p>
<p>Assessment</p>	<p>Broadly Implemented</p>
<p>Comments</p>	<p>The Broadly Implemented rating is primarily based on the inconsistencies in product regulation as described above and in Principle 16. There are also some differences in the conduct of business requirements. The FFSA is expected to address these inconsistencies.</p> <p>FINMA has certain exemptive powers under various financial market acts. Some of those are routinely used, e.g. the possibility to exempt CIS for qualified investors from certain requirements</p>

	<p>under CISA (see Principle 26). Some may be used in a more tailor-made manner. To promote transparency and to provide a tool for market participants and the public to verify the equality of treatment, FINMA is encouraged to consider publishing information on the exemptions granted (e.g., in a summary format).</p> <p>Even though the parliamentary initiative referred to above has not impacted the current rating due to its pending status, adding the suggested new objective for FINMA would create challenges for FINMA's decision making because the two objectives are likely to conflict.</p>
Principle 2.	The regulator should be operationally independent and accountable in the exercise of its functions and powers.
Description	<p>Political independence and accountability</p> <p>The legal basis for FINMA's political independence and accountability is set out in FINMASA, according to which FINMA carries out its supervisory activity autonomously and independently (Art. 21(1)). At least once every year, it reviews the strategy for its supervisory activity and current issues of financial centre policy with the Federal Council (Art. 21(2)). The relationship between FINMA and the Federal Council is defined in the Government and Administration Organization Act (RVOG) and FINMASA. According to Art. 8(4) of the RVOG, the Federal Council monitors the decentralized administrative bodies and other bodies charged with carrying out federal administrative tasks that are not part of the Federal Administration according to special provisions. Art. 21(4) of FINMASA specifies that FINMA deals with the Federal Council via the Federal Department of Finance. This means that FINMA has to submit governmental affairs first to the FDF before the FDF hands them over to the Federal Council.</p> <p>FINMA's Board of Directors is the strategic management body of FINMA. Among others tasks, it is responsible for the following (Art. 9 FINMASA):</p> <ul style="list-style-type: none"> A) Determining the strategic objectives of FINMA and submitting them to the Federal Council for approval; B) Drawing up the annual report and submitting it to the Federal Council for approval prior to publication; and C) Appointing the CEO, subject to approval by the Federal Council. <p>The Federal Audit Office is the external auditor of FINMA and provides the Board of Directors and the Federal Council with a report on the result of its audit. FINMA is also indirectly accountable to the Parliament (Art. 21(4) FINMASA). In practice it presents its annual report to the Parliament and can be requested to attend a hearing on a particular matter. The Parliament can also conduct special investigations on FINMA, and several of them have been conducted in the past few years.</p> <p>Despite the above mentioned roles of the Federal Council and Parliament, neither of them have a role in FINMA's day-to-day supervisory work. Contacts with the Federal Council are more frequent than with the Parliament. However, according to FINMA they do not concern day-to-day business, but focus on accountability and strategic matters.</p> <p>Independence from commercial or other sectoral interests</p> <p>FINMASA includes requirements on the independence of FINMA Board of Directors. According to Art. 9(2), the Board of Directors comprises seven to nine expert members, who are independent of the supervised persons and entities. The Board of Directors is appointed for a term of office of four years; each member may be reappointed twice. The Federal Council appoints the Board of Directors,</p>

	<p>ensuring the appropriate representation of both genders. It also appoints the Chair and the Vice-Chair. The Federal Council determines the level of remuneration, taking into account the requirements of Art. 6a of the Federal Personnel Act regarding remuneration and other contractual conditions. Art. 11 of the FINMA Organizational Rules requires the members of the Board of Directors to have relevant specialist knowledge. In practice the members of the FINMA Board of Directors have a range of professional knowledge and experience in banking, insurance and financial markets, including related issues such as accounting, auditing and risk management.</p> <p>There are specific requirements on the independence of the members of the Board of Directors. According to Art. 9(4) of FINMASA, the Chair may not carry out any other economic activity or hold any federal or cantonal office unless this is in the interest of the fulfillment of the tasks of FINMA. Art. 6a(3) of the Federal Personnel Act subjects the ancillary activities of the members of the Board of Directors to the approval of the Federal Council, if the extent of these activities can compromise their contribution to FINMA or lead to a conflict of interest. Until December 2013, FINMA Organizational Rules stipulated that the members of its Board of Directors may not be members of the executive board or chairman/vice-chairman of the Board of Directors of any supervised institution. Acceptance of membership in another executive body (such as a regular member of a Board of Directors) of a supervised institution was subject to the consent of the FINMA Board of Directors and public disclosure. Membership in an executive body of a supervised institution of considerable size or of systemic importance was not considered to be compatible with a mandate as a member of the FINMA Board of Directors. In practice in the recent past only one FINMA Board member has been a member of the Board of Directors of a supervised entity. Recent appointees have not held such positions. The FINMA Organizational Rules and the Federal Council conditions for exercising the role of a FINMA Board member were revised and published in early December 2013, and they now preclude a FINMA Board member from being a member of the Board of Directors of a supervised entity. These new requirements are subject to a transitional period, which will lead to the complete phasing out of potentially conflicting board memberships by the end of 2015.</p> <p>For the time being any potential conflicts of interest from a FINMA Board member's membership in a Board of Directors of a supervised entity are dealt with through the abstention rules set out in the FINMA Code of Conduct. Members of the Board of Directors are required to report all existing or potential conflicts of interest to the Secretary of the Board of Directors for the attention of FINMA's Legal and Compliance group. Following this, the Legal and Compliance group examines prior to the Board meeting whether any grounds for abstention exist. According to FINMA staff, the abstention requirement is strictly enforced.</p> <p>Protection of the independence of FINMA Board of Directors and CEO</p> <p>The FINMA Board of Directors is appointed for a term of office of four years; each member may be reappointed twice. The Board of Directors in turn appoints FINMA's CEO, subject to approval by the Federal Council. It also appoints the members of the Executive Board.⁸</p> <p>The Federal Council may remove the members of the Board of Directors and must approve the decision of the Board of Directors to terminate the employment of the CEO, if the conditions for the exercise of their functions are no longer fulfilled (Art. 9(5) FINMASA). The conditions required for exercising the function of a member of FINMA Board of Directors were published in December 2013. However, no specific reference to conditions for their removal is made. In practice, no</p>
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⁸ The unofficial translation of FINMASA uses the term Management Board, but this report refers to Executive Board as per the practice of FINMA.

	<p>member of the FINMA Board of Directors or CEO has been removed.</p> <p>Accountability to the public</p> <p>FINMA publishes an annual report (Art. 7 FINMASA) and informs the general public at least once a year about its supervisory activities and practices (Art. 22 FINMASA). FINMA's approach to maintaining the balance between transparency and confidentiality vis-à-vis the public is described in Principle 4.</p> <p>Stability and continuity of funding</p> <p>FINMA levies fees for supervisory proceedings in individual cases and for services. In addition, it levies an annual supervision charge on supervised persons and entities in each supervision area to cover the costs incurred by FINMA that are not covered by the fees. The supervised persons and entities are charged to cover all FINMA's costs (Art. 15 FINMASA) that are based on a budget approved by FINMA's Board of Directors (Art. 9(1)(j) FINMASA). The principles for determining the fees in the various supervisory areas of FINMA are set out in a Federal Ordinance. In practice, the annual supervision charge is assessed according to economic criteria (such as balance sheet total, securities turnover or assets managed).</p> <p>Bona fide legal protection</p> <p>Art. 19 of FINMASA addresses the question of liability, according to which the liability of FINMA and its management bodies, staff and mandataries is governed by the Government Liability Act. FINMA and its mandataries are liable only if they have committed a breach of fundamental duties and the loss or damage is not due to a breach of duty by a supervised person (Art. 19(2) FINMASA). A breach of fundamental duties may have occurred if measures were taken in bad faith.</p> <p>FINMA itself has been sued in several occasions, but so far all the charges have been dismissed by courts. Several of these cases relate to complaints about handing over client information to foreign competent authorities (see Principles 13-15).</p> <p>FINMA staff are not personally and directly liable in civil law for discharging their duties, although they can be prosecuted if permitted by the Department of Justice. If a staff member acts in good faith, FINMA's policy is to cover the expenses of a criminal procedure (e.g., court and legal fees). No prosecution or litigation has been made against FINMA staff members.</p> <p>Right to be heard and legal redress</p> <p>According to Art. 53 of FINMASA, the administrative procedure of FINMA is governed by the Administrative Procedure Act (APA). In particular, the APA provides for the following:</p> <p>A) Parties' right to be heard (Art. 29); B) Requirement for written rulings that have to state the grounds for them and include instructions on legal remedies (Art. 34 and 35); and C) Right to appeal (Art. 44)</p> <p>Appeals may be lodged with the Federal Administrative Court. It is also possible to appeal a decision of the Federal Administrative Court to the Federal Court.</p>
Assessment	Broadly Implemented
Comments	The possibility for a member of the FINMA Board of Directors to also be a member of the Board of

	<p>Directors of a supervised entity was unhelpful from a governance perspective. This was the case despite it in practice applying only to one Board member and strict enforcement of the abstention rules. In this regard, the recent changes to the Federal Council conditions for exercising the function of a FINMA Board member and related changes to FINMA Organizational Rules are welcome. After the end of the transitional period, Switzerland can be considered to fulfill the requirements of Principle 2 in this regard.</p> <p>The formulation in FINMASA that the members of FINMA Board of Directors and CEO can be removed only subject to a consideration that the “conditions for the exercise of their functions are no longer fulfilled” is very open compared to the requirement of Principle 2 to have criteria for removal of the head and governing board of the regulator. Even though in the Swiss political environment the risk of an undue removal may be negligible, and no such removals have taken place, introducing additional criteria into FINMASA and/or the FINMA Organizational Rules would bring the Swiss regime at par with the requirements of the IOSCO and other standard setters’ Principles. The fact that the Federal Council has now published the conditions for exercising the function of a FINMA Board member is helpful in this regard, but may not provide sufficient legal certainty.</p>																																										
Principle 3.	The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.																																										
Description	<p>Powers</p> <p>Overall, FINMA has appropriate licensing, supervision, inspection, investigation and enforcement powers. In relation to its administrative enforcement powers, certain improvements could be made to further enhance the effectiveness of its enforcement (see Principle 11).</p> <p>Funding</p> <p>FINMA considers that its funding is adequate to permit it to fulfill its responsibilities. The Board of Directors approves FINMA’s budget (Art. 9(1)(j) FINMASA), and FINMA can allocate it wherever it considers appropriate to fulfill its mandate and carry out its strategic goals.</p> <p>FINMA’s budget development over the last three years (in 1,000 CHF) has been the following:</p> <table border="1" data-bbox="467 1241 1260 1308"> <thead> <tr> <th></th> <th style="text-align: center;">2010</th> <th style="text-align: center;">2011</th> <th style="text-align: center;">2012</th> <th style="text-align: center;">2013</th> </tr> </thead> <tbody> <tr> <td></td> <td style="text-align: center;">100,313</td> <td style="text-align: center;">107,044</td> <td style="text-align: center;">121,938</td> <td style="text-align: center;">142,118 (projection)</td> </tr> </tbody> </table> <p>The budget breakdown by function (in 1,000 CHF) has been as follows:</p> <table border="1" data-bbox="383 1398 1308 1734"> <thead> <tr> <th></th> <th style="text-align: center;">2010</th> <th style="text-align: center;">2011</th> <th style="text-align: center;">2012</th> </tr> </thead> <tbody> <tr> <td>Banks and securities dealers⁹</td> <td style="text-align: center;">44897</td> <td style="text-align: center;">50046</td> <td style="text-align: center;">55469</td> </tr> <tr> <td>Insurance</td> <td style="text-align: center;">37560</td> <td style="text-align: center;">37966</td> <td style="text-align: center;">42298</td> </tr> <tr> <td>Collective investment schemes</td> <td style="text-align: center;">12439</td> <td style="text-align: center;">14033</td> <td style="text-align: center;">17870</td> </tr> <tr> <td>SROs (for anti-money laundering)</td> <td style="text-align: center;">1402</td> <td style="text-align: center;">1401</td> <td style="text-align: center;">1607</td> </tr> <tr> <td>Directly subordinated financial intermediaries (subject to anti-money laundering supervision)</td> <td style="text-align: center;">1220</td> <td style="text-align: center;">1594</td> <td style="text-align: center;">2001</td> </tr> <tr> <td>Registered insurance intermediaries</td> <td style="text-align: center;">1009</td> <td style="text-align: center;">892</td> <td style="text-align: center;">1180</td> </tr> <tr> <td>Audit firms</td> <td style="text-align: center;">1786</td> <td style="text-align: center;">1112</td> <td style="text-align: center;">1513</td> </tr> </tbody> </table>		2010	2011	2012	2013		100,313	107,044	121,938	142,118 (projection)		2010	2011	2012	Banks and securities dealers ⁹	44897	50046	55469	Insurance	37560	37966	42298	Collective investment schemes	12439	14033	17870	SROs (for anti-money laundering)	1402	1401	1607	Directly subordinated financial intermediaries (subject to anti-money laundering supervision)	1220	1594	2001	Registered insurance intermediaries	1009	892	1180	Audit firms	1786	1112	1513
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⁹ The budget for banks and securities dealers includes the FMI operators.

Resources

FINMA allocates approximately the same amount of resources to each of the three core divisions responsible for financial market supervision (banks, insurance and markets). Together they account for approximately 60 percent of FINMA's total staff. Due to the supervisory model applied by FINMA that relies heavily on audit firms, FINMA's resources are complemented by those of audit firms (see Principle 10). With regards to the scope of the IOSCO assessment, the responsibilities are divided between Banks, Markets, Enforcement and Strategic Services Divisions. Given the assessment of Principles 31 and 34 that cover supervision of securities dealers and exchanges, there seem to be some gaps in the resources devoted to those areas.

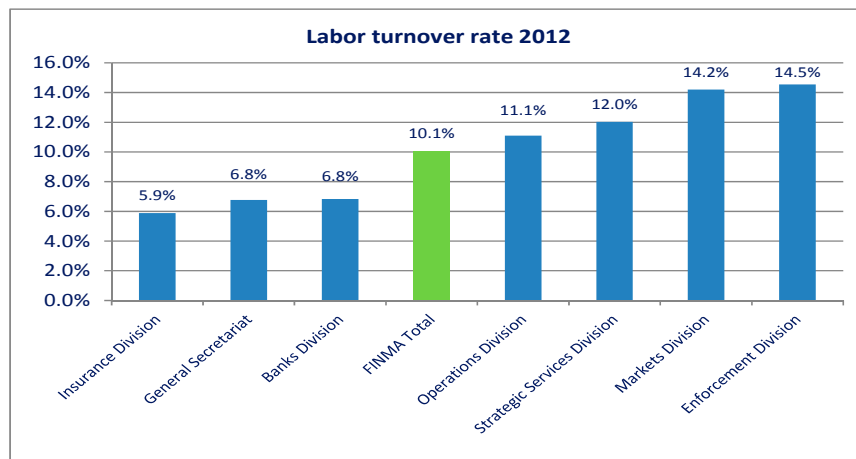
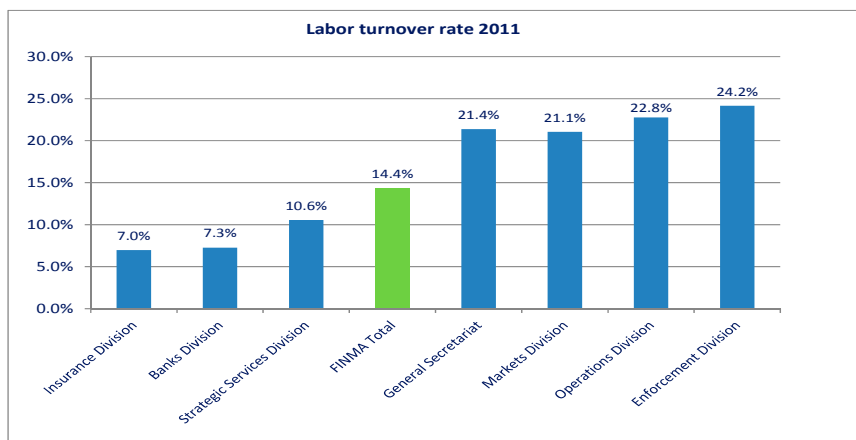
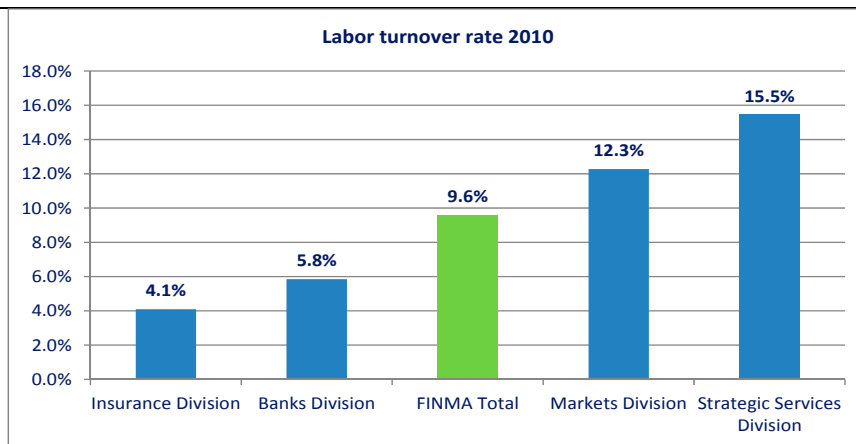
Headcount at end of April 2013 (by full-time equivalent):

Banks	Insurance	Markets	Enforcement	Strategic Services	Operations	Internal audit/CEO	Total
101.0	95.1	87.4	66.8	43.5	62.4	6.0	462.2
21.8%	20.6%	18.9%	14.5%	9.4%	13.5%	1.3%	100%

According to Art. 13(1)-(2) of FINMASA, the employment of FINMA staff is governed by public law. The Board of Directors regulates the employment relationship through the FINMA Personnel Ordinance. This contains regulations on salaries, additional benefits, working hours, duty of loyalty and termination of employment. The ordinance requires the approval of the Federal Council. According to FINMA, the fact that it has its own Personnel Ordinance allows it to deviate from the laws and principles for staff stipulated by the Federal Administration. FINMA's financial independence gives it sufficient financial resources for recruiting and retaining experienced and skilled staff. FINMA's salary levels are in general considered to be competitive, including by market participants.

In 2010, FINMA had an overall staff turnover of 9.6 percent; in 2011 it was 14.4 percent and in 2012 10.1 percent. FINMA considers that the reduction in turnover in 2012 was most likely caused by various actions: a reduced number of organizational changes after several years of integrating various supervisory bodies into FINMA, as well as improved training initiatives and the possibility to perform secondments with other national or international supervisory bodies. At the moment, FINMA can attract new staff, also due to the current market situation. Regarding retention, FINMA supports its employees in their further education and training, and has development programs in some areas (see below). No cooling-off period is required after leaving FINMA employment.

FINMA management itself was not particularly concerned about the high staff turnover rate in any of the Divisions. Many industry representatives expressed concerns about the turnover, its impact on the continuity of the supervisory relationship and the resulting need to "train" FINMA staff. The staff turnover rate in the past three years is presented in the following charts.



Training

FINMA supports the development of staff skills through a process based on management by objectives. The initiative for education and training can be taken by the employees or their supervisors. Training and further education possibilities include short soft skill courses run by the Federal Personnel Office, courses on specific supervisory topics run by the Financial Stability Institute and larger projects such as doctoral or other post-graduate education programs while temporarily reducing workload at FINMA. FINMA also regularly offers internal seminars on

specialized topics presented by academics or internal or external practitioners. Finally, FINMA supports employees' further education and training by partially or fully covering the costs involved and time expenditure. FINMA also has development programs in place for some areas.

The overview of FINMA's training costs and expenses in the past three years is as follows:

2010	Effective 2010 CHF	Budget 2010 CHF
Other divisions	182,582	520,700
Banks Division	95,378	140,700
Insurance Division	111,295	182,000
Markets Division	140,079	198,300
Total	529,334	1,041,700

2011	Effective 2011 CHF	Budget 2011 CHF
Board of Directors/CEO/General Secretariat	31,258	31,800
Banks Division	137,489	192,300
Insurance Division	77,359	183,900
Markets Division	32,112	139,600
Enforcement Division	86,212	80,800
Strategic Services Division	56,108	64,000
Operations Division	105,968	107,600
Total	526,505	800,000

2012	Effective 2012 CHF	Budget 2012 CHF
BoD/CEO/General Secretariat	31,382	99,000
Banks Division	177,792	289,650
Insurance Division	185,011	278,850
Markets Division	61,364	327,900
Enforcement Division	129,463	182,700
Strategic Services Division	37,646	92,100
Operations Division	169,336	169,800
Total	791,993	1,440,000

According to FINMA, the underspending of the training budget can be largely explained by the high staff turnover in some of the Divisions.

Governance

Board of Directors

The FINMA Board of Directors has the following strategic tasks (Art. 9(1) FINMASA), some of which have been discussed above.

	<p>a) Determine the strategic objectives of FINMA and submit them to the Federal Council for approval;</p> <p>b) Decide on matters of substantial importance;</p> <p>c) Issue the ordinances delegated to FINMA and decide on the Circulars;</p> <p>d) Supervise the Executive Board;</p> <p>e) Establish an internal audit unit and provide for internal controls;</p> <p>f) Draw up the annual report and submit it to the Federal Council for approval prior to publication;</p> <p>g) Appoint the CEO, subject to approval by the Federal Council;</p> <p>h) Appoint the members of the Executive Board;</p> <p>i) Issue the organizational regulations and the guidelines on information activities; and</p> <p>j) Approve the budget.</p> <p>The tasks of the Board of Directors have been further specified in Art. 2 of the FINMA Organizational Rules that define the framework for the organization, tasks and responsibilities of the Board of Directors, the Executive Board and the internal audit unit. In addition to the tasks allocated to the Board of Directors in FINMASA, the FINMA Organizational Rules assigns the following additional tasks to it:</p> <p>a) Appoint the deputy CEO;</p> <p>b) Define the provisions for the employment of staff members in an ordinance and define the principles on which the employee pension scheme is based;</p> <p>c) Approve the Rules Governing the Conduct of Business;</p> <p>d) Decide on the organizational structuring into divisions;</p> <p>e) Issue a Code of Conduct that is applicable to the Board of Directors and all staff members;</p> <p>f) Oversee the internal audit process; and</p> <p>g) Issue the guidelines for the implementation of regulatory principles.</p> <p>The Board of Directors also decides on business matters of substantial importance that are defined in particular as:</p> <p>a) Matters of considerable consequence for financial markets or of systemic importance as evidenced at one or more of the supervised institutions;</p> <p>b) Matters of particular interest for the general public;</p> <p>c) Matters that result in establishing rules of practice or a change to them;</p> <p>d) Matters involving a high liability risk for FINMA or having a long-term effect on FINMA's reputation; and</p> <p>e) Matters that are designated as such by at least three members of the Board of Directors.</p> <p>The Board of Directors establishes from among its members an audit and risk committee, an appointment committee, and a takeover committee. Unless otherwise provided for, the committees perform advisory tasks and submit proposals to the Board of Directors.</p> <p>In exceptional cases that do not tolerate delay and where the importance of the business requires it, the Chairman may of his own accord or at the request of the Executive Board take the necessary decisions (Chairman's resolutions) in lieu of the Board of Directors. The Board of Directors must be informed of such Chairman's resolutions as soon as possible. In urgent cases, resolutions may also be passed via Circular (including fax and email) provided no member of the Board of Directors demands, within three working days of the motion in question being dispatched, that the matter be deliberated in a meeting. Circular resolutions may only be passed by a majority of the votes cast by all the members of the Board of Directors. (Art. 9 of the FINMA Organizational Rules).</p> <p><i>Executive Board</i></p>
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	<p>The FINMA Executive Board led by the CEO is the operational management body of FINMA. It has the following tasks in particular (Art. 10 FINMASA):</p> <ul style="list-style-type: none"> a) Issue rulings in accordance with the organizational regulations; b) Prepare the files and materials on which the Board of Directors bases its decisions and report to it regularly, and in the case of special events immediately; and c) Carry out all the tasks that are not assigned to another management body. <p>According to Art. 14 of the FINMA Organizational Rules, the Executive Board performs the tasks that are not reserved to the Board of Directors or the audit unit. It acts as a collective body with joint responsibility for FINMA's operational activities. In addition to the tasks assigned to it in FINMASA, the following are the main tasks of the Executive Board:</p> <ul style="list-style-type: none"> a) Conduct FINMA's business operations; b) Implement the resolutions passed by the Board of Directors and its committees; c) Take decisions on regulatory matters of minor material importance; and d) Operate appropriate steering and control systems and report regularly to the Board of Directors on their effectiveness. <p>The Executive Board issues rulings on all matters that do not fall to the Board of Directors. In a few cases of lesser importance, the Executive Board may transfer this competence to the divisions. The Executive Board must issue Rules Governing the Conduct of Business that set out the powers of delegation.</p> <p>Decisions on enforcement measures are made by the Enforcement Committee of the Executive Board. This committee is composed of the CEO, the Heads of the Strategic Services and Enforcement Divisions and the head of the division presenting the case for decision. The Enforcement Committee decides by simple majority.</p> <p>FINMA has focused on developing internal procedures to support its supervisory approach. This includes the preparation of Standard Operating Procedures (SOPs) applicable for the majority of supervised entities, that provide detailed guidance for staff in charge of supervising a particular entity on how to use various supervisory tools (see Principles 12, 24, 31 and 34).</p> <p><i>Organization</i></p> <p>According to Art. 11 of FINMASA, FINMA is divided into supervision areas. The Federal Council and the Board of Directors ensure the appropriate representation of the various supervision areas in the Board of Directors and Executive Board. According to Art. 18 of FINMA Organizational Rules, FINMA is divided into various divisions at the primary management level. Depending on their size and span of control, these divisions are in turn divided into sections and groups. FINMA currently has six divisions: Banks, Insurance, Markets, Enforcement, Strategic Services, and Operations.</p> <p>Investor education</p> <p>The responsibility for investor education has not been directly assigned to any Swiss authority. FINMA's activities in promoting education to protect investors are limited. Its key activity in this field is to raise awareness in the area of illegal financial intermediaries. FINMA's website informs investors on what FINMA does to protect investors and which measures investors can take in order to protect themselves. FINMA publishes a list of unauthorized institutions and a link to the IOSCO</p>
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	Investor Alerts Portal and has a hotline used by some hundred private individuals every year, seeking information about unauthorized or illegal financial intermediaries. FINMA also highlights specific risks to investors in its media activities. Finally, FINMA’s website furnishes general information about supervisory, regulatory and financial topics, e.g. FAQs and fact sheets.
Assessment	Broadly Implemented
Comments	<p>FINMA is thinly resourced in certain areas (in particular Banks Division and FMI supervision), and subject to high staff turnover in certain other areas (Markets Division in general). This poses challenges in establishing a sound supervisory program with sufficient continuity of knowledge across all the areas. Even though some of the resourcing challenges might be temporary, FINMA should ensure that its supervisory resources in all divisions are sufficient to cover the securities activities under their responsibility (see also Principles 31 and 34). It should also consider the costs and benefits of the current high staff turnover in some Divisions, and take any necessary measures.</p> <p>Swiss authorities have not specifically focused on investor education. The planned new legislation that focuses on conduct of business and product regulation and is likely to cover independent asset managers, seems to require that they reconsider whether the current approach to investor education is sufficient.</p>
Principle 4.	The regulator should adopt clear and consistent regulatory processes.
Description	<p>Policy development process</p> <p><i>Development of FINMA Ordinances and Circulars</i></p> <p>Art. 7(1) FINMASA sets out the principles of regulation, according to which FINMA exercises its regulatory powers by issuing ordinances, where this is stipulated in financial market legislation, and circulars on applying financial market legislation. It exercises its regulatory powers only to the extent required by its supervisory objectives. In doing so, it takes account in particular of:</p> <ul style="list-style-type: none"> a) The costs that the supervised persons and entities incur as a result of regulation; b) The effect that regulation has on competition, innovative ability and the international competitiveness of Switzerland’s financial center; c) The various business activities and risks incurred by the supervised persons and entities; and d) The international minimum standards. <p>According to Art. 7(4) of FINMASA, FINMA provides for a transparent regulatory process and appropriate participation of the parties concerned. It issues guidelines on the implementation of these principles. In doing so, it acts in agreement with the FDF (Art. 7(4)-(5) FINMASA). FINMA has issued the Guidelines on Financial Market Regulation in March 2010.</p> <p>Where supervisory and regulatory issues of considerable importance are in question, the impact of which is uncertain or controversial, FINMA describes as far as possible the background situation, the problems and the regulatory options, publishes them and launches the discussion in a discussion paper. It takes the opinions of those interested into consideration. As a follow-up to the discussion paper and based on the comments received, FINMA publishes its own position on the issues in question. It can, however, publish a position paper without previously publishing a discussion paper, or can link the position paper directly to the regulatory process.</p> <p>When FINMA drafts regulations (FINMA Ordinances or Circulars) it involves those affected and, to the extent possible, clients of supervised institutions. If the need arises, it also involves other authorities. It opens public consultations and provides explanatory reports for all its projects. If the project foreseen is deemed sufficiently important and time and circumstances permit, workshops and mixed working groups can be organized. FINMA provides information about pending regulatory projects as soon as possible and informs about their progress. FINMA publishes the opinions received along with the consultation report that includes FINMA’s reaction to the</p>

	<p>comments received. Before adopting regulations, FINMA analyzes in particular the comments received, legal transition issues and whether it is worthwhile to e.g. launch a pilot project, apply test phases, or set compliance deadlines. The regulations that have been adopted are also published on FINMA’s website. FINMA also interprets regulations and informs on them by answering FAQs, issuing newsletters and providing additional guidelines.</p> <p><i>Development of self-regulation</i></p> <p>In the development of self-regulation, the self-regulatory organizations only consult their membership rather than the public or a section of the public.</p> <p>Procedural fairness</p> <p>The requirements for procedural fairness are described in Principle 3.</p> <p>Licensing decisions</p> <p>The criteria for granting, denying or revoking a license are stipulated in each supervisory law (e.g., Art. 10 SESTA and Art. 14 CISA). Additional guidelines are available on FINMA’s website. Art. 29 of the APA prescribes the right to a hearing (see Principle 3).</p> <p>Transparency and confidentiality</p> <p>Confidentiality is maintained through requiring the FINMA staff and management bodies to observe secrecy on official matters (Art. 14 FINMASA). The Swiss Freedom of Information Act does not apply to the SNB and FINMA (Art. 1(2).) Where there is a serious violation of supervisory provisions, FINMA may publish its final ruling in electronic or printed form once it takes full legal effect, and may disclose the relevant personal data (Art. 34 FINMASA). Notice of publication must in these cases be contained in the ruling itself. FINMA does not provide information on individual proceedings, unless there is a particular need to do so from a supervisory point of view and the information is necessary for the protection of market participants or the supervised persons and entities, to correct false or misleading information, or to safeguard the reputation of Switzerland’s financial center (Art. 22 FINMASA).</p> <p>Consistency of the application of powers</p> <p>Art. 5 of the Swiss Constitution includes the principle of rule of law, according to which all activities of the state must be based on and limited by law, be conducted in the public interest and be proportionate to the ends sought. FINMA has to comply with this principle in its regulatory, supervisory and enforcement actions. The processes adopted by FINMA support the consistent application of its powers; no concerns on lack of consistency were expressed by market participants.</p>
Assessment	Fully Implemented
Comments	<p>The Fully Implemented rating is based on assessing FINMA and its procedures and practices. However, FINMA is encouraged to engage with the industry associations to assess whether broadening their consultations to the public in particular when investor protection measures are introduced or revised would be beneficial, given the fact that those measures become subject to FINMA supervision and enforcement.</p>
Principle 5.	<p>The staff of the regulator should observe the highest professional standards, including appropriate standards of confidentiality.</p>

Description	<p>Code of conduct</p> <p><i>Avoidance of conflicts of interest</i></p> <p>FINMA has a Code of Conduct which has rules on the avoidance conflicts of interest. According to Art. 2(2) of the Code of Conduct, persons working for FINMA must avoid conflicts between their own personal interests and those of FINMA or disclose them if they cannot be avoided. There are also rules on recusal in Art. 11 of the Code of Conduct that require persons working for FINMA to recuse themselves in particular from matters:</p> <ul style="list-style-type: none"> a) In which they have a personal interest; b) When they have a close personal relationship with the persons involved or with persons who have a personal interest in the matters; c) In which they themselves were already involved prior to their employment with FINMA; and d) In which they could be biased for other reasons or in which there could be the appearance of bias. <p>Persons who are required to recuse themselves from a certain matter may not be informed of it, nor participate in the discussion of the matter or in the relevant decision-making process. They will be informed of the outcome of the matter after the fact.</p> <p>Members of the Board of Directors and Executive Board, as well as senior management, must also recuse themselves from matters concerning supervised entities at which they were employed within the previous year, whose securities they hold or which have granted them special privileges that create a relationship of dependency. Persons who are required to recuse themselves may be informed in advance of the matter concerned and may participate in the relevant discussion, but not in the decision-making process, except in the case of administrative procedures where they may not be informed of the matter or participate in the discussion.</p> <p><i>Restrictions on holding securities</i></p> <p>According to Art. 6 of the Code of Conduct, persons working for FINMA may not directly or indirectly hold securities, book-entry securities, or derivatives the value of which is determined to a significant extent by the share price or the credit rating of supervised entities (securities of supervised entities). Concentrated collective capital investments and structured products are also included in this category. Medium-term and other bonds are exceptions. Securities of supervised entities may not be held within the framework of asset management agreements.</p> <p>The Code of Conduct also includes requirements on the divestment of securities of supervised entities in certain cases (e.g., after joining FINMA) and certain exemptions for holding or selling securities that have been received on the basis of a former employment relationship. It also describes the decision making in case exemptions are sought for.</p> <p><i>Confidentiality, secrecy and protection of personal data</i></p> <p>FINMA staff, including management, are bound by official secrecy under Art. 14 of FINMASA. The Code of Conduct obliges persons working for FINMA to protect official secrecy and to not misuse official information. FINMA also has special rules on the appropriate use of information in the Ruling on Protection of Information. The FINMA Ordinance on Data Processing regulates the protection of personal data.</p> <p><i>Procedural fairness</i></p> <p>Staff have to observe the provisions of the APA (see Principle 3). There are also basic rules in the Code of Conduct which cover procedural fairness, including a requirement that persons working for</p>
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	<p>FINMA must avoid any remarks that could create the appearance that they are biased in a given matter, in particular in the context of administrative procedures.</p> <p>Enforcement of the code of conduct</p> <p>Art. 17 of the Code of Conduct requires FINMA to appoint an independent outside party to perform an annual review of the observance of the prohibition of holding securities by the members of the Board of Directors and Executive Board. This party is also assigned with the responsibility for performing the relevant random checks of FINMA employees.</p> <p>If there is a reasonable suspicion that a violation of the provisions of the Code of Conduct has occurred, the FINMA Legal and Compliance group conducts an inquiry to determine the facts. If a violation is confirmed, the relevant decision-making body/person and the responsible member of the Executive Board are informed in writing, and appropriate enforcement action is proposed. In the event that the Executive Board member declines to pursue the proposed enforcement action, he must inform the FINMA Legal and Compliance group in writing of the reasons for doing so. If the FINMA Legal and Compliance group does not agree with the refusal to pursue enforcement action, it informs the CEO to this effect. The person concerned must be granted a fair hearing. The disciplinary measures can include dismissal. The breach of official secrecy is also liable to prosecution (Art. 320 Swiss Criminal Code).</p> <p>There have been some cases of breaches of the Code of Conduct, but they have only led to reprimands.</p>
Assessment	Fully Implemented
Comments	
Principle 6.	The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate.
Description	<p>Process to identify and monitor systemic risk</p> <p>Art. 5 of FINMASA defines FINMA's goals as follows: "In accordance with the financial market acts, financial market supervision has the objectives of protecting creditors, investors, and insured persons, as well as ensuring the proper functioning of the financial market."</p> <p>The cross-sectoral assessment of systemic risk and respective policy options made by the committee of experts on the "too big to fail" issued in 2010 concluded that only banks pose a systemic threat for Switzerland. As a result, a special regime for systemically important banks was designed and the BA was complemented by a section on systemically important banks. Virtually all securities dealers in Switzerland also hold a banking license and hence would be subject to these provisions if they were deemed systemically important. According to Art. 8(3) of the BA, the SNB is the responsible authority for assessing whether a bank is systemically important, following consultation with FINMA. Art. 10(1) of the BA assigns FINMA the responsibility to define the special requirements that a systemically important bank must fulfill after consultation with the SNB.</p> <p>FINMA has developed a semi-annual internal publication (Risk Barometer) that is addressed to the supervisors of all firms supervised by FINMA. The purpose of the Risk Barometer is to highlight key macro-financial risks that should be taken into account in supervisory activities. The barometer is contributed to by FINMA staff from the Strategic Services, Banks, Insurance, and Markets Divisions, with expertise in the monitoring of economic developments and risk management. The Risk Barometer procedure is intended to support the sharing of risk information between all divisions within FINMA. The focus of the analysis in the Risk Barometer is currently on macroeconomic and</p>

	<p>general financial market developments. The Risk Barometer concept has recently been enhanced, and the latest edition includes a new section on regulatory and political risks that includes references to some risks that could potentially arise from securities markets.</p> <p>The results of this analysis are reported to the Executive Board and the supervisory teams. The Executive Board discusses the issues and agrees on actions to take. The implementation of the agreed actions becomes the responsibility of the relevant Head of Division. Follow-up on the implementation of the agreed actions is not formalized, but happens informally when the next Risk Barometer will be prepared, in particular if the issues identified earlier are still relevant.</p> <p>Cooperation with other regulators</p> <p>In relation to financial stability FINMA cooperates in particular with the SNB, and FINMA and the SNB have signed an MOU in this regard. In addition, the FDF, the SNB and FINMA signed a tripartite memorandum of understanding in 2011 (see Principles 1 and 13) that covers also exchange of information on financial stability issues, as well as collaboration in the event of a crisis.</p>
Assessment	Broadly Implemented
Comments	<p>The first assessments of Principles 6 and 7 conducted by the IMF after the introduction of the new Assessment Methodology focused on three high level issues in assessing the existence of a process to identify systemic risk or to review the perimeter of regulation, which is required pursuant to Key Question 1 of the respective Principles: (i) whether the arrangements in place allow for a holistic (across products, entities, and markets) view of risk; (ii) whether they allow for a periodic reassessment of risk; and (iii) whether they allow for proper follow up (actions). The experience gained over the last year has enabled an enhancement of the assessment criteria, for example, by looking at the type of data and analysis that the authorities use to identify such risks, and the degree to which the processes implemented allow for proper accountability. This is in line with the recommendations included in the recent report of the Assessment Committee of IOSCO.¹⁰</p> <p>In its Risk Barometer, FINMA has developed a tool for a systematic analysis of macroeconomic and financial market related risks to support its supervisory activities. At the moment a holistic and systematic analysis of products, entities, markets, market infrastructures and activities across securities markets that could become a source of systemic risk is still lacking. However, the Risk Barometer provides a good basis on which to build such further analysis.</p>
Principle 7. The Regulator should have or contribute to a process to review the perimeter of regulation regularly.	
Description	<p>Approach for reviewing the regulatory perimeter</p> <p>Together with the FDF and the SNB, FINMA is involved in various international, national and internal processes that aim at assessing the adequacy of the Swiss regulatory framework.</p> <p><i>Internationally</i></p> <p>FINMA is represented in various committees and working groups of international standard setting bodies, which it considers to be a valuable instrument for identifying and assessing the regulatory framework. It also works closely with the SIF and the SNB that also represent Switzerland in many international committees and working groups. An example of a regulatory change in the area of securities markets that was triggered in this way is the G20 and Financial Stability Board (FSB) standards on OTC derivatives that led to an ongoing revision of the regulation of FMIs and OTC</p>

¹⁰ The enhanced assessment criteria have been applied since the assessments conducted from summer 2013 onwards.

derivatives markets in Switzerland. Currently SIF is also active in an FSB working group on shadow banking.

Nationally

FINMA's Guidelines on Financial Market Regulation oblige FINMA to observe developments on financial markets, both nationally and internationally, to identify and understand relevant risks. In consultation with the FDF and the SNB, FINMA follows the evolution of the international financial markets regulations, as well as their impact on Switzerland.

While FINMA does not systematically scan the market for unregulated products, participants and activities, FINMA informed that it uses the following processes in order to gain a broader oversight of financial markets:

- Within FINMA a group of market analysts analyzes indications concerning unauthorized financial intermediaries and products, such as private issues of unregulated securities. Another focus of the group is on contracts for difference and bilateral structured products. Unregulated products are also indirectly monitored by supervising the trading by regulated entities such as banks, e.g., by monitoring detailed trading information;
- In the context of reviews by international standard setting bodies, SIF, FINMA and the SNB are occasionally involved in reviewing activities that are currently not subject to prudential supervision by FINMA;
- In its role as anti-money laundering authority, FINMA supervises a broader industry than the sectors that are subject to prudential supervision;
- Expanding the scope of supervised entities is one of the measures currently being discussed in the regulatory project for the FFSA;
- A responsible expert is assigned to each area of FINMA's regulations. These experts are in charge of overseeing the implementation of the regulations, as well as gathering suggestions regarding any corrections or amendments; and
- FINMA has an EU desk and a U.S. desk responsible for monitoring regulatory developments in these jurisdictions and assessing implications for Switzerland.

In line with the role of the FDF with respect to high level regulation, the SIF also regularly reviews the Swiss regulatory framework against the backdrop of international developments in order to assess whether the framework needs to be amended with a view to reducing systemic risk, fostering consumer protection, strengthening the integrity and the competitiveness of the Swiss financial center, and implementing new international standards. The FDF's principles of regulation in the financial sector are described in the Report on Switzerland's Financial Market Policy.

Addressing issues identified

The FINMA Guidelines on Financial Market Regulation describe a specific process to assess the regulatory framework and stimulate political discussion on potential regulatory changes in the format of discussion and position papers (see Principle 4). An example of a regulatory change that was triggered in this way is the upcoming FFSA. FINMA had initiated the policy discussion by publishing a discussion paper in 2010 and a subsequent position paper in 2012. On March 28, 2012, the Federal Council instructed the FDF, in collaboration with the Federal Department of Justice and Police and FINMA, to draw up a legislative basis for the creation of a uniform and cross-sectoral regulation of financial products and services and their distribution.

