

New regime for portfolio managers and trustees

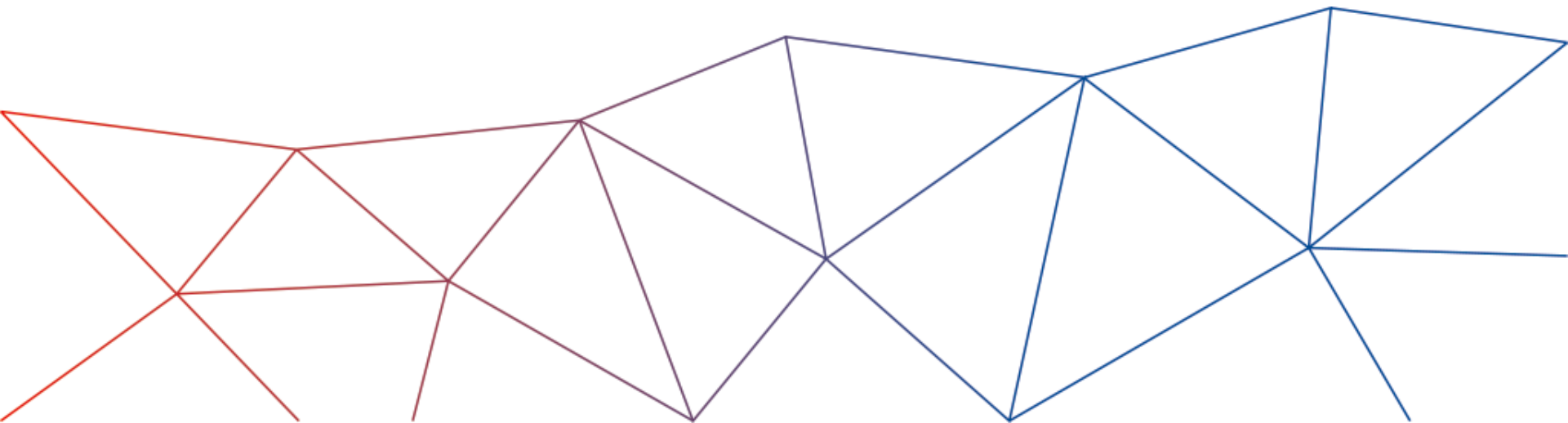
Thomas Hirschi / Kenneth Ukoh

2020

Agenda

- I. Introduction
- II. Current legal situation
- III. Risk-based checking of licence applications
- IV. Licensing process
- V. Questions

I. Introduction