	<p>FINMA involves the FDF in its regulatory projects, as well as the SNB with regard to agreed common interests of the two authorities. If FINMA's observations and evaluations have led to the conclusion that regulation at the level of a Federal Act or Ordinance would be required, FINMA informs the FDF accordingly. FINMA supports the FDF in the work related to the development of regulations, and submits appropriate proposals.</p>
Assessment	Partly Implemented
Comments	<p>The comments section of Principle 6 describes the criteria applied also to the assessment of Principle 7, and the recent amendments made to the assessment criteria.</p> <p>The processes for conducting a regular review of products, markets, market participants and activities to identify and assess possible risks to investor protection and the fairness, efficiency and transparency of markets are not yet very systematic in Switzerland. Progress has been made, and the first results are emerging, in particular in the format of recent and upcoming significant legislative initiatives. At the same time, many Swiss financial sector players are international, and have been forced to adopt the more stringent regulatory framework applied elsewhere. This runs the risk of putting the market participants active only in the domestic market at a competitive advantage vis-à-vis those active internationally.</p> <p>There is a need, in line with the assessment criteria highlighted above, and the work of the IOSCO Assessment Committee, for the Swiss authorities to develop more robust arrangements to conduct comprehensive analyses of potential risks emerging from unregulated products and entities in the Swiss securities markets beyond just following the international regulatory developments. This is particularly important given the very open nature of the Swiss market. In addition to qualitative analysis, additional quantitative information on the size of the unregulated sector would assist the authorities in prioritizing regulatory actions. As an essential part of the work on addressing the existing gaps, the implications on the powers, resources and operational structure of FINMA and any other authorities potentially impacted should be addressed. Given the breadth and depth of the existing regulatory gaps in Switzerland and the ambitious plans of addressing them, implementation will be a major challenge for FINMA. On the other hand, given the need for Switzerland to catch up with other jurisdictions in some important areas, postponing the necessary changes does not seem to be possible. This is particularly true for the areas where the Swiss framework will need to be considered equivalent to foreign frameworks in order for the Swiss market participants to be able to continue to conduct cross-border business.</p>
Principle 8.	The Regulator should seek to ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed or otherwise managed.
Description	<p>Regulated entities</p> <p>The various regulatory requirements relating to conflicts of interest are described in the relevant Principles, i.e., Principles 9 and 33 (SROs/stock exchanges), Principle 22 (CRAs), Principle 23 (sell-side analysts), Principle 24 (fund management companies) and Principle 31 (securities dealers). Compliance with these requirements, including the related self-regulatory framework, is reviewed by the regulatory auditors according to the requirements imposed by FINMA on their audit strategy and audit plan.</p> <p>In case of non-compliance, the auditor and/or FINMA's prudential supervisors may order the supervised entities to re-establish compliance with applicable laws and regulations. FINMA can also use its powers under Art. 31 of FINMASA to ensure the restoration of compliance with the law or use its enforcement powers under Art. 32-35 of FINMASA and Art. 35a of SESTA (see Principle 11).</p> <p>Issuers</p> <p>The regulation of issuers is not in the remit of FINMA, but is left for self-regulation (see Principle 16). There is no specific framework to identify and evaluate potential and actual misalignment of</p>

	incentives regarding issuers. Neither are there any self-regulatory requirements on avoiding, eliminating, disclosing or otherwise managing misalignments (e.g., specific disclosure or retention rules on asset-backed securities). The regulatory framework in this area therefore relies on the general principle of good faith and trust, the breach of which can be a basis for civil litigation.
Assessment	Broadly Implemented
Comments	The rating is based on the lack of a framework to identify and evaluate potential and actual misalignment of incentives regarding issuers. The authorities should firstly consider whether this issue is suitable to be left for self-regulation. Secondly, they should assess how best to launch an appropriate process to conduct an evaluation on the existence of any misaligned incentives and how and by whom any necessary measures should be taken as a result.
Principles for Self-Regulation	
Principle 9.	Where the regulatory system makes use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, such SROs should be subject to the oversight of the Regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.
Description	<p>Use of self-regulation in Switzerland</p> <p>There is a long tradition of self-regulation in Switzerland in the areas for which FINMA is responsible. Self-regulation takes a variety of different forms. A distinction is made between voluntary or autonomous self-regulation, self-regulation that is recognized as a minimum standard, and compulsory self-regulation based on a mandate from the legislator.</p> <p>Voluntary or autonomous self-regulation is based solely on private autonomy and is by definition established without any government involvement (e.g., codes of conduct issued by professional associations). Under Art. 7(3) of FINMASA FINMA may also, either at the request of a self-regulatory organization or on its own initiative, recognize self-regulatory measures as a minimum standard (cf. FINMA Circular 08/10: Self-Regulation as a Minimum Standard). Once recognized, such norms no longer apply merely to the members of the relevant self-regulatory organization, but must be observed as minimum standards by all other participants in the sector. Subsequent compliance with the recognized minimum standards is monitored as part of the regulatory audits, as agreed in the audit strategy of a particular supervised entity. A list of currently recognized self-regulatory measures is included in the Annex to FINMA Circular 08/10. Many of them are referred to later in this report.</p> <p>Compulsory self-regulation is based on the self-regulatory organizations receiving a mandate from the legislator to deal with a given topic through self-regulation. Regulatory mandates of this kind relevant for the scope of the IOSCO assessment are contained in, for example, Art. 4(3) of CISO (requirements for simplified documentation on structured products, see Principle 16). Compulsory self-regulation can also be recognized by FINMA, where the legislator has not already stipulated that state approval is required.</p> <p>FINMA encourages self-regulatory organizations to take certain regulatory principles into account when drawing up new rules, particularly if they are seeking to have them recognized. The Guidelines for Financial Market Regulation from April 2010 provide input in this regard. In particular, self-regulatory standards should be transparent and easily accessible, and those affected by regulation should have an appropriate say in its development (see also Principle 4). Proactive information exchange and coordination with all relevant authorities are also essential.</p>

	<p>SROs covered by Principle 9</p> <p>The majority of the bodies that in Switzerland are referred to as self-regulatory organizations are not such in the sense of Principle 9. This applies e.g., to the SBA and SFAMA, since they only develop self-regulatory standards and guidelines, but do not have any role in monitoring or enforcing compliance with them. Therefore, the only self-regulatory organizations in Switzerland covered by Principle 9 are the stock exchanges.¹¹</p> <p><i>Exchanges as SROs</i></p> <p>Art. 4(1) of SESTA requires a stock exchange¹² to ensure that it has an organizational structure in respect of its operations, administration and supervision that is appropriate to its activities. A stock exchange must submit its regulations and their amendments to FINMA for approval. As an example, the rule-making for the SSX and SIX Structured Products Exchange is the responsibility of a Regulatory Board composed of representatives of issuers (appointed by the Swiss Business Federation/economiesuisse) and representatives of participants and investors (appointed by the Board of Directors of SIX Group Ltd). In addition, there are two other members nominated by the SIX Group Board of Directors and the SSX.</p> <p>Since Eurex Group's exchanges share a single trading platform but the Eurex Group has a dual, cross-border legal structure, the rules applying to all Eurex trading participants (e.g., trading rules) are subject to review both by FINMA and by the Börsenaufsicht Hessen in Germany. Swiss specific regulations are only reviewed by FINMA (e.g., organizational regulations pertaining to the Eurex Zurich Surveillance Office).</p> <p>Art. 7 and 8 of SESTO require that the self-regulatory powers of stock exchanges are exercised in a functionally and operationally independent manner. In the case of SSX and SIX Structured Products Exchange this has been arranged by establishing SER as a separate business unit that is composed of two departments: Listing & Enforcement and Surveillance & Enforcement. SER supervises and enforces issuers' and participants' compliance with the SSX and SIX Structured Products Exchange rules. The Head of SER reports directly to the Chairman of the Board of Directors of SIX Group Ltd on operative issues, and to the Chairman of the Regulatory Board on regulatory issues. In the case of Eurex Zurich, FINMA has approved the independent set-up and organizational regulations of Eurex Zurich's surveillance office as well as its head of surveillance.</p> <p><i>Admission of participants</i></p> <p>According to Art. 7 of SESTA, a stock exchange must issue regulations regarding the admission, duties and expulsion of securities dealers, reflecting in particular the principle of equal treatment. As an example, SSX Directive 1: Admission of Participants requires the participants to comply with the following admission requirements:</p> <ul style="list-style-type: none"> a) Have a licence as a securities dealer or remote member of the SSX from FINMA; b) Have provided a deposit, if the SSX demands one; c) Meet the requirements for connecting to the exchange system;
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¹¹ Typically also central counterparties, central securities depositories and operators of securities settlement systems can be considered to be self-regulatory organizations in many jurisdictions. However, due to their current limited regulation in Switzerland, they are not considered here, even though in practice they fulfill many of the criteria set out in Principle 9.

¹² The term stock exchange also includes a derivatives exchange, see Principle 33.

- d) Be a participant in a clearing organization recognized by the SSX or have access to such via a General Clearing Member; and
- e) Be a participant in a settlement organization recognized by the SSX or have access to such via a custodian.

Admission of securities

A stock exchange is required to issue regulations regarding the admission of securities to listing (Art. 8 SESTA). The regulations must contain provisions relating to the negotiability of securities and set out the information which must be furnished to investors in order to enable them to form an opinion about the characteristics of the securities and the quality of the issuer. Issuers and investors must be adequately represented in the body responsible for the admission of securities (Art. 6 SESTO), and the stock exchange determines the representation of issuers and investors in its regulations (which are to be approved by FINMA).

Market surveillance

According to Art. 6 of SESTA, stock exchanges are required to supervise price formation, execution and settlement of transactions in such a manner so as to ensure that insider trading, price manipulation and other breaches of law may be detected. Whenever there is a suspicion of any breach of law or any other irregularities, the stock exchange must inform FINMA. Operationally these reports are directed to a dedicated market surveillance team at FINMA's Enforcement Division.

Disciplinary and appeal mechanisms

Even though SESTA and SESTO do not explicitly require a stock exchange to set up disciplinary rules or conduct disciplinary proceedings, such rules and arrangements for exercising disciplinary powers have been set up e.g. by the SIX Group that operates the SSX and SIX Structured Products Exchange. SER is in charge of disciplining minor breaches of the exchange rules, whereas more serious cases are referred to the Sanction Commission for decision.

Art. 9 of SESTA requires the stock exchange to set up an independent appeal board with which an appeal may be lodged regarding the rejection of an application for admission as a securities dealer, the listing of securities, the expulsion of a securities dealer or the delisting of a security. The stock exchange must set out rules governing the organization and procedures of the appeal board. The organizational structure, the rules of procedure and the nomination of members of the appeal board are subject to the approval of FINMA.

In the case of the SSX its appeal bodies include the Independent Appeals Board and the Board of Arbitration to which the appeals rejected by the Appeals Board may be brought (see SSX Rules for the Appeals Board). Eurex Zurich also operates an Appeal Board.

FINMA approval of the SRO governance framework

Members of the Board of Directors (body in charge of supervision, regulation and control) of a stock exchange and the head of the surveillance office have to be approved by FINMA. In practice FINMA also discusses the governance structures for the stock exchanges' self-regulatory functions with the exchanges prior to their establishment and in case of significant changes.

	<p>Authorization of SROs</p> <p>Art. 4 of SESTA requires a stock exchange to undertake to ensure that it has an organizational structure in respect of its operations, administration and supervision that is appropriate to its activities. The title of Art. 4 (self-regulation) implies that this is intended to refer in particular to the self-regulatory structure of a stock exchange.</p> <p>As noted above, a stock exchange is required to supervise price formation, execution and settlement of transactions in such a manner so as to ensure that insider trading, price manipulation and other breaches of law may be detected (Art. 6 SESTA). The Board of Directors must create an internal surveillance office for the stock exchange. In terms of personnel and organization, this unit must be independent of the management. The surveillance office must be provided with adequate staff and facilities. The appointment of the head of the surveillance office is subject to the approval of FINMA. An application for authorization as a stock exchange must include the rules and regulations pertaining to the powers and responsibilities of the surveillance and enforcement unit, including a description of its organizational autonomy, staff and facilities.</p> <p>FINMA consideration of a stock exchange application for authorization includes a review of the proposed self-regulatory structure for the exchange. The self-regulatory framework and processes will need to be documented and adequate resources, including systems, controls and staff, will need to be in place (FINMA Guide Pertaining to Applications for Authorization as a Domestic or Foreign Stock Exchange or Stock Exchange Like Organization).</p> <p>Art. 13 of SESTO states that FINMA, before taking a decision on the approval of stock exchange regulations, may consult the Competition Commission. The latter will give an opinion on whether the regulations are neutral with regard to competition and whether they favor anti-competitive agreements. Such consultations have not been done in practice.</p> <p>Supervision by FINMA</p> <p>FINMA has the authority to request information from the stock exchanges under Art. 29 of FINMASA. The stock exchanges are also required to refer suspicions of unlawful conduct to FINMA and propose any rule changes to FINMA for approval.</p> <p>FINMA's risk-based supervisory program of the Swiss exchanges, including their self-regulatory functions is described in Principle 34. In addition to the general stock exchange supervision described in Principle 34, FINMA monitors the activities of SER through reporting and meetings. SER submits its annual report including its budget and a detailed self-assessment of its operational performance to FINMA in April. SER Surveillance & Enforcement Unit also submits to FINMA monthly status updates on current cases. With regard to meetings, FINMA meets with SER senior management on a yearly basis. FINMA Supervision of Financial Market Infrastructure Group and Enforcement Division meet with SER Surveillance & Enforcement Unit on a quarterly basis to discuss operational developments. Ad hoc meetings are organized as deemed necessary.</p> <p>Professional standards</p> <p>Art. 43 of SESTA covers breaches of professional secrecy by employees and governance bodies of a stock exchange, including those engaged in its self-regulatory functions. Art. 46 of the FINMA Ordinance on Stock Exchanges and Securities Trading (FINMA Stock Exchange Ordinance, SESTO-FINMA) requires the self-regulatory bodies of the exchanges (admission, disclosure and surveillance office) and FINMA to provide each other, on their own initiative or on request, with all information and documents they need to fulfill their tasks. It also requires the self-regulatory bodies (and FINMA) to uphold official, professional and business secrecy and use the information and relevant documentation that they have received exclusively to fulfill their individual statutory obligations.</p>
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	<p>Procedural fairness is safeguarded in the first instance through the stock exchange rules.</p> <p>Conflicts of interest</p> <p>Several articles of the law require appropriate management of conflicts of interest and/or independence of the self-regulatory functions, including Art. 9 of SESTA regarding the independence of the Appeal Board, Art. 6 of SESTA and Art. 8 of SESTO regarding the independence of the Surveillance Office and Art. 7 of SESTA regarding equal treatment of participants.</p>
Assessment	Broadly Implemented
Comments	<p>The rating is based on FINMA's supervisory program for the exchange SROs that, considering the important self-regulatory, market surveillance and enforcement functions they undertake, is not sufficiently robust (see Principles 33 and 34).</p> <p>The requirements for setting up the self-regulatory functions of stock exchanges in SESTA and SESTO are relatively high level and at times subject to interpretation. Given the potential opening up of the market to operators of new trading platforms, there is a need to both clarify the legal provisions and to ensure that the framework to be set up includes appropriate requirements for the self-regulatory responsibilities of the operators of various types of trading platforms in a manner that does not distort competition.</p>
Principles for the Enforcement of Securities Regulation	
Principle 10.	The regulator should have comprehensive inspection, investigation and surveillance powers.
Description	<p>Inspection power</p> <p>According to Art. 24 of FINMASA, FINMA carries out inspections (audits) either itself, through third parties that it has appointed, or through audit firms. Art. 23 of the BA includes a presumption for audits to be conducted by audit firms, since it notes that FINMA may itself carry out direct audits at banks, banking groups and financial conglomerates, if this is necessary in light of the economic significance, the complexity of the factors to be addressed, or the approval of internal models. Similar provisions are not included in SESTA and CISA, though.</p> <p>There are no specific provisions regarding notice to be given on audits, which in the Swiss legal regime means that they can be conducted either with or without notice. In practice FINMA and the audit firms generally provide prior notice for their audits, but some have also been conducted unannounced. This happens more often when FINMA has nominated an investigating agent to conduct an audit or investigation (see below).</p> <p>FINMA's audits may also be carried out on-site. Following normal audit practices, the audit firms' audits normally include both on-site and desk-based work.</p> <p>Power to obtain books, records and data from regulated entities</p> <p>The supervised persons and entities and their audit firms and auditors must provide FINMA with all information and documents that it requires to carry out its tasks (Art. 29 FINMASA, see Principle 11 on other persons and entities to which this obligation applies). Exercising this power does not require judicial action or suspicion of misconduct, and can be undertaken both in response to a particular inquiry and on a routine basis.</p> <p>In addition, where an audit firm or a third party is appointed under the financial market acts, the supervised persons and entities must provide it with all information and documents that it requires</p>

	<p>to carry out its tasks (Art. 25 FINMASA).</p> <p>Surveillance power</p> <p>The surveillance powers and responsibilities of the exchanges are discussed in Principles 9, 33, 34 and 36. FINMA does not itself conduct direct market surveillance, but according to FINMA there are no legal impediments to that other than the fact that this has been specifically assigned as the task of the stock exchanges under SESTA. As described in the above mentioned Principles, the exchanges must notify FINMA of suspected breaches of law or any other irregularities. FINMA also has its own analyst team that receives the notifications from the exchanges and analyses trading primarily on an ex post basis using Bloomberg data.</p> <p>Requirements for record-keeping and determination of client identity</p> <p>Art. 15 of SESTA requires that a securities dealer keeps a daily record of orders received and transactions carried out in which all information necessary to enable the reconstruction of transactions and the supervision of its operations must be recorded. This obligation is further specified in Art. 1 of SESTO-FINMA and in FINMA Circular 08/4 (Securities Journals).</p> <p>Upon entering into business relations, a financial intermediary¹³ must verify the identity of the contracting party on the basis of a document of evidentiary value (Art. 3 AMLA). The financial intermediary must verify the (potential) contracting party's identity by assessing and photocopying his/her official documents and noting the name, date of birth, nationality and home address. If the contracting party is a legal entity, the identity of the natural person who acts on its behalf and such natural person's power to legally bind the entity must also be verified and documented in the financial intermediary's anti-money laundering records.</p> <p>AMLA requires that the financial intermediary must obtain a written declaration from the customer indicating who the beneficial owner is, if: the customer is not the beneficial owner or if there is any doubt about the matter; the customer is an off-shore company; or a cash transaction of considerable financial value is being carried out.</p> <p>The financial intermediaries must keep records of transactions and assessments undertaken under AMLA in a way that allows the supervisory authorities, the SROs and the prosecuting authorities to review such files and the transactions' compliance with AMLA. The records must be kept for a minimum of ten years after the execution of a transaction or the termination of a business relationship. A reliable audit trail has to be kept of any transactions involving financial intermediation (Art. 20 FINMA Ordinance on the Prevention of Money Laundering and Terrorist Financing).</p> <p>Outsourcing of FINMA's audits</p> <p><i>Audit firms</i></p> <p>As noted above, FINMA can carry out its audits through the audit firms. The audit firms are appointed by the supervised persons and entities, but the appointment requires the approval of FINMA. The supervised entities cover the cost of both financial and regulatory audits. FINMA licenses an audit firm for regulatory audits, if it is supervised by the FAOA and adequately organized</p>
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¹³ Financial intermediaries are persons who on a professional basis accept or hold on deposit assets belonging to others or who assist in the investment or transfer of such assets. They include, among other persons, those that trade for their own account or for the account of others in e.g. securities and derivatives, manage assets, make investments as investment advisers, hold securities on deposit or manage securities.

	<p>for the audits in accordance with the financial market acts and does not carry out any activity requiring a license under the financial market acts. Currently 11 audit firms have been licensed to conduct regulatory audits in one or more of the following categories: i) banks and securities dealers; ii) fund management companies, investment companies and limited partnerships for CIS; and iii) CIS asset managers and representatives of foreign CIS. Lead auditors also need to demonstrate the required specialist knowledge for the audit in accordance with one of the financial market acts and be licensed by the FAOA as audit experts. The audits must be conducted with the care of a suitably qualified professional auditor. (Art. 26 FINMASA).</p> <p>The audit firm provides the Board of Directors of the audited supervised entity and FINMA with a report on its audits. According to Art. 27 of FINMASA, if an audit firm detects violations of supervisory provisions or other irregularities, it gives the audited entity an appropriate period to restore compliance with the law. If the period is not complied with, it informs FINMA. In the case of serious violations of supervisory provisions or serious irregularities, the audit firm has to notify FINMA immediately.</p> <p>FINMA has instructed the audit firms on how to conduct the audits of supervised entities in its Circular 13/3 (Auditing) and the related instructions that also require the audit firms to prepare a risk analysis and audit strategy. FINMA either approves the audit strategy proposed by the audit firm or determines one on the basis of the risk analysis, the audit firm's proposal and its own risk considerations.</p> <p>FINMA currently examines the compliance of audit firms with the FINMASA licensing requirements and supervises their regulatory audit activities (Art. 28 FINMASA). The audit firms and auditors must provide FINMA with all information and documents that it requires to carry out its tasks (Art. 29 FINMASA).</p> <p>On June 15, 2012, the Federal Council decided, in principle, to consolidate the previously separate oversight of financial¹⁴ and regulatory audits under the FAOA. In a first step, the oversight of the financial audits of listed banks, insurance companies and collective investment companies was transferred to the FAOA in September 2012. No changes in the law were required for this. The transfer of the other responsibilities will follow in a second step, as soon as the Federal Assembly enacts the necessary changes to the law. The Federal Council submitted a draft law on the amendment of the AOA and FINMASA to the Federal Assembly on August 28, 2013.</p> <p><i>Investigating agents</i></p> <p>FINMA may appoint one or several independent and suitably qualified agents to investigate circumstances relevant for supervisory purposes at a supervised entity or implement supervisory measures that it has ordered. FINMA defines the duties of such investigating agent(s) in the appointment order and determines the extent to which they may act in the place of the management bodies of the supervised entity (Art. 36 FINMASA). The supervised entity must allow the investigating agent access to its premises and provide the investigating agent with all the information and documents that he/she requires to fulfill his/her duties. The costs of the investigating agent are borne by the supervised entity.</p>
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¹⁴ See Principles 19–21 for the FAOA's role in the oversight of financial auditors.

	<p>FINMA has a pool of investigating agents maintained by the Legal & Compliance Group of the Strategic Services Division. On the basis of a request of the Enforcement Division, Legal & Compliance Group provides three proposals for agents to be used in a particular case. The investigating agents in the pool are e.g. lawyers, auditors and accounting specialists. They are used in particular for unregulated entities.</p> <p>According to Art. 14 of FINMASA, official secrecy applies to all mandataries of FINMA, including investigating agents.</p> <p><i>Stock exchanges</i></p> <p>The self-regulatory functions undertaken by the stock exchanges as SROs and FINMA's powers to supervise them, have access to information on them, and cause changes to be made by them as well as the confidentiality requirements applicable to stock exchanges are described in Principle 9.</p>
Assessment	Fully Implemented
Comments	<p>FINMA has the necessary inspection and investigation powers vis-à-vis supervised entities, and would be able to conduct real-time market surveillance, should it decide to devote more resources on it. In the current circumstances where there is only one significant cash equity/bond trading platform in Switzerland, the current arrangement where the exchange has the frontline responsibility can still work, subject to sufficient cooperation between FINMA and SER on one hand and SER and Eurex Zurich on the other hand (see also Principle 34). The situation will however change, should more competing trading platforms be established in Switzerland.</p>
Principle 11. The regulator should have comprehensive enforcement powers.	
Description	<p>Power to require records, statements and testimony</p> <p>As noted above, the supervised entities and their audit firms and auditors must provide FINMA with all information and documents that it requires to carry out its tasks. In addition, this obligation applies to persons or companies that are qualified investors or that have a substantial participation in a supervised person or entity (Art. 29 FINMASA).</p> <p>According to Art. 34 of SESTA, the above power also applies to all persons who violate Art. 20 (obligation to disclose qualified shareholdings), Art. 21 (obligation of the company to disclose changes in qualified shareholdings), Art. 33e (prohibition of insider trading) and Art. 33f (prohibition of market manipulation).</p> <p>In addition, persons subject to a notification obligation under Art. 31 of SESTA (obligation to notify acquisitions and sales in a company subject to a takeover offer) and persons who pursuant to Art. 33b may have the status of party in a takeover offer, must provide all information and surrender all documents to FINMA, which the latter requires to perform its duties (Art. 35 SESTA). Non-supervised persons and entities are also obliged to provide information to FINMA as witnesses in administrative proceedings, if it is not possible to establish the facts of the case sufficiently in any other way (Art. 14 APA).</p> <p>The criminal authorities have the full powers to require records, statements and testimony from any person.</p> <p>Power to conduct investigations</p> <p>FINMA can conduct investigations on both supervised and non-supervised entities, but in practice the majority of its investigations are conducted by investigating agents (see Principle 10).</p> <p>The Legal Services of the FDF and the Attorney General's Office have investigative powers under the Administrative Criminal Law.</p>

Power to take administrative measures*Supervised entities and their responsible managers and employees*

FINMA has the following administrative enforcement measures at its disposal to deal with non-compliance by supervised persons and entities and their responsible managers and employees:

- a) Ordering of measures to restore compliance with the law, if a supervised person or entity violates FINMASA or a financial market act, or if there are any other irregularities (Art. 31 FINMASA);
- b) Issuance of a declaratory ruling, if the proceedings reveal that the supervised person or entity has seriously violated supervisory provisions, but there is no longer a need to order measures to restore compliance with the law (Art. 32 FINMASA);
- c) Prohibition to practise a profession (Art. 33 FINMASA): if FINMA detects a serious violation of supervisory provisions, it may prohibit the person responsible for the violation from acting in a management capacity at any person or entity subject to its supervision for a period of up to five years;
- d) Ban on performing securities trading activities (Art. 35a SESTA): FINMA may permanently or temporarily ban the performance of securities trading activities by persons who in their capacity as responsible employees of a securities dealer engage in securities trading and grossly infringe SESTA, its implementing provisions or the securities dealer's internal rules;
- e) Publication of the supervisory ruling (Art. 34 FINMASA): where there is a serious violation of supervisory provisions, FINMA may publish in electronic or printed form its final ruling once it takes full legal effect, and disclose the relevant personal data. Notice of publication must be contained in the ruling itself;
- f) Confiscation of profit made or loss avoided (Art. 35 FINMASA): FINMA may confiscate any profit that a supervised person or entity or a responsible person in a management position has made or a loss that has been prevented through a serious violation of the supervisory provisions. The confiscated assets go to the Swiss Confederation unless they are paid to the parties suffering loss;
- g) Appointment of investigating agents to investigate circumstances relevant for supervisory purposes at a supervised person or entity or to implement supervisory measures that FINMA has ordered (Art. 36 FINMASA, see also Principle 10); and
- h) Revocation of license, withdrawal of recognition or cancellation of registration, if a supervised person or entity no longer fulfils the requirements for its activity or seriously violates the supervisory provisions (Art. 37 FINMASA).

In practice, where a supervised entity is concerned, FINMA first addresses the issue in the course of regular supervision. FINMA may request the supervised entity to take immediate corrective measures to restore compliance with the law and set time limits for implementation. Such corrective measures might include restricting the current business activities of the supervised entity (e.g., prohibition of business activities in certain markets), imposing more stringent prudential limits and requirements (e.g., capital or organizational requirements), withholding approval of new business activities or acquisitions (e.g., acquisition of other business units/teams), restricting or suspending payments to shareholders or share repurchases, restricting asset transfers, barring individuals from their profession, and replacing or restricting the powers of managers, board members or controlling owners. If the supervised entity does not implement the requested corrective measures, the issue will be further escalated under regular supervision and eventually into enforcement proceedings.

	<p>Depending on which law applies, the withdrawal of authorization may result in liquidation or, where there is an excess of debts over assets, bankruptcy proceedings (see Principle 32).</p> <p>The ability to publish a supervisory ruling under Art. 34 of FINMASA is limited to final rulings on serious violations of supervisory provisions once they have taken full legal effect. However, FINMA is sometimes able to publish information on its supervisory measures on the basis of Art. 22 of FINMASA. This provision enables the publication of FINMA's rulings, if the information is necessary for the protection of market participants or the supervised persons and entities, to correct false or misleading information, or to safeguard the reputation of the Swiss financial centre.</p> <p>The exchanges' self-regulatory bodies have disciplinary powers vis-à-vis their trading participants (see Principles 9 and 34).</p> <p><i>Unauthorized persons and entities</i></p> <p>Some of the above mentioned FINMASA provisions can also be used in relation to persons and entities that carry out their activities without a required license, recognition, or registration. The power under Art. 37 of FINMASA specifically refers to the applicability of FINMA's power to persons and entities that carry out their activities without a required license, recognition, or registration.¹⁵ According to FINMA, despite the unclear legal drafting of these provisions, there is an extensive amount of case law supporting the applicability of FINMA's powers also to unregulated persons and entities (see Principle 12 on the use of these powers).</p> <p><i>Breach of disclosure obligations, insider trading and market manipulation</i></p> <p>According to Art. 34 of SESTA, the following powers provided under FINMASA apply also to all persons who violate¹⁶ Art. 20 (obligation to disclose qualified shareholdings), Art. 21 (obligation of the company to disclose changes in qualified shareholdings), Art. 33e (prohibition of insider trading) and Art. 33f (prohibition of market manipulation):</p> <ul style="list-style-type: none"> • Art. 32: Declaratory ruling; • Art. 34: Publication of the supervisory ruling; and • Art. 35: Confiscation. <p>These new administrative measures came into force on May 1, 2013. Before that, FINMA could investigate possible violations of the disclosure requirements through the power to require qualified investors to provide information and documents and enforce them on the basis of court rulings.¹⁷ However, it was not able to confiscate (disgorge) the profits gained or losses avoided under the old regime.</p>
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¹⁵ Art. 31-36 of FINMASA seem to largely limit the applicability of the relevant powers to supervised persons and entities. However, in practice many of the relevant provisions have been interpreted to apply also to persons that conduct securities activities without an appropriate authorization.

¹⁶ The drafting of Art. 34 would appear to seriously limit the ability to address this type of breaches, since it refers to violation rather than suspicion of violation. Apparently the latter has been included as an interpretation in the explanatory material of the changes to SESTA. In many other jurisdictions this would not be sufficient to provide legal certainty. So far FINMA has not faced difficulties in using these powers.

¹⁷ The court rulings provided FINMA with the enforcement power due to the fact that it was evident that a clear enforcement power had been omitted by mistake rather than intentionally. However, the only enforcement measure that could be taken was a declaratory ruling under Art. 32 of FINMASA.

	<p>At the same time, the new provisions on the prohibition of insider trading and market manipulation, subject to administrative enforcement by FINMA, were introduced in SESTA (see Principle 36). Under the old regime, FINMA could address market abuse by supervised entities under the business conduct rules, but not market abuse by third parties, which was enabled through the new SESTA provisions. Contrary to the penal provisions, market abuse by legal entities is an offence under Art. 33e and 33f of SESTA. Parallel to introducing these new provisions, the penal provisions on insider trading and price manipulation¹⁸ were transferred from the Criminal Act to SESTA.</p> <p><i>Issuers</i></p> <p>Breach of issuers' disclosure requirements is subject to the disciplinary framework of the self-regulatory bodies of the stock exchanges (see Principles 16 and 18). The same applies to issuers' directors' and senior managers' obligations to disclose transactions in the equity securities of the issuer (see Principle 17). FINMA does not have any administrative enforcement powers vis-à-vis issuers.</p> <p><i>Auditing</i></p> <p>The administrative measures that the FAOA can take in relation to audit firms and auditors are discussed in Principles 19-21.</p> <p>Power to initiate criminal proceedings or impose criminal sanctions</p> <p><i>FDF Legal Services</i></p> <p>The FDF Legal Services both prosecutes and judges violations of the criminal provisions of FINMASA and of the financial market acts (e.g. SESTA) (Art. 50(1) FINMASA). For example, acting without a required license, recognition, or registration is a criminal offense in Switzerland (Art. 44 FINMASA). FDF Legal Services initiates administrative criminal proceedings under the Federal Act on Administrative Criminal Law, if notified by a criminal complaint or by other means of circumstances constituting reasonable and sufficiently specific grounds to suspect the possible occurrence of a punishable offence in its jurisdiction. The vast majority of criminal complaints are submitted by FINMA.</p> <p>If proceedings before the courts are requested or the FDF Legal Services is of the view that the requirements for a custodial sentence or custodial measure are met, the offence is subject to federal jurisdiction. In such a case, the FDF refers the files to the Attorney General's Office for proceedings before the Federal Criminal Court.</p> <p><i>Attorney General's Office and Federal Criminal Court</i></p> <p>With an amendment to Art. 44 of SESTA that came into force on May 1, 2013, the prosecution and adjudication of insider trading and price manipulation offenses of SESTA (Art. 40 and 40a, see Principle 36) became the responsibility of the Attorney General's Office and the Federal Criminal Court. In the past, the cantonal prosecutors' offices were in charge of prosecuting these offenses.</p>
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¹⁸ The SESTA criminal provision (and the previous Criminal Law provision) refers to price manipulation, whereas the administrative provision uses the broader term market manipulation.

	<p>The maximum criminal sanction for primary insiders under Art. 40 of SESTA is three years of imprisonment or a fine (five years if the pecuniary advantage gained was more than CHF 1 million), whereas the maximum criminal sanction for secondary insiders is one year of imprisonment or a fine. The maximum criminal sanction for price manipulation under Art. 40a of SESTA is three years of imprisonment or a fine, unless the pecuniary advantage gained was more than CHF 1 million. The maximum fines are not defined in SESTA.</p> <p><i>Cooperation between FINMA, the FDF and the Attorney General's Office</i></p> <p>Art. 38 of FINMASA requires FINMA and the prosecution authorities to provide each other with mutual and administrative assistance in accordance with the relevant acts. They must coordinate their investigations, as far as is practicable and required. Where FINMA obtains knowledge of common law felonies and misdemeanors or of offences against FINMASA or the financial market acts, it must notify the competent prosecution authorities.</p> <p>The FDF and FINMA have entered into an MOU under Art. 38 of FINMASA on cooperation in criminal matters in February 2011. The MOU covers coordination of investigations and proceedings as well as objectives of and procedures in exchange of information between the two authorities (see Principle 1).</p> <p>Power to order suspension of trading</p> <p>SER may temporarily suspend the trading of securities at the request of the issuer or on its own initiative if unusual circumstances, specifically the breach of important disclosure obligations by the issuer, indicate that such a suspension is advisable (Section IV of the Listing Rules).</p> <p>FINMA does not have a power to suspend trading either in individual securities or in all securities.</p> <p>Private rights of action</p> <p>Private persons can seek their own remedies for misconduct relating to the securities laws in civil and criminal procedures. They may also have recourse to an ombudsman in some circumstances (see Principle 31).</p>
Assessment	Broadly Implemented
Comments	<p>FINMA does not have the power to impose pecuniary administrative fines. Due to recent changes in the criminal enforcement responsibilities, it was not possible to collect detailed information about the effectiveness of the use of the fining powers under the administrative criminal law to analyze whether such fines have in practice risen to a level that could be considered to be effective and dissuasive, as required by the Assessment Methodology. It is important that the authorities consider the need for, and the legal possibility of, introducing administrative fining powers, or alternative ways to ensure a sufficiently effective and dissuasive sanctioning regime, including through enhancing the dissuasiveness of criminal sanctions.</p> <p>SER is responsible for investigating and enforcing compliance with the issuer disclosure requirements. Although strictly speaking it may not be a competent authority as referred to in the IOSCO Assessment Methodology, its ability to discipline issuers' compliance with their disclosure requirements appears to be broadly appropriate. In contrast to FINMA, it also has the ability to fine issuers and trading participants. However, the lack of criminal enforcement powers is a deficiency that should be addressed to be able to tackle more serious infringements by issuers.</p> <p>FINMA does not normally publish its rulings. If they are published, it is mostly done under Art. 22 of FINMASA. Given the important deterrent impact of publishing sanctions, it is recommended that</p>

	FINMA considers on a more strategic basis which kind of decisions it would be beneficial to publish.
Principle 12.	The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.
Description	<p>Requirements for compliance systems</p> <p>Art. 20 of SESTO requires securities dealers to implement an effective internal control system. In particular, they must entrust a unit, independent of the management, with the internal audit function. This unit must also verify compliance with the duties of disclosure, diligence and loyalty under Art. 11 of SESTA in accordance with FINMA Circular 08/24 on the Supervision and Internal Control of Banks that applies also to securities dealers.</p> <p>For fund management companies, open-ended and closed-ended investment companies, limited partnerships for collective investment schemes, custodian banks, asset managers, distributors, and representatives of foreign CIS the duty to ensure compliance with the requirements of CISA through internal regulations and an appropriate organizational structure is one of the authorization conditions under Art. 14(1)(c) of CISA.</p> <p>Under FINMA Circular 13/8 on Market Conduct Rules, the entities supervised by FINMA (where relevant) are subject to specific organizational requirements (Section VII) aimed at ensuring the prevention of securities laws violations.¹⁹ In particular, they are required to:</p> <ul style="list-style-type: none"> a) Organize and monitor the handling of insider information in a way that market conduct prohibited under supervisory law can be prevented and identified (margin number 49); b) Create areas of confidentiality and monitor adherence to these precautions (margin numbers 50-51); c) Administrate a watch and a restricted list (margin numbers 56-58); and d) Survey employee transactions (margin numbers 53-55). <p>Monitoring of the execution of the required compliance procedures and their communication to employees of supervised entities is subject to regulatory audit, as set out in the risk analysis and audit strategy for a particular supervised entity.</p> <p>FINMA can address ineffective organization or possible breaches of the requirement for proper business conduct through supervisory and enforcement measures. The auditor may urge and/or FINMA's prudential supervisors may order a supervised entity to re-establish compliance with applicable laws and regulations. FINMA's Enforcement Division may also investigate violations of securities laws and open further proceedings against the supervised entity even though the objectionable behavior involved its personnel (alleged organizational fault). Such proceedings may result in enforcement measures described in Principle 11.</p> <p>FINMA's risk based supervisory approach</p> <p><i>Categorization and rating</i></p>

¹⁹ The requirements will not be the same for every supervised institution: depending on its business activities, size and structure, they will be applied on an individual basis. The organizational measures necessary must be defined according to a risk assessment that is conducted regularly.

	<p>FINMA applies a similar risk-based supervisory approach to all supervised entities, under which they are allocated to one of five categories according to their potential impact on creditors, investors, policy holders, the system as a whole, and the reputation of the Swiss financial sector. In addition to being allocated to a supervisory category, each firm receives a rating corresponding to FINMA's assessment of its current state. The underlying ratings follow a scale from 1 to 9, but are presented also in a simplified traffic light format. Supervised entities rated 8-9 are red, whereas those rated 6-7 are presented as amber, and those rated 1-5 as green.</p> <p>The categorization and the simplified firm rating (red, amber, green) define the supervisory approach to be taken for each supervised entity, i.e., the extent of supervision, the choice of supervisory instruments, and the interaction between direct supervision by FINMA and the regulatory audits by audit firms. Even though the basic approach is the same across the supervised population, the need to use different parameters to categorize the supervised entities and to determine their rating introduces an element of judgment into the process. More importantly, the supervisory approaches also differ across the supervised population, even though the categorization and rating would be the same. This means e.g. that a bank and a fund management company that are in the same category and have the same rating are not necessarily subject to a similar supervisory approach in terms of review of reports, liaison with audit firms, direct contacts with the supervised entity, etc.</p> <p>The approaches taken in various sectors are described in more detail in the respective sectoral Principles (Principle 24 for entities involved in the management of CIS, Principle 31 for banks and securities dealers, and Principle 34 for exchanges, exchange-like institutions and FMI operators). Overall, in terms of number of entities, most supervised entities fall into categories 3-5.</p> <p><i>Role of audit firms</i></p> <p>FINMA's supervisory approach largely relies on regulatory audits, the purpose of which is to ensure that supervised entities comply with the regulatory framework and existing conditions will allow compliance to continue in the foreseeable future. FINMA Circular 2013/3 on Auditing outlines how audit firms are expected to conduct regulatory audits.²⁰ Firstly, they are required to prepare a risk analysis and audit strategy for the supervised entity on an annual basis on the basis of detailed requirements and instructions included in the Circular and its Annexes. Depending on the category and rating of a particular supervised entity, the risk analysis and audit strategy are subject to differing degrees of scrutiny by FINMA. As a result of this process, and taking into account its own risk analysis, FINMA either approves the audit strategy proposed by the audit firm or sets the definitive strategy for the ongoing year.²¹ Given the introduction of the revised requirements in January 2013, the first audits under the new regime were only commencing for banks at the time of the assessment mission. The 2012 audits were still planned and conducted under the old regime, where FINMA did not approve the audit strategy.</p> <p>FINMA requires that a basic audit is conducted in all supervised entities on an annual basis to review their compliance with basic supervisory requirements. Annexes to Circular 13/3 define the minimum standard audit strategies for each type of supervised entity that include the audit areas,</p>
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²⁰ This Circular does not apply to stock exchanges and stock exchange like institutions. See Principle 34 for further details.

²¹ For banks and securities dealers, the risk analysis and audit strategy have to be submitted by the end of April and FINMA is normally expected to approve/determine the audit strategy by the end of July. In relation to entities involved in the management of CIS, the deadlines are end of June and end of September, respectively.

	<p>audit fields and audit points to be included in the basic audit, the minimum frequency with which they have to be covered and the minimum audit depth that has to be applied (audit vs. critical assessment²²). The audit areas, fields and points are different for different types of supervised entities. Beyond the generally applicable prudential, governance and organizational elements included in the audit strategy, the areas specifically related to the scope of the IOSCO Principles that are required to be covered in the audits of banks and securities dealers include compliance with FINMA Circulars and certain self-regulatory standards and guidelines (recognized by FINMA) on market conduct and conduct of business in securities trading and asset management. These are required to be covered every three years, alternating between audit and critical assessment. Similar requirements that take into account the specifics of the relevant regulatory framework have been set out for the audits of fund management companies, CIS asset managers, representatives of foreign CIS, and custodians. Circular 13/3 does not apply to stock exchanges, stock exchange-like institutions and FMI operators (see Principle 34).</p> <p>FINMA can also order additional audits on specific areas for individual supervised entities in line with their business model or risk situation. Thematic audits across a larger population of supervised entities may also be mandated. The themes for this type of audit are normally selected on grounds such as new or updated regulations, or risks identified concerning specific topics. Finally, case-related audits mandated by FINMA are conducted where the targeted use of specialists is required, or where a supervised entity is affected by an extraordinary event.</p> <p><i>FINMA supervisory reviews</i></p> <p>In addition to the regulatory audits carried out by audit firms, FINMA can conduct its own supervisory reviews. These are on-site inspections that enable FINMA to form a picture of a business area or risk area. They may cover current issues arising out of daily business, or involve more in-depth analyses of specific topics. The frequency of these supervisory reviews depends on the supervisory category to which FINMA has assigned each financial intermediary in accordance with FINMA's risk-based supervisory approach (see Principle 31 and FINMA's Report on Effectiveness and Efficiency in Supervision). Supervisory reviews are also sometimes used to examine the same issue at more than one bank. Currently supervisory reviews are conducted only at the large banking groups, and selectively at other banks and insurance companies. So far entities involved in the management of CIS (such as fund management companies, asset managers, or custodians), stock exchanges and stock-exchange-like institutions have not been subject to FINMA supervisory reviews. FINMA plans to launch such reviews in 2014 (see Principles 24 and 34).</p> <p>Coverage and effectiveness of audit firm audits</p> <p><i>Periodic basic audit</i></p> <p>The benefit of the basic audit requirement is that it ensures minimum coverage of all supervised entities at least annually, notwithstanding limited FINMA supervisory reviews. Given the current prudential focus of the regulatory framework for securities dealers, the audit/critical assessment of the conduct requirements plays a limited role in the basic audit. On the basis of the very limited</p>
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²² An audit provides an opinion on the supervised entity's compliance with the supervisory requirements on a positive assurance basis, whereas in a critical assessment the auditor makes a written statement that as part of the activities engaged in, no circumstances were found based on which it could be concluded that the supervisory provisions had not been complied with (negative assurance).

sample of audit reports provided for review, it is not possible to draw any conclusions on the quality of the work of the audit firms. In relation to conduct requirements, the reports reviewed were very concise and prepared on a negative assurance basis. Also for prudential requirements, on the basis of the sample of reports reviewed, there is a notable difference in the detail of reporting by audit firms on the large banks vs. on other supervised entities. Since the samples reviewed were from 2012 and were therefore prepared prior to the adoption of the new Circular on Auditing, it is not possible to conclude on whether the style of reporting will change under the new requirements. If it continues as it is, the dialogue between FINMA and the audit firm/lead auditor will be even more critical to assist FINMA to form an understanding on developments and risk situation in a particular supervised entity.

Risk-based audits

Additional audits have been used to a limited extent in the areas directly relevant to the scope of the IOSCO Principles. In 2012 FINMA required additional audits to be conducted in 13 banks and securities dealers, two of which related to derivatives.²³ In 2011, FINMA required additional audits to be conducted in 28 banks and securities dealers, three of which related to wealth management.²⁴ According to FINMA, the themes were selected mainly because of identified weaknesses.

Thematic audits

In addition to the audits included in the audit firms' audit plans, FINMA informed the audit firms that they have to conduct certain audits in all banks and securities dealers in 2013 (if applicable). One of the themes included in these audits is retrocessions (inducements).

Coverage and effectiveness of FINMA supervisory reviews

The following table provides information on the number and distribution of FINMA supervisory reviews of banks/securities dealers in the last five years:

	2009	2010	2011	2012	August 2013
Category 1	20	14	20	14	19
Categories 2-3	1	1	20	21	23

In addition to the supervisory reviews included in the above table, in 2012 FINMA conducted three supervisory reviews in category 4 and 5 banks.

Some banks were subject to more than one supervisory review. As a result, out of all the entities supervised by FINMA, 21 were subject to FINMA's supervisory reviews in 2012. The plan is to increase this number to 25 in 2013. All these reviews were done for firms with both a banking license and a securities dealer license. Some of the reviewed entities are specialized in securities market activities. The topics covered in these reviews that appear to be of most relevance for the scope of the IOSCO assessment are suitability and external asset manager's business. However, no conclusions can be drawn on the quality and findings of the reviews, because the reports were not available for review.

²³ These audit reports were not available for review.

²⁴ One of these reports was provided for review as part of the sample of reports reviewed. The audit in question had a relatively broad scope, including monitoring of compliance with the guidelines for discretionary managed accounts.

Audits by the SROs

The participant audits conducted by audit firms in the SSX and SIX Structured Products Exchange participants are described in Principle 34. According to oral information provided by the BX Berne eXchange, it applies a similar approach to participant audits as SER for SSX participant audits. No information was available on the participant audits conducted by Eurex Zurich.

Effectiveness of market surveillance

The exchanges' market surveillance and record-keeping responsibilities and activities are described in Principles 11 and 34. The record-keeping requirements imposed on exchanges can be expected to enable an audit of the execution and trading of all transactions.

Adequacy of system to receive and react to market intelligence

Stock exchanges are required to inform FINMA of any potential breaches of law and other irregularities (Art. 6 SESTA). In addition, under Art. 29 of FINMASA, supervised persons and entities, their audit firms and auditors as well as persons or companies that are qualified investors or that have a substantial participation in a supervised entity must immediately report to FINMA any incident of substantial importance to supervision. Also, Art. 27 of FINMASA obliges audit firms to report to FINMA any serious violations of supervisory provisions or other serious irregularities detected during the audit. Where investigations substantiate a breach of law, FINMA institutes further proceedings (see Principle 11).

According to FINMA it initiates investigations based both on its own market observations and on notifications by investors, issuers, audit firms, and the exchanges' surveillance and enforcement units. Within FINMA, the prudential supervisory staff inform the Enforcement Division of potential breaches of law, which are then investigated by the latter.

Effectiveness of FINMA investigations and administrative proceedings*Supervised entities and unauthorized institutions*

The following table provides information on the number of investigations FINMA conducted in supervised entities and unauthorized institutions as well as the number of criminal complaints it filed and administrative proceedings it opened and closed as a result.

	2010	2011	2012
Opening of investigations	139 unauthorized institutions 32 supervised entities	216 unauthorized institutions 60 supervised entities	195 unauthorized institutions 91 supervised entities
Closing of investigations	18 unauthorized institutions 27 supervised entities	196 unauthorized institutions 48 supervised entities	232 unauthorized institutions 88 supervised entities
Criminal complaints filed to FDF	Not known	45 (including insolvency cases)	58 (including insolvency cases)

Opening of administrative proceedings	8 unauthorized institutions 12 supervised entities	14 unauthorized institutions 23 supervised entities	25 unauthorized institutions 22 supervised entities
Closing of administrative proceedings	7 unauthorized institutions 1 supervised entity	17 unauthorized institutions 16 supervised entities	18 unauthorized institutions 31 supervised entities

Breach of disclosure obligations

Compliance with the requirement to disclose substantial shareholdings in listed companies is supervised by the SER Disclosure Office. FINMA is informed of potential breaches of the disclosure requirement. In such cases, FINMA either starts its own investigations that may lead to further regulatory proceedings, or directly informs the FDF as the competent criminal authority under Art. 41 of SESTA.

	2010	2011	2012
Opening of investigations	109	76	81
Closing of investigations	112	77	78
Criminal complaints filed	4	35	50
Opening of administrative proceedings	1	0	0
Closing of administrative proceedings	0	1	0

The sharp increase in the criminal complaints filed from 2010 to 2011 is due to the fact that FINMA, as a result of a parliamentary investigation, started forwarding more notifications made by SER to it to the FDF for criminal investigation.

Breach of issuers' disclosure requirements is subject to the disciplinary framework of the stock exchanges (see Principle 16). The same applies to issuer's directors' and senior managers' obligation to disclose transactions in the equity securities of the issuer (see Principle 17).

Market abuse and code of conduct

The following table presents information on the market abuse investigations initiated by FINMA:

	2010	2011	2012
Opening of investigations	18	43	61
Closing of investigations	23	34	61
	12 insider trading 2 market manipulation 4 rules of conduct 1 front running 4 others (e.g., organization)	25 insider trading 8 market conduct 1 rules of conduct	46 insider trading 14 market conduct 1 financial analysis

Criminal complaints filed	3	7	16
Opening of administrative proceedings against supervised entities	2	1	2
Closing of administrative proceedings	1	1	1

Measures taken by FINMA

FINMA has used its enforcement powers under FINMASA as follows between January 2011 and August 2013.

FINMASA Measure	2011	2012	2013
Order of restoration of compliance with law (Art. 31)	5 (5 supervised entities)	12 (12 supervised entities)	5 (5 supervised entities)
Declaratory ruling (Art. 32)	24 (12 supervised entities, 12 unauthorized institutions)	29 (17 supervised entities, 12 unauthorized institutions)	18 (4 supervised entities, 14 unauthorized institutions)
Ban on practicing profession (Art. 33)	0	3 (3 supervised entities)	1 (1 supervised entity)
Publication of supervisory ruling (Art. 34)	10 (10 unauthorized institutions)	9 (9 unauthorized institutions)	15 (15 unauthorized institutions)
Confiscation (Art. 35)	0	3 (3 supervised entities)	0
Investigative agent (Art. 36)	13 (13 unauthorized institutions)	22 (7 supervised entities, 15 unauthorized institutions)	15 (3 supervised entities, 12 unauthorized institutions)
Withdrawal of license/liquidation (Art. 37)	2	4	1

Effectiveness of the criminal process

FDF investigations and proceedings

The following shows the information provided by the FDF on the criminal complaints received by it and completed, including breaches of disclosure obligations.

	2010	2011	2012	2013 projection
Total number of complaints	19	80	10 7	85
Complaints SESTA	2	24	53	45

	<table border="1"> <tr> <td>Cases received (breaches of disclosure obligations)</td> <td>2</td> <td>24</td> <td>51</td> <td>43</td> </tr> <tr> <td>Other complaints</td> <td>17</td> <td>56</td> <td>54</td> <td>40</td> </tr> <tr> <td>Total cases completed</td> <td>11</td> <td>21</td> <td>52</td> <td>82</td> </tr> <tr> <td>Cases completed (breaches of disclosure obligations)</td> <td>0</td> <td>6</td> <td>20</td> <td>42</td> </tr> </table>	Cases received (breaches of disclosure obligations)	2	24	51	43	Other complaints	17	56	54	40	Total cases completed	11	21	52	82	Cases completed (breaches of disclosure obligations)	0	6	20	42
Cases received (breaches of disclosure obligations)	2	24	51	43																	
Other complaints	17	56	54	40																	
Total cases completed	11	21	52	82																	
Cases completed (breaches of disclosure obligations)	0	6	20	42																	
	<p>Since FINMA and the FDF signed the MOU mentioned under Principles 11 and 13, the FDF has provided FINMA with notifications of penalty on the cases filed by FINMA. In 2012, FINMA received 16 notifications of penalty and one order for withdrawal of prosecution. The fines ranged from CHF 4,500 to CHF 50,000, with an average of about CHF 15,500.</p> <p><i>Cantonal/federal prosecution authorities</i></p> <p>Assessing the past effectiveness of the criminal process with regards to market abuse enforcement is difficult, since until May 2013 criminal complaints in the area of market abuse were filed with the cantonal criminal authorities. FINMA did not receive information about the results of such proceedings. Since May 1, 2013, these complaints are filed with the Attorney General's Office (and the Federal Criminal Court).</p> <p>According to the information received from the Attorney General's Office, there have been 14 definitive judgments on insider trading in Switzerland in 1995-2010, and no judgments for price manipulation (see Principle 36 for the narrow definition of the criminal provision on price manipulation).</p> <p>Effectiveness of the FAOA enforcement</p> <p>The enforcement measures taken by the FAOA in the area of audit oversight are described in Principles 19-21.</p>																				
Assessment	Partly Implemented																				
Comments	<p>The Partly Implemented rating is primarily due to the fact that FINMA is still in the process of implementing its new supervisory approach regarding more proactive engagement with the audit firms and increased use of FINMA own supervisory reviews. Significant additional work is required to fully implement the new approach, review results and adjust the approach, where needed. In the supervisory approach currently applied for banks and securities dealers, a particular concern is the level of engagement FINMA is able to have with both the audit firms and the banks and securities dealers that have been allocated to the lower systemic impact categories (categories 4 and 5). A conduct problem even in a small supervised entity can have notable investor protection consequences.</p> <p>Assessing the effectiveness of administrative and criminal enforcement on the basis of available incomplete information is difficult. Since the administrative and criminal enforcement powers and the allocation of responsibilities between the authorities have been subject to recent very significant changes, such a backward looking assessment would have had limited value. The statistics available indicate that a reasonable number of investigations has been undertaken. Enforcement measures taken reflect also the more limited measures that were available in the past. However, criminal fines appear to have been low (cf. the comments on Principle 11). Overall, increased cooperation and exchange of information between FINMA, the FDF Legal Services and the Attorney General's Office is a very positive development, and a necessary precondition for ensuring sufficient follow-up on the cases FINMA has filed with the criminal authorities.</p>																				
Principles for Cooperation in Regulation																					
Principle 13.	The regulator should have authority to share both public and non-public information with domestic																				

and foreign counterparts.	
Description	<p>Domestic information sharing</p> <p>FINMA can share relevant information with federal and cantonal prosecution authorities, as well as other domestic regulators, such as the FAOA, the SNB, the TOB, the admission, disclosure and surveillance offices of the stock exchanges, the SROs under AMLA and the Competition Commission.²⁵</p> <p>Under Art. 40 of FINMASA, FINMA may refuse to disclose information that is not publicly accessible or to hand over files to prosecution authorities and other domestic authorities where:</p> <ul style="list-style-type: none"> a) The information and files solely serve the purpose of forming internal opinions; b) Their disclosure or handover would prejudice ongoing proceedings or the fulfillment of FINMA's supervisory activity; or c) It is not compatible with the aim of financial market supervision. <p>If requested by any of the authorities concerned, the Federal Administrative Court rules on disputes relating to the cooperation between FINMA and the prosecution authorities or other domestic authorities.</p> <p>FINMA can share information for regulatory and enforcement purposes with other domestic authorities without the need for external approval, such as from a government minister or attorney.</p> <p>Foreign information sharing</p> <p>Both SESTA and FINMASA include provisions on information sharing with foreign authorities.²⁶ <i>Information sharing under SESTA</i></p> <p>Under Art. 38(2) of SESTA, FINMA may request from foreign financial market supervisory authorities such information and documents as may be necessary for the enforcement of SESTA. It may forward publicly inaccessible information and case related documents to foreign financial market supervisory authorities only where:</p> <ul style="list-style-type: none"> a) This information is used solely to enforce regulations governing stock markets, securities trading and securities traders, or is forwarded to other authorities, courts or bodies for this purpose; and b) The applicant authorities are bound by official or professional secrecy, notwithstanding provisions on the public nature of proceedings and the notification of the general public about such proceedings.

²⁵ Art. 38-41 FINMASA, Art. 23bis BA, Art. 34a SESTA, Art. 46 SESTO-FINMA, Art. 22 AOA, Art. 29 AMLA and Art. 10 CartA. The ability to share information with the above mentioned self-regulatory units of the stock exchanges is included only in SESTO-FINMA; a more solid legal basis for that information sharing is expected to be included in the legislation being drafted on financial market infrastructures.

²⁶ Art. 141 of CISA also covers foreign information sharing, but it cross-refers to Art. 42 of FINMASA. As a condition for assistance, it notes that the requesting authority has to in effect be responsible for supervising the activities of fund management companies etc. within its territory.

	<p>According to FINMA, despite the seemingly narrow reference to regulations governing stock markets, securities trading and securities traders in the above provision, it has been able to exchange information on e.g. CIS under this provision. This is based on the interpretation of the courts that what falls within the mandate of the foreign securities regulator is used for the purpose of Art. 38(2)(a). FINMA also noted that it has not lost any court cases for submission of important information under this provision.</p> <p>Should the information that FINMA is to pass on concern individual clients of securities dealers, the APA will apply. Administrative assistance proceedings must be carried out swiftly and FINMA must observe the principle of proportionality. The transmission of information on persons evidently not involved in the matter under investigation is prohibited. The decision of FINMA on the transmission of information to a foreign financial market supervisory authority may be challenged by the client before the SFAC within ten days (see below).</p> <p>Provided judicial assistance in criminal matters is permitted, FINMA may, in agreement with the Federal Office of Justice, consent that the transmitted information may be forwarded to criminal prosecution authorities for a purpose other than that stated above. The APA is applicable in those cases as well.</p> <p><i>Information sharing under FINMASA</i></p> <p>According to Art. 42 of FINMASA, in order to enforce financial market acts, FINMA may request foreign authorities responsible for financial market supervision to provide information and documents. FINMA may hand over information and documents that are not publicly accessible to foreign authorities responsible for financial market supervision only if the foreign authorities are bound by official or professional secrecy and the information:</p> <ul style="list-style-type: none"> a) Is used exclusively for the direct supervision of foreign institutions; and b) Is passed on to competent authorities or to bodies that are entrusted with supervisory duties that lie in the public interest only on the basis of a general authorization in an international treaty or with the consent of FINMA. <p>FINMA must refuse consent if it is intended that the information will be passed on to prosecution authorities and mutual assistance in criminal matters is not permitted. FINMA decides in agreement with the Federal Office of Justice. Where the information to be passed on by FINMA relates to individual clients, the APA applies.</p> <p>In practice most information sharing relating to the scope of the IOSCO Principles is undertaken under Art. 38(2) of SESTA rather than Art. 42 of FINMASA, since the latter is more restrictive.</p> <p><i>Ability of the client to challenge the transmission of information</i></p> <p>The requirement relating to information on individual clients under the APA means that, prior to transmitting any non-public information relating to a client, FINMA may have to issue a formal decree to the client concerned, subject to appeal to the SFAC deciding as first and only judicial instance. FINMA's decision may be challenged on the basis that one or more of the conditions for administrative assistance cited in Art. 38 of SESTA or Art. 42 of FINMASA have not been fulfilled.</p> <p>This requirement is challenging from the perspective of Art. 11(a) of the IOSCO MMOU that requires each authority to keep confidential requests made under the MMOU, the contents of such requests, and any matters arising under the MMOU, including consultations between or among the authorities and unsolicited assistance. The MMOU provides that after consultation with the requesting authority, the requested authority may disclose the fact that the requesting authority has made the request if such disclosure is required to carry out the request. Despite the requirement for FINMA to inform the client about the request for information by a foreign authority, IOSCO</p>
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	<p>accepted FINMA as category A signatory to the MMOU in 2010. This was based on the understanding that the information FINMA is obliged to disclose to the person subject to the information request would be limited to the minimum facts necessary to support the lawful basis of the request, i.e., what is sufficient to enable the client (or court) to judge the legitimacy of the investigation, the powers of the requesting regulatory authority and the relevance of the information.</p> <p>On the basis of Art 27(1) of the APA, FINMA may refuse to allow the inspection of the request for information if:</p> <ul style="list-style-type: none"> a) Essential public interests of the Confederation or the cantons, and in particular the internal or external security of the Confederation, require that secrecy be preserved; b) Essential private interests, and in particular those of respondents, require that secrecy be preserved; or c) The interests of an official investigation that has not yet been concluded so requires. <p>Recent jurisprudence²⁷ by the SFAC has accepted FINMA's partial redacting of the request due to overriding private interests and an ongoing procedure by a foreign securities regulator on the basis of the above provision of the APA. Therefore FINMA can redact parts of a request if disclosure of sensitive contents could jeopardize the foreign investigation. The requesting authority is always provided with the option of deciding whether or not and to what extent its request can be disclosed. In 2011-August 2013, FINMA issued 20 decrees to clients before submitting information on them to a foreign authority. Twelve of them were appealed.</p> <p><i>No requirement for the breach of Swiss law</i></p> <p>As provided in Art. 38 of SESTA and Art. 42 of FINMASA, FINMA can share information with its foreign counterparts even if the alleged conduct would not constitute a breach of the Swiss laws.</p> <p>Unsolicited information and information on beneficial ownership and bank records</p> <p>FINMA can provide information to the above mentioned domestic authorities on an unsolicited basis. The same applies to foreign authorities. The information sharing with both is subject to the APA requirements described above. This information sharing right also applies to information and records identifying the person or persons beneficially owning or controlling brokerage accounts and bank accounts related to securities and derivatives transactions as well as the necessary information to reconstruct a transaction, including bank records.</p> <p>Confidentiality</p> <p>With respect to domestic counterparts, Swiss legislation provides for professional secrecy obligations, breach of which is subject to criminal law prosecution. Both Art. 42(2) of FINMASA and Art. 38(2)(b) of SESTA expressly require that in order to share non-public information with a foreign authority, the latter must be subject to official or professional secrecy. Furthermore, as an integral part of the request for administrative assistance FINMA requires a declaration that the requesting authority treats the transmitted information in compliance with the rules of confidentiality.</p>
Assessment	Fully Implemented

²⁷ See <http://www.bvger.ch/publiws/download?decisionId=00391e6c-ecbc-4ade-b552-e2bf895c56bf>.

Comments	<p>When IOSCO accepted FINMA as category A signatory to the IOSCO MMOU, it concluded that FINMA’s obligation to inform the client of a request for information is not in contradiction with the requirements of the MMOU. However, even though FINMA has found ways to share information with its foreign counterparts despite the constraints imposed on it, it is clear that the current situation is challenging from the perspective of ensuring the integrity and timely conclusion of often very complex cross-border investigations. The Swiss authorities are encouraged to continue to pursue the abolition of this constraint. This is important since any shift in the position of the SFAC to allow clients wider access to the request for information might jeopardize FINMA’s continued ability to remain as full signatory to the IOSCO MMOU, with resulting reputational damage.</p>												
<p>Principle 14. Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.</p>													
Description	<p>Power to enter into information sharing agreements</p> <p>Domestic information sharing is subject to legal provisions described in Principle 13, which allow FINMA to cooperate with other domestic authorities and share information with them. In FINMA’s view, from legal perspective there is therefore no need to enter into agreements for the purpose of information sharing. However, such agreements may be concluded in order to formalize the organization of exchange of information.</p> <p>Under Art. 6(2) of FINMASA, FINMA fulfils the international tasks that are related to its supervisory activity. These can relate to administrative assistance and cross-border inspections. This has been considered to provide FINMA with the power to enter into information sharing agreements with its foreign counterparts.</p> <p>Existing agreements</p> <p>FINMA is category A signatory the IOSCO MMOU.</p> <p>The four domestic MOUs that FINMA has signed have been discussed in Principles 1 (the bilateral MOU with the SNB and the trilateral MOU between FINMA, the SNB and the FDF). There is also a bilateral MOU with the FDF Legal Services on enforcement cooperation (see Principle 11) and a bilateral MOU with the FAOA relating to the preparation of the transfer of FINMA’s supervisory responsibilities for regulatory auditors to the FAOA (see Principle 19).</p> <p>FINMA currently has MOUs with the following foreign supervisory authorities relevant for the scope of the IOSCO assessment.</p> <table border="1" data-bbox="391 1398 1419 1766"> <tr> <td data-bbox="391 1398 618 1465">Australia</td> <td data-bbox="618 1398 1419 1465">Australian Securities and Investments Commission Australian Prudential Regulation Authority</td> </tr> <tr> <td data-bbox="391 1465 618 1503">Belgium</td> <td data-bbox="618 1465 1419 1503">Banking, Finance and Insurance Commission</td> </tr> <tr> <td data-bbox="391 1503 618 1570">China</td> <td data-bbox="618 1503 1419 1570">China Banking Regulatory Commission China Securities Regulatory Commission</td> </tr> <tr> <td data-bbox="391 1570 618 1608">Denmark</td> <td data-bbox="618 1570 1419 1608">Danish Financial Supervisory Authority</td> </tr> <tr> <td data-bbox="391 1608 618 1675">Germany</td> <td data-bbox="618 1608 1419 1675">German Federal Financial Supervisory Authority (concluded with the former BAWe, German Federal Securities Supervisory Office)</td> </tr> <tr> <td data-bbox="391 1675 618 1766">France</td> <td data-bbox="618 1675 1419 1766">French Autorité des Marchés Financiers (concluded with the former COB, Commission des Opérations de Bourse) Commission Bancaire</td> </tr> </table>	Australia	Australian Securities and Investments Commission Australian Prudential Regulation Authority	Belgium	Banking, Finance and Insurance Commission	China	China Banking Regulatory Commission China Securities Regulatory Commission	Denmark	Danish Financial Supervisory Authority	Germany	German Federal Financial Supervisory Authority (concluded with the former BAWe, German Federal Securities Supervisory Office)	France	French Autorité des Marchés Financiers (concluded with the former COB, Commission des Opérations de Bourse) Commission Bancaire
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United Kingdom	Financial Services Authority ²⁸ (general agreement) Financial Services Authority ²⁹ (x-clear supervision)
Hong Kong	Hong Kong Monetary Authority Securities and Futures Commission
Italy	Commissione Nazionale per le Società e la Borsa Bank of Italy
Mexico	Comisión Nacional Bancaria y de Valores
The Netherlands	Netherlands Authority for the Financial Markets (concluded with the former Stichting Toezicht Effectenverkeer) Netherlands Authority for the Financial Markets (Securities Board of the Netherlands)
Portugal	Portuguese Securities Market Commission
Sweden	Swedish Financial Supervisory Authority
Singapore	Monetary Authority of Singapore
Spain	Comisión Nacional del Mercado de Valores
USA	U.S. Commodity Futures Trading Commission State of Connecticut Department of Banking Federal Deposit Insurance Corporation Board of Governors of the Federal Reserve System State of New York Banking Department Office of the Comptroller of the Currency U.S. Office of Thrift Supervision Securities and Exchange Commission
United Arab Emirates	Dubai Financial Services Authority

Additionally, FINMA participates regularly in supervisory colleges for cross-border institutions.

Confidentiality

With respect to information that FINMA obtains from foreign counterparts, the FINMA Board of Directors and FINMA employees are bound by official secrecy under Art. 14 of FINMASA, the FINMA Personnel Ordinance and the FINMA Code of Conduct. This duty applies not only with regard to third parties but also towards other offices of the federal or cantonal administration. In addition, FINMA must comply with the Data Protection Act that imposes restrictions on the processing of personal data. A violation of official secrecy may lead to administrative disciplinary measures and to a custodial sentence or fine under Art. 320 of the Criminal Act. As a result, FINMA may neither disclose confidential information nor transfer such information to third parties.

Regarding information transmitted to domestic and foreign counterparties, see Principle 13. Principle 13 also provides detailed information on the basis of which IOSCO concluded that FINMA can comply with Art. 11(a) of the IOSCO MMOU, which is a condition for becoming and remaining as a category A signatory to the MMOU.

²⁸ The MOU with the Financial Services Commission applies now to the cooperation between FINMA and the Financial Conduct Authority.

²⁹ The MOU on x-clear supervision now applies to the cooperation between FINMA and the Bank of England.

	<p>Practice</p> <p><i>Domestic information sharing</i></p> <p>FINMA's practice in sharing information with other domestic authorities is described in Principles 1 (SNB and FDF), 11 (FDF Legal Services), 13 and 19 (FAOA).</p> <p><i>Foreign information sharing</i></p> <p>In 2011-August 2013, FINMA received the following number of requests for administrative assistance from different foreign counterparts:</p> <table border="1" data-bbox="427 604 1390 1255"> <thead> <tr> <th></th> <th>2011</th> <th>2012</th> <th>2013 (Jan-Aug)</th> </tr> </thead> <tbody> <tr> <td>Number of requests sent to FINMA</td> <td>396</td> <td>378</td> <td>344</td> </tr> <tr> <td>Number of requests closed the same year</td> <td>311</td> <td>294</td> <td>244</td> </tr> <tr> <td>Average duration of a request under Art. 38 SESTA, received and closed the same year</td> <td>32.9 days</td> <td>38.4 days</td> <td>37.0 days</td> </tr> <tr> <td>Median duration of a request under Art. 38 SESTA, received and closed the same year</td> <td>11.0 days</td> <td>12.5 days</td> <td>13.5 days</td> </tr> <tr> <td>Maximum duration of a request under Art. 38 SESTA, received and closed the same year</td> <td>327 days</td> <td>352 days</td> <td>N/A</td> </tr> <tr> <td>Average duration of a client procedure under Art. 38 SESTA, received and closed the same year</td> <td>72.7 days</td> <td>72.6 days</td> <td>54.0 days</td> </tr> <tr> <td>Maximum duration of a client procedure under Art. 38 SESTA, received and closed the same year</td> <td>143 days</td> <td>303 days</td> <td>N/A</td> </tr> <tr> <td>Maximum duration of a client procedure under Art. 38 SESTA, received and not closed the same year</td> <td>385 days</td> <td>377 days</td> <td>N/A</td> </tr> </tbody> </table>		2011	2012	2013 (Jan-Aug)	Number of requests sent to FINMA	396	378	344	Number of requests closed the same year	311	294	244	Average duration of a request under Art. 38 SESTA, received and closed the same year	32.9 days	38.4 days	37.0 days	Median duration of a request under Art. 38 SESTA, received and closed the same year	11.0 days	12.5 days	13.5 days	Maximum duration of a request under Art. 38 SESTA, received and closed the same year	327 days	352 days	N/A	Average duration of a client procedure under Art. 38 SESTA, received and closed the same year	72.7 days	72.6 days	54.0 days	Maximum duration of a client procedure under Art. 38 SESTA, received and closed the same year	143 days	303 days	N/A	Maximum duration of a client procedure under Art. 38 SESTA, received and not closed the same year	385 days	377 days	N/A
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Principle 15.	The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.																																				
Description	<p>Assistance to foreign regulators</p> <p><i>Obtaining records and documents</i></p> <p>FINMA's power to request information and documents that it requires to carry out its tasks under Art. 29(1) FINMASA is described in Principles 10 and 11. In accordance with Art. 15 of SESTA, a securities dealer has to keep a daily record of orders received and of transactions carried out in which all the information necessary to enable the reconstruction of transactions and the supervision of its operations is recorded. Based on those obligations, FINMA is able to obtain all the records referred to in Key Questions 1(a) and (b). It is also able to share this information with foreign regulators (see Principle 13).</p> <p>It is possible for FINMA to identify persons who beneficially own or control non-natural persons</p>																																				

	<p>domiciled in its jurisdiction, except in the case of bearer shares (unless the holder of bearer shares in a listed company has made a notification under Art. 20(1) of SESTA).³⁰ A regulation is currently being discussed that would lead to mandatory registration of holders of bearer shares, primarily for anti-money laundering purposes.</p> <p>The requesting authority may use the information furnished for the purposes set forth under Art. 10(a) of the IOSCO MMOU.</p> <p><i>Securing compliance with laws and regulations</i></p> <p>Subject to the conditions highlighted in Principle 13, FINMA is able to offer assistance to foreign counterparts in securing compliance with laws and regulations. Statistics on FINMA's timeliness in providing assistance are presented in Principle 14.</p> <p><i>Providing information on regulatory processes</i></p> <p>According to FINMA, it strives to share any information on the regulatory processes in its jurisdiction that may assist foreign regulators in order to implement and enforce their financial market legislation.</p> <p><i>Enabling direct audits by foreign authorities in Switzerland</i></p> <p>Art. 43 FINMASA, Art. 38a of SESTA and Art. 143 of CISA include requirements on cross-border audits, i.e. cases where a foreign supervisory authority wishes to carry out direct audits at Swiss establishments of foreign institutions. These audits are subject to certain restrictions, most notably with regards to access to information on individual clients. This information has to be gathered by FINMA and submitted to the authorities, redacting all information relating to individual clients.</p> <p><i>Taking statements</i></p> <p>Under Art. 12 of the APA, FINMA is allowed to obtain a person's statement or testimony in its own proceedings. According to FINMA, the same should apply when dealing with a request for administrative assistance. However, this question has not yet been addressed by the SFAC.</p> <p><i>Obtaining court orders</i></p> <p>Court orders, for example urgent injunctions, have to be requested under the mutual legal assistance procedure in Switzerland. The Federal Office of Justice is the competent authority in this regard.</p> <p><i>Providing information on financial conglomerates</i></p> <p>In accordance with applicable law, FINMA is able to provide assistance to foreign regulators regarding information about financial conglomerates subject to its supervision, but only to the extent the information is required by foreign counterparts in order to implement and enforce their financial market legislation (Art. 42(2) FINMASA).</p>
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³⁰ About 28 percent of Swiss companies limited by shares (i.e. 51,575 companies) use bearer shares.

	<p>Independent interest</p> <p>FINMA is able to provide assistance to foreign regulators even if FINMA does not have an independent interest in the matter.</p>
Assessment	Broadly Implemented
Comments	<p>The specific requirements imposed on FINMA to protect the information concerning individual clients impose an extra administrative burden that consumes FINMA time and resources, and thereby can impact the ability of FINMA to process the requests in an effective and timely manner.</p> <p>The initiative to require the registration of holders of bearer shares is important not only to effectively combat money laundering, but also to ensure that all persons who beneficially own Swiss companies limited by shares can be identified.</p>
Principles for Issuers	
Principle 16.	There should be full, accurate and timely disclosure of financial results, risk and other information that is material to investors' decisions.
Description	<p>Prospectus requirements</p> <p><i>Listed securities</i></p> <p>The prospectus requirements for listed securities are subject to self-regulation in Switzerland. Due to its dominant market share, the discussion below focuses on the SSX, but the BX Berne eXchange (see Principle 33) also includes prospectus requirements in its listing rules.</p> <p>Art. 27 of the Listing Rules of the SSX requires that, in order to be listed, an issuer must publish a listing prospectus which provides sufficient information for competent investors to reach an informed assessment of the issuer's assets and liabilities, financial position, profits and losses and prospects, as well as of the rights attached to the securities. Specific mention must be made of any special risks.</p> <p>The exact information that a listing prospectus must contain depends on the regulatory Standard (listing segment) under which the securities will be listed. The required prospectus content is laid down in different Schemes for the various Standards. The Main Standard, Domestic Standard and Standard for Collective Investment Schemes follow Scheme A, whereas all the other Standards (Standard for Investment Companies, Standard for Real Estate Companies, Standard for Global Depository Receipts, Standard for Bonds, Standard for Derivatives, and Standard for Exchange Traded Products) have their own Schemes.</p> <p>The listing prospectuses under all the Schemes have to include information on the issuer, such as general corporate information, as well as information on administrative, management and audit bodies, business activities, investments, capital and voting rights, and the issuer's policy on informing shareholders.</p> <p>With regards to financial information, for example Scheme A - Equity Securities requires the listing prospectus to contain, among other information, the following³¹:</p> <p>Annual financial statements for the last three (two for Domestic Standard) full financial years drawn up in accordance with a financial reporting standard recognized by the SER Regulatory Board and audited by the auditors; and</p>

³¹ For the other Schemes, the same information is required, but not for as many years as described below.

	<p>Auditors' report for the last three (two) audited annual financial statements.</p> <p>For equity securities, the balance sheet date of the last audited annual financial statements may be no more than 18 months in the past on the date the listing prospectus is published. If the balance sheet date of the last audited annual financial statements is more than nine months in the past on the date the listing prospectus is published, the listing prospectus must include additional interim financial statements, as described in Art. 9 of the Directive Financial Reporting that cover the first six months of the financial year. Material changes that have occurred in the issuer's assets and liabilities, financial position and profits and losses since the close of the last financial year or the balance sheet date of the interim financial statements have to be included in the listing prospectus. If no material changes have occurred, the listing prospectus must include a corresponding negative declaration.</p> <p>With regards to bonds, exchange traded products and derivatives, the annual audited financial statements have to be presented for the last two full financial years, and the auditors' report has to be included for the last financial statements. In addition to the last audited financial statements that may be no more than 18 months old, the listing prospectus must contain general information on the performance of the issuer's business since the close of the financial year to which the last annual financial statements relate. Specifically, details must be given of the most important trends behind the latest movements in turnover, in addition to other information that has a material impact on the issuer's business performance.</p> <p><i>Other securities subject to a public offer</i></p> <p>According to Art 652(2) of the CO, a public offer is any invitation to subscribe that is not addressed solely to a limited number of persons. The CO includes the prospectus requirements for public offers of shares and bonds. According to Art. 652 of the CO, where new shares are publicly offered for subscription, the company must publish an issue prospectus containing, among other things, information on the most recent annual accounts and consolidated accounts with audit report and, if more than six months have elapsed since the accounting cut-off date, the interim accounts. In the case of companies that do not have an auditor, the board of directors must arrange for an audit report to be prepared by a licensed auditor and provide information on the result of the audit in the issue prospectus.</p> <p>According to Art. 1156 of the CO, bonds may be offered for public subscription or sale on the stock exchange only on the basis of a prospectus. The provisions governing prospectuses for issues of new shares apply mutatis mutandis; in addition, the prospectus must provide more detailed information on the bonds and in particular on the interest and redemption conditions, the special collateral posted for the bonds and, where applicable, the representation of bond creditors.</p> <p>There are no other requirements for the prospectuses of public offers of securities that will not be listed, and the prospectuses are not subject to review by any public authority or self-regulatory organization. This means that there is no legal, regulatory or self-regulatory obligation on e.g. the issuers whose shares or bonds are traded on the OTC trading platforms of some banks to prepare a prospectus, unless they conduct a public offer at the same time or a prospectus is required by the operator of the platform (see Principle 33). According to the information provided by the FDF, it intends to include a prospectus requirement for all public offers of securities in its upcoming proposal for the FFSA.</p>
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	<p><i>Unlisted structured products</i></p> <p>In Switzerland, it is also possible to publicly offer structured products such as capital protected products, capped return products and certificates to non-qualified investors (see Principle 24), if they are issued, guaranteed, or backed³² by a bank, an insurance company, a securities dealer or a foreign institution that is subject to equivalent standards of supervision (Art. 5(1) CISA). The foreign institution has to have a branch in Switzerland, unless the structured product is listed on a Swiss exchange (Art. 4(1)(b) CISO).</p> <p>A simplified prospectus that complies with the following requirements must be available (Art. 5(2) CISA):</p> <ul style="list-style-type: none"> a) It describes in a standard format the key characteristics of the structured product, its profit and loss prospects, and significant risks to investors; b) It is easily understood by an average investor; and c) It makes reference to the fact that a structured product is neither a collective investment scheme, nor does it require authorization by FINMA. <p>The financial intermediaries referred to above are required to formalize the requirements for the simplified prospectus through a system of self-regulation. The requirements are subject to approval by FINMA. However, the prospectuses of public offers of structured products that are not listed are not reviewed or approved by any public authority or self-regulatory organization.</p> <p>According to the information provided by the FDF, it intends to include structured products within the coverage of the FFSA, thus aligning their regulatory framework with other economically equivalent products.</p> <p>Review of the listing prospectus</p> <p>According to Art. 6 of the SSX Listing Rules, in fulfilling their tasks, the SSX Regulatory Board and SER may demand that issuers and/or guarantors provide all the information that is necessary for investors to assess the characteristics of the securities and the quality of the issuer and/or the guarantor as well as for the SER to monitor compliance with the rules and regulations and to investigate any breaches. Issuers and/or guarantors may be required to present relevant documentation to this end. When reviewing listing applications, the Regulatory Board and SER may, in particular, demand explanations and further information, as well as additional documentation. Having informed the issuer accordingly, they may also obtain legal opinions and statements from third parties. The costs that are incurred may be charged to the applicant. The Regulatory Board and SER may demand that the issuer and/or guarantor publish certain information. If the issuer and/or guarantor do not make a disclosure that has been required, the Regulatory Board or SER may, after providing the issuer the opportunity for a hearing, publish the information themselves if they are able to do so.</p> <p>SER reviews all listing prospectuses for equity securities, bonds and exchange traded products. It checks whether the information required by the applicable Prospectus Schemes is contained in the listing prospectus. If the disclosure in the listing prospectus is considered incomplete, the issuer must file an updated version of the listing prospectus. Listing prospectuses for derivatives and</p>
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³² The requirement for the structured product to be backed by a financial intermediary (by guaranteeing the issuer's performance obligations, by providing it with financial resources, or by providing physical collateral) was included in CISA in the amendments that came into force on March 1, 2013. Before that it was sufficient that a financial intermediary distributed the structured product.

structured products are grouped together by type of product (e.g., call warrants) and issuer. One listing prospectus for the same issuer and type of product is fully reviewed, whereas a more summary review limited to critical points such as the underlying security, responsibility statement of the issuer, declaration on no material adverse changes, and certain trading parameters is carried out. This procedure is applicable for highly standardized products such as warrants; for more complex structured products, each listing prospectus is reviewed individually and completely.

The number of listing prospectuses submitted during the past three years has been as follows:

	2010	2011	2012
Bonds	387	396	357
Derivatives and structured products	41,195	52,406	45,013
Equity securities (including CIS)	55	60	49

Advertising of public offering outside a prospectus

According to Art. 37 of the SER Listing Rules, if the listing prospectus is not provided in full in an advertisement (newspaper, free of charge in printed form, or electronically, with printed copy available on request), the issuer must publish a Listing Notice. The Listing Notice is intended to draw investors' attention to the listing applied for, where the listing prospectus may be obtained free of charge (including details of where it has been published electronically, if possible), and any material changes compared with the information contained in the listing prospectus.

Periodic disclosure requirements

Annual report and interim reports

According to Art. 10 of the SER Directive on Financial Reporting (DFR), the annual report must be published, together with the annual financial statements, within four months of the balance sheet date for the latter, and must be submitted to SER no later than at the time of publication. Issuers of debt securities must publish their annual report on a website within four months without having to submit it to SER.

Issuers of listed equity securities are obliged to publish semiannual financial statements (Art. 50 Listing Rules). The publication of quarterly financial statements is voluntary. However, where quarterly financial statements are published, they must be drawn up according to the same principles that apply to semi-annual financial statements. Interim financial statements are subject to neither an audit nor a review.

Issuers of bonds, exchange traded products and derivatives are not subject to any interim reporting obligations.

Where the issuer is obliged to produce an interim report, it must be published together with the interim financial statements within three months of the balance sheet date for the latter.

Regulatory review of annual and interim reports

The annual and semiannual financial statements of issuers whose equity securities have a primary listing on the SSX are subject to monitoring by SER with regards to their compliance with the

	<p>requirements governing periodic reporting. The responsibility for this lies in the Financial Reporting unit of the Listing & Enforcement Department. The selection of the annual and semiannual financial reports to be reviewed is made on a risk-based manner³³ and supplemented by random sampling. The intention is to ensure that the financial reporting of a given issuer is reviewed every five years for the Main Standard and every ten years for the other Standards. SER does not normally review the half-yearly reports.</p> <p>The actual review is also risk-based and limited to certain specific areas and current areas of focus. The review of specific areas focuses in particular on the financial reporting standards that:</p> <ul style="list-style-type: none"> a) Owing to the company specific issues or particular situation, are deemed to be especially critical; b) Experience has shown are particularly prone to errors; and c) Have been applied/were applicable for the first time. <p>SER publishes the current areas of focus in a statement to enable the preparers of financial statements to take them into account. In principle, the key areas of focus are directed at IFRS users but are equally applicable to users of other recognized accounting standards such as US GAAP and Swiss GAAP FER.</p> <p>If the review gives no cause to suspect any potential violations of the applicable financial reporting requirements, the issuer will be notified by means of a Direct Comment Letter.³⁴ However, if there is a suspicion that the requirements may have been violated, SER requests the issuer to state its position on the matter (preliminary investigation, see the section on Enforcement below). If the issuer's response does not confirm the suspicion of violation justifying a sanction, SER issues a Comment Letter that distinguishes between recommendations and changes that are expected to be made in the next financial statements. The proper implementation of the latter is verified in the immediately following annual or semiannual financial statements. If the preliminary investigation supports the suspicion that accounting standards may have been violated to the extent justifying a sanction, a formal investigation will be initiated (see below). In the case of financial reporting, such an investigation can be concluded with a Comment Letter in addition to the other means described below.</p> <p>Ongoing disclosure requirements</p> <p><i>Ad hoc publicity</i></p> <p>According to Art. 53 of the SER Listing Rules, the issuer must inform the market of any price sensitive facts that have arisen in its sphere of activity. Price sensitive facts are facts that are capable of triggering a significant change in market prices. The issuer must provide a notification as soon as it becomes aware of the main points of the price sensitive fact. Disclosure must be made so as to ensure equal treatment of all market participants. The SER Directive on Ad Hoc Publicity provides more detailed guidance on the matter.</p>
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³³ The risk oriented approach places particular weight on the following matters: new listing or first time application of an accounting standard; significant change of business activities/business structure; change in corporate management (CEO/CFO); qualification in auditor's report; and third party leads.

³⁴ It is possible that a Direct Comment Letter also includes recommendations on improving the quality of financial reports.

	<p>Art. 15 of the Directive on Ad Hoc Publicity requires the content of the notices to be formulated in such a way that an average market participant can form an opinion of the extent to which the content is price sensitive. The information must be factual, clear and complete. Notices that do not fulfill these requirements must be corrected immediately by the issuer.</p> <p>Ad hoc notices must be distributed at least to the following recipients:</p> <ul style="list-style-type: none"> a) SER (90 minutes ahead of time if published during trading hours); b) At least two electronic information systems widely used by professional market participants (e.g., Bloomberg, Reuters, Telekurs); c) At least two Swiss newspapers of national importance; and d) All interested parties upon request (push and pull system)³⁵. <p><i>Shareholder voting decisions</i></p> <p>If shareholder voting decisions are price sensitive, the issuer has to publish them in the form of an ad hoc notice (see note 67 Commentary on the Directive on Ad hoc Publicity). Information on the decisions to be made in shareholders' meetings has to be provided to shareholders as described in Principle 17.</p> <p><i>Regulatory review of material event disclosures</i></p> <p>The Corporate Disclosure team of the SER Listing & Enforcement Department is responsible for monitoring issuers' compliance with the rules regarding ad hoc publicity. The process applied is similar to that described above for financial reporting. If the violation detected in the preliminary investigation does not justify a sanction, SER may still issue a Warning Letter to the issuer concerned. Such Warning Letters have been regularly issued in the area of ad hoc publicity. SER does not publish these Warning Letters or other information on their number or issues addressed in them.</p> <p>Derogations</p> <p>According to Art. 36 of the Listing Rules, the Regulatory Board³⁶ may permit certain information to be omitted from the listing prospectus, if it considers that:</p> <ul style="list-style-type: none"> a) Disclosure would be seriously detrimental to the issuer, provided that the omission would not mislead investors with regard to facts and circumstances that are essential to an informed assessment of the issuer and of the rights attached to the securities in question; b) The information in question is of minor importance only, and will have no bearing on the assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer; or c) The securities that are to be listed are traded in another stock exchange segment that is
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³⁵ The issuer must provide a service on its website that allows interested parties to receive via e-mail distribution free and timely notification of potentially price-sensitive facts (push system). When a published ad hoc notice is distributed, it must simultaneously be made available on the issuer's website and remain available there for two years (pull system).

³⁶ In practice deciding on derogations has been delegated to SER.

	<p>supervised by FINMA, and the issuer's periodic reporting has complied with the financial reporting requirements for the last three years.</p> <p>The issuer may postpone the disclosure of a price sensitive fact, if the fact is based on a plan or decision from the issuer, and its dissemination might prejudice the legitimate interests of the issuer (Art. 54 Listing Rules). The issuer must ensure that the price sensitive fact remains confidential for the entire time that disclosure is postponed. In the event of a leak, the market must be informed about the fact immediately, in accordance with the rules on disclosing price sensitive information.</p> <p>Suspension of trading may be imposed in exceptional circumstances where otherwise orderly and fair trading cannot be guaranteed (Art. 18 Directive on Ad Hoc Publicity). If an issuer considers the suspension of trading to be necessary, it must apply to SER, stating its reasons, as early as possible and no later than 90 minutes before the intended suspension. SER decides at its own discretion on whether or not suspension of trading should be granted and, if so, how long it should last. In the event that SER denies suspension of trading, the issuer must disclose the price sensitive fact at least 90 minutes before the start of trading or after the close of trading.</p> <p>SER may also suspend trading at its own discretion and without request by the issuer if it considers this step necessary for maintaining orderly trading.</p> <p>Liability for disclosures</p> <p>There are no specific rules on the liability of other parties than the issuer on the content of the disclosures in the SER Listing Rules. However, according to Art. 725 of the CO, where information that is inaccurate, misleading or in breach of statutory requirements is given in prospectuses or similar statements disseminated when the company is established or on the issue of shares, bonds or other securities, any person involved willfully or through negligence is liable to the acquirers of such securities for the resultant losses.</p> <p>Further, according to Art. 1156(3) of the CO, in the event that bonds are issued without a prospectus that complies with the relevant provisions of the CO or the prospectus contains inaccurate information or information that fails to satisfy the statutory requirements, all persons involved in such non-compliance, whether intentionally or negligently, are jointly and severally liable for the damage arising.</p> <p>Enforcement of disclosure requirements</p> <p>According to Art. 61 of the Listing Rules, one or more of the following sanctions may be imposed on issuers, guarantors or recognized representatives:</p> <ol style="list-style-type: none"> a) Reprimand; b) Fine of up to CHF 1 million (in case of negligence) or CHF 10 million (in case of wrongful intent); c) Suspension of trading; d) Delisting or reallocation to a different regulatory Standard; e) Exclusion from further listings; and f) Withdrawal of recognition. <p>The Listing & Enforcement Department of SER is responsible for investigating potential violations of the SER Listing Rules, Additional Rules and their implementing provisions. Listing & Enforcement Department may conduct a preliminary investigation before launching a formal investigation. A preliminary investigation may lead to a Warning Letter or Comment Letter, if the violation does not justify a sanction. If a formal investigation is started, the parties will be notified in writing of the object of the investigation and the fact that it may lead to a proposal for sanction. An investigation</p>
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	<p>will conclude with the stay of proceedings, an agreement on a sanction, the issue of a sanction notice by SER or the lodging of a proposal for sanctions with the Sanction Commission.</p> <p>Agreements can be made in trivial cases or if they allow the public to be informed more rapidly or more fully than would be the case if sanction proceedings concluded in the regular manner. A sanction notice may be issued by the Listing & Enforcement Department for a violation of the Listing Rules and Additional Rules, if possible sanctions include a reprimand or fine. All other sanction decisions have to be made by the Sanction Commission on the basis of a sanction proposal by the Listing & Enforcement Department. In determining the sanction to be imposed, the competent body will take into consideration, in particular, the severity of the breach and the degree of fault. When setting the level of fines, the competent body will also take the impact of the sanction on the party concerned into account.</p> <p>Listing & Enforcement Department publishes the fact that it has started an investigation, unless it is prohibited to do so by another rule or regulation or in exceptional cases. Information is also provided if an investigation is halted. Sanctions are generally published in anonymized form once they become legally effective, i.e., once all the appeal mechanisms have been exhausted (see Principle 9).</p> <p>The following is a summary of the sanctions given or agreements made by SER and the Sanction Commission on matters covered by Principle 16:³⁷</p> <table border="1" data-bbox="394 888 1421 995"> <thead> <tr> <th></th> <th>2010</th> <th>2011</th> <th>2012</th> </tr> </thead> <tbody> <tr> <td>Corporate Disclosure: Ad hoc publicity</td> <td>3</td> <td>2</td> <td>2</td> </tr> <tr> <td>Financial Reporting: Review of financial statements</td> <td>3</td> <td>5</td> <td>4</td> </tr> </tbody> </table> <p>Listing and public offers by foreign issuers</p> <p>Foreign issuers whose securities are listed on the SSX are subject to its rules. Public offers of unlisted securities by foreign issuers are subject to the CO requirements in the same manner as public offers of securities by Swiss issuers.</p>		2010	2011	2012	Corporate Disclosure: Ad hoc publicity	3	2	2	Financial Reporting: Review of financial statements	3	5	4
	2010	2011	2012										
Corporate Disclosure: Ad hoc publicity	3	2	2										
Financial Reporting: Review of financial statements	3	5	4										
Assessment	Partly Implemented												
Comments	<p>The rating of this Principle has been impacted by several issues. Firstly, IOSCO requires all issuers that have made a public offer of securities to be subject to a comprehensive set of disclosure requirements, regardless of whether the securities are listed. The same applies to public offers of structured products.</p> <p>In Switzerland, semi-annual financial statements are required to be published only by issuers of listed equity securities, while Key Question 3(b) and the related explanatory text of the Assessment Methodology require the publication of such information on at least a semi-annual basis by issuers of all³⁸ securities that have been offered to the public.</p> <p>Compared to the practices of many non-EU jurisdictions, the deadlines for publishing annual and</p>												

³⁷ The decisions are available on the SER website at http://www.six-exchange-regulation.com/enforcement/sanction_decisions_en.html.

³⁸ There are some exceptions from this requirement applicable to e.g. government securities.

	<p>half-yearly reports are long in Switzerland. IOSCO Assessment Committee is currently undertaking a review to develop further guidance and/or identify good practices in this area. Pending the finalization of this work, the current deadlines applied in Switzerland have not impacted the rating of this Principle. Nevertheless, the authorities are encouraged to consider whether the current deadlines could be benchmarked differently.</p>
<p>Principle 17. Holders of securities in a company should be treated in a fair and equitable manner.</p>	
<p>Description</p>	<p>Basis for shareholders’ voting rights</p> <p>The rights and obligations of shareholders are addressed in particular in Art. 660-697h of the CO. There is also a specific requirement on the members of the board of directors and third parties engaged in managing the company’s business to afford the shareholders equal treatment in like circumstances (Art. 717(2) CO).</p> <p>Ownership registration and right of transfer</p> <p>The articles of association may stipulate that registered shares may be transferred only with the consent of the company (Art. 685a CO). The consequence of a non-entry into the shareholder register of a privately held corporation is that that all rights connected with the shares remain with the seller before the formal registration (Art. 685c CO). Listed companies may reject a shareholder only if the articles of association provide for a maximum shareholding and this is exceeded by the purchaser (Art. 685d CO). Where listed registered shares are sold on a stock exchange, the selling bank must without delay notify the company of the name of the seller and the number of shares sold (Art. 685e CA) and the related rights pass to the acquirer upon transfer. Where listed registered shares are acquired off-exchange, the related rights pass to the acquirer as soon as it has submitted a request for registration as a shareholder to the company. Until such registration, the acquirer may not exercise the voting rights or any other associated rights conferred by the shares. The acquirer is not restricted in its exercise of any other shareholder rights, in particular subscription rights. (Art. 685f CA).</p> <p>The shareholder can also decide not to register its ownership. Such unregistered shares are referred to as “Dispoaktien” in Switzerland and their shareholders are referred to as “Dispoaktionäre”. As noted above, the owners of these shares cannot exercise their voting rights. However, they will receive the monetary rights (such as dividends) in such a manner that the company pays the dividends relating to unregistered shares to the relevant custodian bank that credits them to the shareholder. Many shareholders that are not interested in exercising their voting rights therefore prefer not to register their ownership in Switzerland.</p> <p>Shareholders’ meetings</p> <p>The shareholders exercise their voting rights at the annual general meetings in proportion to the total nominal value of shares belonging to them. Every shareholder has at least one vote, even if holding only one share. The company’s articles of association may impose restrictions on the number of votes cast by holders of multiple shares (Art. 692 CO), and may stipulate that voting rights are determined regardless of nominal value of the number of shares belonging to each shareholder so that each share confers one vote.</p> <p><i>Voting on election of directors</i></p> <p>By law, the shareholders' meeting has the power to elect the members of the board of directors (Art. 698(2)(2) CO).</p>

	<p><i>Voting on changes affecting the terms and conditions of securities</i></p> <p>Changes concerning the terms and conditions of securities require an amendment of the articles of association. The shareholders' meeting has the power to determine and amend the articles of association (Art. 698(2)(1) CO).</p> <p><i>Voting on other fundamental corporate changes</i></p> <p>A resolution by the general meeting requiring at least two thirds of the voting rights represented and an absolute majority of the nominal value of shares represented is required for fundamental corporate changes (Art. 704 CO).</p> <p><i>Notice of general shareholders' meetings</i></p> <p>The annual general meeting is convened by the directors within six months after the closing of each business year. Where necessary, the auditors, liquidators or representatives of bondholders can also convene a general meeting. By stating the purpose of the meeting in writing, shareholders representing at least one tenth of all shares may demand that a shareholders' meeting be convened. Notice of meetings must be given at least 20 days in advance unless notice is waived by all shareholders (Art. 698 to 701 CO).</p> <p><i>Disclosure of information material to a voting decision</i></p> <p>The notice convening the shareholders' meeting must include the agenda items and the motions of the Board of Directors and the shareholders who have requested that a general meeting be called or an item be placed on the agenda. No resolutions may be made on motions relating to agenda items that were not duly notified; exceptions to this are motions to convene an extraordinary general meeting or to carry out a special audit and to appoint an auditor at the request of a shareholder. No advance notice is required to propose motions on duly notified agenda items and to debate items without passing resolutions.</p> <p>No later than 20 days prior to the annual general meeting, the annual report and audit report must be made available for inspection by the shareholders at the seat of the company. Shareholders can request that a copy of these reports be sent to them without delay. Registered shareholders are notified of this in writing, bearer shareholders by publication in the Swiss Official Gazette of Commerce and in the form prescribed by the articles of association. The SSX website includes links to the corporate calendar and financial reports of each listed issuer.</p> <p>At the general meeting, any shareholder is entitled to information from the Board of Directors and from the external auditors on the affairs of the company. The information must be given to the extent required for the proper exercise of shareholders' rights. It may be refused where providing it would jeopardize the company's trade secrets or other interests warranting protection. The company ledgers and business correspondence may be inspected only with the express authorization of the annual general meeting or by resolution of the Board of Directors and only if measures are taken to safeguard trade secrets. Where information or inspection is refused without just cause, the court may order it on application.</p> <p><i>Use of proxies or voting instructions</i></p> <p>According to Art. 686 of the CO, the company keeps a share register of registered shares in which</p>
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	<p>the names and addresses of the owners and beneficial owners are recorded. In relation to the company the shareholder or beneficial owner is the person entered in the share register. The membership rights conferred by registered shares may be exercised by any person authorized to do so by entry in the share register. Unless otherwise provided in the articles of association, a registered shareholder may issue a written proxy to a third party. In the case of bearer shares, possession entails voting rights (Art. 689 and 689a CO). A “Dispoaktionär” cannot issue a proxy.</p> <p>Shareholder right for dividends</p> <p>By law the shareholders’ meeting has the power to approve the annual financial statements as well as the resolutions on the use of the net profit (Art. 698(2)(4) CO). Every shareholder is entitled to a pro rata share of the disposable profit to the extent that the distribution of such profit among the shareholders is provided for by law or the articles of association (Art. 660 CO).</p> <p>Accountability of the company, its directors and senior management</p> <p>The members of the board of directors, auditors, appointed directors and managers of the company are responsible for any damages caused intentionally or negligently by default of their duties both to the company and to the individual shareholders and creditors (Art. 754 CO). In addition to the company, the individual shareholders are also entitled to sue for any losses caused to the company.</p> <p>Shareholder rights in bankruptcy or insolvency</p> <p>If the bankruptcy administration waives the right in bankruptcy proceedings to institute claims for directors’ liability, both the shareholders and the creditors of the company have the right to request compensation of the damage from the company (Art. 757 CO). Any proceeds are first used to satisfy the claims of litigant creditors, after which any surplus is divided among the litigant shareholders in proportion to their equity participation in the company.</p> <p>Regulation of takeover offers</p> <p>Public takeover offers are governed by SESTA and the corresponding FINMA and TOB Ordinances. Takeover proceedings are monitored and administered by the TOB (see Regulatory Structure).</p> <p>The obligation to launch a takeover offer is triggered if a shareholder (the offeror) acquires, directly, indirectly, or acting in concert with third parties, equity securities of a listed company (the target company) and thereby exceeds the threshold of 33 1/3 percent of voting rights (Art. 32(1) SESTA). The regulation of takeover bids primarily aims to provide fair and transparent conditions in takeover proceedings for the benefit of shareholders.</p> <p>Companies may, prior to their equity securities being listed, state in their articles of association that an offeror will not be bound by the obligation to make a takeover offer (Art. 22 SESTA). In addition, a company may raise the threshold from 33 1/3 percent up to 49 percent in its articles of association (Art. 32(1) SESTA). This increase can be made at any time, subject to the agreement of the shareholders’ meeting to amend the articles of association. Finally, the TOB may grant exemptions from the obligation to make a takeover offer (Art. 32(2) SESTA).³⁹</p>
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³⁹ Examples of such situations include: where the transfer of voting rights occurs within a group organized pursuant to an agreement or otherwise; where the threshold is exceeded as a result of a decrease in the total number of voting rights of the company; where the threshold is exceeded only temporarily; where the securities have been acquired without consideration or on exercise of pre-emptive rights pursuant to a share capital increase; and where the securities have been acquired for reorganization purposes.

	<p>According to the latest TOB practice,⁴⁰ an opting out is legally effective only if (i) the shareholders are informed transparently of the introduction of an opting out and its consequences, and (ii) the majority of the represented votes and the majority of the minority shareholders approve the opting out at the general meeting. If both conditions are met, it is generally assumed that the opting out does not discriminate against minority shareholders.</p> <p>An opting out materially complies with these transparency requirements when the actual intention of the applicant that requested the introduction of the opting out and the intention of the controlling shareholder are disclosed. In addition, the general consequences of the introduction of an opting out and the actual impact on the company in question must be indicated. The requestor must provide sufficient information as to his motivation, the intended transaction and the resulting change of control. The Board of Directors is required to clarify the general and practical effects of the opting out for the company and to specify that an opting out can be invoked by any current and future shareholder in the context of a change of control. Such information and the consequences of the introduction of an opting out must be communicated to the shareholders together with the invitation to the general meeting.</p> <p>Information on whether a company has used the ability to opt out from takeover bids or apply a higher threshold (opt up) is available on the SSX website under market data for each listed company. In addition, SER provides a search functionality on its website, using which it is possible to verify whether a particular company has used the opting out or opting up possibility⁴¹.</p> <p><i>Prior announcement of a takeover offer</i></p> <p>According to Art. 5 of the Takeover Offer Ordinance (TOO), the offeror may announce an offer before the publication of the offer prospectus. This prior announcement must contain the following information:</p> <ul style="list-style-type: none"> a) The corporate name and registered office of the offeror; b) The corporate name and registered office of the target company; c) The equity securities and financial instruments that are the subject of the offer; d) The offer price; e) The time limits for the publication of the offer and the duration of the offer; and f) Any conditions attached to the offer. <p>The prior announcement must be published in at least one German and one French language newspaper and submitted to the TOB and to at least two of the principal electronic media that provide stock market information (information providers). Within six weeks of the prior announcement, the offeror must publish an offer prospectus that corresponds to the conditions of the prior announcement.</p> <p><i>Offer prospectus</i></p> <p>To be able to make an informed decision regarding the offer, shareholders must be supplied with an offer prospectus published by the offeror and a report by the Board of Directors of the target</p>
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⁴⁰ Decision 518/01 of October 11, 2012 in the case of Advanced Digital Broadcast Holdings SA.

⁴¹ See http://www.six-exchange-regulation.com/obligations/reporting/opting/search_en.html.

	<p>company. Both documents are subject to examination by the TOB (see below). The offer prospectus has to contain all relevant information about the offer, such as details about the object and the price of the offer and the conditions of the offer.</p> <p><i>Board of Directors' report and fairness opinion</i></p> <p>The Board of Directors of the target company is required to submit a report to the holders of the equity securities setting out its position on the offer (Art. 29(1) SESTA). The report, in particular, has to explain the effects of the offer on the target company and its shareholders. The report may recommend that the offer be accepted or rejected. It may, however, also enumerate the advantages and disadvantages of the offer without making a recommendation. The recommendation of the Board of Directors may be based on the assessment of a third party (fairness opinion). In this case, the fairness opinion forms an integral part of the report.</p> <p>The report of the Board of Directors must state whether any member of the Board of Directors or the management board has a conflict of interest. It must, in particular, state whether any member of the Board of Directors has entered into an agreement with, or has any other ties to, the offeror; was elected on the proposal of the offeror; is to be re-elected; is a company officer or employee of the offeror or of a company that has significant business relations with the offeror; or exercises his or her mandate according to the instructions of the offeror. The report must also indicate the consequences that the offer has for the individual members of the Board of Directors and management board, in particular in relation to the remuneration they will receive on continuing or terminating their relationship with the company. (Art. 32 TOO)</p> <p>If there are conflicts of interest and there are fewer than two independent members of the Board of Directors, a fairness opinion must be obtained in order to ensure the independence of the statement given in the report.</p> <p><i>Offer period and pricing</i></p> <p>Under Art. 9 of the TOO, the offer must extend to all categories of listed equity securities of the target company and the offeror must ensure that an appropriate relationship exists between the prices offered for the various equity securities and financial instruments.</p> <p>For listed companies, the publication of a takeover offer is followed by a so-called cooling-off period of 10 trading days, within which shareholders are not allowed to accept the offer. Once the cooling-off period has elapsed, the offer period of at least 20 and at most 40 trading days commences. During this time period, the shareholders may tender their shares into the offer. If the offer is successful, the offeror is obliged to grant an additional offer period of 10 trading days.</p> <p>If the offeror acquires equity securities of the target company in the period running from the publication of the offer until six months after the additional acceptance period at a price that exceeds the offer price, it must offer this price to all recipients of the offer (best price rule) (Art. 10 TOO).</p> <p><i>Review of the takeover offer by the TOB</i></p> <p>The TOB verifies that the offer complies with the requirements of takeover law. There are two different ways it examines a takeover offer and its conditions:</p> <p>a) Prior examination of the offer: The offeror can submit the draft of the pre-announcement and/or the offer prospectus to the TOB for examination before publication (Art. 59 TOO). In this case the TOB initiates proceedings and invites the target company to state its opinion. After hearing the parties, the TOB issues a decision regarding the compliance of the offer with</p>
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	<p>the legal requirements. The offer documents and the decision of the TOB are then published on the same day.</p> <p>b) Subsequent examination of the offer: If the pre-announcement or the offer prospectus is published without a prior examination, the examination takes place after the publication. If necessary, the offeror must amend the offer prospectus and publish it again (Art. 60 TOO). Before issuing and publishing a decision, the TOB initiates proceedings and invites the parties to state their opinions.</p> <p>In the examination process, the TOB is entitled to ask persons and companies subject to an obligation to notify their transactions pursuant to Art. 31 of SESTA, as well as persons and companies that may have the status of a party pursuant to Art. 33b(2)-(3) of SESTA,⁴² to provide all information and documents which the TOB requires to perform its duties. Furthermore, the offeror must, prior to publication, submit the offer to an independent reviewer (audit firm licensed by FINMA or a securities dealer; Art. 25 SESTA) that verifies that the offer is in conformity with the law and the implementing provisions and confirms compliance with the legal requirements. This confirmation must be published in the offer prospectus. The TOB may instruct the reviewer to carry out special examinations and to provide corresponding reports. If the reviewer has reason to believe that SESTA or ordinances or decisions issued by the TOB in connection with the offer have been infringed after the publication of the offer, it must immediately inform the TOB and submit a special report (Art. 29 TOO).</p> <p>The reviewer verifies compliance with the minimum price rule. It also ensures compliance with the best price rule from the date of publication of the offer until six months after the expiry of the supplementary acceptance period. The former requirement, introduced in its current format in the amendments made to SESTA that came into force on May 1, 2013 removed the ability to pay an up to 25 percent premium to shareholders selling their shares within twelve months before the launch of a takeover offer. The revised minimum price rule requires that the offered price must be at least be as high as the higher of the stock exchange price or the highest price that the offeror had paid for the equity securities of the target company in the previous twelve months (Art. 32)(4) SESTA; Art. 9(6) TOO).</p> <p><i>Right of appeal</i></p> <p>TOB's decisions can be appealed with FINMA within a period of five trading days after the notification of the TOB's decision (Art. 33c(1) SESTA). An appeal against the corresponding decision of FINMA may be lodged within 10 days after the notification of the decision with the Federal Administrative Court (Art. 33d(1)-(2) SESTA). According to takeover law, not only the offeror and the target company are parties in a takeover procedure. Shareholders providing evidence of holding at least 3 percent of the voting rights in the offeree company, whether exercisable or not, qualify as parties, if they claim such status from the TOB (qualified shareholders).</p> <p>Regulation of other change of control transactions</p> <p>Non-public change of control transactions are governed by the MerA, which also applies to listed</p>
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⁴² The offeror, persons who act in concert with the offeror, the target company, and shareholders holding at least three percent of the voting rights of the target company, whether exercisable or not, if they claim the status of a party from the TOB.

	<p>companies in addition to the requirements relating to takeover offers. The approval of the shareholders' meetings of the involved companies is required for a transaction agreement on a merger, demerger or transformation of companies. The invitation to the relevant shareholders' meeting must be sent at the latest 20 days before the meeting, and the deadline for making the transaction agreement, transaction reports, audit reports and the relevant financial information available to all shareholders is 30 days before the shareholders' meeting.</p> <p>In case of a merger of a non-listed public company with the option of compensation in cash, assets and/or shares, the time within which the proposal has to be considered is not provided for in the law but has to be fixed in the merger agreement. As a general rule, shareholders of the transferring company are entitled to receive participation and membership rights in the acquiring company in proportion to their existing shareholdings (principle of continuity of membership, Art. 7(1) MerA). This right may only be excluded and replaced by cash compensation, if 90 percent of the shareholders agree (Art. 18(5) MerA).</p> <p>Disclosure of changes in substantial holdings</p> <p><i>Listing prospectuses and annual reports</i></p> <p>To the extent that the issuer is aware of them, information about significant shareholders and significant groups of shareholders and their shareholding has to be included in the listing prospectus (see e.g., Section 2.5.9 of the SER Scheme A – Equity Securities). For issuers domiciled in Switzerland, the prospectus schemes specifically refer to the fact that the information must be provided in accordance with Art. 20 of SESTA and the corresponding provisions of SESTO-FINMA (see below).</p> <p>Art. 663c of the CO provides that listed companies must disclose the significant shareholders and their shareholdings in the notes to the balance sheet, where these are known or ought to be known. Significant shareholders are defined as shareholders and groups of shareholders linked through voting rights that own more than 5 percent of all voting rights. Where the articles of association provide for a lower threshold at which the company may refuse an acquirer as a shareholder of registered shares (see above), that threshold applies for the purposes of the duty of disclosure.</p> <p><i>Ongoing disclosure obligations</i></p> <p>According to Art. 20 of SESTA, whoever directly, indirectly or acting in concert with third parties acquires or sells for their own account securities or purchase or sale rights relating to securities in a company domiciled in Switzerland whose equity securities are listed in Switzerland, or a company not domiciled in Switzerland whose equity securities are mainly listed in Switzerland, and thereby attains, falls below or exceeds the threshold percentages of 3, 5, 10, 15, 20, 25, 33 1/3, 50, or 66 2/3 of voting rights, whether or not such rights may be exercised, must notify the company and the stock exchanges on which the equity securities in question are listed. Such notifications are published on the SSX website.</p> <p>According to Art. 21(4) of SESTO-FINMA, any change in the information subject to the obligation to notify must be communicated to the competent Disclosure Office and to the company within four trading days of the obligation to notify having been created. Additionally, the issuer has to publish an ad hoc notice if the change is price sensitive (Art. 53 Listing Rules).</p> <p>According to Art. 20(3) of SESTA and Art. 10(3) of SESTO-FINMA, a group organized pursuant to an agreement or otherwise must comply with the obligation to notify as a group and disclose:</p> <p>a) Its total holdings;</p>
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- b) The identity of its individual members;
- c) The nature of the agreement; and
- d) The identity of their representative.

Art. 10 of SESTO-FINMA further provides that those who coordinate their conduct with third parties by contract or by any other organized methods with a view to the acquisition or sale of equity securities or the exercise of voting rights are held to be acting in concert or as an organized group. Such coordination of conduct exists, inter alia, in the event of:

- a) Legal relationships for the acquisition or sale of equity securities;
- b) Legal relationships regarding the exercise of voting rights (shareholders' voting agreement); or
- c) The constitution by individuals and/or legal entities of a group of companies or another type of firm controlled through possession of the majority of voting rights or capital or in any other way.

Acquisitions and sales among associates who have notified their total holdings are exempt from the obligation to notify. However, the obligation to notify applies in the case of changes in the composition of those involved and in the nature of the agreement or the group.

The SER Disclosure Office monitors compliance with the shareholders' obligation to notify. Since a violation is a criminal offence, it forwards all suspected violations to FINMA.

Holdings of voting securities by directors and senior management

Art. 56 of the SER Listing Rules provides that an issuer whose equity securities have their primary listing on the SSX must ensure that the members of its board of directors and executive committee report transactions in the issuer's equity securities, or in related financial instruments, to the issuer no later than the second trading day after the reportable transaction has been concluded. Transactions undertaken on a stock exchange must be reported to the issuer no later than the second trading day after they have been executed. Transactions on whose execution the person subject to the reporting obligation is unable to influence are not subject to the reporting obligation. The SER Directive on Disclosure of Management Transactions emphasizes that transactions executed within the framework of an asset management agreement are subject to the reporting obligation.

SER has issued a Directive on Disclosure of Management Transactions, which requires the issuer to take action if a person subject to the reporting obligation fails to fulfill his/her reporting obligations. In case SER identifies breaches of the disclosure requirement, it can take action against the issuer under Art. 60 of the Listing Rules for failing to ensure compliance with the management disclosure obligations.

Over the past three years, SER has undertaken several investigations on compliance with the obligation to disclose management transactions and has also issued several Warning Letters. Agreements were reached or sanctions given in two cases in 2012 and in one case each in 2011 and 2010.

Listings by foreign issuers

There is no specific provision in the SER Listing Rules or the prospectus schemes requiring disclosure of any governance provisions or information relating to the foreign issuer's jurisdiction

	that may materially affect the fair and equitable treatment of shareholders. However, according to SER such information would have to be included in the listing prospectus based on Art. 27 of the Listing Rules that requires the issuer to provide sufficient information for competent investors to reach an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer, as well as of the rights attached to the securities. Specific mention must be made of special risks.
Assessment	Broadly Implemented
Comments	<p>There is a need to strengthen the regulatory framework with regards to the disclosure of holdings by directors and senior managers of listed companies to ensure the ability to effectively enforce this requirement vis-à-vis the persons themselves (rather than only indirectly through the listed companies). Key Question 5.(c) of the Assessment Methodology requires the existence of a legal infrastructure sufficient to ensure enforcement and compliance. Despite the fact that SER has managed to take enforcement action against the companies due to their directors' breach of the disclosure requirements, elevating these requirements to the legislative level would enable direct enforcement by the relevant public authorities.</p> <p>The regulatory gaps relating to unlisted companies have been taken into account in Principle 16.</p>
Principle 18.	Accounting standards used by issuers to prepare financial statements should be of a high and internationally acceptable quality.
Description	<p>Scope of the audit requirement in Switzerland</p> <p>Art. 727 of the CO requires that the following companies have their annual accounts and, if applicable, their consolidated accounts audited:</p> <ol style="list-style-type: none"> a) Publicly traded companies, which are companies that: <ol style="list-style-type: none"> 1. Have shares listed on a stock exchange; 2. Have outstanding bonds; or 3. Contribute at least 20 percent of the assets or of the turnover of the consolidated accounts of a company referred to in 1. or 2. <p>Companies that exceed two of the following thresholds in two successive financial years:</p> <ol style="list-style-type: none"> 1. A balance sheet total of CHF 20 million; 2. Sales revenue of CHF 40 million; and 3. 250 full-time positions on annual average. <p>Companies that are required to prepare consolidated accounts.</p> <p>As a result of the above, the financial statements included in public offer prospectuses and annual reports of companies whose shares are not listed do not need to be audited (unless the issuer fulfills the criteria in b) and c) above), whereas public offering of bonds requires both the inclusion of audited financial statements in the prospectus and the audit of the annual accounts. However, as described in Principle 16, the CO requires even a company that does not have an auditor to arrange for an audit report to be prepared and provide information on the result of the audit in the prospectus. After the public offer, there does not appear to be any legal obligation to have the annual accounts of issuers of unlisted shares audited on a yearly basis, as for the annual accounts of listed companies.</p> <p>Accounting standards applied in Switzerland</p> <p>As a result of the limited regulation of non-listed issuers in Switzerland, the discussion below focuses on accounting standards applied to issuers whose securities are listed on the SSX (and SIX Structured Products Exchange).</p> <p>Art. 6-8 of the SER DFR stipulate the accounting standards permitted for issuers whose securities</p>

are listed on the various Segments of the SSX.

Issuers domiciled in Switzerland

	IFRS	US GAAP	Swiss GAAP FER
<i>Issuers of equity securities</i>			
Main Standard	X	X	
Standard for Investment Companies	X	X	
Standard for Real Estate Companies	X		X
Domestic Standard ⁴³	X	X	X
<i>Issuers of debt securities⁴⁴ only</i>	X	X	X

All of the three above accounting standards require that the financial statements include:

- a) A balance sheet;
- b) A statement of the results of operations;
- c) A cash flow statement; and
- d) A statement of changes in ownership equity.

Issuers not domiciled in Switzerland

Issuers that are not incorporated in Switzerland may also apply the accounting standards of their home country (Home Country Standard), provided that these standards are recognized by the Regulatory Board. The accounting standards currently accepted by the Regulatory Board under the Home Country Standard are EU IFRS and Japanese GAAP.

Issuers of debt securities only that are not incorporated in Switzerland may also use other accounting standards, provided the following conditions are fulfilled:

- a) The issuer's debt securities may, subject to the application of the corresponding accounting standards, be admitted to trading on a regulated market in a member state of the EU or EEA irrespective of the denominations of the issue. The issuer must provide evidence of this; or
- b) The accounting standard that is applied is permitted on the market recognized by the Regulatory Board in the home country of the issuer or guarantor (Art. 3(1) DFR) and the differences between the applied accounting standard and IFRS or US GAAP are explained in detail in text form in the listing prospectus and in the annual reports, or in a supplement to these documents. The existence of any supplement must be stated prominently in the listing prospectus.

Currently approximately 29 percent of the listed issuers report under Swiss GAAP FER. The market capitalization of these issuers represents less than 5 percent of the total SSX market capitalization as

⁴³ Banks and securities dealers that are incorporated in Switzerland whose shares are listed on the Domestic Standard or that have listed only fixed income securities may apply the specific accounting standard applicable to banks, as stipulated in the BA.

⁴⁴ Debt securities here includes bonds, derivatives and Exchange Traded Products.

of December 31, 2012.

Swiss GAAP FER was conceptually developed for small and medium-sized entities. As such it is principles based and provides more accounting options than e.g. the IFRS. It may be applied in a way that minimizes differences to IFRS; however, the specific application depends on the choice by the issuer to use these accounting options. In the view of FINMA, the lack of a requirement for segment reporting, the lack of specific rules for financial instruments and hedge accounting, and the permitted netting of goodwill against equity are the major differences compared to the IFRS.

Standard setting and interpretation

IFRS and US GAAP

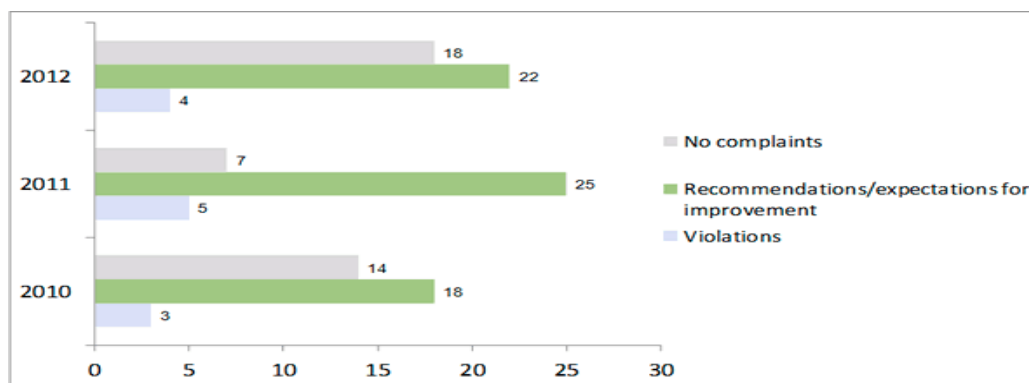
IFRS and US GAAP are applied as issued by the respective standard setters, including the interpretations issued by them. As a result, there is no official Swiss process for interpreting IFRS and US GAAP. SER has established a Specialist Pool for IFRS Issues, from which experts can be drawn to discuss the application of IFRS in professional practice.

Swiss GAAP FER

Swiss GAAP FER are issued by the Swiss GAAP FER Foundation. The Board of the Foundation appoints voting members to a Commission, which represents the various stakeholders in the standard setting process. The Executive Board of this Commission is responsible for the development of the accounting and reporting standards. The establishment of Swiss GAAP FER is not subject to oversight by the regulator or another body that acts in the public interest.

Supervision and enforcement of compliance with the accounting standards

As described in Principle 16, SER is responsible for supervising and enforcing compliance with the accounting standards. In addition to the information on sanctions provided in Principle 16, the following chart provides more detailed information on the SER's supervisory and enforcement activities in the area of financial reporting during the last three years.



SER also summarizes and publishes the new determinations that arise from its Comment Letters to individual issuers in an annually revised IFRS Circular.⁴⁵

Issuers using US GAAP and Swiss GAAP FER are subject to similar monitoring and enforcement by

⁴⁵ See http://www.six-exchange-regulation.com/admission_manual/07_03-CIR2/en/index.html).

	SER.
Assessment	Broadly Implemented
Comments	<p>An issuer of unlisted equity securities that have been offered to the public is not subject to an audit requirement in Switzerland, unless it fulfills the size related criteria in the CO or has to prepare consolidated accounts. Since no data is available on public offers of unlisted equity securities, it is not possible to assess the practical significance of this gap.</p> <p>The possibility to use Swiss GAAP FER is limited to companies whose shares are listed on the SSX Domestic Standard or Standard for Real Estate companies or that have listed only debt securities. The Swiss GAAP FER are established by an independent foundation, the standard setting of which is not subject to cooperation with or oversight by any public authority. To ensure that the authorities will be appropriately involved in the future shaping of Swiss GAAP FER and decisions on whether their continued use is appropriate, the authorities should consider whether the establishment of Swiss GAAP FER should be subject to cooperation with or oversight by the public sector.</p>
Principles for Auditors, Credit Ratings Agencies, and Other Information Service Providers	
Principle 19.	Auditors should be subject to adequate levels of oversight.
Description	<p>Overview of the regulatory framework</p> <p>The AOA regulates licensing and oversight of individuals and firms providing statutory audit services. It aims at assuring the proper performance and quality of audit services (Art. 1 AOA). The licensing and oversight under the AOA is the responsibility of the FAOA established under Art. 28 of the AOA (see below).</p> <p>The following Acts, Ordinances and Circulars are currently relevant for audit oversight in Switzerland:</p> <ul style="list-style-type: none"> a) AOA; b) Federal Ordinance on the Licensing and Oversight of Auditors (Auditor Oversight Ordinance, AOO); c) Ordinance of the Federal Audit Oversight Authority on the Oversight of Audit Firms (Oversight Ordinance FAOA, OO-FAOA); d) Ordinance of the Federal Audit Oversight Authority on Electronic Access to Not Publicly Accessible Data (Data Ordinance FAOA); e) FAOA Circular 1/2007 on Required Licensing Information and Documents; f) FAOA Circular 1/2008 on Approval of Auditing Standards; g) FAOA Circular 1/2009 on the Comprehensive Audit Report to the Board of Directors; and h) FAOA Circular 1/2010 on the Reporting to the Audit Oversight Authority by Audit Firms under State Oversight. <p>Auditor qualification requirements</p> <p>In order to provide statutory audit services to public companies in Switzerland, audit firms need a license provided by the FAOA (Art. 4-7 and 15 AOA). Such audit firms have to guarantee compliance with statutory provisions and be sufficiently insured against liability risks (Art. 7 and 9 AOA). Further, the auditor in charge needs to have a license as an audit expert (Art. 4 AOA). An individual will be licensed as an audit expert if he/she satisfies the requirements relating to education and</p>

	<p>professional experience and is of good repute. Continuous education is required through the general obligation imposed on audit firms in Art. 12 of the AOA⁴⁶, the Swiss Auditing Standards (SAS) (Quality Standard 1 and SAS 220), the International Standards on Auditing (ISA) (International Standard on Quality Control (ISQC) 1 and ISA 220) and directives of continuing education issued by the professional associations. The FAOA verifies during its inspections that the individual auditors comply with these requirements.</p> <p>The FAOA runs a public, internet-based register containing all licensed individuals and audit firms. Individuals are licensed for an unlimited period, whereas audit firms are licensed for a period of five years.</p> <p>FAOA</p> <p>In addition to licensing all audit firms, the FAOA oversees all audit firms undertaking statutory audits of public companies or having opted for a voluntary state oversight (Art. 7 AOA). The FAOA is also competent for administrative assistance in international matters of audit oversight. The FAOA is entitled to conduct inspections, give legally binding instructions to restore an orderly situation as well as impose administrative and criminal sanctions.</p> <p>As an institution under public law, the FAOA is a legal entity with a separate legal personality. It performs its oversight function independently, is independent in its organization and management and keeps its own accounts (Art. 28 AOA). The budget of the FAOA is not subject to approval by the Swiss Government. The CEO submits a draft budget to the FAOA Board which approves the budget and the annual accounts (Art. 30(3)(e) AOA).</p> <p>The FAOA is exclusively funded by fees and charges levied on registered individuals and audit firms (Art. 21(1)-(2) AOA). In order to finance the oversight costs not covered by its fees, the FAOA imposes annual oversight charges on audit firms under state oversight on the basis of costs incurred in the accounting year that take into consideration the economic significance of the audit firm (Art. 21(2) AOA). The Federal Council determines the details, in particular the fee schedules, the assessment of the oversight dues and their allocation on audit firms under state oversight.</p> <p>Cooperation with other domestic and foreign authorities</p> <p>Art. 23 of the AOA requires that the stock exchanges and the FAOA coordinate their oversight activities to avoid any duplication. They must inform each other about pending proceedings and decisions that may be important with regard to their respective oversight activities. For example, in 2012 the FAOA received three notifications from SER that led to preliminary fact finding to assess the role of the auditor. The focus of the FAOA fact finding in these types of cases is on compliance with legal and professional audit requirements rather than on an assessment of compliance with accounting standards. If the FAOA finds possible material breaches of accounting standards, it notifies SER or the BX Berne eXchange; in 2012 one such notification was made to the latter.</p> <p>The FAOA and the criminal prosecution authorities must also provide each other with all the information and documents they require to enforce the AOA. The criminal prosecution authority may only use information and documents received from the FAOA within the context of the criminal proceedings for which the FAOA had granted legal assistance. It may not pass information and documents on to third parties. If criminal offences come to the attention of the FAOA during the</p>
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⁴⁶ Art. 12 of the AOA requires an audit firm under state oversight to ensure that a suitable organizational structure is in place and issue written instructions on, among other issues, the following: "the appointment, training and development... of employees."

	<p>performance of its official duties, it has to inform the competent criminal prosecution authorities. In turn, the criminal prosecution authorities are required to notify the FAOA of all proceedings that are connected with an audit service provided by an audit firm under state oversight; they must inform the FAOA on judgments and orders to dismiss cases.</p> <p>The cantonal civil courts and the Federal Supreme Court are required to notify the FAOA of all proceedings relating to auditors' liability (Art. 755 CO) that are connected with an audit service provided by an audit firm under state oversight. They must supply the FAOA with the judgments and other decisions that conclude such proceedings.</p> <p>In order to enforce the AOA, the FAOA may ask foreign audit oversight authorities for information and documents. It may transfer to foreign audit oversight authorities information and documents that are not publicly accessible, subject to similar requirements and constraints that apply to FINMA under Art. 42 of FINMASA. The foreign authorities must:</p> <ol style="list-style-type: none"> a) Only use the information supplied for the direct oversight of individuals and firms providing audit services; b) Be bound by official or professional secrecy; and c) Pass on the information to authorities and bodies that perform oversight tasks in the public interest and are bound by official and professional secrecy only if this is done on the basis of an authorization conferred by a treaty or with the FAOA's prior consent. <p>Reviews of audit firms</p> <p>The FAOA currently oversees 21 audit firms that are subject to state oversight. Art. 16(1) of the AOA requires the FAOA to subject audit firms under state oversight to a thorough inspection at least every three years. The audit firms to be inspected are selected on the basis of internationally accepted risk factors and other criteria such as the market capitalization of the public companies being audited. Due to the strong market position of the biggest three audit firms in Switzerland and the market capitalization of the listed entities audited by them, they are inspected on an annual basis.⁴⁷</p> <p>As a general rule, a risk-based approach is used in testing whether applicable regulations and standards have been complied with. Alongside routine inspections or special inspections prompted by suspected irregularities, general preventative measures are also part of the FAOA oversight concept (e.g., publications, presentations and seminars on key issues and inspection results).</p> <p>An inspection of an audit firm under state oversight includes both formal and substantive aspects. The firm review encompasses checks as to whether the licensing requirements have been met and whether there is a suitable and functional internal quality assurance system. The file review involves the inspection of audit working papers for public company engagements to determine whether quality assurance requirements and applicable professional standards have been met.</p> <p><i>Firm review</i></p>
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⁴⁷ See margin number 8 of Circular 1/2010, according to which audit firms auditing more than 50 listed companies are inspected on an annual basis.

	<p>In connection with the inspection of an audit firm's internal processes (firm review), the following are the main areas covered:</p> <ul style="list-style-type: none"> a) Inspection of the internal quality control system (in particular ISQC 1); b) Tests of processes relating to independence; and c) Examination of the licensing documents. <p>The audit firm's internal monitoring system required by professional standards is regularly reviewed. During the firm review, the FAOA obtains an understanding of the audit firm's quality control processes and tests the effectiveness of the controls. In particular, it tests the audit firm's processes on independence.</p> <p><i>File review</i></p> <p>As a second step, the working papers for the audit of the financial statements of selected public companies are reviewed in order to determine whether the processes and measures forming the quality assurance system have actually been put into practice (file review). The review of working papers assesses whether the audit assignment has been performed properly (Art. 12 OO-FAOA). To this end, the FAOA adopts a risk-based selection of the audit areas to be reviewed, as monitoring activities of the FAOA are carried out only on a sample basis (see Art. 16(2)(c) AOA). The selection is based primarily on a risk analysis of the public companies audited, but also considers other criteria such as coverage of offices and lead audit partners.</p> <p>Important ISQC1 elements, including the independence requirements, are also part of the file review. This is intended to ensure a bilateral approach for testing the effectiveness of the audit firm's quality control system. The effectiveness of the independence processes at firm level will further be tested at the specific engagement levels.</p> <p>With regard to access to the audit working papers, audit firms under state oversight, their employees, the persons they engage for audit services, and the companies being audited must provide the FAOA with all the information and documents it needs to carry out its work (Art. 13(1) AOA). Audit firms under state oversight must further grant the FAOA access to their business premises at all times (Art. 13(2) AOA).</p> <p>Enforcement</p> <p>The reporting procedure is outlined in the OO-FAOA. Once fieldwork is completed, the FAOA issues comment forms for each significant finding. The audit firm has the opportunity to comment on the facts and the assessment. After that, the FAOA includes the finding into its draft inspection report. The audit firm has 30 days to comment on the draft inspection report and in particular propose a set of different remedial actions to rectify the identified shortcomings. The FAOA reviews the comments and the proposed remedial actions. Where necessary, it amends, completes or proposes further remedial actions. They must be appropriate and sufficient to ensure corrective measures. This can include audit firm and engagement related measures and can also have a financial impact on the remuneration of responsible persons.</p> <p>Once there has been an agreement on the remedial actions, the FAOA issues the final inspection report. Should no agreement be reached, the FAOA opens a formal investigation and issues a formal decision. Remedial actions have to be implemented during a maximum period of twelve months. The implementation of the remedial actions is monitored by the FAOA.</p> <p>If the remedial actions have not been implemented within the time or extension provided for in the inspection report, the FAOA opens again a formal investigation (Art. 16(4) AOA). Depending on the severity of the infringement, the FAOA may open a disciplinary/administrative or a criminal proceeding. The following sanctions are at the FAOA's disposal:</p>
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	<p>a) Disciplinary/administrative sanctions:</p> <ol style="list-style-type: none"> 1. Instructions to restore an orderly situation (Art. 16(4) AOA); 2. Withdrawal of license for a fixed or undetermined period of time (Art. 17 AOA); and 3. Reprimand/ban/withdrawal of license of the individuals employed by an audit firm under state oversight (Art. 18 AOA). <p>b) Criminal sanctions</p> <ol style="list-style-type: none"> 1. Minor offences: fine of up to CHF 100,000 (Art. 39 AOA); and 2. Offences: imprisonment of up to three years or fine of up to CHF 1,080,000 (Art. 40 AOA). <p>Since the inspection activities of the FAOA began in 2008, it has conducted 21 proceedings as follows:</p> <p>a) Six proceedings against audit firms</p> <ol style="list-style-type: none"> 1. Three breaches of independence requirements; 2. Two cases of non-implementation/delay in implementation of the measures agreed with the FAOA after its first inspection; and 3. One breach of the statutory reporting obligation. <p>b) 15 proceedings against individuals</p> <ol style="list-style-type: none"> 1. Nine breaches of independence requirements; and <p>Six cases of failure to exercise proper duty of care.</p> <p>As a result, 23 license withdrawals were imposed and six reprimands were issued.</p>
Assessment	Fully Implemented
Comments	
Principle 20.	Auditors should be independent of the issuing entity that they audit.
Description	<p>Regulatory requirements on independence</p> <p>The Swiss law contains provisions on the independence of auditors (Art. 728 CO and Art. 11 AOA). Depending on circumstances, additional professional rules and standards may apply. The International Federation of Accountants (IFAC) Code of Ethics is applicable to all listed companies presenting their financial statements in accordance with the IFRS and being audited in accordance with the ISA (the majority of listed companies in Switzerland). For smaller listed companies (Domestic Segment) Swiss independence rules included in the Swiss Accountancy Academy's Guidelines on Independence are applicable.</p> <p>Art. 728 CO requires the auditor to be independent and form its audit opinion objectively. His/her true or apparent independence must not be adversely affected. The following in particular are not compatible with independence:</p> <ol style="list-style-type: none"> a) Membership of the board of directors or any other decision-making function in the company or any employment relationship with it; b) A direct or significant indirect participation in the share capital or a substantial claim against or debt due to the company; c) A close relationship between the person managing the audit (lead auditor) and a member of the board of directors, another person in a decision-making function, or a major shareholder; d) The involvement in the accounting or the provision of any other services which give rise to a

	<p>risk that the auditor will have to review his/her own work;</p> <p>e) The assumption of a duty that leads to economic dependence;</p> <p>f) The conclusion of a contract on non-market conditions or of a contract that establishes an interest on the part of the auditor in the result of the audit; and</p> <p>g) The acceptance of valuable gifts or special privileges.</p> <p>The provisions on independence apply to all persons involved in the audit. If the auditor is a partnership or a legal entity, the provisions on independence also apply to the members of the supreme management or administrative body and to other persons with a decision-making function. The auditor's employees that are not involved in the audit may not be members of the board of directors or exercise any other decision-making function in the company being audited. The provisions on independence also apply to companies that are under the same management as the company being audited or the audit firm.</p> <p>In addition to the general statutory provisions on independence of auditors included in Art. 728 of the CO, audit firms under state oversight must observe the following principles when providing audit services to public companies (Art. 11 AOA):</p> <p>a) The annual fees arising from audit and other services provided to one or more companies under common management (a group of companies) do not exceed 10 percent of the audit firm's total fees;</p> <p>b) If persons who held a decision-making or senior accounting position at a company transfer to an audit firm and take up a senior position there, this audit firm may not provide any audit services to the company concerned for two years from the time of the transfer; and</p> <p>c) If persons who have been involved in a company's accounting department transfer to an audit firm, they may not be the lead auditors for the company concerned for two years from the time of transfer.</p> <p>Further, a public company may not employ any person who has been its lead auditor or has held a decision-making position at the audit firm concerned over the two preceding years (Art. 11(2) AOA).</p> <p>Subject to the legal requirements mentioned above, national and international independence guidelines permit the provision of certain additional services to an audited company. Depending on the nature of the services, however, threats must be assessed and necessary safeguards are to be taken. The provision of additional services can impair auditor independence, at least in appearance. For audit firms under state oversight, the FAOA evaluates regularly whether this is the case. Audit firms under state oversight have to notify the FAOA about all audit engagements, if, according to the annual report of the public company audited, the relationship between the audit fee and other fees exceeds a factor of 1 to 3 in two consecutive financial years, indicating what steps have been taken to safeguard against a possible impairment of the firm's independence (FAOA Circular 1/2010, margin number 22(b)). In its current discussions, the FAOA plans to reconsider and possibly lower the ratio to 1 to 1. The FAOA plans its company and file review inspection procedures such that it can identify possible infringements of independence requirements through the provision of additional services. The nature and extent of non-audit services rendered to audited companies also impacts the selection of files for review.</p> <p>Requirements for monitoring, identifying and addressing threats to independence</p> <p><i>Audit committee</i></p> <p>The appointment of the external auditor is the responsibility of the general shareholders' meeting (Art. 730 CO). The board of directors is generally in charge of the selection, and proposes an auditor to the shareholders' meeting. Neither the CO nor SESTA requires a public company to have an audit</p>
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committee. The Swiss Code of Best Practice for Corporate Governance of the Swiss Business Federation (economiesuisse) contains a (non-binding) recommendation for the establishment of an audit committee. According to the recommendation, an audit committee should consist of non-executive, preferably independent members of the board of directors. A majority of members, including the chairman, should be financially literate (recommendation 23). The audit committee should form an independent judgment of the quality of the external auditors, the internal control system and the annual financial statements (recommendation 24). More specifically, the audit committee should:

- a) Form an impression of the effectiveness of the external audit (the statutory auditors or, if applicable, the group auditors), the internal audit and their mutual cooperation;
- b) Assess the quality of the internal control system, including risk management, and have an appreciation of the state of the company's compliance with relevant norms;
- c) Review the individual and consolidated financial statements and the interim statements intended for publication and discuss these with the Chief Financial Officer and the head of internal audit and, should the occasion warrant, separately with the head of external audit;
- d) Decide whether the individual and consolidated financial statements be recommended to the board of directors for presentation to the general shareholders' meeting; and
- e) Assess the performance and fees charged by the external auditors, ascertain their independence and examine compatibility of their auditing responsibilities with any consulting mandates.

The SER Directive on Information Relating to Corporate Governance encourages issuers to publish information on the management and control mechanisms that are in place at the highest corporate level of the issuer (corporate governance). The commentary to this Directive provides additional details on how the publication could take place. As such, the Directive does not include a requirement for an Audit Committee. Instead, it only requires the Annual Report to include information on the members, tasks and areas of responsibility of each committee of the board of directors (including an audit committee, if any), the working methods of the board of directors and its committees, and instruments available to assist the members of the board of directors in obtaining information on the activities of external auditors. To be indicated in particular are the means by which the audit firm reports to the board of directors, as well as the number of meetings the board or audit committee has held with the external auditors (Annex, paragraphs 3.4.2, 3.4.3 and 8.4). For all information prescribed in the Annex, the principle of "comply or explain" applies. If the issuer opts not to disclose certain information, the annual report must contain an individual, substantiated justification for each instance of such non-disclosure (Art. 7).

Internal systems and governance standards

In order to be licensed as an audit firm under state oversight, the management structure of the audit firm must guarantee that individual engagements will be sufficiently supervised (Art. 6(1)(d) AOA), meaning that the firm needs to prove that it has an adequate and effective internal quality assurance system (Art. 9(1) AOO). It must ensure that a suitable organizational structure is in place and issue written instructions on the following in particular (Art. 12 AOA):

- a) The appointment, training and development, assessment, signatory powers and required conduct of employees;
- b) The acceptance of new and continuation of existing assignments for audit services; and
- c) The ongoing control of measures to ensure independence and quality.

	<p>With regard to quality standards, audit firms following the ISA have to comply with the ISQC1 quality control standard (Art. 5 OO-FAOA) and the IFAC Code of Ethics. This applies to the audit of companies listed in Switzerland that apply the IFRS. Audit firms following the SAS have to comply with the Swiss Quality Standard 1. The quality standards have precise instructions on the set-up and functioning of the internal quality control systems for audit firms, including on independence procedures. The FAOA reviews these processes in the course of its inspections.</p> <p>With regard to rotation, an audit firm is appointed for a period of 1-3 financial years. Its term of office ends on the adoption of the annual accounts for the final year. Re-appointment is possible. In the case of an ordinary audit, the person who manages the audit may exercise the mandate for seven years at the most. He/she may only accept the same mandate again after an interruption of three years (Art. 730a CO).</p> <p><i>Disclosure of the resignation, removal or replacement of an auditor</i></p> <p>Audit firms under state oversight must inform the FAOA immediately in writing of any circumstances that are relevant to the oversight. The following must in particular be reported (Art. 14(2) AOA):</p> <ul style="list-style-type: none"> a) Changes to the composition of their highest supervisory or governing body and their executive body; b) Changes in the lead auditor, indicating the reasons; and c) The premature termination of, or decision, not to renew an audit assignment, indicating the reasons. <p>In the event of the auditor's premature resignation, notes to the company's annual accounts must include the reasons (Art. 959c(2) and 959c(14) CO). Further, the SER Corporate Governance Directive requires the following information to be disclosed in the annual report (Annex, paragraph 8.1):</p> <ul style="list-style-type: none"> a) Duration of the mandate and term of office of the lead auditor; b) Date of assumption of the existing audit mandate; and c) Date on which the lead auditor responsible for the existing auditing mandate took up office. <p>Finally, a change in the external auditors may need to be disclosed as a potentially price sensitive fact through an ad hoc notice, if it is capable of affecting the average market participant in his investment decision (Art. 3 SER Directive on Ad Hoc Publicity and note 58 to SER Commentary on the Directive on Ad hoc Publicity).</p> <p>Enforcement</p> <p>Breaches of independence requirements can, according to circumstances, be considered to be a breach of the individual's licensing requirement of being in good repute. Breaches of these requirements are also relevant in assessing whether the audit firm's internal quality assurance system is appropriate and effective.</p> <p>For information on the measures taken by the FAOA to enforce the independence requirements, see Principle 19.</p>
Assessment	Broadly Implemented
Comments	<p>The Swiss regulatory framework does not require the setting up of an audit committee or similar governance body to oversee the selection and appointment process of the external auditor. The Swiss approach is to recommend in a SER Directive that listed companies set up an audit committee consisting of non-executive, preferably independent members of the board of directors, subject to certain comply and explain requirements. The authorities are recommended to ensure that this</p>

	<p>approach is in practice sufficient to ensure compliance with Key Question 6.(b) of the IOSCO Assessment Methodology.</p> <p>The Swiss regulatory framework requires prompt disclosure on the resignation, removal and replacement of an auditor of a listed company only if such information is considered to be potentially price sensitive. Full information is available only in the annual report. This is contrary to the requirement of the Assessment Methodology (Key Question 6.(d)) for prompt disclosure in all cases of resignation, removal, or replacement of an external auditor.</p> <p>The remaining gaps should be closed to reach full compliance with this Principle, taking into account the fact that this Principle applies also to unlisted companies that have made a public offer.</p>
Principle 21.	Audit standards should be of a high and internationally acceptable quality.
Description	<p>Audit standards used in Switzerland</p> <p>The audit firms of companies that use IFRS in preparing their financial statements must comply with the ISA issued by the International Auditing and Assurance Standards Board (IAASB). The audit firms of companies that use US GAAP must follow the US Generally Accepted Auditing Standards (US GAAS) of the American Institute of Certified Public Accountants (AICPA) or, if applicable, the auditing standards of the Public Company Accounting Oversight Board (PCAOB).</p> <p>Art. 28 of the AOO stipulates that the FAOA determines the auditing standards that audit firms under state oversight must adhere to when auditing public companies. In so doing, the FAOA refers to nationally and internationally accepted standards. If there are no standards or if any standards are inadequate, the FAOA can issue its own standards or add to or partially annul existing standards. In order to implement this provision, the FAOA enacted in April 2008 the OO-FAOA and Circular 1/2008 concerning the recognition of auditing standards. The FAOA approved ISA as well as the existing SAS. US GAAS and PCAOB standards are recognized as equivalent to the ISA by the FAOA (Art. 5 Circular 1/2008).</p> <p>The SAS applicable until December 15, 2013 are based on the ISA as of June 30, 2003. In December 2012, all clarified ISAs were incorporated into the SAS. The revised SAS will be applicable for audits of financial statements ending on or after 15 December 2013. Because the SAS also cover specific Swiss issues (for example, confirmation of the existence of a system of internal control, SAS 890), the SAS have to be followed also when the ISA or US GAAS are applied.</p> <p>As a member of the IFAC, the Swiss Accountancy Academy is responsible for the establishment and timely updating of the SAS. Because the FAOA can amend or derogate from those standards, the Swiss Accountancy Academy works together with the FAOA when adopting or updating standards. However, the FAOA assesses the standards independently from the profession.</p> <p>Enforcement</p> <p>The FAOA is responsible for enforcing against cases of non-compliance with the auditing standards. So far there have been no sanctions given for the violation of auditing standards, as most violations of auditing standards have also constituted a breach of statutory duty.</p>
Assessment	Fully Implemented
Comments	
Principle 22.	Credit rating agencies should be subject to adequate levels of oversight. The regulatory system should ensure that credit rating agencies whose ratings are used for regulatory purposes are subject to registration and ongoing supervision.

Description	<p>Recognition</p> <p>Entities supervised by FINMA may use credit ratings issued by credit rating agencies (CRAs) recognized by FINMA for the following regulatory purposes (FINMA Circular 12/1: Credit Rating Agencies):</p> <p>a) Banks and securities dealers:</p> <ul style="list-style-type: none"> • Calculation of capital adequacy requirements for credit and market risks and risk diversification under the Federal Ordinance on Own Funds and Risk Distribution of Banks and Securities Dealers (Capital Adequacy Ordinance, CAO). <p>b) Insurers:</p> <ul style="list-style-type: none"> • Determination of capital in accordance with the Swiss Solvency Test; and • Determination of tied assets from January 1, 2015. <p>c) Collective investment schemes:</p> <ul style="list-style-type: none"> • Compliance with the provisions governing investment techniques and derivatives under the FINMA Ordinance on Collective Investment Schemes (FINMA Collective Investment Schemes Ordinance, CISO-FINMA). <p>The use of credit ratings for other than regulatory purposes, e.g. for information purposes or as support to the risk management of supervised institutions, does not require the CRA to be recognized by FINMA.</p> <p>As a result of the above, the regulatory framework in Switzerland addresses CRAs indirectly by requiring supervised entities to use only credit ratings of recognized CRAs rather than regulating the CRAs themselves.</p> <p>FINMA may recognize a CRA for credit ratings of all or some of the following market segments:</p> <p>a) Public finance and its credit instruments;</p> <p>b) Commercial entities, including banks and insurance providers and their credit instruments; and</p> <p>c) Structured finance, including securitizations and derivatives.</p> <p>FINMA may also recognize a CRA for its credit ratings of other market segments.</p> <p>The recognition of CRAs is based on the provisions of the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies (IOSCO Code of Conduct), which recognized CRAs are required to observe at all times.</p> <p><i>Recognition of CRAs domiciled in Switzerland</i></p> <p>FINMA decides whether to recognize a CRA on the basis of an application for recognition. The CRA has to document the following in its application to FINMA:</p> <p>a) The market segment(s) for which recognition is being sought;</p> <p>b) How it meets the requirements for recognition; and</p> <p>c) To what extent it complies with the current version of the IOSCO Code of Conduct.</p> <p>There is currently only one Swiss CRA (fedafin AG) whose credit ratings are used for regulatory purposes in Switzerland. This small local CRA is only recognized for the public finance market segment, i.e., local and regional authorities in Switzerland.</p> <p><i>Recognition of CRAs domiciled abroad</i></p>
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All CRAs whose ratings are used for regulatory purposes by entities supervised by FINMA must be recognized by FINMA, independent of their location. In principle, CRAs domiciled abroad and CRAs domiciled in Switzerland are subject to the same requirements. If a CRA domiciled abroad is subject to ongoing supervision in that jurisdiction, FINMA may apply a simplified recognition process or waive proof of compliance with the recognition requirements. It is currently assumed that the regulation and supervision of CRAs in the following jurisdictions are sufficient:

- Australia;
- EU countries;
- Japan; and
- USA.

Four globally operating CRAs that are not domiciled in Switzerland are currently recognized by FINMA for regulatory purposes. The recognitions were made before FINMA Circular 12/1 was issued and apply to all group companies of each CRA at the time of recognition, provided they use the group wide binding rating methodology. Therefore the one recognition example that was reviewed appeared to be outdated.

Ongoing supervision and enforcement

In the view of FINMA, as there is only one CRA with limited activities in Switzerland, there is no need to establish registration and supervisory programs for CRAs. Another justification for its view is that the most relevant CRAs recognized by FINMA are not located in Switzerland and are subject to registration and ongoing supervision by the authorities of their respective jurisdictions. FINMA is also entitled to review the compliance of the recognized CRAs with the recognition requirements at any time. For this purpose, FINMA can hold discussions with the recognized CRAs or request information and documentation.

FINMA may make the recognition of a CRA subject to conditions or additional requirements, or effective only for a given period of time.

If shortcomings are found in a CRA's compliance with the recognition requirements, FINMA may impose measures appropriate to remedying the shortcoming or may temporarily or permanently revoke recognition (FINMA Circular 12/1, margin number 68). If FINMA revokes a CRA's recognition, the credit ratings of that agency can no longer be used for regulatory purposes by FINMA supervised institutions.

Oversight requirements

FINMA Circular 12/1 requires that the recognized credit rating agencies comply with the provisions of the IOSCO Code of Conduct at all times. The Code of Conduct requirements have been largely included in FINMA Circular 12/1.

Quality and integrity

FINMA Circular 12/1 requires the methods of awarding credit ratings to be strict and systematic and subject to a validation process that is based on historical experience. The credit ratings should be reviewed periodically and reflect changes in the business and financial situation as well as the

	<p>relevant market environment. The credit rating methods have to comprise qualitative and quantitative elements. The CRA should have documented procedures for ensuring that its credit ratings are based on careful analysis of all information that is known to it and is relevant to the methods applied.</p> <p>The Circular requires a CRA to observe a code of conduct which essentially corresponds to the provisions of the IOSCO Code of Conduct. The code of conduct of the CRA should be publicly available. If the CRA deviates from any of the provisions of the IOSCO Code of Conduct, it is required to disclose any such deviations and indicate the reasons for them.</p> <p>FINMA Circular 12/1 requires a CRA to have sufficient resources (finances, personnel, infrastructure, etc.) to issue high quality credit ratings. In the case of the participation of the issuer (solicited credit rating), the CRA's resources should allow close contact with the executive bodies of the debtor being rated/the issuer of the credit instruments being rated.</p> <p>FINMA Circular 12/1 does not include an explicit requirement for regulated CRAs to maintain internal records to support their credit ratings.</p> <p><i>Conflicts of interest</i></p> <p>FINMA Circular 12/1 requires the CRA and its credit rating procedures to be independent and not to be subject to any political or economic pressure that might influence the credit ratings. In particular, a CRA is required to ensure that the agency itself, its employees and analysts and any related parties do not have any economic relationships (e.g., financial participations and loans) that could cause a conflict of interest.</p> <p>A CRA may not be associated with public sector entities, companies or issuers of structured finance products for which it produces credit ratings or with FINMA supervised entities which use the credit ratings issued by the CRA. An inadmissible association also applies to employees, analysts and related parties and is deemed to exist not only in the case of a participating interest, but also if the CRA or its individual credit ratings could be influenced, or there is the appearance of such influence.</p> <p>A CRA should identify all potential conflicts of interest and eliminate them or, if this is not possible within a reasonable period of time, disclose them. However, there is no specific requirement to disclose actual and potential conflicts of interest arising from the nature of compensation arrangements for producing credit ratings.</p> <p><i>Transparency and timeliness</i></p> <p>FINMA Circular 12/1 requires that the CRAs make publicly available the individual credit ratings, the key elements on which the credit ratings are based, whether or not the issuer participated in the credit rating process, and the guidelines adhered to for the credit rating process. Each credit rating not initiated at the request of the issuer (unsolicited credit rating) should be identified as such and the policies and procedures regarding unsolicited credit ratings should be disclosed. Where a CRA has an "investor-pay" business model, it can make its credit ratings accessible only to its subscribers under similar conditions. In addition, a CRA should disclose the procedures, methodology and assumptions which resulted in the credit rating. The conditions of access to this information are to be similar for all interested parties.</p> <p>In summary, a CRA has to disclose the following information:</p> <ol style="list-style-type: none"> a) Code of conduct; b) Principles of the remuneration agreements with the debtors and issuers who are rated; c) Credit rating methods including the definition of default, the time horizon of the credit ratings
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	<p>and the significance of each credit rating category;</p> <p>d) The default rates observed in each credit rating category; and</p> <p>e) The migration rates of each credit rating category (migration matrix).</p> <p>There are no specific requirements in FINMA Circular 12/1 on the regulated CRAs to distribute their credit ratings in a timely manner.</p> <p>Oversight requirements: confidential information</p> <p>FINMA Circular 12/1 requires the CRA and its credit ratings to be credible. To ensure credibility, the CRA should have internal procedures in place that safeguard against the misuse of confidential information.</p>
Assessment	Partly Implemented
Comments	Switzerland applies an indirect way to regulate CRAs, i.e., it requires them to be recognized so that supervised entities can use their ratings for regulatory purposes. However, FINMA does not supervise the one recognized domestic CRA on an ongoing basis due to its limited activities. This means that e.g. the requirement for FINMA supervised entities to be subject to regulatory audits does not apply to this CRA. Supervision of recognized foreign CRAs relies on their respective competent authorities, which is an approach permitted under the Assessment Methodology.
Principle 23.	Other entities that offer investors analytical or evaluative services should be subject to oversight and regulation appropriate to the impact their activities have on the market or the degree to which the regulatory system relies on them.
Description	<p>Sell-side securities analysts</p> <p>The SBA's Directives on the Independence of Financial Research of January 2008 are recognized by FINMA as a minimum standard. The Directives include principles for the relationship between the organizational unit responsible for financial research and other departments of the bank, such as investment banking and the new issues department. In particular, the Directives require the financial analysts to be independent from an organizational, hierarchical, functional and location perspective from any units responsible for issuing securities, investment banking, lending business, and securities trading (including proprietary trading) and sales. Further, the remuneration paid to financial analysts must not be dependent upon the performance of one or more specific transactions of these other units. If the remuneration paid to the financial analysts is based generally upon the performance of these units, this must be disclosed in reports and recommendations.</p> <p>In addition, a financial analyst may not acquire for his/her own account any securities which he/she researches. Should the analyst wish to continue to hold securities already in his/her possession, such ownership must be declared in the research report of the relevant company (without revealing the quantity or value of shares owned).</p> <p>Under the Directives, the new issues department, the investment banking operations of a bank, securities trading, the organizational unit responsible for lending to corporate clients and the financial research unit must be structured in such a manner that basically no privileged information flows between them that is not simultaneously available to the bank's clients (Chinese walls). Prior approval by the compliance unit is required for any exceptional cases where such information is exchanged despite this requirement. The compliance unit must ensure that any exchange of information occurs within the framework of a regulated process. Further, if a bank holds more than 50 percent of the voting rights of a listed company, it may not include any such companies in any of its own financial research. If a bank holds at least 10 percent of a company's voting rights, any</p>

	<p>financial research relating to the company must disclose the relevant threshold value in terms of the situation shortly before the publication of the report or recommendation. Any other potential conflicts of interest must be disclosed in any published research reports, unless the bank chooses not to prepare such reports.</p> <p>A financial analyst may not provide the company with any research results for approval before those results have been published. Any perusal of information by the company being analyzed prior to the publication of the results may only be for the purpose of checking facts. A financial analyst may notify the company about any rating change one day prior to the publication of the research report, but only after the close of trading on the stock exchange(s) where the company in question is listed.⁴⁸ A financial analyst may not give any promises that favorable research reports, a specific rating or a specific target price will be published. Analysts may not accept any privileges, gifts or any other favors from the company being analyzed where the value of such privileges, gifts or favors exceeds that of normal occasional gifts. If there is any doubt, the analyst must notify the compliance unit about any offers received. The bank must set out the procedure to be followed in any such case in an internal directive.</p> <p>Finally, banks must issue the necessary directives and implement appropriate organizational measures to ensure that such directives are complied with at all times and monitored on an ongoing basis. Internal audit must review compliance with the directives on a periodic basis. As a rule, supervised entities such as banks and securities dealers and their senior staff must provide assurance of proper business conduct (see Principle 29). In addition, Art. 11 SESTA stipulates that securities dealers have a duty of disclosure vis-à-vis their clients. They must in particular inform them of the risks associated with certain types of transactions and instruments. Finally, securities dealers must ensure that in the event of any potential conflicts of interest, clients' interests are not adversely affected (duty of loyalty).</p> <p>Financial analysts and companies providing financial research services must also follow business conduct rules that are based on civil law. In particular, they have a duty of diligence and loyalty vis-à-vis their clients. Severe breaches of these civil law duties can be viewed as a breach of supervisory requirements such as the duty to assure proper business conduct.</p> <p>Other providers of analytical or evaluative services</p> <p>Art. 7 FINMASA sets forth the principles which FINMA must observe while engaging in regulatory activity. The regulatory process can be triggered by FINMA's monitoring of supervised entities, financial markets and international regulatory developments, or by public or political expectations. In its monitoring activities, FINMA would also be able to consider the impact and importance of entities that provide analytical or evaluative services and whether they warrant regulation and supervision. FINMA has not identified any such entities in Switzerland, and has not periodically considered whether analytical or evaluative services are provided by other than already regulated entities in Switzerland.</p>
Assessment	Broadly Implemented
Comments	The rating of this Principle is based on the fact that FINMA does not periodically consider whether there are any currently unregulated entities that provide analytical or evaluative services in Switzerland, and if yes, whether they warrant regulation and oversight because of the impact of their activities on the market or because of the degree to which the regulatory system relies on them.
Principles for Collective Investment Schemes	

⁴⁸ No reference is made to derivatives exchanges, multilateral trading facilities, alternative trading systems, etc.

Principle 24.	The regulatory system should set standards for the eligibility, governance, organization and operational conduct of those who wish to market or operate a collective investment scheme.
Description	<p>Collective investment schemes in Switzerland</p> <p>In Switzerland CIS are defined as assets raised from investors for the purpose of collective investment, which are managed for the account of such investors on an equal basis (Art. 7(1) CISA). CISO further specifies that CIS are assets provided by at least two mutually independent investors for the purpose of collective investment, which are managed externally (Art. 5(1) CISO).</p> <p>Swiss CIS may be open-ended or closed-ended (Art. 7(2) CISA). Open-ended CIS may be in the form of a contractual fund or an investment company with variable capital (Société d'Investissement à Capital Variable, SICAV). Closed-ended CIS may be in the form of a limited partnership for collective investment or an investment company with fixed capital (Société d'Investissement à Capital Fixe, SICAF).</p> <p>Concept of qualified investors</p> <p>The concept of qualified investors is central to the Swiss regulatory framework for CIS, because the offering of CIS only to qualified investors may exempt them⁴⁹ and their managers, distributors and representatives from certain regulatory requirements.</p> <p>Qualified investors include (Art. 10(3) CISA):</p> <ul style="list-style-type: none"> a) Regulated financial intermediaries such as banks, securities dealers, fund management companies, CIS asset managers, and central banks; b) Regulated insurance institutions; c) Public entities and retirement benefit institutions with professional treasury operations; and d) Companies with professional treasury operations. <p>High net worth individuals may declare in writing that they wish to be deemed qualified investors (opt in).⁵⁰ A high net worth individual is any natural person who at the time of subscribing to the CIS meets one of the following conditions (Art. 6(1) CISO):</p> <ul style="list-style-type: none"> a) He/she provides evidence of having the knowledge required to comprehend the risks of the investments based on his/her individual education and professional experience or based on comparable experience in the financial sector and he/she holds financial assets of at least CHF 500,000; or b) He/she confirms in writing that he/she holds assets of at least CHF 5,000,000.⁵¹

⁴⁹ According to Art. 10(5) of CISA, FINMA may fully or partially exempt CIS from certain provisions of CISA, provided that they are exclusively open towards qualified investors and the protective purpose of CISA is not impaired. This applies in particular to the requirement to produce a prospectus and a semi-annual report, to provide investors with the right to terminate their investment at any time, to issue and redeem units in cash, and to diversify investments in the manner stipulated in CISA.

⁵⁰ Prior to the amendments made to CISA that came into force on March 1, 2013, high net worth individuals were automatically considered to be qualified investors.

⁵¹ The requirement for the value of the assets of a high net worth individual was raised from CHF 2,000,000 to CHF 5,000,000 through the amendments of CISO that came into force on March 1, 2013. These assets may include a net

(continued)

	<p>In addition to high net worth individuals, investors who have concluded a written discretionary management agreement with a financial intermediary or with an independent asset manager (see Principle 31) are deemed qualified investors unless they have declared in writing that they do not wish to be deemed as such (opt out). To qualify for this exemption, an independent asset manager has to be subject to AMLA and be governed by a code of conduct issued by a specific industry body recognized as the minimum standard by FINMA⁵². Further, the discretionary management agreement with an independent asset manager must comply with the standards of a specific industry body recognized as the minimum standard by FINMA (see Art. 3(2)(c) AMLA).</p> <p>Authorization of a CIS</p> <p><i>Swiss CIS</i></p> <p>The following documents are required to obtain FINMA's specific approval for a Swiss CIS (Art 15 CISA):</p> <ul style="list-style-type: none"> a) Investment funds: the collective investment contract; b) SICAVs: the articles of association and investment regulations; c) Limited partnerships for CIS: the company agreement; and d) SICAFs: the articles of association and investment regulations. <p>In addition to the review of the above mentioned fund documents, SICAVs, limited partnerships for CIS and SICAFs are subject to the general authorization requirements described below. The process applied to reviewing other fund documentation, such as the prospectus, simplified prospectus, and the Key Investor Information Document (KIID) is described in Principle 26.</p> <p>Investment companies in the form of Swiss companies limited by shares are not governed by CISA, provided they are listed on a Swiss exchange, or provided that only qualified shareholders are entitled to participate in them and their shares are registered. Further, CISA does not govern in-house funds of a contractual nature created by banks and securities dealers for the purpose of collectively managing the assets of existing clients, provided the requirements set out in Art. 4 of CISA are met. However, according to FINMA such in-house funds no longer exist.</p> <p>Given the fact that the majority of funds in Switzerland are still contractual funds (see Market Structure), the discussion below focuses on them.⁵³</p> <p><i>Foreign CIS</i></p> <p>In the case of foreign CIS, only the relevant documents for CIS distributed to non-qualified investors are subject to FINMA's approval. These include the prospectus, the simplified prospectus or the KIID, the collective investment agreement for a contractual CIS or the relevant documents of a CIS organized under company law, and other necessary documents.</p>
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value of up to CHF 2,000,000 of non-financial assets. There is a two year transitional period for the raised threshold to come into force (Art. 158e CISA).

⁵² Independent asset managers can choose to apply the SBA Portfolio Management Guidelines recognized by FINMA as a minimum standard in FINMA Circular 08/10: Self-Regulation as a Minimum Standard. Footnote 11 of this Circular also lists seven other self-regulatory codes issued by various associations that can be applied instead of the SBA Guidelines.

⁵³ Until 2007, contractual funds were the only type of CIS permitted in Switzerland.

	<p>Foreign CIS that are distributed only to qualified investors do not require approval, but they are subject to certain non-product related requirements (see below).</p> <p>Fund and asset managers, custodians, distributors, and representatives of foreign CIS</p> <p>Any party responsible for managing a collective investment scheme, safekeeping its assets, or distributing it to non-qualified investors must obtain authorization from FINMA. More specifically, the following are required to obtain authorization:</p> <ul style="list-style-type: none"> a) Fund management companies; b) Custodian banks of Swiss CIS; c) CIS asset managers;⁵⁴ d) Distributors;⁵⁵ and e) Representatives of foreign CIS. <p><i>Fund management company</i></p> <p>A fund management company manages the fund at its own discretion and in its own name, but for the account of investors. In particular, it decides on the issue of units, investments and their valuation, calculates the NAV, determines the issue and redemption prices and income distributions, and exercises all rights associated with the investment fund. In addition to fund business, a fund management company may provide discretionary portfolio management and investment advisory services, as well as safekeeping and technical administration of CIS.</p> <p>The fund management company authorization encompasses also the right to act as an asset manager, distributor and representative of foreign CIS.</p> <p><i>Custodian bank</i></p> <p>A custodian bank is responsible for the safekeeping of the CIS assets, the issue and redemption of units, and the payment transfers on behalf of the investment fund. It ensures that the fund management company complies with CISA and with the fund regulations. More specifically, it verifies whether the calculation of the net asset value (NAV) and of the issue and redemption prices and the investment decisions are in compliance with CISA and the fund regulations and that the income is appropriated in accordance with the fund regulations.</p> <p><i>Asset manager</i></p> <p>The CIS asset manager ensures the proper conduct of portfolio and risk management for one or more CIS. An asset manager may also conduct certain ancillary services, including discretionary</p>
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⁵⁴ Prior to the amendments to CISA that came into force on March 1, 2013, Swiss asset managers of foreign CIS were not required to be authorized. The new requirements are subject to a two year transitional period ending on February 28, 2015, by which they must meet the statutory requirements and apply for authorization.

⁵⁵ The authorization requirement became applicable to distributors that distribute foreign funds to qualified investors through the amendments to CISA that came into force on March 1, 2013. Their authorization requirement is subject to a two year transitional period.

	<p>portfolio management (Art. 18a CISA). In practice there are many asset managers, whose main business is discretionary portfolio management, but that have been licensed as CIS asset managers due to the fact that they also manage the assets of one or a few CIS.</p> <p>Asset managers of foreign CIS for qualified investors (see above) that meet one of the following requirements are exempted from CISA⁵⁶:</p> <ul style="list-style-type: none"> a) The assets under management, including the assets acquired through the use of leveraged finance, amount in total to no more than CHF 100 million; b) The assets under management amount to no more than CHF 500 million and consist of non-leveraged CIS whose investors are not permitted to exercise redemption rights for a period of five years after their first investment, or c) The investors are exclusively the asset manager's group companies. <p>Exempted asset managers may however submit an application for authorization to FINMA (opt in), if they have their registered office in Switzerland and Swiss or applicable foreign law provides that the CIS asset management may only be delegated to a regulated asset manager (Art. 1c CISO). The Federal Council could also require registration in order to be able to collect data on such asset managers independent of whether they themselves opt in (Art. 2(2)(2bis) CISA). However, this requirement has not been implemented in practice.</p> <p><i>Distributor</i></p> <p>The distribution of CIS is defined as any offering and advertising of CIS that is not exclusively directed at regulated financial intermediaries and regulated insurance institutions (as defined in Art. 10(3)(a) and (b) CISA, respectively).⁵⁷ Neither are the following deemed to be distribution (Art. 3 CISA):</p> <ul style="list-style-type: none"> a) The provision of information and the subscription of CIS at the instigation or initiative of investors, especially in the context of investment advisory agreements or for execution only transactions; b) The provision of information and the subscription for CIS based on a written discretionary management agreement with regulated financial intermediaries; c) The provision of information and the subscription for CIS based on a written discretionary management agreement with an independent asset manager that fulfils the conditions prescribed in CISA; d) The publication of prices, NAVs and tax data by regulated financial intermediaries; and e) The offering of stock option schemes in the form of CIS to employees. <p>The distribution of Swiss or foreign CIS to non-qualified investors requires the use of an authorized distributor. The distribution of Swiss CIS to qualified investors is not subject to regulation, but the distribution of foreign CIS intended for qualified investors needs to be carried out only by financial intermediaries that are subject to appropriate supervision in Switzerland or their country of domicile</p>
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⁵⁶ This exemption is not available to asset managers of Swiss funds since Art. 31(3) of CISA enables Swiss fund management companies to delegate asset management only to asset managers that are subject to recognized supervision.

⁵⁷ This means that the CISA requirements on the approval of the fund and on the nomination of a representative and paying agent for a foreign CIS do not apply. According to the interpretation of some law firms, this includes even cases where the CIS distributed to these financial intermediaries and insurance institutions are redistributed by them.

	<p>(Art. 19 CISA). Art. 30a of CISO also requires a written distribution agreement between the distributor and a representative (see below) for the distribution of foreign CIS. The distribution agreement commits the distributor to exclusively using fund documents that indicate the representative, paying agent and place of jurisdiction.</p> <p>From January 1, 2014, a Swiss distributor will be required to record its product recommendations when marketing to investors.</p> <p><i>Representative</i></p> <p>Prior to distributing foreign CIS in or from Switzerland, the fund management company must appoint a representative to represent the foreign CIS with regard to investors and FINMA. The representative must observe the statutory obligations to report, publish and inform, as well as the codes of conduct of industry associations which have been recognized as a minimum standard by FINMA. The representative may either distribute the foreign CIS itself or outsource the distribution to third parties.</p> <p><i>Exemption for banks, securities dealers and insurance institutions</i></p> <p>Any party authorized as a bank, securities dealer or insurance institution is exempted from the requirement to obtain authorization for asset management of CIS and distribution (Art. 8 CISO). However, despite being exempted, they are subject to the same regulatory requirements as authorized asset managers and distributors. They cannot however act as representatives of foreign CIS without FINMA's specific authorization.</p> <p>Requirements for authorization</p> <p><i>General requirements</i></p> <p>According to Art. 14 of CISA, authorization as a fund management company, asset manager, custodian bank and distributor is granted if:</p> <ol style="list-style-type: none"> a) The persons responsible for management and business operations have a good reputation, guarantee proper management, and possess the required specialist qualifications; b) The significant equity holders have a good reputation and do not exert their influence to the detriment of prudent and sound business practice; c) Compliance with the duties under CISA is assured by internal regulations and an appropriate organizational structure; d) Sufficient financial guarantees are available; and e) The additional authorization conditions under CISA are met. <p>The fitness and propriety criteria are specified in Art. 10 of CISO. The persons responsible for the management and business operations must be suitably qualified for the intended activity on the basis of their education, training, experience and career history. FINMA determines the requirements for furnishing evidence of good reputation, proper management and professional qualifications. In assessing compliance with these requirements, FINMA takes into account the intended activity and the nature of intended investments. Specific expertise requirements are applied on a case by case basis, in particular to persons managing real estate funds and hedge funds.</p>
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	<p>Honesty and integrity is also addressed in Art. 20 of CISA, according to which the licensees and their agents must act independently and exclusively in the interests of investors (duty of loyalty) and implement the organizational measures that are necessary for proper management (due diligence). Art. 12 of CISO requires that the organizational structure is defined in a set of organizational regulations. The executive board has to comprise at least two persons. FINMA may require the establishment of an internal audit function if required by the scope and nature of activity of the licensee. The licensee has to ensure that it has proper and appropriate risk management, an internal control system and compliance (Art 12a(1) CISO).</p> <p><i>Specific requirements for a fund management company</i></p> <p>A fund management company must be a company limited by shares with its registered office and main administrative office in Switzerland. The persons holding executive powers at the fund management company and custodian bank must be independent of the other party. (Art. 28 CISA and Art. 43 CISO).</p> <p>There are specific requirements on the organization of fund management companies, according to which their Board of Directors must comprise at least three members, and they have to have at least three full-time employees with signatory powers.</p> <p>Fund management companies have additional requirements on financial guarantees beyond those set out in Art. 14 of CISA. There must be an appropriate relationship between the equity of the fund management company and the total assets of the CIS that it manages. The fund management company must have share capital of at least CHF 1 million, to be paid up in cash (Art. 43 CISO). The required qualifying capital (as defined in Art. 22 and 23 of CISO) is calculated as a percentage of the total assets of the CIS managed by the fund management company in the following manner:</p> <ul style="list-style-type: none"> a) 1 percent for the portion not exceeding CHF 50 million; b) 0.75 percent for the portion exceeding CHF 50 million but not exceeding CHF 100 million; c) 0.5 percent for the portion exceeding CHF 100 million but not exceeding CHF 150 million; d) 0.25 percent for the portion exceeding CHF 150 million but not exceeding CHF 250 million; e) 0.125 percent for the portion exceeding CHF 250 million. <p>The required capital does not however need to exceed CHF 20 million. The prescribed capital adequacy must be maintained at all times, and the fund management company must notify FINMA of the insufficiency of capital immediately (Art. 48 CISO).</p> <p><i>Specific requirements for custodian banks</i></p> <p>A custodian bank must be a bank pursuant to the BA and have an appropriate organizational structure to act as a custodian bank for CIS (Art. 72 CISA). In addition to the members of its Board of Directors, the persons entrusted with the tasks of custodian bank activity must also comply with the relevant fitness and propriety requirements.</p> <p><i>Specific requirements for asset managers</i></p> <p>Swiss CIS asset managers have to be legal persons in the form of companies limited by shares, partnerships limited by shares, limited liability companies or general or limited partnerships. Subject to certain conditions, they can also be Swiss branches of a foreign asset manager. FINMA has expressed its reservations about the possible impact of authorizing branches as asset managers (see FINMA 2010 Annual Report, p. 32), and in practice no such branches have been authorized.</p> <p>The minimum share capital requirement for asset managers of Swiss CIS is CHF 200,000, whereas the requirement for asset managers of foreign CIS is CHF 500,000. Asset managers must hold</p>
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	<p>additional capital of 0.01 percent of the total CIS assets managed or have professional indemnity insurance (for an amount defined by FINMA). In addition, an asset manager is subject to a capital adequacy requirement of 0.02 percent of the total CIS assets managed exceeding CHF 250 million. Independent of the value of assets under management, the capital has to always be at least one quarter of the fixed costs in accordance with the most recent annual financial statement, but does not need to exceed CHF 20 million.</p> <p><i>Specific requirements for distributors</i></p> <p>FINMA grants authorization to a natural person who wishes to distribute CIS where that person can provide evidence of professional indemnity insurance coverage or a deposit of at least CHF 250,000, of the existence of reliable procedures for distribution, and of a written distribution agreement with the fund management company or the representative of a foreign collective investment scheme. FINMA can also grant the authorization for distribution to legal persons and competent partnerships if they or their executives meet the above requirements.</p> <p>Distribution of foreign CIS to non-qualified investors is subject to approval by FINMA. The representative must submit the relevant binding documents such as the sales prospectus, articles of association and fund contract to FINMA. Approval is granted if the collective investment scheme, fund management company, asset manager and custodian are subject to public supervision intended to protect investors. The fund management company and custodian have to be subject to regulations on organization, investor rights and investment policy that are equivalent to CISA. A representative and a paying agent must also be appointed and there has to be an agreement on cooperation and exchange of information between FINMA and the relevant foreign supervisory authorities.⁵⁸ The representative and the paying agent may only end their mandate with FINMA's prior approval.</p> <p>Foreign CIS that are only distributed to qualified investors do not require approval but must, on the basis of the amendments to CISA that came into force on March 1, 2013, appoint a representative and a paying agent (Art. 120 CISA). This requirement is subject to a two year transitional period.</p> <p>As noted above, authorization as a distributor is not required for the distribution of Swiss funds to qualified investors</p> <p>FINMA authorization process</p> <p>All applications are examined by FINMA as soon as they are considered complete. Applicants may nonetheless provide additional information complementing their application. FINMA may also request further information and/or documentation from the applicant. There is no deadline in the legislative or regulatory framework for completing the approval process, but FINMA applies internally set deadlines for the various authorization processes. Market participants expressed varying views on the length of the approval processes, some considering that they take too long, whereas some were of the view that complete applications are handled in a relatively timely manner. The comments on the length of the approval process focused on the time taken to approve new funds.</p>
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⁵⁸ The latter requirement was introduced in the amendments to CISA that came into force on March 1, 2013, and compliance with it is subject to a one year transitional period.

	<p>FINMA has published various documents to facilitate the application process. These documents include application forms for the authorization of entities or for the approval of investment products, as well as guidelines and standard declaration forms.</p> <p>Record-keeping</p> <p>The record-keeping obligations applicable to fund management companies are not explicit in CISA, but have to be derived from the requirements on the content of the annual report. Art. 89 of CISA requires the annual report to contain, among other information, the number of units redeemed and newly issued during the financial year and a breakdown of the buy and sell transactions.</p> <p>Conflicts of interest</p> <p>As a general requirement to avoid conflicts of interest, licensees and their agents are required to act independently and exclusively in the interests of investors (duty of loyalty) (Art. 20(1)(a) CISA). Art 32b of CISO further requires a licensee to make effective organizational and administrative arrangements to identify, prevent, resolve and monitor conflicts of interest, and to prevent them from adversely affecting the interests of investors. If conflicts of interest cannot be avoided, they must be disclosed to investors.</p> <p>The content of the duty of loyalty is specified in Art. 31 of CISO as follows:</p> <ul style="list-style-type: none"> a) The licensees and their agents may only purchase securities and other assets for their own account from the CIS at the market price and may only sell such assets from their own portfolios at the market price; b) In relation to services delegated to third parties they must waive the compensation owed to them in accordance with the fund regulations, company agreement, investment regulations or discretionary management agreement where such compensation is not used for payment of the services rendered by such third parties; c) Where investments of a collective investment scheme are transferred to another scheme of the same licensee or a scheme belonging to a closely related licensee, no costs may be levied; and d) The licensees may not levy any subscription or redemption fees from a CIS they manage, if they purchase for its account other funds managed by themselves or by a company with which they are related by virtue of common management, control or a material direct or indirect participation. <p>Conduct of business</p> <p>Art. 20 of CISA imposes a duty to provide information that requires the licensees and their agents to provide investors with transparent financial statements and appropriate information about the CIS; to disclose all charges and fees incurred directly or indirectly by investors and their appropriation; and to notify investors of compensation for the distribution of CIS in the form of commissions, brokerage fees and other soft commissions in a full, truthful and comprehensible manner.</p> <p>Art. 22 of CISA contains a best execution requirement. It requires that the counterparties (execution venues) for securities trades and other transactions are carefully selected. The counterparty must offer a guarantee of best execution in terms of price, time and quantity. The choice of counterparties must be reviewed at regular intervals. Agreements which curtail the freedom of decision of the licensees or their agents are not permitted.</p> <p>The SFAMA Code of Conduct for Asset Managers of Collective Investment Schemes recognized by FINMA as a minimum standard requires asset managers to implement the organizational measures</p>
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	<p>necessary to prevent the preferential treatment of certain investors and/or groups of investors at the expense of others and to set out these measures in writing. In particular, such organizational measures are required in the case of allocations in respect of securities trading transactions and similar transactions, if the asset manager has issued collective orders prior to allocation to the individual investment schemes, and in the charging of costs and expenses incurred in addition to the fee. The Code of Conduct also requires asset managers to prohibit churning.</p> <p>According to Art. 21 of CISA, licensees and their agents have to pursue an investment policy that at all times corresponds with the investment characteristics of the CIS as determined in the relevant documents. The fund contract sets out the permitted investments by type (equity securities, debt securities, derivative instruments, residential property, commercial property, precious metals, commodities, etc.) and by country, geographical region, sector or currency. It also defines the permitted investment techniques and instruments. (Art. 36 CISO).</p> <p>In respect of the purchase and sale of assets and rights, the licensees are only entitled to receive the fees specified in the relevant documents (Art. 21(2) CISA). Commissions and other financial benefits must be credited to the collective investment scheme. Art. 37 of CISO determines the fees and incidental costs that may be charged to the assets of a fund or any of its subfunds:</p> <ul style="list-style-type: none"> a) A management fee for the fund management company; b) Custody fees and other costs for the remuneration of the custodian bank, including the costs for the safekeeping of the fund's assets by third party custodians or central securities depositories; c) A management fee and any performance fees for the remuneration of the asset manager; d) Any distribution fees for the remuneration of the distributors' activity; and e) The incidental costs defined in Art. 37(2) of CISO, if they have been explicitly provided by the fund contract (e.g., brokerage fees, commissions, supervisory authority's and audit firm's fees). <p>The fund contract has to set out the fees and incidental costs in a comprehensive overview, providing a breakdown by type, maximum amount and calculation.</p> <p>Delegation</p> <p><i>Delegation by a fund management company or asset manager</i></p> <p>Art. 31 of CISA deals with the delegation of duties by a fund management company. A fund management company may delegate investment decisions as well as specific tasks, provided this is in the interest of efficient management. It must appoint only those persons who are properly qualified to execute the task, and ensure they receive the instruction, monitoring and control required for the implementation of the assigned tasks. A fund management company may only delegate investment decisions to CIS asset managers that are subject to recognized supervision. Where foreign law requires an agreement on cooperation and exchange of information with foreign supervisory authorities, it may only delegate investment decisions to asset managers abroad, if such an agreement exists between FINMA and the relevant foreign supervisory authorities. The fund management company is liable for the actions of its agents (including delegates) as if they were its own. The above requirements also apply to delegation by asset managers under Art. 18b of CISA. A</p>
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	<p>fund management company generally has to have at least three full-time employees (Art. 44 CISO). FINMA Circular 2008/37⁵⁹ requires that the delegation agreement includes provisions on the fund management company's right to supervise the delegate.</p> <p>The requirement for the fund management company to have its registered office and main administrative office in Switzerland also puts certain limits on delegation. According to Art. 42 of CISO, the main administrative office of a fund management company is located in Switzerland if:</p> <ul style="list-style-type: none"> a) The inalienable and non-transferable tasks of the Board of Directors set out in Article 716a of the CO are carried out in Switzerland; and b) In relation to each of the investment funds managed by the fund management company, at least the following tasks are performed in Switzerland: <ul style="list-style-type: none"> 1. Deciding on the issue of units; 2. Deciding on the investment policy and valuation of the assets; 3. Valuation of the assets; 4. Determining the issue and redemption prices; 5. Determining the profit allocation; 6. Determining the contents of the prospectus, the simplified prospectus, the annual and semiannual report as well as other publications intended for investors; and 7. Fund accounting. <p>According to FINMA Circular 09/37 (Delegation by the fund management company and SICAV), the following are examples of tasks that are not permitted to be delegated:</p> <ul style="list-style-type: none"> a) Ensuring the establishment and maintenance of an internal control system; b) Determination of a strategy and business plan; c) Determination of an investment policy; and d) Determination of instructions on the use of derivatives and securities lending. <p>The Circular also includes a list of tasks that can be delegated to the management of the fund management company/SICAV, but not to third parties. It also provides a list of tasks that can be delegated to third parties, some of which however cannot be delegated abroad (determining the issue and redemption price, setting up the accounting system, risk management and compliance). Further, risk management may only be delegated within the group.</p> <p>There is a specific requirement to have a written contract describing the rights and responsibilities of the contracting parties when the administration, investment decisions or distribution of a SICAV is delegated to a third party. More specifically, the contract has to include (Art. 65 CISO):</p> <ul style="list-style-type: none"> a) The tasks conferred; b) Any powers for further delegation; c) The accountability of the fund management company; and d) The monitoring rights of the SICAV Board of Directors. <p><i>Delegation by a custodian and distributor</i></p> <p>According to Art. 73 of CISO, the custodian bank may transfer the responsibility for the safekeeping</p>
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⁵⁹ Délégation par la direction et la SICAV.

	<p>of the investment fund's assets to third party custodians and central securities depositories in Switzerland or abroad, provided this is in the interest of efficient safekeeping.⁶⁰ Investors must be informed in the prospectus about the risks associated with such transfers. Financial instruments may only be transferred to regulated third party custodians and central securities depositories. This does not apply to mandatory safekeeping at a location where the transfer to such custodians or depositories is not possible, in particular due to mandatory legal provisions or the investment product's modalities. Investors must be informed in the product documentation of safekeeping by non-regulated third-party custodians or depositories.</p> <p>If distributors engage the services of third parties in the distribution of CIS units, they must conclude distribution agreements with these third parties (Art. 24 CISA).</p> <p><i>Information to investors</i></p> <p>The minimum content of a CIS prospectus (Annex 1 paragraphs 2.5 and 4 CISO) has to include information on the persons to whom investment decisions and other specific tasks have been delegated; information on the third parties whose fees are charged to the CIS, including name/company, elements of the contract between the licensee and third parties which are significant for investors, except for fee arrangements; other significant activities of the third parties; and specialist knowledge of third parties entrusted with management and decision making powers.</p> <p><i>Termination of delegation</i></p> <p>Under Art. 404 of the CO, an agency contract (delegation) may be revoked or terminated at any time by either party. However, a party doing so at an inopportune juncture must compensate the other for any resultant damage.</p> <p><i>FINMA's power to supervise</i></p> <p>In addition to the supervisory instruments provided to FINMA under Art. 29-37 FINMASA (see Principle 10), Art. 132 of CISA specifically provides FINMA with the responsibility to supervise compliance with the legal, statutory, contractual and regulatory requirements. According to FINMA, these powers would allow it to take appropriate actions in case of delegations which may give rise to a conflict of interest between the delegate and investors.</p> <p>There is no specific legal requirement relating to FINMA's access to the data related to the delegated functions. However, according to FINMA's practice, the delegation has to be effected in such a manner that the fund management company is able to give access to any data related to the delegated functions, either directly from the delegate(s) or indirectly through the fund management company.</p> <p>Supervision and ongoing monitoring</p> <p><i>Periodic reporting</i></p>
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⁶⁰ There is a two year transitional period for complying with this requirement starting from the coming into force of the amendments to CISA on March 1, 2013.

	<p>A fund management company has to submit its annual report to FINMA within ten days following its approval by the general meeting of shareholders (Art. 49 CISO). Fund management companies and SICAVs submit for statistical purpose quarterly figures on the managed CIS to the SNB (Ordinance to the Federal Act on the Swiss National Bank). The SNB provides this data to FINMA.</p> <p>Fund management companies and SICAVs have to submit to FINMA an annual report for each open-ended CIS within four months of the close of the financial year and a semi-annual report within two months after the first half of the financial year. The reports contain, among other things, annual financial statements and information on the issue and redemption of units, the inventory of assets including the NAV at the end of the financial year, the principles for the valuation of assets, the purchases and sales of assets, information on persons to which duties have been entrusted, and the fund's performance and other economically important matters (Art. 89 CISA). The audit firm provides its opinion on the annual report of the managed open-ended CIS in a brief report.</p> <p>In addition, FINMA may for the purposes of risk-based supervision in individual cases impose further reporting and information obligations in its authorization decision or in the ongoing supervision of a fund management company or SICAV.</p> <p><i>Reporting of material changes</i></p> <p>Art. 16 of CISA requires FINMA's authorization or approval prior to the continuation of activity, if there is a change in the circumstances underlying the authorization or approval. In particular changes to the organizational structure must be authorized by FINMA (Art. 14 CISO).</p> <p>Licensees, with the exception of a custodian bank, must also report to FINMA immediately:</p> <ul style="list-style-type: none"> a) Any change in the persons responsible for management and business operations; b) Facts which might call into question the good reputation or the guaranteeing of proper management by the persons responsible for management and business operations, particularly the instigation of criminal proceedings against them; c) Any change in significant equity holders; d) Facts which might call into question the good reputation of significant equity holders, specifically the instigation of criminal proceedings against them; e) Facts which might call into question the prudent and sound business practice of the licensees owing to the influence of significant equity holders; and f) Any change with respect to the financial guarantees (Art. 13), in particular if the minimum requirements are no longer met. <p>FINMA must also be notified in advance of any change in the CIS asset manager (Art. 18c CISA). Finally, supervised persons and entities are subject to the general duty to report immediately to FINMA any incident that is of substantial importance to supervision (Art. 29(2) FINMASA).</p> <p><i>Inspections and investigations</i></p> <p>FINMA has the power to conduct inspections and investigations of fund management companies and other licensees involved in the management of CIS and take remedial action in the event of breach or default (see Principles 10 and 11). However, until now it has relied on the regulatory auditors in its supervisory work.</p> <p>FINMA is in the process of adopting a similar supervisory approach as that already applied for banks and securities dealers for fund management companies, CIS asset managers, limited partnerships for CIS, representatives of foreign CIS, SICAVs, SICAFs, and contractual funds (i.e. all the entities covered by CISA). All these entities are expected to fall into supervisory categories 3-5, with the exact category determined on the basis of certain predetermined factors. Some entities, such as</p>
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	<p>custodians, are automatically assigned to category 5. SOPs developed for these entities follow a similar basic approach as those developed for banks, but there are differences in the envisaged intensity of the use of the various supervisory instruments, including the degree to which audit firm reports are reviewed by FINMA.</p> <p>FINMA informed that it plans to initiate its own supervisory reviews from 2014 onwards, with both periodic and thematic reviews scheduled. These reviews will mostly focus on asset managers, fund management companies and custodians.</p> <p>FINMA has also conducted investigations of fund management companies, asset managers and representatives of foreign CIS.</p> <p><i>Enforcement</i></p> <p>In the event of infringements of contractual or regulatory requirements or articles of association, the supervisory instruments pursuant to Art. 30–35 and 37 of FINMASA apply (see Principle 11). If the investors' rights appear to be endangered, FINMA may order a licensee to provide the necessary collateral. If an enforceable order issued by FINMA is not complied with within a deadline set by FINMA, FINMA may itself carry out the required actions at the expense of the negligent party. (Art. 133 CISA).</p> <p>FINMA has imposed sanctions for less severe breaches. These sanctions include the issuance of letters of reprimand, requests to restore legal order, and specific reporting requirements. The number and nature of these sanctions is not tracked.</p>
Assessment	Broadly Implemented
Comments	<p>The rating is largely based on the current design of the FINMA supervisory approach that has not provided sufficient supervisory coverage of the entities involved in fund and asset management and custody. With the introduction of its new supervisory approach, FINMA has the potential to improve the supervisory coverage of these entities.</p> <p>Record-keeping requirements are not explicit in CISA, but have to be derived from the requirements on the content of the annual report. It would be important to introduce more specific record-keeping requirements in CISA.</p>
Principle 25.	The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.
Description	<p>Legal form</p> <p>The various possible legal forms for CIS are discussed in Principle 24.</p> <p>Art. 25 and 26 of CISA and Art. 35a of CISO include requirements on the fund contract and its content for contractual funds. The fund contract has to contain the name of the investment fund, together with the name and registered office of the fund management company, the custodian bank and the asset manager. The company name of a SICAV must contain a description of its legal status or the abbreviation SICAV (Art. 38 CISA). In addition, the prospectus has to include information concerning the legal status (contractual fund or SICAV) and nature of the collective investment scheme (securities fund, real estate fund, other fund for traditional or alternative investments) (paragraph 1.14 of Annex 1 of CISO). When approving the fund contract, FINMA verifies the corresponding provisions and ensures their compliance with CISA (Art. 35a(2) CISO).</p> <p>Changes to investor rights</p>

	<p>The fund contract has to set out the rights and duties of investors, the fund management company and the custodian bank (Art. 26(2) CISA). The fund management company must submit the amendments to the fund contract to FINMA, after having received the consent of the custodian bank. If the fund management company amends the fund contract, it must publish a summary of the significant amendments in advance, in which reference is made to the locations where the full wording of the amendments may be obtained free of charge. The publication must inform investors of their right to lodge objections with FINMA within 30 days of the publication. Further, investors must be made aware that they may request the repayment of their units in cash, while observing the contractual or regulatory notice period. FINMA publishes its decision on the objections made by investors in the media. (Art. 27 CISA, see also Art. 41 CISO). In the case of SICAV, the process is similar.</p> <p>The rights and duties of the fund management company may be transferred to another fund management company. In order to be effective, the transfer agreement between the outgoing and incoming fund management company must be in writing, have the consent of the custodian bank and be approved by FINMA. Prior to approval by FINMA, the outgoing fund management company has to publish the proposed change in the media. The investors must be informed in these publications of their right to lodge objections with FINMA within 30 days from publication. FINMA authorizes the change of fund management company, if the legal requirements have been met and the continuation of the investment fund is in the interest of investors. It publishes its decision in the media. (Art. 34 CISA, see also Art. 50 CISO).</p> <p>In the case of investment funds, the provisions concerning a change of the fund management company (Art. 34) also apply to a change of the custodian bank. In the case of a SICAV, a change of the custodian bank requires a written agreement and must be approved in advance by FINMA. FINMA publishes its decision in the media. (Art. 74 CISA, see also Art. 105 CISO).</p> <p>Compliance with investment restrictions</p> <p>Chapter 3 of CISO includes the investment and borrowing restrictions for various types of open-ended CIS (securities funds, real estate funds, and other funds for traditional and alternative investments). FINMA conducts checks to verify compliance with these restrictions, basing the sampling e.g. on abnormal returns. In case of infringements, FINMA could use its general powers (see Principles 10 and 11); in practice no such cases have been identified.</p> <p>Segregation and safekeeping of assets</p> <p>The custodian bank is responsible for the management of the CIS accounts and safekeeping accounts. It has to keep the required records and accounts in such a manner that it is at all times able to distinguish between the assets held in safe custody of each collective investment scheme. In relation to assets that cannot be placed in safe custody, it verifies the ownership of the fund management company or collective investment scheme and keeps a record of it. It may hold accounts with third parties for the purpose of the ongoing management of real estate assets. (Art. 104 CISO).</p> <p>The amendments to CISA that came into force on March 1, 2013 include additional requirements on custody and outsourcing of custody (see Principle 24 on delegation).</p> <p>Art. 35 of CISA provides that, in the event of bankruptcy, assets and rights belonging to the fund management company will be segregated in favor of the investors.</p> <p>The fund management company/SICAV and the custodian bank must be separate legal entities. Art. 28(5) and 51 of CISA also require the persons holding the executive powers at the fund management company/SICAV and custodian bank to be independent of each other. Simultaneous</p>
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	<p>membership of the executive board of the fund management company and the executive board of the custodian bank is specifically prohibited in Art. 45(2) of CISO.</p> <p>Members of the board of directors of the custodian bank can act as members of the board of directors of the fund management company. However, the majority of the members of the board of directors of the fund management company must be independent of the persons entrusted by the custodian bank with its duties. The persons entrusted by the custodian bank at executive board level with such duties are not deemed to be independent. None of the persons vested with signatory powers on behalf of the fund management company may at the same time be responsible for custodian bank duties. (Art. 45 CISO).</p> <p>FINMA Circular 08/37 notes that the custody staff of the custodian bank cannot at the same time be responsible for the oversight tasks assigned to the custodian bank under Art. 73(3) of CISA.</p> <p>The regulatory auditors are required to audit compliance with the above independence requirements every 3-5 years, depending on the categorization of the fund management company (3 years category 3, 4 years category 4, and 5 years category 5, see Annex 3 to FINMA Circular 13/3). FINMA has not conducted any supervisory reviews focusing on custody.</p> <p>A change of the custodian bank requires a change in the fund contract and is therefore subject to the approval and publication requirements described above (Art. 105a CISO).</p> <p>Winding up</p> <p>Art. 96 and 97 of CISA and Art. 116 of CISO deal with the dissolution of investment funds and SICAVs. An investment fund is dissolved:</p> <ol style="list-style-type: none"> a) If it was formed for an unlimited period: after a notice by the fund management company or the custodian bank has been served; b) If it was formed for a fixed period: on expiry of such period; or c) By order of FINMA: <ol style="list-style-type: none"> 1. If it was formed for a fixed period: based on a reasonable cause, at the request of the fund management company or the custodian bank; 2. If the minimum assets fall below the required amount; or 3. If FINMA's use of its supervisory measures requires it. <p>A SICAV is dissolved:</p> <ol style="list-style-type: none"> a) If it was formed for an unlimited period: by resolution of the company shareholders, provided such a resolution is taken by at least two thirds of the company shares; b) If it was formed for a fixed period: on expiry of such period; or c) By order of FINMA: <ol style="list-style-type: none"> 1. If it was formed for a fixed period: based on a reasonable cause, by resolution of the company shareholders, provided such a resolution is taken by at least two thirds of the company shares; 2. If the minimum assets fall below the required amount; or 3. In the cases FINMA's use of its supervisory measures requires it. d) In the other cases specified by CISA. <p>The fund management company and SICAV must notify FINMA of the dissolution, and announce it in the media. Following its dissolution, an investment fund or SICAV may neither issue nor redeem</p>
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	<p>any units. In the case of an investment fund, investors have a claim to a proportionate share of the liquidation proceeds. In the case of a SICAV, investors have the right to a proportionate share of the liquidation proceeds.</p> <p>CIS from which approval has been withdrawn may be liquidated by FINMA (Art. 134 CISA). FINMA may also initiate bankruptcy proceedings for SICAVs (and SICAFs) if the conditions stipulated in Art. 137 of CISA are fulfilled. FINMA Ordinance on the Bankruptcy of CIS details the procedures to be applied in such cases.</p> <p>There have been no FINMA orders for the dissolution of investment funds or SICAVs.</p>
Assessment	Broadly Implemented
Comments	The rating of this Principle is driven by the ability to use a related party custodian in Switzerland without additional regulatory and/or supervisory safeguards beyond those already applied. Such additional safeguards can comprise e.g. more frequent, specific regulatory audits by regulatory auditors and allowing no overlap in directors between the fund management company and custodian. It is also important that FINMA takes the risks arising from related party custody into account, when it starts conducting its own supervisory reviews in the area of fund management.
Principle 26.	Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.
Description	<p>Disclosure obligations' focus on non-qualified investors</p> <p>As noted in Principle 24, FINMA may fully or partially exempt CIS from certain provisions of CISA, provided that they are exclusively sold to qualified investors and that the protective purpose of CISA is not impaired. In relation to disclosure obligations, Art. 10(5) of CISA specifically refers to the ability of FINMA to grant an exemption from the requirement to produce a prospectus and a semi-annual report. These are standard exemptions granted by FINMA for funds for qualified investors.</p> <p>Due to this, the discussion below applies primarily to funds for non-qualified investors, that is, retail investment funds.</p> <p>Initial disclosure obligations</p> <p><i>Prospectus</i></p> <p>The minimum content of a CIS prospectus is stipulated in Annex 1 of CISO. Among other things, a CIS prospectus must contain the following:</p> <p>Information concerning the collective investment scheme</p> <ul style="list-style-type: none"> a) Date of formation and indication of the country in which the CIS was established; b) In the case of CIS with a definitive term, the duration (Art. 43 CISA); c) Information concerning the relevant tax provisions (including deductions of withholding tax); d) Accounting year; e) Name of the audit firm; f) Information concerning the units (e. g. nature of the rights represented by a unit and description of the investor voting rights where applicable; available documents or certificates; qualification and denomination of any securities; conditions and effects of dissolution); g) Where applicable, information about exchanges and markets on which the units are listed or traded; h) Procedural details and conditions for the subscription, conversion and redemption of units, including the possibility of subscription or repayment of tangible assets (e.g., method and

	<p>frequency of price calculation and publication, information about the medium of publication) and conditions under which such actions may be suspended;</p> <p>i) Information concerning the calculation and appropriation of net income as well as the frequency of payments in accordance with the distribution policy;</p> <p>j) Description of the investment objectives, investment policy, permitted investments, investment techniques applied, investment restrictions and other rules applicable to risk management;</p> <p>k) Information concerning the rules applicable to the calculation of NAV;</p> <p>l) Information concerning the calculation and amount of fees payable at the expense of the CIS to the fund management company, custodian bank, asset managers, and distributors; information about incidental costs, any performance fee and the total expense ratio; information concerning commissions and other financial benefits where applicable as well as the calculation and amount of fees charged to the investors;</p> <p>m) Information concerning the location where the fund contract, if not attached to the prospectus, and annual and semi-annual reports may be obtained;</p> <p>n) Information concerning the CIS legal status (contractual fund or SICAV) and nature (securities fund, real estate fund, other fund for traditional or alternative investments);</p> <p>o) Information concerning the specific risks and high volatility, where applicable; and</p> <p>p) In the case of funds for alternative investments, a glossary explaining the most important specialist terms.</p> <p><i>Information concerning the licensee (fund management company, SICAV)</i></p> <p>a) Date of formation, legal status, domicile and main administrative office;</p> <p>b) Information on the other CIS managed by the fund management company and, where applicable, on the other services it renders;</p> <p>c) Names and functions of the members of the governing and executive bodies, including any relevant activities not performed on behalf of the licensee;</p> <p>d) Amount of subscribed and paid-up capital;</p> <p>e) Persons to whom investment decisions and other specific tasks have been delegated; and</p> <p>f) Information concerning the exercising of members' and creditors' rights.</p> <p><i>Information concerning the custodian bank</i></p> <p>a) Legal status, registered office and main administrative office; and</p> <p>b) Primary activity.</p> <p><i>Information concerning third parties whose fees are charged to the CIS</i></p> <p>a) Name/company;</p> <p>b) Elements of the contract between the licensee (fund management company, SICAV) and third parties which are significant for the investors, except for fee arrangements;</p> <p>c) Other significant activities of third parties; and</p> <p>d) Specialist knowledge of third parties entrusted with management and decision-making powers.</p> <p><i>Further investment information</i></p> <p>a) Where applicable, the historical results of the CIS; such information may be contained either in the prospectus or attached thereto; and</p>
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	<p>b) Profile of the typical investor for whom the collective investment scheme has been conceived.</p> <p><i>Simplified prospectus</i></p> <p>In addition to a prospectus, a simplified prospectus has to be published for real estate funds (Art. 76(1) CISA). The simplified prospectus contains a summary of the key information provided in the prospectus pursuant to Annex II of CISO. It must be easy to understand. The fund management company and SICAV have to date the simplified prospectus and submit it and any amendments to it to FINMA at the latest at the time of publication.</p> <p><i>KIID</i></p> <p>In addition to a prospectus, a document containing key information for investors must be published for securities funds and other funds for traditional investments (Art. 76(1) CISA). The KIID contains factual information on the key features of the CIS concerned. It must be presented in such a way that investors understand the nature and risks of the CIS and can make informed investment decisions on that basis. The KIID has to contain the information pursuant to Annex 3 of CISO. The fund management company and SICAV have to date the KIID and submit it and any amendments to it to FINMA immediately.</p> <p><i>Suitability</i></p> <p>To assist the investors to evaluate the suitability of the CIS for them, the prospectus has to include information on the profile of the typical investor for whom the CIS has been conceived (see above). The same requirement applies for the simplified prospectus for real estate funds (Annex 2(2)(4) CISO). In case of the KIID, the synthetic indicator describing the volatility record of the fund provides indications to the investor on the suitability of the CIS for that investor (see Annex 3(3) CISO).</p> <p><i>Role of FINMA</i></p> <p>Under Art. 15 of CISA, the fund contract of a contractual fund and the relevant documents for other types of funds require FINMA's approval (see Principle 24). After approval, FINMA also has the power to intervene under Art. 31 FINMASA, if the information is inaccurate, misleading or false.</p> <p>The minimum content of a fund contract is as follows (Art. 35a CISO):</p> <ol style="list-style-type: none"> a) The name of the investment fund, and the name and registered office of the fund management company, custodian bank and asset manager; b) Investor eligibility; c) The investment policy, investment techniques, risk diversification and risks associated with the investment; d) The division into subfunds; e) The unit classes; f) The investors' right to cancel; g) The accounting year; h) The calculation of the NAV and of the issue and redemption prices; i) The appropriation of net income and capital gains from the sale of assets and rights; j) The type, amount and calculation of all fees, the subscription and redemption commission and the incidental costs for the purchase and sale of investments (brokerage fees, charges, duties) that may be charged to the fund's assets or to the investors; k) The duration of the contract and the conditions of dissolution; l) The media of publication; m) The conditions for the deferment of redemption and compulsory redemption;
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	<p>n) The locations at which the fund contract, prospectus, KIID and simplified prospectus, together with the annual and semiannual reports, may be obtained free of charge;</p> <p>o) The unit of account; and</p> <p>p) The restructuring.</p> <p>When FINMA approves the fund contract, it has to verify only the above provisions a–g to ensure their compliance with CISA.</p> <p>The prospectus has to include all material information required for the evaluation of the collective investment scheme by prospective investors. The fund management company and SICAV date the prospectus and submit it and any amendments to it to FINMA at the latest by the time of publication. In practice, FINMA receives the draft prospectus and fund contract for its review at the same time (except for funds for qualified investors, for which the prospectus requirement is normally waived). FINMA reviews both the fund contract and prospectus. As noted in Principle 24, there are no formal deadlines for this review.</p> <p>Ongoing disclosure obligations</p> <p>The prospectus and the simplified prospectus have to be updated in the event of material changes, and otherwise at least once a year (Art. 106(3) and 107(3) CISO). The fund management company and the SICAV must verify the information relevant for investors whenever significant changes to the information occur, but at least once a year. If a review finds that the KIID requires amendment, the fund management company and SICAV must make a revised version available immediately (Art 107d CISO). Amendments to the prospectus, simplified prospectus and KIID must be reported to FINMA (Art. 15(3) CISO).</p> <p>Periodic reporting</p> <p>Art. 89 of CISA requires the publication of an annual report for each open-ended CIS within four months of the close of the financial year. It must contain the following data in particular:</p> <p>a) The annual financial statements;</p> <p>b) The number of units redeemed and newly issued during the financial year and the final balance of the issued units;</p> <p>c) The inventory of the funds' assets at market value and the resulting value (NAV) of a fund unit as of the last day of the financial year;</p> <p>d) The valuation principles and the principles used for the calculation of the NAV;</p> <p>e) A breakdown of the buy and sell transactions;</p> <p>f) The names of persons and companies to which duties have been entrusted;</p> <p>g) Information relating to matters of particular economic or legal significance, e.g., amendments to the fund regulations, a change of the fund management company or custodian bank, changes concerning the persons holding executive powers at the fund management company, SICAV or asset manager, and legal disputes;</p> <p>h) The performance of the CIS, possibly benchmarking it with comparable investments; and</p> <p>i) A brief report by the audit firm regarding the information mentioned above.</p> <p>A semi-annual report must be issued within two months after the end of the first half of the financial year. The report has to contain an unaudited statement of net assets or an unaudited balance sheet and income statement as well as the information in points b, c and e above.</p>
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	<p>The annual and semi-annual reports must be filed with FINMA at the latest at the time of publication.</p> <p>The CIS accounts have to be prepared in accordance with the requirements set out in FINMA Collective Investment Schemes Ordinance (CISO-FINMA), which includes detailed requirements on the presentation of the accounts of various types of CIS. According to FINMA, these requirements are largely aligned with international standards.</p> <p>Standard formats</p> <p>As noted above, Annex 1 of CISO includes the minimum content of the prospectus, while Annexes 2 and 3 of CISO include the content for the simplified prospectus and the KIID, respectively.</p> <p>The standard items to be included in the annual reports are stipulated in Art. 67-78 of CISO-FINMA.</p> <p>Advertisements</p> <p>Public advertising is any advertising directed towards the public. However, it is not deemed to be public if it is directed exclusively towards qualified investors (Art. 3 CISA). While CISA does not explicitly address advertising apart from the offering documents, the issue can be considered to be covered by the obligations relating to the general duty to provide information (see Art. 20(1)(c) CISA). In case an advertisement were inaccurate, misleading or false, FINMA would have the power to intervene (see Principles 10 and 11). However, in practice FINMA has not taken measures in relation to CIS advertisements.</p>
Assessment	Fully Implemented
Comments	<p>Given the concerns expressed by some market participants on the length of the FINMA approval process for fund contracts, the FDF should consider the costs and benefits of introducing a formal, sufficiently long deadline for the FINMA approval process of fund contracts. This should be combined with appropriate safeguards to enable FINMA to effectively reject non-compliant proposals.</p>
<p>Principle 27. Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.</p>	
Description	<p>Asset valuation</p> <p>Art. 88 of CISA requires that CIS investments which are listed on a stock exchange or other regulated market open to the public must be valued at the prices paid on the main market. Other investments for which no current price is available must be valued at the price that would probably be obtained in a diligent sale at the time of valuation.</p> <p>There are specific requirements on the valuation of derivatives, including OTC derivatives. Art. 34 of CISO-FINMA requires derivatives for which market prices are available to be valued at the current prices paid on the main market. The prices have to be based on prices of external parties that specialize in this type of transactions and operate independently of the fund management company or SICAV and its agents. Art. 32(4) of CISO-FINMA requires that if no current market price is available for derivatives, it must be possible to determine the price at any time using appropriate valuation models that are recognized in practice, based on the market value of the underlying instruments or assets. Before concluding such transactions, specific offers must be obtained from at least two potential counterparties and the most favorable offer is to be accepted, under due consideration of price, credit rating, risk distribution and the range of services offered by the counterparties. The conclusion of the transaction and pricing must be clearly documented.</p>

	<p>Valuations are to be clearly documented. Finally, Art. 49 of CISO-FINMA includes provisions on the valuation of the claims against OTC derivatives counterparties.</p> <p>More detailed valuation guidelines for CIS assets are included in the SFAMA Guidelines on the valuation of CIS assets and the handling of valuation errors in the case of open-ended CIS. The NAV of an open-ended CIS must be calculated as of the end of the financial year, and on each day on which units are issued or redeemed (Art 83(1) CISA). The NAV per unit represents the market value of the investments, less all the fund's liabilities, divided by the number of units in circulation. FINMA may permit a different method for calculating the NAV, provided such a method meets international standards and the protective purpose of CISA is not impaired as a result. The fund management company and the SICAV have to publish the NAV at regular intervals.</p> <p>Art. 128 of CISA requires that the audit firm examines whether the licensee complies with the statutory, contractual and regulatory provisions as well as the provisions of the articles of association, and conducts interim audits on a spot check basis. Among other issues, the audit firm must examine the financial statements of the CIS on an annual basis, including the valuation of assets.</p> <p>In summary, the regulatory framework attempts to ensure the fairness and reliability of valuations through requirements imposed on the fund management company, custodian bank, and audit firm. First, the fund management company is responsible for a fair and reliable valuation through its obligation to ensure the provision of transparent financial statements (Art. 20 CISA). Second, the custodian bank has to verify whether the calculation of the NAV and of the issue and redemption prices of the units is in compliance with CISA and with the fund regulations (Art. 73(3)(a) CISA). Third, the audit firm has to examine the annual accounts of the CIS. Ultimately FINMA could also use its general powers under CISA and FINMASA to aim at ensuring compliance with the rules applicable to asset valuation and pricing.</p> <p>Subscription and redemption</p> <p>According to Art. 78(2) of CISA, investors are, in principle, entitled at all times to request the redemption of their units and payment of the redemption amount in cash. As noted in Principle 26, the prospectus has to include information on the procedural details and conditions for the subscription, conversion and redemption of units (e.g., the method and frequency of price calculation and publication, information about the medium of publication) and conditions under which such actions may be suspended. Art. 80 of CISA provides that the issue and redemption prices of the CIS units have to be based on the NAV per unit on the day of valuation, less any fees and expenses.</p> <p>According to Art. 109 of CISO, the regulations of a CIS whose value is difficult to ascertain, or which has limited marketability, may provide for redemptions to take place only on specific dates, subject to a minimum of four times per year. FINMA may also in the event of a justified request restrict the right to redeem at any time depending on the investments and investment policy. This can apply specifically in the case of funds that invest in instruments that are not traded on a regulated market open to the public, mortgages and private equity investments. The fact that the right to redeem at any time is restricted must be stated explicitly in the fund regulations, prospectus and simplified prospectus. The right to redeem at any time may be suspended for a maximum of five years.</p> <p>As noted in Principle 24, FINMA can exempt CIS for qualified investors from the requirement to provide investors with the right to terminate their investment at any time and to issue and redeem</p>
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units in cash.

Art. 79 of CISO-FINMA requires that the issue and redemption price, or NAV, must be published in the print media or electronic platforms cited in the prospectus each time units are issued and redeemed. Prices for securities funds and other funds must also be published at least twice a month. Prices of real estate funds and CIS for which the right to redeem at any time is restricted must be published at least once a month. The weeks and weekdays on which publication takes place must be stated in the prospectus. If the NAV is published, it must be provided exclusive of commission.

Pricing errors

Treatment of pricing errors is covered in the SFAMA Guidelines on the Valuation of CIS Assets and the Handling of Valuation Errors in the Case of Open-Ended CIS that FINMA has recognized as a minimum standard.

The guidelines require a fund management company/SICAV to implement effective organizational measures to enable it to identify, as quickly as possible, errors in the valuation of the assets and in the calculation of the NAV or the subscription and redemption prices, and to rectify the causes of such errors. The fund management company/SICAV must keep a record of all errors that occur that are directly connected with the calculation of the NAV as well as the measures implemented to prevent a reoccurrence of the same error. It must allow the custodian bank and auditors to inspect the error reports at any time.

When errors occur, the decision on the steps to be taken depends primarily on whether the errors are deemed to be significant or insignificant. An error is deemed to be significant if the percentage difference between the initially determined NAV or the subscription/redemption price and the correct, rounded-off NAV or price exceeds the following limits (as a percentage of the correct value or price):

Open-ended CIS by type of investment	Price Difference for Significant Error (In percent)	
	Majority of investments in established markets	Majority of investments in emerging markets
Money market funds	0.25	0.375
Bond funds	0.5	0.75
Equity funds	1.0	2.0
Convertible bond funds and asset allocation funds with equity weightings below 50 percent	0.75	1.375
Asset allocation funds with equity weightings above 50 percent	1.0	2.0

In the case of other funds for alternative investments, the fund management company/SICAV has to issue an internal guideline defining the parameters for assessing the significance of errors.

In the case of errors deemed to be insignificant, the fund management company/SICAV must implement the measures envisaged in the internal guideline. In the case of recurring errors, errors that remain undetected for longer periods of time and errors in excess of a certain volume, the

	<p>board of directors is to be formally informed by the executive management.</p> <p>Every error deemed to be significant is to be reported immediately to the custodian bank, the auditors and FINMA. The report of the fund management company/SICAV in such instances must include the following information:</p> <ul style="list-style-type: none"> a) The scope and cause of the erroneous valuation; b) The corrective measures implemented or an application for approval of such corrective measures; and c) The damage caused to the CIS on the one hand and the investors on the other. <p>In the case of significant pricing errors, the fund management company/SICAV must also observe its duty to disclose information to foreign supervisory authorities in countries where the CIS in question is approved for distribution, as well as to the investors and distribution partners. If no units were subscribed and/or redeemed on the basis of the erroneous NAV, the measures to be implemented will be limited to compiling an error report and observing the above reporting obligations. If units were subscribed and/or redeemed on the basis of the erroneous NAV, the fund management company/SICAV must at least cancel all transactions that were settled on the basis of the erroneous NAV to the detriment of investors, and settle these transactions on the basis of the corrected NAV. It has to indemnify both the investors affected and the CIS concerned, except that in minor cases where the resulting difference amounts to less than CHF 50 per investor, the fund management company/SICAV may apply to FINMA to be released from its obligation to cancel the settlements in question. However, the CIS affected is to be indemnified in all cases.</p> <p>Suspension of pricing and redemptions</p> <p>According to Art. 110 of CISO, the fund regulations may provide for repayment to be deferred temporarily in the following exceptional cases:</p> <ul style="list-style-type: none"> a) Where a market which serves as the basis for the valuation of a significant proportion of the fund's assets is closed, or if trading on such market is restricted or suspended; b) In the event of political, economic, military, monetary or other emergencies; c) If, owing to exchange controls or restrictions on other asset transfers, the CIS can no longer transact its business; and d) In the event of large-scale withdrawals of units which may significantly endanger the interests of the other investors. <p>The audit firm and FINMA must be informed forthwith of any decision to defer redemptions. Such a decision must also be communicated to the investors in a suitable manner.</p> <p>FINMA may also in exceptional instances grant limited deferment for the repayment of the units in the interest of all investors (Art. 81(2) CISA).</p> <p>FINMA would be able to use its power under Art. 31 of FINMASA to restore compliance with the law in case a fund management company or SICAV failed to honor redemptions or imposed a suspension of redemptions in a manner not consistent with the CIS constitutive documents, prospectus, the contractual relationship with the CIS participants, or law. In practice it has not needed to use its powers in this type of cases.</p>
Assessment	Fully Implemented
Comments	The thresholds for qualifying pricing errors as significant appear to be relatively high compared to

	other jurisdictions. FINMA and SFAMA are encouraged to assess whether it would be appropriate to lower them.
Principle 28.	Regulation should ensure that hedge funds and/or hedge funds managers/advisers are subject to appropriate oversight.
Description	<p>Regulatory requirements</p> <p><i>Hedge fund</i></p> <p>Art. 71 of CISA refers to hedge funds as "other funds for alternative investments". They include open-ended CIS whose investments, structure, investment techniques (short selling, borrowing of funds, etc.) and investment restrictions exhibit a risk profile that is typical for alternative investments. Leverage is permitted only up to a certain percentage of the fund's net assets, as defined in detail in Art. 100 of CISO.</p> <p>Investments in securities, precious metals, real estate, commodities, derivatives, units of other CIS, as well as other assets and rights are permitted for hedge funds. They can invest in assets that have limited marketability, are subject to strong price fluctuations, exhibit limited risk diversification, and are difficult to value. (Art. 69 CISA).</p> <p>The following investments are specifically admitted for hedge funds (Art. 99 CISO):</p> <ul style="list-style-type: none"> a) Securities; b) CIS units; c) Money market instruments; d) Sight and time deposits with a term of up to twelve months; e) Precious metals; f) Derivative financial instruments whose underlying assets are securities, CIS, money market instruments, derivative financial instruments, indices, interest rates, exchange rates, loans, currencies, precious metals, commodities or similar instruments; and g) Structured products relating to securities, CIS, money market instruments, derivative financial instruments, indices, interest rates, exchange rates, currencies, precious metals, commodities or similar instruments. <p>FINMA may also approve other investments such as commodities and the corresponding commodity certificates.</p> <p>With regards to leverage, hedge funds may:</p> <ul style="list-style-type: none"> a) Raise loans for an amount not exceeding 50 percent of the fund's net assets; b) Pledge or cede as collateral no more than 100 percent of the fund's net assets; c) Commit to an overall exposure of up to 600 percent of the fund's net assets; and d) Engage in short-selling. <p>While the fund contract of any Swiss hedge fund requires FINMA's approval, the situation for foreign hedge funds is different. Under Art. 15(1)(e) of CISA, the relevant documents of foreign hedge funds only require FINMA's approval in the case of distribution to non-qualified investors. Principle 24 includes a detailed description on the requirements and process applied by FINMA in approving fund contracts.</p> <p><i>Hedge fund manager</i></p> <p>A fund management company, SICAV and asset manager wishing to manage hedge funds must obtain authorization from FINMA in the same way as the entities managing regular CIS. Only asset</p>

	<p>managers of foreign CIS whose investors are qualified investors are not governed by CISA provided they meet certain requirements regarding the amount of assets under management (see Principle 24). This <i>de minimis</i> rule applies to all CIS, not only to hedge funds.</p> <p>As a rule, the same legal provisions apply to hedge funds managers and managers of other CIS. In addition, the persons responsible for the management and business operations of hedge funds are required to have specific qualifications that depend on the nature of the hedge funds to be managed (Art. 14(1)(a) CISA, see also Principle 24).</p> <p>Since hedge fund managers are subject to the same regulatory framework as the fund management companies and asset managers of any other CIS, the requirements on internal organization, risk management, segregation of client funds and assets, conduct of business, management and disclosure of conflicts of interest, and capital and other prudential requirements described in Principle 24 are applicable. FINMA's practice is to tailor these requirements depending on the business conducted, i.e., requirements for those involved in managing hedge funds differ in practice from those applied to managers of regular CIS.</p> <p>Disclosure to investors</p> <p>Hedge funds are subject to the same disclosure requirements as other CIS (see Principle 26). In addition, Art. 71 of CISA requires reference to be made in the fund name, as well as in the prospectus and advertising material, to the special risks involved in alternative investments. The investment techniques and restrictions described above must be set out explicitly in the fund regulations (Art. 100(3) CISO).</p> <p>Reporting, supervision and enforcement</p> <p>FINMA can require hedge fund managers to provide it with information under its powers in FINMASA (Art. 29, see Principle 10). There are also specific provisions on the duty to provide information in CISA. Art. 139 requires persons who perform a role in the context of CISA to provide FINMA with all information and documents that it requires to carry out its duties. FINMA can also order them to do that. Art. 144 on the collection and reporting of data provides FINMA with the power to collect data concerning licensees' business activities and the trend of CIS in order to maintain market transparency or to carry out its supervisory function. It may appoint third parties to collect this information or order licensees to submit this data themselves.</p> <p>Currently FINMA or the SNB do not collect any data on hedge funds or their exposure to counterparties in addition to that collected on any other CIS.</p> <p>Fund management companies, custodian banks, asset managers, distributors and representatives of hedge funds are subject to the same supervisory regime as that applicable to any other collective investment business (see Principle 24). FINMA's powers vis-à-vis these entities are described in Principles 10 and 11, and include the power to access their records, inspect them and enforce against wrongdoing.</p> <p>Cooperation and exchange of information</p> <p>FINMA's general powers to collect information on behalf of a foreign regulator from supervised entities and third persons described in Principles 10, 11 and 15 apply also to hedge fund managers, hedge funds and their counterparties. The confidentiality safeguards and national law restrictions</p>
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	described in Principles 13 and 15 apply. In addition to the information sharing provisions of Art. 42(2) of FINMASA described in Principle 13, Art. 141 of CISA provides that FINMA may transmit to foreign financial market supervisory authorities information and documentation not available publicly concerning licensees in accordance with Art. 42(2)-(4) of FINMASA, provided the requesting authority is in effect responsible for supervising the activities of these licensees within its territory.
Assessment	Fully Implemented
Comments	
Principles for Market Intermediaries	
Principle 29.	Regulation should provide for minimum entry standards for market intermediaries.
Description	<p>Market intermediaries requiring authorization</p> <p><i>Domestic intermediaries</i></p> <p>Persons intending to carry out the activities of a securities dealer are subject to authorization by FINMA (Art. 10(1) SESTA). According to Art. 2(d) of SESTA, a securities dealer means any natural person, legal entity or partnership that buys and sells securities in a professional capacity on the secondary market, either for its own account with the intent of reselling them within a short period of time or for the account of third parties, or makes public offers of securities to the public on the primary market, or creates derivatives and offers them to the public. According to FINMA, in practice there are no natural persons or partnerships that have been authorized as securities dealers.</p> <p>The activities that require authorization as a securities dealer are further specified in Art. 3 of SESTO:⁶¹</p> <ul style="list-style-type: none"> a) Trading for own account on a short-term basis with gross turnover that exceeds CHF 5 billion per year (own account dealers); b) Underwriting securities issued by third parties on a firm basis or against commission and offering them to the public on the primary market (issuing houses); c) Creating derivatives and offering them to the public on the primary market for own account or for the account of third parties (derivatives firms); d) Trading in securities for own account on a short-term basis and maintaining firm bid and offer prices in given securities permanently or on request (market making); and e) Trading in securities in own name for the account of clients and maintaining accounts for these clients themselves or with third parties for the settlement of transactions or holding securities of these clients in safe custody themselves or with third parties in their own name (client dealers). <p>The authorization as a securities dealer is a universal one, i.e., even though the applicant for authorization intends to conduct only one of the above activities, the authorization in principle covers all the above activities. However, an authorized securities dealer is subject to the ongoing obligation to inform FINMA in case of a change in its activities (see below).</p> <p>According to FINMA Circular 2008/5 (Comments on the term securities dealer) a client dealer acts in its own name, but the client carries the economic risk from the securities transactions that the client dealer has executed or transmitted for execution. A client dealer acts in its own name when it</p>

⁶¹ For an authorization to be required, these activities will need to be conducted in a professional capacity. As an example, a client dealer is considered to act in the professional capacity, when it maintains the accounts or holds the securities of more than 20 clients.

	<p>requests third parties to open accounts for each of its clients. A client dealer is also a securities dealer that on the basis of powers of attorney uses its own account to buy and sell securities for the account of its clients. In contrast, an asset manager or an investment adviser that acts in the name and for the account of the client is not a securities dealer, and does not therefore need to be authorized. Since this is the business model of the Swiss independent asset managers, they do not require an authorization. Neither are they subject to any other legal or regulatory requirements applicable to securities dealers.⁶² Discretionary asset management services provided by regulated entities (such as banks, securities dealers, and CIS asset managers) are however subject to guidelines prepared by industry associations that FINMA has recognized as a minimum standard.</p> <p>Art. 2 of SESTO further provides that own account dealers, issuing houses and derivatives firms are only considered to be securities dealers if they are mainly active in the financial sector. According to FINMA Circular 08/5, the reason for limiting the authorization requirement to firms that are mainly active in the financial sector is to prevent industrial and commercial firms from becoming subject to the SESTA requirements due to their treasury activities. The 'mainly active' criterion will be assessed on a consolidated basis. In contrast, market makers and client dealers will require authorization as securities dealers even though they do not conduct their activities primarily in the financial sector. In practice this requires setting up a separate subsidiary for providing these services.</p> <p>Certain entities (the SNB, fund management companies, insurance companies and occupational pension funds) cannot be securities dealers. However, a bank can receive an authorization as a securities dealer in addition to its banking license (and vice versa). In practice, the majority of securities dealers also have a banking license in Switzerland.</p> <p>An additional exemption from the authorization requirement relates to the nature of the clients of a client dealer, since the following are not considered as clients (Art. 3(6) SESTO):</p> <ul style="list-style-type: none"> a) Domestic and foreign banks and securities dealers and other enterprises under government supervision; b) Shareholders or partners with a significant interest and persons with business or family ties to them; and c) Institutional investors with a professional treasury. <p><i>Foreign intermediaries</i></p> <p>A foreign securities dealer is subject to authorization by FINMA, if it (Art. 39 SESTO):</p> <ul style="list-style-type: none"> a) Employs people in Switzerland who, permanently and in a professional capacity for it, in or from Switzerland: <ul style="list-style-type: none"> 1. Trade in securities, maintain client accounts or commit the securities dealer legally (branch); 2. Operate in another way, specifically by passing on client orders to a dealer or representing it for advertising or other purposes (representative office). b) Wishes to become a member of a stock exchange incorporated in Switzerland (foreign member of the stock exchange).
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⁶² Many independent asset managers are members of one of the several associations that have been established in Switzerland. Some have issued codes of conduct that their members have to comply with.

	<p>Provision of services to Switzerland on a cross-border basis is not subject to authorization. If FINMA becomes aware of such cross-border activities, it may inform the competent foreign supervisory authorities (Art. 39(2) FINMASA).</p> <p>The activities of foreign securities dealers in Switzerland are governed by the provisions of SESTA and SESTO relating to Swiss securities dealers, in so far as no special regulations are stipulated in SESTO (Art. 40 SESTO).</p> <p>Criteria for authorization of a domestic securities dealer</p> <p>According to Art. 10(2) of SESTA, authorization as a securities dealer is granted if:</p> <ol style="list-style-type: none"> a) The organization and internal rules of the applicant are such as to ensure compliance with the duties under SESTA; b) The applicant has the required minimum capital or has provided the required security deposit⁶³; c) The applicant and its senior staff can show that they have the required professional knowledge; and d) The applicant, its senior staff and principal shareholders can give an assurance of proper business conduct. <p><i>Initial capital requirement</i></p> <p>Art. 22 of SESTO requires the minimum share capital of a securities dealer to be CHF 1.5 million, which must be fully paid up. Banks are subject to Art. 4 of the Federal Ordinance on Banks and Savings Banks (Banking Ordinance, BO), which requires a minimum share capital of CHF 10 million.</p> <p><i>Fitness and propriety of senior staff and principal shareholders</i></p> <p>Art. 23 of SESTO requires that the application for authorization as a securities dealer includes information on senior staff and principal shareholders. Senior staff of a securities dealer include the members of the body in charge of supervision, regulation and control (Board of Directors), the members of the senior management, and the head of the internal audit unit. Principal (qualified) shareholders refer to the natural persons and legal entities that hold, directly or indirectly, at least 10 percent of the capital or voting rights of a securities dealer, or that can otherwise exert a significant influence on the securities dealer's business activities.</p> <p>The information to be provided on natural persons includes nationality, domicile, significant interests in other companies, pending judicial proceedings and administrative procedures as well as a signed curriculum vitae, references and an extract from the register of criminal records. The information on companies covers the articles of association or partnership agreement, an extract from the commercial register or an attestation to this effect, a description of the business activities, financial position and, where appropriate, group structure as well as information on completed or pending judicial proceedings and administrative procedures. With regard to principal shareholders, the application for authorization must also contain the percentages of capital held and the declaration required under Art. 28(2) of SESTO stating whether they have acquired the interest for</p>
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⁶³ SESTO has detailed requirements on the capital of natural persons and partnerships and their ability to use a security deposit instead of capital that are not described here because such legal formats are currently not in use in Switzerland.

	<p>their own account or on a fiduciary basis for third parties and whether they have granted options or similar rights for said interest.</p> <p>If FINMA were to consider that a member of the Board of Directors or senior management is not fit and proper, it would not grant a license to the applicant. Normally this does not require FINMA to take an official decision, since an applicant would generally replace the problematic individual rather than risk a delay or negative decision on the application.</p> <p>Process for the authorization of a domestic securities dealer</p> <p>The application for authorization has to contain all the information necessary for the purposes of assessing the application, specifically (Art. 17 SESTO):</p> <ul style="list-style-type: none"> a) Area of business (Art. 18); b) Organization (Art. 19); c) Internal control system (Art. 20); d) Place of management (Art. 21); e) Minimum capital or security deposit (Art. 22); f) Senior staff and principal shareholders (Art. 23); g) Own funds and risk spreading (Art. 29); and h) Auditors (Art. 30). <p>FINMA guidelines for license applications for banks and securities dealers provide more detailed instructions on the content of the license application. An audit firm has to take a detailed view on the request for authorization, on the business plan and on compliance with the authorization criteria in line with the practical guide issued by FINMA on the confirmations by the audit firms on the license applications.⁶⁴ FINMA has also issued a template for the minimum content of the report of the audit firm that covers, among other issues, internal organization, risk management, internal controls, and internal policies and procedures. FINMA reviews the report of the audit firm and organizes meetings with the applicant for authorization. It does not itself conduct an on-site inspection in the applicant. If the applicant is authorized, its regulatory auditor cannot be the same than the one that assessed its application for authorization.</p> <p>Very few licenses have been granted in the past years, since the industry is consolidating, not expanding.</p> <p><i>Refusal, withdrawal or suspension of authorization</i></p> <p>According to FINMA, it can set the licensing requirements appropriately in certain cases, thereby shaping specific aspects that need to be addressed in order for the applicant to be authorized. If the licensing requirements cannot be met or incomplete information is submitted, or FINMA is not convinced about the applicant's compliance with the licensing requirements, the license is refused and the application is rejected. In practice most of the applicants withdraw their applications in such a case, but FINMA can also issue a ruling stating that an authorization has not been granted. An appeal against such a ruling can then be made to the SFAC.</p>
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⁶⁴ Guide pratique concernant les confirmations des sociétés d'audit relatives aux demandes d'autorisation de l'établissement/Wegleitung für der FINMA einzureichende Bestätigungen der Prüfgesellschaften zu Gesuchen betreffend Institutsbewilligungen.

	<p>Authorizations that were given on the basis of incorrect information can be revoked under the rules set out in general administrative procedure law. If there are few shortcomings which can be remedied quickly, less stringent measures (e.g., those under Art. 31 and 32 of SESTA, see Principle 11) can be taken in some cases.</p> <p>On the basis of Art. 37 of FINMASA, FINMA must revoke the licence of a supervised entity, if it no longer fulfils the requirements for its activity or seriously violates the supervisory provisions. On revocation, the supervised entity loses its right to carry out its activities. In addition, if FINMA withdraws a securities dealer's authorization to conduct business, it will result in the dissolution of the securities dealer (Art. 36 SESTA). In such a case, FINMA has to appoint a liquidator and supervise his/her activities. FINMA may resolve not to order the dissolution of a securities dealer that is also subject to the BA, provided that its banking license is not also being withdrawn. These consequences apply also in case regulated activities are carried out without an appropriate authorization.</p> <p><i>Banning or suspending a person</i></p> <p>According to Art. 33 of FINMASA, if FINMA detects a serious violation of supervisory provisions, it may prohibit the person responsible from acting in a management capacity at any person or entity subject to its supervision. The prohibition from practicing a profession may be imposed for a period of up to five years.</p> <p>In practice, following irregularities or incidents at an authorized securities dealer, FINMA investigates the individuals. If necessary, FINMA may order the dismissal of an executive who is considered not to fulfill the necessary requirements. To do so, FINMA starts enforcement proceedings (see Principle 11). Also, it can prevent a bank from engaging for a senior executive position a person that does not provide assurance of proper business conduct (hence, such a person will fail the fit and proper test as outlined above). FINMA may also restrict or replace the powers of managers or board members. In this regard, FINMA is authorized to appoint an investigating agent with the powers to replace the existing management and act for the supervised entity as interim management (Art. 36 FINMASA).</p> <p>Criteria for authorization of a foreign securities dealer</p> <p>FINMA may grant a foreign securities dealer authorization to set up a branch, if (Art. 41 SESTO):</p> <ol style="list-style-type: none"> a) The foreign securities dealer is adequately organized and has sufficient financial resources and qualified staff to operate a branch in Switzerland; b) The foreign securities dealer is subject to appropriate supervision which also includes the branch; c) The competent foreign supervisory authorities do not object to the establishment of the branch; d) The competent foreign supervisory authorities undertake to notify FINMA without delay, should circumstances arise which could seriously jeopardize client assets at the branch; e) The competent foreign supervisory authorities are in a position to offer FINMA administrative assistance; f) The branch is organized in keeping with its business activities and has regulations which precisely define the scope of business and provide for an administrative organization in keeping with its business activities; g) The senior staff responsible for the management of the branch offer the guarantee of irreproachable business conduct; and h) The foreign securities dealer furnishes proof that the company name of the branch can be entered in the commercial register.
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	<p>If the foreign securities dealer is part of a group operating in the financial sector, FINMA may make the authorization conditional upon the requirement that it is subject to appropriate supervision on a consolidated basis by foreign supervisory authorities. However, foreign securities dealers are exempted from the requirements of Art. 12-14 of SESTA on own funds, risk diversification and consolidation.</p> <p>FINMA may grant a foreign securities dealer authorization to set up a representative office, if (Art. 49 SESTO):</p> <ul style="list-style-type: none"> a) The foreign securities dealer is subject to appropriate supervision; b) The competent foreign supervisory authorities do not object to the establishment of the representative office; and c) The persons entrusted with the management of the representative office offer the guarantee of irreproachable conduct of their activities. <p>FINMA may grant an authorization to a foreign securities dealer that wishes to become a member of a stock exchange registered in Switzerland, if (Art. 53 SESTO):</p> <ul style="list-style-type: none"> a) The foreign securities dealer is subject to appropriate supervision; b) The competent foreign supervisory authorities do not object to the activities of the foreign securities dealer in Switzerland; and c) The competent foreign supervisory authorities are in a position to offer FINMA administrative assistance. <p>Representative offices of foreign securities dealers and foreign members of a stock exchange are exempted from Art. 12-14 of SESTA as well as Art. 16 and 17 on financial accounts and auditing.</p> <p>Ongoing requirements</p> <p>Art 25 of SESTO requires a securities dealer to report any change in the requirements for authorization to FINMA. A change in the senior staff must only be reported to the auditors.</p> <p>Publicly available information</p> <p>Information on the authorized securities dealers is published on the FINMA website in four different languages (German, French, Italian and English). The information includes a reference on whether the securities dealer is Swiss or foreign controlled, a branch or representative office of a foreign securities dealer, or an authorized remote participant of a Swiss stock exchange (SSX or Eurex Zurich). The identity of senior management and of other authorized signatories is not available on the FINMA website, but can be verified from the Register of Commerce that provides public access.</p>
Assessment	Partly Implemented
Comments	<p>The rating of this Principle reflects the fact that independent asset managers are not subject to authorization or any regulatory requirements in Switzerland, which is contrary to what is expected by the IOSCO Principles. This regulatory gap was identified in the 2001/02 IOSCO assessment.</p> <p>Cross-border provision of securities dealing services does not require authorization in Switzerland. Approaches vary across jurisdictions and Principle 29 does not include specific requirements in this regard. However, globally the trend is towards requiring authorization in particular if services are</p>

	provided to retail clients. The Swiss authorities should carefully consider whether the current approach provides sufficient protection to Swiss investors and whether the provision of services in particular by foreign unauthorized entities can be sufficiently enforced.
Principle 30.	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.
Description	<p>Capital requirements</p> <p>According to Art. 12 of SESTA, a securities dealer must have a sufficient amount of own funds available. SESTA requires the minimum own funds requirements to be set out in SESTO and to take into account the risks associated with a securities dealer's operations, including off-balance sheet transactions. A securities dealer must diversify its risks in an appropriate manner. SESTO is required to set the limits for such risks and the add-ons to the own funds necessary to cover them (Art. 13 SESTA). In practice SESTO sets the capital requirements for securities dealers by referring to the relevant requirements for banks. On the basis of Art. 29(1) of SESTO, the Capital Adequacy Ordinance (CAO) applies also to securities dealers. The requirements in the CAO follow the Basel III capital requirements and cover market, credit and operational risks (see Art. 42(2) CAO). As such, the capital requirements increase as the risk increases according to the Basel framework. In addition to the standard 8.0 percent capital requirement on the risk-weighted positions, all banks must hold a capital buffer of 2.5 percent of their risk-weighted positions at all times.⁶⁵</p> <p>The Basel Core Principles (BCP) assessment concluded that the capital adequacy framework in Switzerland is compliant with the BCP Principle 16 on capital adequacy.</p> <p>In addition, the level of own funds of non-bank securities dealers must be at least one quarter of their annual costs (as defined in Art. 29(4) SESTO) or they must have at least CHF 10 million core capital, even if the above risk-based requirements would lead to a lower capital requirement (Art. 29(3) SESTO).</p> <p>In justified individual cases, FINMA may grant exemptions or tighten the provisions relating to own funds and risk spreading (Art. 29(2) SESTO). In particular, it may require a securities dealer to draw up statements on own funds pursuant to the CAO at shorter intervals. FINMA has granted exemptions mainly from the requirement to prepare the capital adequacy calculations on a solo basis. Some supervised entities have been subjected to more frequent reporting.</p> <p>Liquidity standards</p> <p>The Liquidity Ordinance regulates quantitative and qualitative liquidity requirements for all banks. Non-bank securities dealers are not covered by it and the related FINMA Circular 13/6: Liquidity - banks. According to FINMA the main reason for this is that non-bank securities dealers do not accept regular deposits from the public (however, see Principle 31 for the possibility of securities dealers to hold client funds). They do not have an SNB account and therefore the future Liquidity Coverage Ratio (LCR) regulation is not applicable to non-bank securities dealers. According to FINMA, the majority of non-bank securities dealers do not conduct market making or significant own account dealing⁶⁶. At the end of 2012, all non-bank securities dealers had a total balance sheet of CHF 8.6 billion.</p> <p>The liquidity risk requirements applicable to banks have been analyzed in detail in the BCP assessment that concluded that the liquidity risk framework in Switzerland is largely compliant with</p>

⁶⁵ In addition, Pillar 2 capital charges and related capital adequacy targets and intervention thresholds apply to all except category 5 banks and securities dealers.

⁶⁶ Out of 56 non-bank securities dealers, 9 conduct proprietary trading and 3 market making.

	<p>BCP 24.</p> <p>Record-keeping, reporting and audit requirements</p> <p>The CAO requires banks and securities dealers to submit a capital adequacy reporting form on a quarterly basis to the SNB within six weeks after the end of each quarter (Art. 14). The consolidated report must be provided half-yearly. However, according to FINMA the capital adequacy requirements must be respected at any time (which is to be recorded). In particular situations – whether it relates to an institution or to the market – FINMA also has the competence to increase the reporting frequency.</p> <p>The requirements for the accounts of banks set out in Section IV of the BA and Art. 23-28 of the BO apply also to securities dealers (Art. 16 SESTA and Art. 29 SESTO). The audit requirement of Art. 18 of the BA also applies to securities dealers, requiring a bank and a securities dealer to be subject to an annual financial and regulatory audit (Art. 17 SESTA). FINMA has provided further instructions on the content of the audit report for banks and securities dealers in a document published in March 2013.⁶⁷ The audit firms also have to audit/review the annual/half-yearly capital adequacy reports prepared by banks and securities dealers before their submission.</p> <p>Consolidated capital requirements</p> <p>According to Art. 14 of SESTA, the provisions of the BA on financial groups and financial conglomerates apply also to securities dealers. The group supervision by FINMA includes all group companies active in the financial sector as defined in Art. 11 of the BO (Art. 14 BO). Group companies are companies associated through an economic unit or an obligation to assist (Art. 13 BO).</p> <p>Consolidated supervision has been analyzed in detail in the BCP assessment that concluded that the Swiss framework is compliant with BCP Principle 12 on consolidated supervision.</p> <p>Monitoring and enforcement</p> <p>According to Art. 14 of the CAO, banks and securities dealers must prove on a quarterly basis that they possess adequate capital on the basis of a capital adequacy reporting form stipulated by FINMA. Consolidated capital adequacy reporting takes place on a half-yearly basis. The forms have to be submitted to the SNB within six weeks after the end of each quarter or half-year, which then passes them on to FINMA. In addition, Art. 42 of the CAO requires banks and securities dealers to inform FINMA and their external auditors as soon as their capital falls below the 8.0 percent requirement. If a bank's or securities dealer's capital buffer falls below the 2.5 percent requirement due to exceptional and unpredictable circumstances, FINMA sets an individual grace period for restoring the capital buffer (Art. 43 CAO).</p> <p>FINMA uses a risk-based approach to reviewing the capital adequacy reports, i.e., the categorization of the bank or securities dealer and its rating have an impact on the frequency and thoroughness of the reviews FINMA conducts.</p>
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⁶⁷ See <http://www.finma.ch/f/beaufsichtigte/pruefgesellschaften/Documents/vorgaben-ergaenzende-angaben-berichterstattung-rechnungspruefung-banken-f.pdf>.

	<p>In special cases FINMA is authorized to permit less stringent capital and liquidity requirements or seek enforcement of more stringent provisions (Art. 4(3) BA). According to FINMA Circular 11/2 Capital Buffer and Capital Planning—Banks, if FINMA sees a firm’s capital ratio falling below the target level,⁶⁸ it intensifies its supervision and contacts the firm to clarify the causes. If the firm is generally capable of making a profit or borrowing capital on standard terms via the capital market, it is requested to take the necessary measures to restore the capital ratio to the capital adequacy target as quickly as possible. If the firm is temporarily not capable of making a profit, it must show FINMA that it is taking suitable measures to restore the capital ratio to the capital adequacy target and indicate when this can be expected. In this case, FINMA may grant a longer deadline for restoring the target level.</p> <p>If FINMA considers the measures taken by the firm to be inadequate, it introduces appropriate supervisory measures. If a firm’s capital falls below the target level, FINMA may order it to reduce or refrain entirely from dividend payments, share buybacks and discretionary remuneration components or to carry out a capital increase. If the intervention threshold is breached, FINMA may—in addition to the above measures—order the firm to reduce its risk-weighted assets, sell specific assets or withdraw from specific areas of business.</p> <p>FINMA takes measures if it deems that the capital adequacy target does not adequately cover a firm’s risk profile or if the firm’s risk management is insufficient in view of its risk profile. These measures remain in place as long as the increased risk situation persists. In particular, FINMA considers stricter requirements on a case-by-case basis for firms that have significant risk concentrations or are exposed to refinancing or liquidity risks, or for financial groups with complex and non-transparent structures.</p> <p>According to Art. 45 of the CAO, FINMA may also require banks and securities dealers to hold additional capital. This additional capital should specifically cover the risks that are not covered or not sufficiently covered by the minimum required capital if a risk-based approach is applied. Together with the capital buffer, the additional capital is meant to ensure compliance with the minimum capital requirements in unfavorable conditions. If a bank or securities dealer does not have additional capital, FINMA may stipulate special measures to monitor and supervise the capital adequacy and risk situation. Under certain circumstances, FINMA may on an individual basis demand further capital, namely if the minimum required capital, the capital buffer and the additional capital do not ensure an appropriate level of security in view of the bank’s or securities dealer’s business activities, risks, strategy, quality of risk management or the state of development of the techniques used.</p> <p>FINMA has used the above powers on several occasions.</p>
Assessment	Fully Implemented
Comments	The ability of securities dealers to hold clients’ funds and the lack of appropriate segregation requirements for them has been taken into account in Principles 31 and 32. Alternatively, the securities dealers that hold clients’ funds could be subjected to the same capital and liquidity requirements as banks to cover the additional risks arising from the possibility to hold clients’ funds without depositing them in a bank.
Principle 31.	Market intermediaries should be required to establish an internal function that delivers compliance with standards for internal organization and operational conduct, with the aim of protecting the interests of clients and their assets and ensuring proper management of risk, through which

⁶⁸ The capital adequacy targets and intervention thresholds are set out at four different levels on the basis of the institution’s size and complexity. The capital adequacy targets vary between 10.5 and 14.4 percent, whereas the intervention thresholds range from 10.5 to 11.5 percent.

	management of the intermediary accepts primary responsibility for these matters.
Description	<p>Role of management</p> <p>In case of banks, an appropriate management and organizational structure is part of the authorization requirements in Art. 3 of the BA and the general requirements concerning organization and management in Art. 7-8 of the BO. For non-bank securities dealers, the authorization requirements in Art. 10 of SESTA require that the organization and internal rules of the applicant ensure compliance with the securities dealer's duties under SESTA. Further, Art. 3 of the BA sets the good reputation of the persons charged with the administration and management of the bank as a condition for authorization with the aim of assuring the proper conduct of business operations. The applicant for authorization as a securities dealer, its senior staff and its principal shareholders also have to give assurances of proper business conduct.</p> <p>FINMA Circular 08/24 (Supervision and Internal Control – Banks) details the requirements concerning management and supervision applicable to both banks and securities dealers. Among other things, the Circular requires that the management puts in place and documents an organizational structure that clearly defines the responsibilities, competencies, obligations, decision making powers, and flow of information. The management also has to ensure that a suitable information management system is put in place (margin numbers 83 and 84). Specific requirements on outsourced activities are included in FINMA Circular 08/07 Outsourcing – Banks.</p> <p>Internal control</p> <p>Art. 9(4) of the BO requires a bank to be responsible for an effective internal control system. In the case of non-bank securities dealers, Art. 20 of SESTO includes the same requirement. The management is responsible for verifying regularly the adequacy of internal controls and reporting to the Board of Directors periodically on their efficiency and informing the Board of Directors and the internal audit immediately in case of any serious findings.</p> <p>FINMA Circular 08/24 (margin numbers 9-16 and 80-96) defines the duties and responsibilities of the Board of Directors and management concerning internal controls. Operational management is required to ensure the appropriate separation of functions and avoid the assignment of conflicting responsibilities. It also has to define the control activities to be set up as an integral part of work processes (e.g., physical controls and verification of compliance with limits and authorizations).</p> <p>Risk management</p> <p>Art. 19(3) of SESTO requires that, for the purposes of identifying, limiting and monitoring risks, a securities dealer must define in regulations or internal directives the basic principles of risk management and the responsibility and procedure for authorizing transactions involving risks. Art. 9(2) of the BO requires that a bank lays down in a regulation or internal guidelines the main principles underlying the management of risks and the competencies and procedures for the approval of high risk transactions. It must in particular identify, limit and supervise market, credit, default, settlement, liquidity, reputational, operational, and legal risks.</p> <p>FINMA Circular 08/24 requires each firm to have a risk management function that has an unlimited right to access and review information relevant to its mandate. The risk management function has to be independent of the operational, profit-making activities. It has to have resources and competences suitable for the size of the firm, for the complexity of its activities and organization, and for its risk profile. A member of the operational management has to be assigned the</p>

	<p>responsibility for risk management. The remuneration system for the risk management staff cannot include elements that can create conflicts of interest. When there are no conflicts of interest, the risk management function can form a department with other functions (e.g., compliance).</p> <p>The tasks, responsibilities, and reporting obligations of the risk management function have to be determined in a procedure approved by the management or Board of Directors. The risk management function monitors the firm's risk profile, provides necessary information for the monitoring of risks and elaborates the risk policy, risk appetite and risk limits of the firm for the approval of the management or Board of Directors. The risk management function is required to provide at least a quarterly report to the management on the risks and risk positions, and inform the management and internal audit immediately of any particular developments. At least once a year, the risk management function has to present to the Board of Directors a report on its activities and of the firm's risks.</p> <p>Compliance</p> <p>FINMA Circular 08/24 requires each firm to have a compliance function that has an unlimited right to access and review information relevant to its mandate. The compliance function has to be independent of the operational, profit-making activities. It has to have resources and competences suitable for the size of the firm, for the complexity of its activities and organization, and for its compliance risk. A member of the operational management has to be assigned the responsibility for the compliance function. The remuneration system for the compliance staff cannot include elements that can create conflicts of interest. When there are no conflicts of interest, the compliance function can form a department with other functions (e.g., legal services or risk management). The compliance function can also be outsourced.</p> <p>The tasks, responsibilities, and reporting obligations of the compliance function have to be determined in a procedure approved by the management or Board of Directors. As a general rule, the tasks of the compliance function include supporting and advising the management and staff in compliance matters; evaluating at least once a year the compliance risks related to the firm's activities and elaborating an action plan for the approval of management; supporting the management in training and informing staff on compliance matters; providing the management with reports on important changes in the assessment of compliance risk, significant compliance deficiencies identified, and compliance investigations conducted; and presenting to the Board of Directors a report on its activities and on the assessment of the firm's compliance risk.</p> <p>Conduct requirements</p> <p>The integrity of the company's dealing practices is regulated in FINMA Circular 13/8 (Market Conduct Rules); that entered into force on October 1, 2013.⁶⁹ The Circular deals with, among other issues, the organizational requirements for dealing with market abuse, information barriers/Chinese walls, surveillance of employee transactions, maintenance of a watch list/restricted list, as well as documentation and recording requirements.</p> <p>Conflicts of interest</p> <p>On the basis of Art. 11(1)(c) of SESTA, a securities dealer has a duty of loyalty in that it must ensure that in the event of any potential conflict of interest its client's interests are not adversely affected. Further, certain organizational requirements are targeted at preventing conflicts of interest. Art. 19(1)-(2) of SESTO require a securities dealer to ensure effective internal separation of trading,</p>
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⁶⁹ This is a revised version of the earlier Circular 08/38.

	<p>portfolio management and settlement functions. Similar requirements are included in Art. 9(1) of the BO.</p> <p>Further regulations concerning conflicts of interest are included in:</p> <ul style="list-style-type: none"> a) FINMA Circular 10/1 (Remuneration Schemes); b) FINMA Circular 13/8 (Market Conduct Rules); c) SBA's Code of Conduct for Securities Dealers Governing Securities Transactions (especially Art. 8); d) SBA's Directives on the Independence of Financial Research (especially Introduction and margin numbers 8, 16, 18 and 22); and e) SBA's Allocation Directives for the New Issues Market. <p>Market intermediaries have to comply with the above-mentioned regulations. External audit firms audit compliance with them using a risk-based approach, as required in FINMA Circular 13/3 (Auditing).</p> <p>Art. 8 of the SBA's Code of Conduct for Securities Dealers Governing Securities Transactions obliges a securities dealer to take appropriate organizational measures to prevent conflicts of interest either between the securities dealer and the client, or employees of the securities dealer and the client, and to ensure that such conflicts of interest are not acted on in a way that is adverse to the client's interests. If a conflict of interest, which may lead to a disadvantage for the client, cannot be avoided, this circumstance must be disclosed to the client in an appropriate manner. Otherwise, the transaction concerned may not be executed.</p> <p>Direct electronic access</p> <p>According to FINMA, requirements for appropriate controls concerning direct electronic access (DEA) are part of the risk management requirements covered in Art. 9 of the BO. Further, the SSX requires that market intermediaries implement appropriate controls if they allow their DEA or sponsored access clients to access the SSX trading system under their member ID (see Principle 33).</p> <p>Client assets and funds</p> <p>Client assets deposited for safekeeping are client property (Art. 16 BA). In the course of its normal business activities, a bank or securities dealer is not required to segregate client assets from its own assets. However, if a bank or securities dealer is declared bankrupt, all such assets have to be excluded from bankruptcy and immediately released to clients. Assets deposited for safekeeping are therefore not automatically included in the bankruptcy assets. This rule applies to all assets deposited for safekeeping (such as securities) as well as any precious metals physically held at banks/securities dealers to which the client has title (Art. 37d BA and Art. 36a SESTA).</p> <p>Art. 37d of the BA on segregation of assets in custody deposit accounts requires that assets in custody deposit accounts pursuant to Art. 16 of the BA are segregated as prescribed in Art. 17 and 18 of FISA. Among other things, Art. 17 of FISA provides that if the custodian does not hold its own securities and those of its account holders in separate securities accounts with a sub-custodian, the securities credited to those accounts are presumed to belong to the custodian's account holders. Intermediated securities and claims for delivery of intermediated securities excluded from the custodian's estate must be transferred to the custodian designated by the account holder or delivered to the account holder in the form of certificated securities. If the accounts are short</p>
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	<p>securities, Art. 19 of FISA is applicable. According to this provision, if the intermediated securities excluded from the custodian's assets are not sufficient to satisfy the client account holders in full, intermediated securities of the same kind held by the custodian for its own account must also be treated as client assets insofar as necessary, even where such intermediated securities have been held separately from the account holders' intermediated securities. If the account holders' claims are still not fully satisfied, they will bear the shortfall in proportion to the number of intermediated securities of the missing kind credited to their respective securities accounts and will have a corresponding claim against the custodian.</p> <p>According to FINMA, for execution purposes securities dealers can maintain their clients' cash accounts themselves. The legal basis for this is somewhat unclear, since the BA prohibits natural persons and legal entities that are not subject to the BA from accepting deposits from the public on a professional basis (Art. 1(2)). Alternatively securities dealers can deposit their clients' funds in a bank. The BA does not include any segregation requirements for clients' funds, even when the securities dealer holds the accounts itself.</p> <p>If a bank or securities dealer is declared bankrupt, cash deposits of up to CHF 100,000 per client are given privileged treatment. This extends to all client deposits, including those made at branches of banks or securities dealers outside Switzerland. Provided the bank or securities dealer has sufficient liquidity, privileged deposits of up to CHF 100,000 held at branches in or outside Switzerland will be satisfied immediately, without any offsetting of claims and regardless of the ordinary schedule of claims (Art. 37b BA). In the event that privileged deposits cannot be paid out immediately, the deposit protection scheme steps in for privileged deposits held in branches in Switzerland (Art. 37h BA, see Principle 32).</p> <p>Investor complaints</p> <p>There is currently no obligation for banks and securities dealers to implement specific internal processes for handling customer complaints, although many of them apply these processes in practice. FINMA Distribution Report 2010 proposed to make this a requirement. Further, while most banks and many insurers are already affiliated to an ombudsman, this does not apply to other financial services providers. A mandatory affiliation with an ombudsman's office is one of the measures currently being discussed in the regulatory project for the FFSA.</p> <p>Know your customer requirements</p> <p>Art. 3 of AMLA requires a financial intermediary, when establishing a business relationship, to verify the identity of the customer. In the case of cash transactions with a customer whose identity has not yet been identified, the duty to verify identity applies only if one transaction, or two or more transactions that appear to be connected, involve a considerable financial value, except if there is any suspicion of money laundering or terrorist financing. According to FINMA, it is not however possible to make transactions in securities without opening an account.</p> <p>AMLA requires that a financial intermediary must obtain a written declaration from the customer indicating who the beneficial owner is, if the customer is not the beneficial owner or if there is any doubt about the matter; the customer is an off-shore company; or a cash transaction of considerable financial value is being carried out.</p> <p>Art. 2 and 3 of the SBA Agreement on the Swiss Banks' Code of Conduct with regard to the Exercise of Due Diligence require banks to verify the identity of the contracting partner and identify the beneficial owner. FINMA has recognized this self-regulation as a minimum standard (Art. 32 FINMA Anti-Money Laundering Ordinance, FINMA Circular 08/10 Self-Regulation as a Minimum Standard).</p> <p>Swiss contract law includes a general obligation to verify whether a specific product or service is</p>
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suitable for a particular client. However, there is no such obligation specifically targeted at financial services. An explicit and detailed obligation to conduct a suitability or appropriateness review is one of the measures currently being discussed in the regulatory project for the FFSA (see Report FFSA, Key Thrusts of Potential Regulation, page 16).

Record-keeping requirements

According to Art. 7 of AMLA, a financial intermediary must keep records in such a manner that other specially qualified persons are able to make a reliable assessment of the transactions and business relationships and of compliance with the provisions of AMLA. A financial intermediary must also be able to respond within a reasonable time to any requests made by the prosecution authorities for information or for the seizure of assets. After terminating the business relationship or completing the transaction, a financial intermediary must retain the records for a minimum of ten years, which is also required under contract law.

Art. 15 of SESTA requires a securities dealer to keep a daily record of orders received and of transactions carried out in which all information necessary to enable the reconstruction of transactions and the supervision of its operations must be recorded. This obligation is further specified in FINMA Circular 08/4 (Securities Journals).

Information to clients

Information on risks

Art. 11(1)(a) of SESTA imposes a duty of disclosure on a securities dealer vis-à-vis its clients, in particular on the risks associated with certain types of transactions.

According to Art. 3 of the SBA's Code of Conduct for Securities Dealers Governing Securities Transactions (recognized by FINMA as minimum standard), a securities dealer's duty of disclosure must be in line with the client's individual business knowledge and experience. The duty of disclosure applies to the special risks of particular types of transactions and not to any specific risks inherent in any individual securities transaction that the client can be assumed to be aware of. A securities dealer may provide standardized or individual disclosures for transactions where the risk potential exceeds the ordinary risk level for the purchase, sale and holding of securities.

Standardized risk disclosures must be presented in a plain and comprehensible manner appropriate to all clients. A securities dealer must apply reasonable measures of diligence to determine the level of disclosure required. It must perform the duty of disclosure proactively and in good time, prior to the execution of the transaction, by informing the client accurately and clearly of the fundamental risks inherent in the relevant type of transaction.

FINMA Circular 09/1 (Guidelines on Asset Management) requires asset managers to inform their clients, in an appropriate manner commensurate with the clients' experience and level of knowledge, of the risks associated with the investment objectives, restrictions and strategies agreed with them. This information may be provided in a standardized form.

Written contract

According to FINMA Circular 09/1, taking the client's experience and knowledge into consideration, a risk profile should be drawn up that outlines the asset management client's risk tolerance and risk

	<p>capacity. An asset management contract must be concluded in writing.</p> <p>Under current contract law pure consulting and execution only relationships can be established without a written agreement (e.g., via phone). Explicit documentation requirements are currently discussed in the regulatory project for the FFSA (see Report FFSA, page 18). The aim is that key rights and obligations of the parties be set out in a written framework agreement prior to the execution of services on behalf of a client. Also, all other agreements in place with the client should be set out in writing.</p> <p><i>Fees and commissions</i></p> <p>The SBA's Code of Conduct for Securities Dealers requires that the contract note for the client discloses at least the number of securities traded, date and place of execution, price or rate and transaction costs (commissions, fees, taxes, charges, etc.). With the client's consent, the securities dealer may base the contract note on a flat rate for its services (own commission) and services provided by third parties (third party commissions) including all expenses incurred. Official fees and taxes (stock exchange fees, stamp duty, etc.) may be either included in the flat rate or charged separately.</p> <p>FINMA Circular 09/1 requires that asset managers establish in written contracts with their clients (or their annexes) the type, terms and elements of their remuneration. The contracts must include an agreement on the party that is entitled to any inducements received by the asset manager from third parties in the context of the asset management mandate. Asset managers must advise their customers of any conflicts of interest that might arise as the result of accepting third party inducements. They must also inform their clients of the calculation parameters and range of inducements they receive or might receive from third parties. In so doing, they must differentiate between various product classes, insofar as this is possible. At the request of clients, asset managers must also disclose the amount of any third party inducements already received.</p> <p><i>Client reporting</i></p> <p>Art. 6 of the SBA's Code of Conduct for Securities Dealers Governing Securities Transactions requires the execution of a transaction generally to be confirmed and processed by the close of business on the day of the transaction and the corresponding contract note to be dispatched to the client in the agreed form. Alternatively, and subject to the client's approval, a list of transactions may be provided at regular intervals but at least once per year.</p> <p>Asset managers must report to clients on their conduct of business as mandataries on a regular basis and if specifically requested (FINMA Circular 09/1, margin number 25).</p> <p>Best execution and best interest of clients</p> <p>According to Art. 11(1)(b) of SESTA, a securities dealer has a duty of diligence. This includes the duty to ensure the best possible execution of its clients' orders and the ability to retrace the steps taken in the execution of clients' orders. The safeguarding of clients' interests and the means to exercise due diligence in asset management are addressed in FINMA Circular 09/1. Among other issues, it requires asset managers to ensure that investments are always in line with the risk profile and the designated investment objectives and restrictions of the client.</p> <p>Periodic evaluation of internal controls, risk management and compliance</p> <p>Both SESTO and the BO require a bank and a securities dealer to set up an internal audit unit independent from management (subject to the possibility for FINMA to grant an exemption in justified individual cases). This unit is also required to verify compliance with the duties of disclosure, diligence and loyalty set out in Art. 11 of SESTA.</p>
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Audit firms are required to verify compliance with FINMA Circular 08/24 and record the result of their audit in their audit report (FINMA Circular 13/3).

Supervisory program

Categorization and rating of banks and securities dealers

FINMA's general approach to categorizing and rating supervised entities has been described in Principle 12. Banks and securities dealers are allocated to categories 1 to 5 on the basis of the criteria highlighted in the following table:

Categories / Criteria	1 Extremely large, important and complex institutions / very high risk	2 Very important, complex market participants / high risk	3 Large and complex market participants / significant risk	4 Medium-sized market participants / average risk	5 Small market participants / low risk	6 Market participants not subject to prudential supervision
Specific Criteria (3 out of 4 must be fulfilled)	Balance sheet total \geq 500 bn. Aum \geq 1000 bn. Priv. deposits \geq 30 bn. Reg capital \geq 20 bn.	Balance sheet total \geq 100 bn. Aum. \geq 500 bn. Priv. deposits \geq 20 bn. Reg capital \geq 2 bn.	Balance sheet total \geq 15 bn. Aum. \geq 20 bn. Priv. deposits \geq 0,5 bn. Reg capital \geq 0,25 bn.	Balance sheet total \geq 1 bn. Aum. \geq 2 bn. Priv. deposits \geq 0,1 bn. Reg capital \geq 0,05 bn.	Balance sheet total $<$ 1 bn. Aum. $<$ 2 bn. Priv. deposits $<$ 0,1 bn. Reg capital $<$ 0,05 bn.	n.a.
Number of supervised institutions in this category	2	2	25	70 banks	270 banks/ securities dealers	n.a.

As a result of the above criteria, all non-bank securities dealers have been allocated to category 5. Wealth management banks are allocated to categories 3 to 5. In terms of balance sheet size or volume of deposits, 85 to 90 percent of banks and securities dealers are found within categories 1 to 3.

A key account manager is assigned to all banks in categories 1-3 and an employee is assigned to all banks and securities dealers in categories 4-5. The key account manager/employee is responsible for contacts with the supervised firm and third parties involved (auditors, foreign authorities, the SNB, associations). He/she participates in all meetings, summarizes all important information and is a source of information for FINMA management and other relevant FINMA units.

The Banks Division has set SOPs applicable to banks and securities dealers that define whether and how the following possible supervisory instruments are used for a firm with a particular categorization and rating:

- a) Ongoing monitoring, including:
 1. Analysis of the audit firm's risk analysis and audit strategy;
 2. Cooperation with internal audit;
 3. Critical analysis of the annual reporting data;
 4. Processing of the monthly and/or quarterly reports;
 5. Critical review of the regular audit reports (summary and irregularities);
 6. Processing of the regular audit reports;
 7. Processing of the business reports (differentiated for users of different accounting standards);
 8. Ad hoc processing; and
 9. Contacts with the auditors.
- b) Contacts with the banks/securities dealers;

	<p>c) Supervisory reviews; d) Participation in capital and liquidity planning; e) Participation in stress tests; f) Crisis planning; g) Organizing/participating in a crisis management college; h) Recording of the key account manager’s/employee’s rating; i) Preparation of an assessment letter; and j) Organizing/participating in supervisory colleges.</p> <p>These supervisory instruments are used differently for firms in different categories and with different ratings. For example, the lower the category (5 being the lowest) and the better the firm rating (see Principle 12), the longer delay is allocated for reviewing a report after its receipt. In some cases, certain activities are not undertaken for firms in a lower category and/or with a better rating. The level of FINMA participation in meetings with a bank/securities dealer may also be impacted by its category/rating. In the case of non-bank securities dealers, the risk based supervisory approach means that they are subject only to very limited desk-based supervision by FINMA. FINMA would have meetings with non-bank securities dealers once every five years or upon request, unless they have the worst firm rating. FINMA supervisory reviews would be conducted only in extraordinary circumstances. The summary of any irregularities included in the audit firms’ reports would be reviewed annually, but the reports would be processed more thoroughly only every five years.</p> <p><i>Regulatory audits and FINMA supervisory reviews</i></p> <p>The regulatory audits conducted in banks/securities dealers are described in Principle 12.</p> <p>FINMA supervisory reviews are currently being carried out on a regular basis at the large banking groups, and selectively (focusing on specific issues) at other banks and securities dealers. Where FINMA identifies potential sources of risk, it also carries out cross-sector surveys or comparisons for benchmarking purposes. The review teams are drawn from the various areas of the Banks division and put together by the cross-divisional Risk Management Function, which also organizes the risk assessments in which all parties involved from the supervisory and cross-divisional functions take part. Additional information on supervisory reviews conducted by FINMA in banks and securities dealers has been included in Principle 12.</p>
<p>Assessment</p>	<p>Partly Implemented</p>
<p>Comments</p>	<p>The rating for this Principle is partly based on the deficiencies in the FINMA supervisory program already described in Principle 12. There are also some other shortcomings that are worth highlighting. Firstly, for non-bank securities dealers there is no particular requirement to provide for an efficient and effective mechanism to address investor complaints. Secondly, the existing suitability requirements are based on contract law, and do not therefore sufficiently address the specificities of financial services business. The requirements for documenting the client relationship could also be strengthened. All of these deficiencies are expected to be addressed in the FFSA. Complementing the current record-keeping requirements based on AMLA with more comprehensive requirements in SESTA is also recommended.</p> <p>The segregation requirements for clients’ securities comply with the minimum requirement of Key Question 8, whereas those applicable to clients’ funds are less clear (see Principle 32). Key Question 8 of the IOSCO Assessment Methodology requires that there are regulations that require proper protection of clients’ securities and funds. In Switzerland, the protection of clients’ funds seems to be provided only through the deposit guarantee scheme, which may prove insufficient in case of client advance deposits made for the purpose of large securities transactions. The FDF should introduce appropriate legal requirements for the segregation of clients’ funds by securities dealers that apply on an ongoing basis and in bankruptcy.</p>
<p>Principle 32.</p>	<p>There should be a procedure for dealing with the failure of a market intermediary in order to</p>

	minimize damage and loss to investors and to contain systemic risk.
Description	<p>Early warning systems</p> <p>As described in Principle 30, banks and securities dealers are normally subject to quarterly capital adequacy reporting, with the exception of the two largest banks that report on a monthly basis. FINMA analyzes the reports normally within (at most) weeks of the receipt of the report, with the exception of the two lowest supervisory categories where the reports are analyzed only under special circumstances or if the firms are subject to ad hoc reporting obligations due to their firm rating. As noted under Principle 30, banks and securities dealers must also inform FINMA and their external auditor as soon as their capital falls below the minimum required capital.</p> <p>FINMA uses stress tests, sensitivity analyses (building block analyses) and loss potential analyses to aim at identifying risks at an early stage at the two big banks/securities dealers and at selected medium-sized banks/securities dealers. They model the impact of macroeconomic changes on the situation of supervised entities. The target is to carry out comprehensive scenario analyses with a macroeconomic background for some banks/securities dealers per year.</p> <p>FINMA also participates in the capital planning of the two big and selected medium-sized banks/securities dealers. These examine, for example, the impact of the new capital adequacy requirements on the banks/securities dealers' capital situation. Regular assessments are made as to whether the banks/securities dealers falling in categories 2-4 would be able to absorb a stress loss (specified by FINMA on the basis of the risks to which they are exposed) without compromising their capitalization (see Circular 11/2 Capital Buffer and Capital Planning – Banks). Circular 11/2 does not apply to the two largest banks/securities dealers that are subject to a special capital adequacy regime. FINMA does not directly participate in the capital planning of the category 5 banks and securities dealers, except under extraordinary circumstances.</p> <p>Powers</p> <p>If there are serious grounds to believe that a bank or securities dealer is over-indebted, has serious liquidity problems or no longer fulfills the capital adequacy provisions after the expiry of a deadline set by FINMA, FINMA can decree protective measures or undertake restructuring procedures or liquidation/bankruptcy (Art. 25 BA).⁷⁰</p> <p><i>Protective measures</i></p> <p>Protective measures may be decreed on an isolated basis or in conjunction with restructuring or liquidation. FINMA must ensure that the protective measures are published in an appropriate manner, if it is necessary for their enforcement or for the protection of third parties.</p> <p>Examples of protective measures are enumerated in Art. 26 BA:</p> <ul style="list-style-type: none"> a) Issuing directives to the governing bodies of the bank or securities dealer; b) Appointing an investigating agent; c) Withdrawing the governing bodies' power of representation or removing them from office; d) Removing the regulatory or financial auditor from office;

⁷⁰ Art. 25-39 of the BA apply also to non-bank securities dealers.

	<p>e) Limiting the business activities of the bank or securities dealer;</p> <p>f) Prohibiting the bank or securities dealer from making or accepting payments or undertaking securities trades;</p> <p>g) Closing the bank or securities dealer; and</p> <p>h) Decreeing a stay of enforcement measures or postponement of maturity.</p> <p>FINMA can adopt the protective measures best fitting each individual case. Protective measures can be taken at a very early stage, even before any restructuring measures are considered. They may last until FINMA has no concern about the capacity of the bank or securities dealer to carry out proper business; therefore they may last even following restructuring. Even though measures with regard to client accounts or assets are not specifically mentioned in Art. 26 of the BA, since the list consists only of examples, FINMA has the power to require the bank or securities dealer to move client accounts to another intermediary.</p> <p>As a preventive measure, FINMA can appoint an investigating agent that can be endowed with a wide range of duties, including assisting the bank or securities dealer or taking possession or control of the assets.</p> <p><i>Restructuring procedures</i></p> <p>When there is a reasonable prospect that a bank or securities dealer can be restructured or that certain services can be maintained, FINMA may order a restructuring procedure. FINMA issues the rulings and orders required to conduct the restructuring procedures and may appoint a person to prepare the restructuring plan (restructuring agent). The restructuring plan must ensure compliance with the authorization requirements and other legal provisions once the restructuring has been carried out. Irrespective of the survival of the firm concerned, the restructuring plan may provide for the continuation of specific services. It may also provide for the transfer of the firm's assets, liabilities and contractual relationships or part of them to other legal entities or to a bridge bank. If the firm's contractual relationships or part of them are transferred, the transferee takes the place of the firm once the restructuring plan is approved. FINMA approves the restructuring plan, if it complies with the requirements set out in Art. 31(1) of the BA, and publishes the main elements of the plan.</p> <p>As also highlighted in the Key Attributes assessment conducted after the IOSCO assessment mission, there are certain deficiencies in the ability of FINMA to exercise some of its resolution powers. These include the fact that, in the case of supervised entities that have not been formally designated as systemically important banks, the majority of creditors can object the transfer of assets and liabilities under a restructuring with the consequence that the bank or securities dealer would be placed in liquidation.</p> <p><i>Liquidation/bankruptcy</i></p> <p>According to Art. 33 of the BA, if there is no prospect of restructuring a bank or securities dealer or the restructuring has failed, FINMA withdraws its license, orders its liquidation and makes this public. FINMA appoints one or several liquidators who are subject to its supervision and report to it as requested. FINMA informs the creditors at least once a year as to the status of the procedures. The liquidation order results in the opening of bankruptcy proceedings.</p> <p>In case of liquidation, privileged deposits of up to CHF 100,000 per client have to be paid immediately out of the bank's or securities dealer's liquid assets (Art. 37b BA). This is intended to be enabled through a requirement that banks and securities dealers permanently hold domestically backed claims or other assets in Switzerland at an amount of 125 percent of their privileged deposits (Art. 37a(6) BA). FINMA may raise this percentage and allow for exceptions in justified cases, in particular for those banks and securities dealers that maintain an equivalent backing due to</p>
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	<p>the structure of their business activities.</p> <p><i>Plans</i></p> <p>FINMA does not have a specific plan on how to use the above mentioned powers.</p> <p>Protection clients' funds and securities</p> <p>Art. 37h of the BA requires banks and securities dealers to ensure that privileged deposits with Swiss branches are guaranteed. Banks and securities dealers possessing such deposits are required to adhere to a system of self-regulation that is subject to FINMA's approval. The system of self-regulation (deposit protection scheme) will be approved if it ensures that the funds for the repayment of guaranteed deposits would be available within 20 days after receiving notification of the ordering of preventive measures pursuant to Art. 26(1)(e)-(h) of the BA or of liquidation procedures pursuant to Art. 33-37g of the BA; if it limits the aggregate outstanding contributions by banks and securities dealers to a maximum amount of CHF 6 billion; and if it ensures that each bank and securities dealer holds liquid funds on an on-going basis for the half of its contributions due in addition to its legal liquidity requirement. FINMA has approved esisuisse to act as the deposit guarantee scheme in Switzerland.</p> <p>If FINMA orders a protective measure to be taken under Art. 26(1)(e)-(h) of the BA or declares a bank or securities dealer to be bankrupt under Art. 33 of the BA, it informs the deposit protection scheme and communicates to it the requirements for paying out the guaranteed deposits (Art. 37i BA). The deposit protection scheme has to make the required amount available within 20 working days after receiving the appropriate notification in an order issued by FINMA in which an investigating agent, a restructuring agent or liquidator is designated. The investigating agent, restructuring agent or liquidator appointed by FINMA pays out the guaranteed deposits to the depositors, but there is no deadline for making these payments. The deposit protection scheme enters into the rights of the depositors to the extent of the payments received by the depositors.</p> <p>As noted in Principle 31, there are no clear regulatory requirements requiring securities dealers to segregate clients' funds. Further, the BA protections in case of bankruptcy apply only to clients' securities. The ability of securities dealers to hold clients' funds without specific segregation requirements and bankruptcy protections is exceptional, given that the securities dealers are not subject to the same capital and liquidity requirements as banks.</p> <p>Although the segregation requirements for clients' securities are appropriate, there is no investor compensation scheme in Switzerland to cover the shortage of securities in custody, e.g. in case of fraud by a bank or securities dealer.</p> <p>Cases</p> <p>On several occasions FINMA has taken protective measures under Art. 26 of the BA against banks and securities dealers when there was a risk of failure. The ordering of protective measures often leads to an announcement on FINMA's homepage. FINMA has also ordered moving client accounts to another intermediary as part of restructuring procedures or bankruptcy proceedings.</p> <p>Communication and cooperation</p> <p>FINMA is both the supervisory and resolution authority in Switzerland. The necessary cooperation</p>
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	<p>between FINMA, the SNB and the FDF⁷¹ is covered in the MOU signed in 2011 (see Principle 14).</p> <p>FINMA has information sharing agreements in place with all of the crisis management college members (i.e., Federal Reserve Bank of New York, Federal Reserve Bank, Federal Deposit Insurance Corporation, and Bank of England) for the two the Swiss systemically important banks. FINMA intends to develop a framework for cross-border crisis cooperation and coordination among the same home and host authorities covering the recognition of resolution measures and supportive actions as soon as the actions arising from the final resolution plans are known.</p>
Assessment	Partly Implemented
Comments	<p>FINMA’s early warning systems focus on the banks and securities dealers that fall into the higher supervisory categories. FINMA has a broad set of powers to deal with the failure of a bank or securities dealer, and the deficiencies highlighted in more detail in the Key Attributes assessment do not impact compliance with Principle 32 requirements. The use of the powers is not supported by a specific plan, but FINMA has used those powers on several occasions.</p> <p>There are uncertainties as to whether payouts from the deposit protection scheme to protected depositors can in practice be made in a sufficiently timely manner (see the Key Attributes assessment for further details and recommendations).</p> <p>The ability of securities dealers to hold clients’ funds is exceptional given the lack of specific segregation requirements, bankruptcy protections and alignment of capital and liquidity requirements with those applied to banks. Even though non-bank securities dealers’ activities would currently be limited due to the concentration of securities activities on banks, the FDF should introduce appropriate legal requirements for the segregation of clients’ funds by securities dealers that apply on an ongoing basis and in bankruptcy.</p> <p>The Swiss authorities should consider introducing an investor compensation scheme or equivalent regime to protect clients’ securities in case on non-compliance with the segregation requirements.</p>
Principles for the Secondary Markets	
Principle 33.	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	<p>Authorization of stock exchanges and stock exchange like institutions</p> <p>Art. 2 of SESTA defines a stock exchange as “any organization which is set up for the purpose of securities trading and which enables the simultaneous exchange of offers of securities among a number of securities dealers, as well as the execution of transactions”. Securities are defined in Art. 2 of SESTA as standardized certificates which are suitable for mass trading, rights not represented by a certificate with similar functions (book-entry securities) and derivatives. Therefore references below to a stock exchange and securities cover also a derivatives exchange and derivatives, respectively.</p> <p>The operation of an exchange is subject to authorization by FINMA (Art. 3(1) SESTA). There are currently three authorized exchanges in Switzerland: SSX, SIX Structured Products Exchange and Eurex Zurich.</p>

⁷¹ However, due to the fact that there is no specific provision allowing sharing of confidential information with the FDF in FINMASA or other relevant legislation, it is unclear whether FINMA could share institution specific confidential information with the FDF. Due to the narrow drafting of Art. 42 of FINMASA, similar challenges relate to sharing information with foreign resolution authorities that do not have supervisory responsibilities. However, Principle 32 requires cooperation only with other domestic and foreign regulators, due to which these constraints in FINMA information sharing powers have not been taken into account in the IOSCO assessment. For further details on the need to expand FINMA information sharing powers with regards to resolution, see the Key Attributes assessment.

FINMA also has the power to decide whether institutions which are similar to stock exchanges (stock exchange-like institutions) are subject to SESTA in whole or in part (Art. 3(4) SESTA and Art. 16 SESTO). There is one such institution in Switzerland: BX Berne eXchange.

FINMA has analyzed some markets operated by banks and concluded that they do not fulfill the multi-laterality criterion to be considered a stock exchange or a stock exchange-like institution. An example of such a market is the OTC-X market operated by Berner Kantonalbank that trades shares of unlisted companies.

On the basis of Art. 15 of SESTO, a market must also be exempted from SESTA in whole or in part, if the volume of trading on it is insignificant in relation to total turnover of all securities or classes of securities traded on Swiss stock exchanges or orderly and transparent trading in the securities listed on the market would be compromised, if it were completely subject to SESTA.

Authorization requirements

FINMA is required to grant authorization as a stock exchange, if (Art. 3(2) SESTA):

- a) The stock exchange⁷² through its regulations and organizational structure ensures compliance with SESTA;
- b) The stock exchange and its senior officials are able to show that they have the necessary professional knowledge and give an assurance of proper business conduct; and
- c) The governing bodies meet such minimum requirements as the Federal Council may set out.⁷³

A stock exchange has to ensure that it has an organizational structure in respect of its operations, administration and supervision that is appropriate to its activities. It must submit its regulations and their amendments to FINMA for approval. A stock exchange has to issue regulations organizing its market so as to achieve efficiency and transparency. It also has to issue regulations regarding the admission, duties and expulsion of securities dealers, which must reflect in particular the principle of equal treatment. (Art. 4-5 and 7 SESTA).

The fitness and propriety assessment covers the Board of Directors, executive management and the head of the surveillance office.

Clearing, settlement and depository arrangements

The exchanges authorized in Switzerland do not assume principal, settlement, guarantee or performance risks. These risks are carried by the operators of the clearing and settlement systems, which currently are SIX x-clear Ltd (Swiss central counterparty), SIX SIS Ltd (Swiss central securities depository), and LCH.Clearnet Limited (recognized foreign clearing house). In practice, for example, the Rule Book of the SSX requires a trading participant to be a participant in a clearing organization or to have access to such via a general clearing member. A SSX trading participant

⁷² All the authorization provisions of SESTA are drafted in a somewhat odd manner, since they refer to an applicant for authorization already as a "stock exchange."

⁷³ No such requirements have been established, but FINMA decides on additional requirements on a case-by-case basis.

	<p>must also be a participant in a settlement organization or have access to such via a custodian.</p> <p>According to Art. 1bis of the BA, FINMA may subject operators of payment and securities settlement systems pursuant to Art. 19 of the NBA to the BA and grant them a banking license. Under Art. 10bis of SESTA, FINMA could also subject them to SESTA and issue them with a securities trading licence. In practice they have been issued only with a tailored banking license that imposes relevant prudential and other requirements designed to reduce the risk of non-completion of transactions. In addition to FINMA authorization and supervision as market infrastructure, the SNB oversight applies to such systems when they are designated as systemically important.</p> <p><i>Market surveillance, member supervision, dispute resolution and appeal procedures</i></p> <p>The requirements on stock exchanges' market surveillance, member supervision, dispute resolution and appeal procedures are described in Principle 9.</p> <p><i>Technical system standards and procedures</i></p> <p>There are no specific provisions in SESTA or SESTO addressing technical system standards and procedures of stock exchanges. Instead FINMA approaches this issue through the generic requirements on stock exchanges to have an organizational structure that ensures compliance with SESTA. However, FINMA noted that it has not faced problems in the past in receiving information on request from the SSX.</p> <p><i>Ability to deal with disorderly trading conditions</i></p> <p>Trading risk controls, such as circuit breakers, form part of an exchange's rule framework and need to be approved by FINMA. An example is the SSX trading risk controls dealing with extraordinary market situations included in the SSX Rule Book in Directive 3: Trading that cover the ability of the SSX to intervene in the opening of trading or to interrupt or suspend trading.</p> <p><i>Record-keeping</i></p> <p>Art. 5 of SESTA requires a stock exchange to maintain a daily chronological record of all transactions executed on it and of all transactions reported to it. It must, in particular, record the time of the transaction, the dealers that participated in it, the securities traded, the number or nominal value of the securities traded and the price. The Surveillance Offices of the exchanges also have the ability to replay the order book.</p> <p>In addition, market participants are required to report OTC transactions in securities available for trading on an exchange to the reporting office of the exchange. The SSX currently operates the Reporting Office for the SIX Group exchanges. In addition, Eurex Zurich has also outsourced the technical operation of its Reporting Office to the SSX with regards to contracts that are not traded via the Eurex trading system.</p> <p><i>Outsourcing</i></p> <p>According to FINMA, the duty to provide information and documents required by FINMA included in Art. 29 of FINMASA also applies to outsourced activities, even though no specific reference is made to them in Art. 29 or elsewhere in the legal framework.</p> <p>Authorization of foreign stock exchanges</p> <p>Stock exchanges organized under foreign law must seek authorization from FINMA before</p>
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providing securities dealers in Switzerland with access to their facilities. FINMA must grant the authorization if:

- The foreign stock exchange is subject to appropriate supervision; and
- The foreign supervisory authorities:
 - Do not object to the cross-border activities of the foreign stock exchange;
 - Guarantee that they will inform FINMA of any breaches of the law or other irregularities by Swiss securities dealers that come to their notice; and
 - Are in a position to grant FINMA administrative assistance (Art. 14 SESTO).

Application process

FINMA has issued a guide pertaining to applications for authorization as a domestic or foreign stock exchange or stock exchange-like institution, which includes additional information on the information and documents that have to be included in an application for authorization. Certain information and documents not relevant for regulatory purposes may be omitted from an application for authorization as a stock exchange-like institution, subject to FINMA's prior approval.

Admission of securities and market participants

The Art. 4 SESTA requirement for a stock exchange to submit its regulations and their amendments to FINMA for approval also covers the listing rules. Listing of new types of securities requires changes to the listing rules. Trading conditions (e.g., free float) and relevant product design characteristics (e.g., to ensure transparency of trading through appropriate issuer reporting requirements) would typically need to be addressed as part of stock exchange rules.

Art. 7 of SESTA governs the admission of securities dealers to stock exchanges and requires a stock exchange to issue regulations regarding the admission, duties and expulsion of securities dealers. It further requires that these regulations reflect, in particular, the principle of equal treatment.

Order routing and order execution procedures

The SBA's Code of Conduct for Securities Dealers requires orders to be executed or scheduled for execution in the chronological order of entry. The Code of Conduct also prohibits front-running, which is also prohibited in FINMA Circular 13/8 on Market Conduct Rules.

Transparency of order matching mechanisms operated by exchanges is ensured via publication of relevant details. FINMA discusses any proposed changes with the exchange as part of its ongoing supervisory activities. To date FINMA has not reviewed the trade matching or execution algorithms of the exchanges' electronic trading systems.

Equal opportunity to connect

The SSX offers various connectivity options to its trading platform; detailed information on them is provided on the SSX website. Trading participants can opt for either a direct link or connectivity via an Application Service Provider to the SSX trading platform. There is also a co-location service with reduced latency.

Similarly, multiple connectivity options are available for trading at Eurex Zurich whose trading

	<p>platform is located in Germany. Colocation services can also be used. Detailed information on the various options is available on the Eurex Group website.</p> <p><i>DEA and sponsored access</i></p> <p>SSX trading participants may grant their clients direct access to the SSX trading system (DEA clients). A participant remains liable to the SSX for all actions and non-actions of its DEA clients. A participant must have suitable systems in place to monitor and filter its DEA clients' orders, and be authorized and able to delete them from the order book at any time at the instruction of the exchange (SSX Rule Book 4.3.3). The SSX Guidelines: Audit of Participant require the annual audit of a SSX/SIX Structured Products Exchange participant to document the type of checks and controls performed by the participant for orders forwarded to the SSX trading system by its DEA customers both before the orders are forwarded to the exchange system and once the trades have occurred. The audit must also examine whether the participant has suitable systems in place to monitor and filter the orders of its DEA clients, which criteria are applied for this purpose, and whether the participant has the technical means to stop the order flow of its DEA customers at any time.</p> <p>Since July 2013, the SSX trading participants may permit their clients (sponsored users) to transmit orders electronically and directly to the SSX trading system under the participant's member ID without the orders being routed through the participant's internal electronic trading systems. The participant remains liable to the SSX for all actions and non-actions of its sponsored users. The participant bears the sole responsibility for monitoring the sponsored access order flow and for managing the risks associated with it. In particular, the participant is obliged to use, configure and monitor the mandatory risk management controls provided by the exchange. Detailed requirements on sponsored access are laid down in the SSX Sponsored Access Directive.</p> <p>The Guidelines: Audit of Participant require the annual audit of a SSX/SIX Structured Products Exchange participant to examine whether the participant uses, has adequately configured and appropriately monitors the risk management controls provided by the exchange, and whether the participant has taken proper account of the nature and complexity of the order flow of each sponsored user. The annual audit must also examine whether the participant has suitable systems in place to allow orders transmitted by sponsored users to be appropriately monitored, and whether the participant has the technical means to delete the orders of its sponsored users at any time and to prevent the entry of new orders.</p> <p>In addition to the pre-trade controls required from participants, the SIX Group exchanges perform real-time monitoring in order to ensure market integrity (e.g., detection and cancellation of erroneous trades and assessment of the reasons why unusual trading movements triggered trading halts).</p> <p>Access to information</p> <p>All market participants have equitable access to the Swiss exchanges' market rules, operating procedures and relevant pre- and post-trade information (on a real-time basis).</p>
Assessment	Broadly Implemented
Comments	It is important that the upcoming Financial Market Infrastructure Act provides more specific powers to FINMA on the supervision of exchanges' technical systems and outsourcing.
Principle 34.	There should be ongoing regulatory supervision of exchanges and trading systems which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.
Description	<p>Market surveillance</p> <p><i>Exchanges</i></p>

Art. 6 of SESTA requires exchanges to supervise price formation, execution and settlement of transactions in such a manner so as to ensure that insider trading, price manipulation and other breaches of law may be detected. In addition, exchanges are required to operate an independent surveillance office to monitor and investigate market abuse. (See Principle 9).

The SER Surveillance & Enforcement Unit is responsible for market surveillance at the SSX and SIX Structured Products Exchange. In practice, SER Surveillance & Enforcement Unit uses the SMARTS Integrity market surveillance system of NASDAQ OMX for market surveillance. With regards to Eurex Zurich, the Head of its recently established Surveillance Office is based in Zurich and manages two dedicated staff members of Eurex Deutschland's independent surveillance office. The monitoring activities of these staff members are focused on a full-time basis on the activities of Swiss Eurex Zurich members and trading in derivatives with Swiss underlying instruments. According to oral information provided by BX Berne eXchange, it conducts market surveillance, but due to the limited trading volume, it does not require any particular market surveillance system.

FINMA

FINMA does not currently conduct any real-time market surveillance. However, the Investigations section of the Enforcement Division has a team that is responsible for analyzing reports submitted by the exchanges and can also request the exchanges to provide FINMA with all information necessary for its investigations.

Member supervision

Exchanges

SER requires each participant to nominate an audit firm to audit compliance with certain provisions of the SSX and SIX Structured Products Exchange rules and regulations, normally on an annual basis. Participants can also commission their internal audit departments to conduct the audits, subject to agreement by SER. If the participant does not appoint an audit firm, SER will appoint one. The participant bears the costs of audits.

The requirements that must be met when conducting audit work are included in the SER Guidelines: Audit of Participant. They require an audit report setting out the findings to be submitted to SER by the end of March of each year. Compliance with the following requirements included in the rules and guidelines of the SSX/SIX Structured Products Exchange is specifically required to be audited (Section G of the SER Guidelines: Audit of Participants):

- a) Access to the exchange system;
- b) Trader substitutions;
- c) Customers with direct market access;
- d) Sponsored access;
- e) Fictitious trades;
- f) Reporting obligation;
- g) Time of execution;
- h) Designation; and
- i) Market information

SER may at any time adjust the points that must be examined as part of the participant audit or

	<p>add points to the list as required. The audit reports are reviewed by the Enforcement & Compliance team of the SER Surveillance & Enforcement Department. All reports were reviewed in the past, but SER is currently transferring to a system where the reports would be reviewed on the basis of samples.</p> <p><i>FINMA</i></p> <p>FINMA's supervision of securities dealers is described in Principle 31.</p> <p>Supervision of the exchanges by FINMA</p> <p><i>Supervisory approach</i></p> <p>FINMA's supervisory remit with regards to the exchanges includes their orderly functioning, the functioning of their monitoring and surveillance activities, the implementation of the requirements to ensure transparent trading and equality of treatment of participants and investors, and compliance with the Swiss exchange and trading legislation and regulations in general.</p> <p>FINMA's Supervision of Financial Market Infrastructure group operates a risk-based supervisory program of the Swiss exchanges (including their self-regulatory functions). The program follows FINMA's overall supervisory approach and methodology, applying it to the specific characteristics and regulatory objectives relating to exchanges. Extending the risk-based approach to exchanges is only in the process of being implemented.</p> <p>In general terms, the categorization of exchanges and exchange-like institutions⁷⁴ is based on three criteria:</p> <ul style="list-style-type: none"> a) Risk profile and interconnectedness (number of asset classes, number of foreign participants, and IT complexity⁷⁵); b) Market share of systemically relevant functions; and c) Size and substitutability (trading volume/year, market capitalization, own capital). <p>Similar to other supervised entities, exchanges are also given a rating. Tailored SOPs that apply to exchanges and FMI operators have also been prepared that—once fully implemented—will determine the supervisory approach for a particular exchange/FMI operator on the basis of its categorization and rating. This means that the reporting requirements, frequency of meetings with the audit firm and the exchange itself (at various levels), and the possibility to conduct FINMA supervisory reviews will vary between different exchanges/FMI operators.</p> <p>The new approach has so far been implemented only for the SSX (as part of the SIX Group) and covers the following:</p> <p>Yearly risk analysis, audit strategy and audit plan prepared by the audit firm⁷⁶;</p>
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⁷⁴ Similar principles apply to the categorization of operators of financial market infrastructures (e.g., central counterparties, central securities depositories and operators of securities settlement systems) that however fall outside the direct scope of the IOSCO Principles assessment.

⁷⁵ IT complexity can be assessed e.g. through the use of high frequency trading, smart order routing and other complex features, and the consequences of malfunctioning and system outages.

⁷⁶ According to FINMA, the preparation and approval of the SSX risk analysis and audit strategy are based on the requirements of Circular 13/3, even though it does not apply to stock exchanges. This is because the FMI operators in the SIX Group have a banking license. Circular 13/3 does not apply to Eurex Zurich and BX Berne eXchange.

	<p>Regular and ad hoc reporting obligations (e.g., yearly financial statements, quarterly business, operational and risk updates, half-yearly legal and compliance reports); and Regular and ad hoc meetings (e.g., biannual meetings with the CEO, quarterly meetings with the COO, Legal and Compliance, Internal Audit, and other relevant staff).</p> <p><i>Regulatory audits</i></p> <p>FINMA has not published a standard audit strategy for exchanges and FMI operators as is the case for other supervised entities (see Principles 12, 24, and 31). On the basis of the 2012 audit report reviewed, the scope of the annual regulatory audit for the SSX covered record-keeping arrangements, admission of participants and traders, transparency and implementation of the trade and transaction reporting obligations, and exchange operations. In relation to SER, the topics covered related to the admission of securities, financial reporting by issuers, ad hoc publicity, Disclosure Office, governance and functioning of the Surveillance Office, and governance and functioning of the Appeals Board. Since the audit reports are largely prepared on a negative assurance basis with limited information on the audit methodologies used, it is not possible to draw firm conclusions on the depth and relevance of the audits conducted. However, it is evident that FINMA staff responsible for exchange supervision needs to actively engage with the audit firms to complement the information included in the concise reporting on regulatory audits.</p> <p>The new SOPs are not yet applied to the supervision of Eurex Zurich. However, FINMA informed that it is in regular contact with the Head of the Surveillance Office and the business side of Eurex Zurich. The new approach to regulatory audits is not yet used in the supervision of Eurex Zurich, but its audit firm works on the basis of its own risk analysis and audit plan, guided by instructions given by FINMA several years ago. The regulatory auditor conducts the audits at Eurex Zurich's offices in Zurich, but also at the Eurex offices in Frankfurt to the extent that it is relevant for the supervision of Eurex Zurich.</p> <p><i>FINMA supervisory reviews</i></p> <p>FINMA has not conducted any supervisory reviews of the exchanges (or the FMI operators). The plan is to conduct such reviews in the future of the exchanges assigned to the higher categories and/or with worse ratings according to need.</p> <p><i>Rule approval</i></p> <p>As noted in Principle 9, Art. 4 of SESTA requires a stock exchange to submit its regulations and their amendments to FINMA for approval. In practice this approach applies to the main rules (e.g., in the case of the SIX Group, SER Listing and SSX Trading Rules and SER Rules of Procedure) rather than to all the Directives and other lower level regulations issued by the SSX or SER.</p> <p>Enforcement by FINMA</p> <p>In principle, FINMA's supervisory and enforcement tools with regards to the exchanges are the same as with regards to other supervised entities (see Principles 10 and 11). In practice, these powers have not been tested, so their effectiveness is subject to the ability to take action using the high level principles included in SESTA in case of a potential enforcement need.</p>
Assessment	Broadly Implemented
Comments	As for Principles 12, 24 and 31, the main reason for the rating of this Principle is the shortcomings of FINMA's current supervisory approach in general, and that applicable to exchanges in particular.

	<p>Given the central role of the exchanges and their interconnections with financial market infrastructures, they have the potential of causing systemic disturbances. FINMA's new supervisory approach acknowledges this, but is not yet sufficiently implemented to warrant a fully implemented rating.</p>
<p>Principle 35.</p>	<p>Regulation should promote transparency of trading.</p>
<p>Description</p>	<p>Art. 5(1) of SESTA includes a general requirement for the stock exchanges to issue regulations which organize the market to achieve efficiency and transparency. In principle, the transparency requirements apply to all securities as defined in Art. 2 of SESTA, i.e., standardized certificates which are suitable for mass trading, rights not represented by a certificate with similar functions (book-entry securities) and derivatives.</p> <p>The discussion below focuses on the most important stock exchange in Switzerland, SSX.</p> <p>Pre-trade transparency</p> <p>The SSX trading system generally provides real-time pre-trade transparency to market participants. However, it is possible to conduct on-exchange, but off-order book trades without pre-trade transparency at the SSX subject to certain rules. Section 11 of the SSX Rule Book subjects such trades to the following conditions:</p> <p>The parties agree prior to or at the time of the trade that it should be made on-exchange; The trade is reported to the exchange in accordance with the rule book; and The price of the reported trade passes an exchange plausibility test.</p> <p>On the basis of the above provisions, FINMA has currently waived pre-trade transparency only for the SSX Liquidnet Service (SLS). SLS enables block trading in Swiss and international equity securities at mid-point prices without pre-trade transparency. Only securities of the trading segments Blue Chip Shares, Mid-/Small Cap Shares and international securities (shared listed in Austria, Belgium, Denmark, Finland, France, Germany, Netherlands, Portugal, Sweden or the UK) can be traded through the SLS. Orders are executed against each other at the mid-point price, which refers to the price between the highest displayed bid price and the lowest displayed ask price in the primary reference market. The SSX publishes the trades made in the SLS within three minutes with a specific designation. Therefore it is possible for both FINMA and the public to follow the development of trading volumes in the SLS. The delayed publication function described below is not available for trades conducted in the SLS.</p> <p>The SSX does not use other fully or partially non-transparent order types, such as hidden orders or iceberg orders.</p> <p>Post-trade transparency</p> <p>Under Art. 5(3) of SESTA, a stock exchange is required to ensure that all information necessary to maintain a transparent market is made public. This applies, in particular, to the prices at which securities have been traded and the volume of securities traded both on and off-exchange. Trading in the SSX orderbook provides immediate post-trade transparency on the price and volume of each trade.</p> <p>In addition, under Art. 15(2) of SESTA and Art. 2(1) of SESTO-FINMA, all securities dealers (independent of whether they are exchange participants or not) must report all off-exchange trades in securities that are admitted to trading on a Swiss stock exchange. The trades have to be reported to the stock exchange on which the security is admitted to trading (Art. 6 SESTO-FINMA). Stock exchanges must set up a special office within their organization (Reporting Office) to receive and process these reports (see also Principle 33).</p>

	<p>For an off-order-book trade made at the SSX⁷⁷ during continuous trading, the report must be made immediately, but no later than three minutes after the trade. The same deadline applies to pure OTC trades made during continuous trading. Trades executed outside of continuous trading must be reported before the opening of trading on the next trading day at the latest.</p> <p>Volume Weighted Average Price (VWAP) transactions must be reported to the Reporting Office with the actual VWAP achieved and Trade Type “Special Price” no later than 30 minutes after the close of trading, if the trade is an off-order book fixed price transaction.</p> <p>As a general rule, the Reporting Office publishes immediately the reported information about the price and trading volume of securities traded. However, the SSX may publish trades in shares and investment funds with a delay, if the trade has been conducted between a participant trading on its own account (nostro) and a client of this participant and the trade complies with the required minimum value calculated on the basis of the average daily turnover of the security (see Annex T to Directive 3: Trading, or Annex A to Reporting Office Rules for the Fulfillment of the Legal Reporting Requirements for Securities Dealers). The minimum values have been aligned with those applied in the EU under the Markets in Financial Instruments Directive (MiFID).</p> <p>In the case of bonds and notes, trades labeled with the deferred publication trade type will be published before the start of trading on the next trading day without any indication of the time of the trade with the exception of international bonds whose aggregated volumes per sector are published monthly.</p> <p>It is possible to get access to market data from the SSX either directly from the new SSX trading platform through the Market Data Interface or indirectly from third party service providers.</p> <p>Information on and monitoring of dark trading</p> <p>SSX Directive 5: Over the Exchange Services together with several brochures available on the SSX website provide detailed information on the functioning of the SLS.</p> <p>FINMA’s Supervision of Financial Market Infrastructure Group monitors development in dark trading for policy purposes. The proportion of dark trading through the SSX SLS is small, around 1 percent of overall on-exchange trading. The volumes on this service are available to FINMA on request. SSX also publishes turnover figures, distinguishing between order book and SLS trading. SER Surveillance & Enforcement Unit monitors the SLS dark pool in conjunction with monitoring trading on the order book of the SSX for market integrity purposes.</p>
Assessment	Fully Implemented
Comments	
Principle 36.	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
Description	<p>Prohibition of market abuse</p> <p>SESTA prohibits the following in relation to securities admitted to trading on a stock exchange or a stock exchange-like institution:</p> <p>a) Market manipulation/provision of misleading information (Art. 33f SESTA);</p>

⁷⁷ It is possible to report a bilateral trade either as an off-order book on-exchange trade or as an OTC trade.

- b) Price manipulation/provision of misleading information (Art. 40a SESTA);
- c) Insider trading (Art. 33e and Art. 40 SESTA); and
- d) Front running (Art. 11 SESTA)

The new administrative offenses of market manipulation and insider trading in Art. 33f and 33e of SESTA, largely aligned with the definitions used in the EU, came into force on May 1, 2013. Prior to this, FINMA was addressing market abuse through the general conduct of business requirements, which limited the scope of application to supervised entities. As described in Principle 11, FINMA can now apply its administrative sanctions to any person that breaches Art. 33f and 33e. At the regulatory level, FINMA outlined its intention of how to apply the legal provisions concerning market manipulation and insider trading in its Circular 13/8 on Market Conduct Rules.

At the same time with the introduction of the new administrative offenses, the criminal offenses of price manipulation and insider trading were transferred from the Criminal Act to Art. 40a and 40 of SESTA. The definition of the criminal offense of insider trading was expanded at this juncture, but the ability to levy a criminal sanction is still conditioned on the offender having gained a pecuniary advantage by the trades. In contrast, the definition of price manipulation remained almost the same as in the past, and does not cover manipulation conducted through transactions other than wash trades and matched orders. As in the past, the definition is limited to price manipulation (in contrast to market manipulation under SESTA), and requires the gaining of a pecuniary advantage to be sanctionable.

With regards to front running, in addition to violating the principle of good faith in Art. 11 of SESTA, securities dealers engaged in front running violate the SBA Code of Conduct for Securities Dealers that is recognized as a minimum standard by FINMA (see also Principle 31).

Monitoring

The general market surveillance activities of the exchanges are described in Principle 34. With regards to market abuse, stock exchanges are specifically required to supervise price formation and execution and settlement of transactions so that they ensure that insider trading, price manipulation and other breaches of law can be detected (Art. 6(1) of SESTA). Clause 9.5(1)-(2) of the Rule Book obliges the SER Surveillance & Enforcement Unit to monitor trading with regard to its compliance with statutory requirements and the Rule Book. In particular, price setting and trades must be monitored in a way that the exploitation of insider knowledge, price manipulation and other violations of the law can be identified. The Surveillance & Enforcement Unit uses the SMARTS Integrity market surveillance system of NASDAQ OMX.

According to Art. 5 of SESTA, stock exchanges have to maintain a daily chronological record of all transactions executed on them and of all transactions reported to them (see Principle 33). In addition, securities dealers are subject to record-keeping and trade reporting requirements described in Principles 31 and 35.

Art. 6(2) of SESTA obliges the stock exchanges to inform FINMA whenever there is a suspicion of any breach of law or any other irregularities. This obligation is further specified in the SSX Rule Book (Section 9.5(3)), requiring the Surveillance & Enforcement Unit to notify the FINMA surveillance office and the relevant criminal prosecution authorities in cases of suspected violations of the law or other improper events. Under Art. 38(3) of FINMASA, FINMA is also obliged to notify the competent prosecution authorities, in case it obtains knowledge of common law felonies and misdemeanors or of offences against the FINMASA or other financial market acts.

As part of their regulatory audits, audit firms are required to assess securities dealers' compliance in particular with the FINMA Circular 08/38 on Market Conduct Rules.

Enforcement

Principles 11 and 12 include information on the administrative and criminal sanctions that can be used in market abuse cases. Some information on the investigations conducted by FINMA in the area of market abuse has also been included, which has to be read in light of the fact that until May 1, 2013, there were no specific administrative provisions in this regard. Information on the criminal sanctions imposed is also included in Principle 12.

The SIX Group exchanges' regulations also provide a system of sanctions to be imposed on participants or traders that violate the SSX/SIX Structured Products Exchange Rule Book. According to Section 19 of the SSX Rule Book, a reprimand, suspension, exclusion, fine and/or contractual penalty of up to CHF 10 million may be imposed against a participant, whereas a reprimand, suspension or revocation of registration may be imposed against a trader. Decisions on imposing sanctions must take into account the gravity of the violation, the degree of fault, and any previous sanctions imposed on the participant or trader.

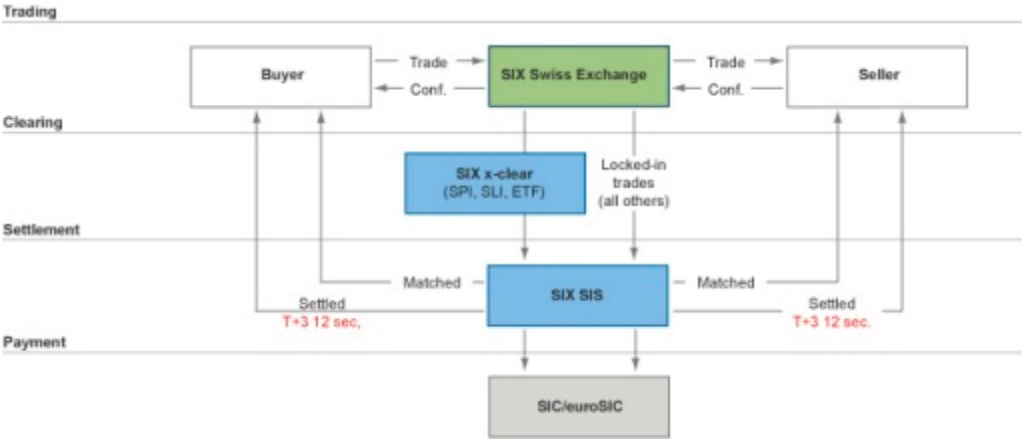
In practice, SER Surveillance & Enforcement Unit investigates also potential insider trading and price/market manipulation violations. The investigations have focused on insider trading⁷⁸, and have been relatively numerous and increasing over the past few years. According to Section 19(3) of the SSX Rule Book, the sanctions imposed on participants or traders, as well as the underlying violations, may be disclosed to the public and other participants. According to the information published by SER, the following sanctions have been given against traders (by SER) and participants (by Sanction Commission).

Sanctions	2010	2011	2012	As of August 2013
Sanction decisions against traders	1	1	3	0
Sanction decisions against participants	2	3	1	0
Total	3	4	4	0

Cross-market trading

Art. 33e SESTA prohibits the exploitation of inside information to acquire or sell securities admitted to trading on a stock exchange or a stock exchange-like institution in Switzerland or to use financial instruments derived from such securities. FINMA Circular 13/08 on Market Conduct Rules clarifies that all transactions in financial instruments are relevant under this rule, as long as they are derived from securities traded in Switzerland, no matter whether the transaction involving the financial instrument takes place on or off-exchange (or an exchange like institution) or abroad. The revised Circular also emphasizes that the assessment of proper business conduct of supervised entities also includes securities trading on the primary market and on a foreign stock exchange and notes that business activities such as trading on the commodity and foreign exchange markets are also of importance when assessing proper business conduct.

⁷⁸ It has to be noted that until May 1, 2013, the only provision relating to manipulation was the Penal Code provision prohibiting price manipulation.

	<p>There are no formal cooperation arrangements between the Swiss exchanges to monitor and/or address domestic cross-market abuses. Neither are there any additional cooperation arrangements with the relevant foreign authorities beyond the IOSCO MMOU. According to SER, in the course of actual investigations, information is shared between SER and Eurex Zurich.</p>
<p>Assessment</p>	<p>Broadly Implemented</p>
<p>Comments</p>	<p>The introduction of the prohibitions of market manipulation and insider trading in SESTA is a significant step forward in the efforts to contain and sanction market abuse. Since the new provisions have been in force only for five months, it is premature to predict how they will function in practice.</p>
<p>Principle 37. Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.</p>	
<p>Description</p>	<p>Clearing and settlement of SSX trades</p> <p>In addition to SIX x-clear, SSX transactions can be cleared in LCH.Clearnet, with the exception of transactions in CHF denominated bonds that can only be cleared in SIX x-clear. Settlement is on a domestic CSD basis, i.e. Swiss securities settle at SIX SIS and non-Swiss securities settle at their respective domestic CSDs. The link to Swiss Interbank Clearing (SIC) real-time gross settlement system (RTGS) enables the settlement of the cash leg of SSX transactions in central bank money. The following figure summarizes the role of the various SIX Group entities in the trading, clearing and settlement process⁷⁹</p>  <p>The diagram is divided into four horizontal layers: Trading, Clearing, Settlement, and Payment. In the Trading layer, a Buyer and a Seller interact with the SIX Swiss Exchange. The Buyer sends a 'Trade' to the Exchange and receives a 'Conf.' (confirmation) back. The Seller also sends a 'Trade' to the Exchange and receives a 'Conf.' back. In the Clearing layer, the SIX Swiss Exchange sends 'Locked-in trades (all others)' to SIX x-clear (SPI, SL, ETF). In the Settlement layer, SIX x-clear sends 'Matched' trades to SIX SIS. SIX SIS then sends 'Matched' trades to the Buyer and Seller. The Buyer and Seller then send 'Settled' payments to SIX SIS, with a 'T+3 12 sec.' settlement period indicated. In the Payment layer, SIX SIS sends payments to SIC/euroSIC.</p> <p>Source: SIX Group</p> <p>The discussion below focuses on the SIX Group and FINMA, and does not cover the monitoring of large exposures by and the default procedures of LCH.Clearnet and Eurex Clearing. This is because these CCPs are not directly supervised by FINMA. However, the cooperation between FINMA and the relevant foreign authorities is discussed below, where relevant.</p> <p>Monitoring of large exposures</p> <p>SIX x-clear calculates open positions in real time and maintains concentration limits to control the positions of its clearing members. However, based on Art. 29 of FINMASA, FINMA is entitled to request any information needed in order to carry out its tasks. Should a market participant under</p>

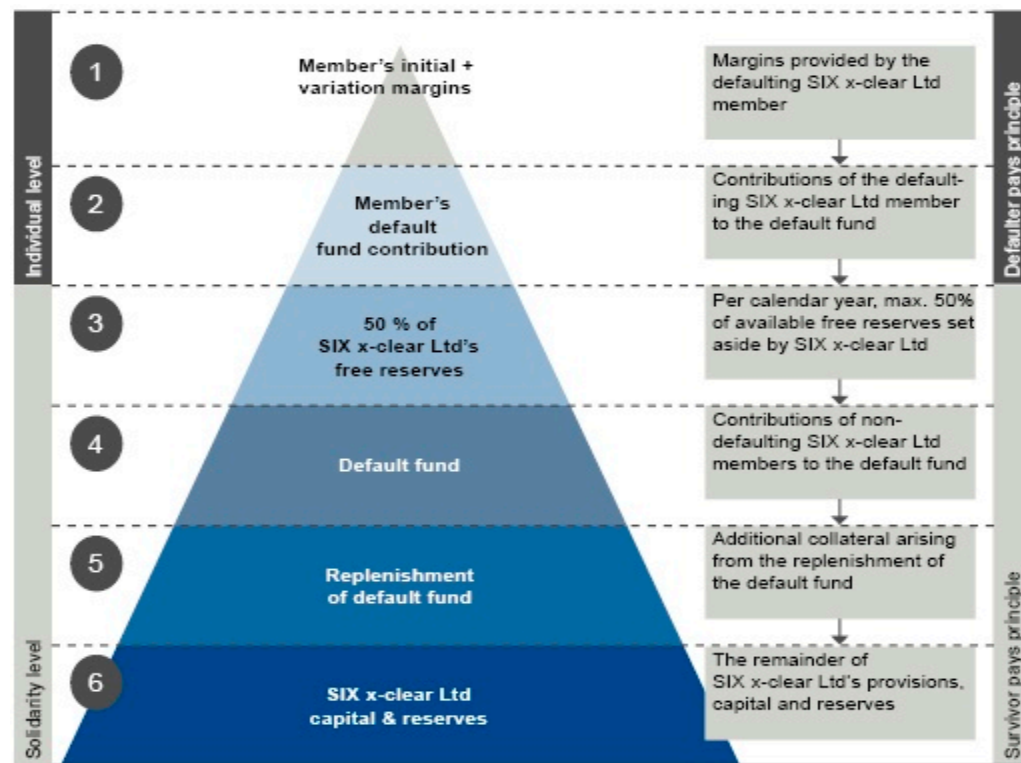
⁷⁹ For further details, see the Technical Note: Oversight, Supervision and Risk Management of Financial Market Infrastructures.

	<p>FINMA's supervision not provide such information, FINMA can open an administrative enforcement proceeding, where it can order restoration of compliance with law (Art. 31 FINMASA). According to FINMA, this means that it has the discretion to decide on any corrective measures required to restore compliance, which may include the reduction of exposures, the liquidation of positions, and the increase of margin requirements.</p> <p>Information sharing on large exposures</p> <p>There are no particular information sharing arrangements between e.g. the SIX Group and Eurex Group that would aim at sharing information on the positions of their common trading or clearing members.⁸⁰ FINMA and the SNB can monitor large exposures through certain reporting requirements. As banks, SIX x-clear and SIX SIS are subject to large exposure reporting requirements. Swiss clearing members are also subject to certain reporting requirements due to being authorized as banks. Additional large exposure reporting requirements apply to certain banks. Banks' large exposure reporting is however not specifically targeted at assessing large exposures arising from secondary market trading.</p> <p>FINMA and the SNB have signed MOUs with the UK and German authorities on the supervision and oversight of SIX x-clear, LCH.Clearnet, EuroCCP and Eurex Clearing. However, these MOUs focus on information exchange, cooperation and coordination in the supervision and oversight of these CCPs rather than sharing information on large exposures of common market participants or on related products.</p> <p>Default procedures</p> <p><i>Measures available to SSX and SIX x-clear</i></p> <p>Information on the SIX x-clear default procedures is available to market participants on its website, both in various rules, regulations and procedures and in summary format.</p> <p>The Termination and Suspension Procedures for x-clear Members and Co-CCPs describe the measures to be taken in case of a default of a clearing member. In such a situation, the SSX disables within 15 minutes any associated trading relationships of the clearing member and of any non-clearing members it may serve. Further, the SSX disables order entry by the member and deletes any of its existing orders. SIX x-clear also takes all necessary steps to disable the clearing member (i.e. suspend open offers/novation) and its membership. The process is designed in such a way that the SSX normally suspends the member before SIX x-clear does, so that no trades need to be rejected. However, if the SSX cannot suspend the defaulting member in due time, x-clear will suspend the member in any case to prevent additional risk.</p> <p>According to the current SIX x-clear procedures, the outstanding contracts of the defaulting x-clear member are either:</p> <p>Fulfilled and settled where legally permissible and in consultation with the recovery agent or the bankruptcy liquidator in the regular process;</p>
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⁸⁰ The above mentioned Technical Note also identified the need for the SIX Group's risk management framework to explicitly address the risks that the group bears from participants active in more than one SIX Group FMI.

Fulfilled and settled through SIX x-clear buying/selling the securities to be delivered by means of a buy-in/sell-out. A close-out settlement amount is then calculated, which is offset against the permissible collateral or paid out to the defaulting member; and/or
 If a. or b. cannot be effected for specific securities within seven business days after the default day, a close-out settlement amount will be calculated and either debited and offset against the liquidation proceeds of the permissible collateral or restituted to the defaulting clearing member.

To cover the potential losses arising from positions of the defaulting party, the lines of defense start with the defaulting party's margins (initial and variation margin) and default fund contribution. If this individual protection is not sufficient, the solidarity protection will come into force; this uses 50 percent of SIX x-clear's free reserves in the first instance. The next line of defense is the use of the whole default fund of the respective market to close out the defaulting party's open positions. If the amount is not sufficient to cover the open positions, the default fund will be replenished, with members having to provide another contribution of the same size as the individual default fund contribution. Finally, the capital and the reserves of SIX x-clear are used to close out the position at the end of the process. The following figure summarizes the functioning of the SIX x-clear default waterfall.



Source: SIX Group

Segregation and portability

Art. 24b of the NBO adopted in July 2013 includes requirements on segregation. A CCP must keep separate records and accounts, enabling it to distinguish its own assets and positions from the collateral and positions of its participants; collateral and positions of a direct participant from those of other direct participants; and collateral and positions held for the account of indirect participants from those of a direct participant, unless the direct participant itself undertakes or is required to perform such segregation. A CCP must also offer a direct participant the choice between keeping and recording the collateral and positions of the indirect participants connected via the direct

	<p>participant either jointly (omnibus client segregation) or separately (individual client segregation).</p> <p>Art. 24b also covers requirements on portability. A CCP is required to have procedures for the transfer of collateral and positions held by the defaulting participant for an indirect participant to another participant indicated by the indirect participant, provided the transfer is enforceable in the relevant jurisdictions and the other participant has contractually agreed with the indirect participant to assume the latter's collateral and positions. A CSD must segregate the securities held in central custody for one participant from those of all other participants and from its own assets. It also has to support the segregation of a direct participant's securities from the securities of indirect participants connected via the direct participant.</p> <p>The above requirements apply after a transitional period that ends in the beginning of July 2014. SIX x-clear is currently improving its contractual framework, account structure and procedures to comply with the NBO segregation and portability requirements.</p> <p><i>Legal protections</i></p> <p>Art. 37d BA which sets out the exclusion of customer assets from liquidation of a bank also applies to securities dealers under Art. 36a SESTA and SIX x-clear and SIX SIS under Art. 1bis BA. The relevant legal protections applicable to client funds and assets are described in Principles 31 and 32.</p> <p><i>Cooperation between Swiss and foreign authorities⁸¹</i></p> <p>The Swiss authorities rely on third country authorities in the supervision and oversight of foreign FMIs that clear transactions made on the SSX and Eurex Zurich. Some, but not all of the MOUs signed between the Swiss and foreign authorities include provisions on information exchange in crisis situations.</p> <p>Short selling</p> <p>At the time of the assessment mission, short selling was addressed only in SSX Messages Nos. 67/2008 and 73/2008. According to them, SSX members were required to ensure the performance of their settlement obligation in equity markets on the contractual due date. This was referred to as a prohibition of naked short selling. The non-delivery of securities was considered to indicate that the applicable rules of conduct had been breached.</p> <p>After the assessment mission (October 10, 2013), the SSX and SIX Structured Products Exchange rules were amended to permit short selling of all securities. Section 9 (Market conduct) of SSX and SIX Structured Products Exchange Rule Books was amended to include the power of the stock exchange to regulate short selling. According to additions made to Directive 3: Trading, the seller must settle the short sale at the latest upon the execution of the trade⁸². The Management Committee of the exchanges was empowered to issue regulations on short selling in special situations. The latter power is intended to provide the management with the flexibility to react to</p>
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⁸¹ For further details, see the above mentioned Technical Note.

⁸² This formulation has been understood to simply mean that the short sale has to be settled at the contractual settlement date, normally T+3.

	<p>changing market situations, if necessary. According to SSX Message No. 54/2013, this would happen following consultation with FINMA. The new regulations entered into force on November 11, 2013.</p> <p>The SSX and SIX Structured Products Exchange rules do not include any specific requirements on the seller to ensure its ability to settle the short sale (such as through securities borrowing or location requirements).</p> <p>The majority of SSX equity trades are settled via a CCP (SIX x-Clear or LCH.Clearnet), which have buy-in rules to enforce settlement and minimize settlement fails.</p> <p><i>Reporting and monitoring</i></p> <p>There are no requirements to report net short positions to the authorities or disclose them to the market. Settlement fails are monitored by SIX SIS, and data on settlement performance would be available to FINMA, if requested. No information on the current settlement fail rate was available during the mission.</p> <p><i>Exceptions</i></p> <p>Given that short selling is permitted in Switzerland, the SSX and SIX Structured Products Exchange rules do not include any specific exceptions e.g. for market making and hedging.</p>
Assessment	Partly Implemented
Comments	<p>The Partly Implemented rating is caused by two main reasons: the fact that the segregation and portability requirements are not yet effectively implemented and the deficiencies in the regulation of short selling compared with the requirements of Principle 37. The first deficiency will be corrected, once the SIX x-clear has implemented the relevant requirements. Rectifying the second deficiency would require, at a minimum, the introduction of a short selling reporting regime as required by KQ 6.(b). The SSX and SIX Structured Products Exchange rule requirement to settle the short sale at the contractual settlement date does not appear to change the earlier requirement nor add to the requirements that CSDs typically apply. In many other jurisdictions, similar rules have not been effective in preventing settlement fails caused by short selling. It is recommended that the Swiss authorities compare their settlement fail statistics to a broader group of peer markets to see whether there is a need to tighten the existing requirement.</p> <p>In addition to addressing the above issues, it is recommended that the Swiss authorities assess whether the current domestic and cross-border arrangements sufficiently cover exchange of information on trading exposures of common market participants and cooperation in crisis situations.</p>
Principles Relating to Clearing and Settlement	
Principle 38.	Securities settlement systems and central counterparties should be subject to regulatory and supervisory requirements that are designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.
Description	
Assessment	Not assessed.
Comments	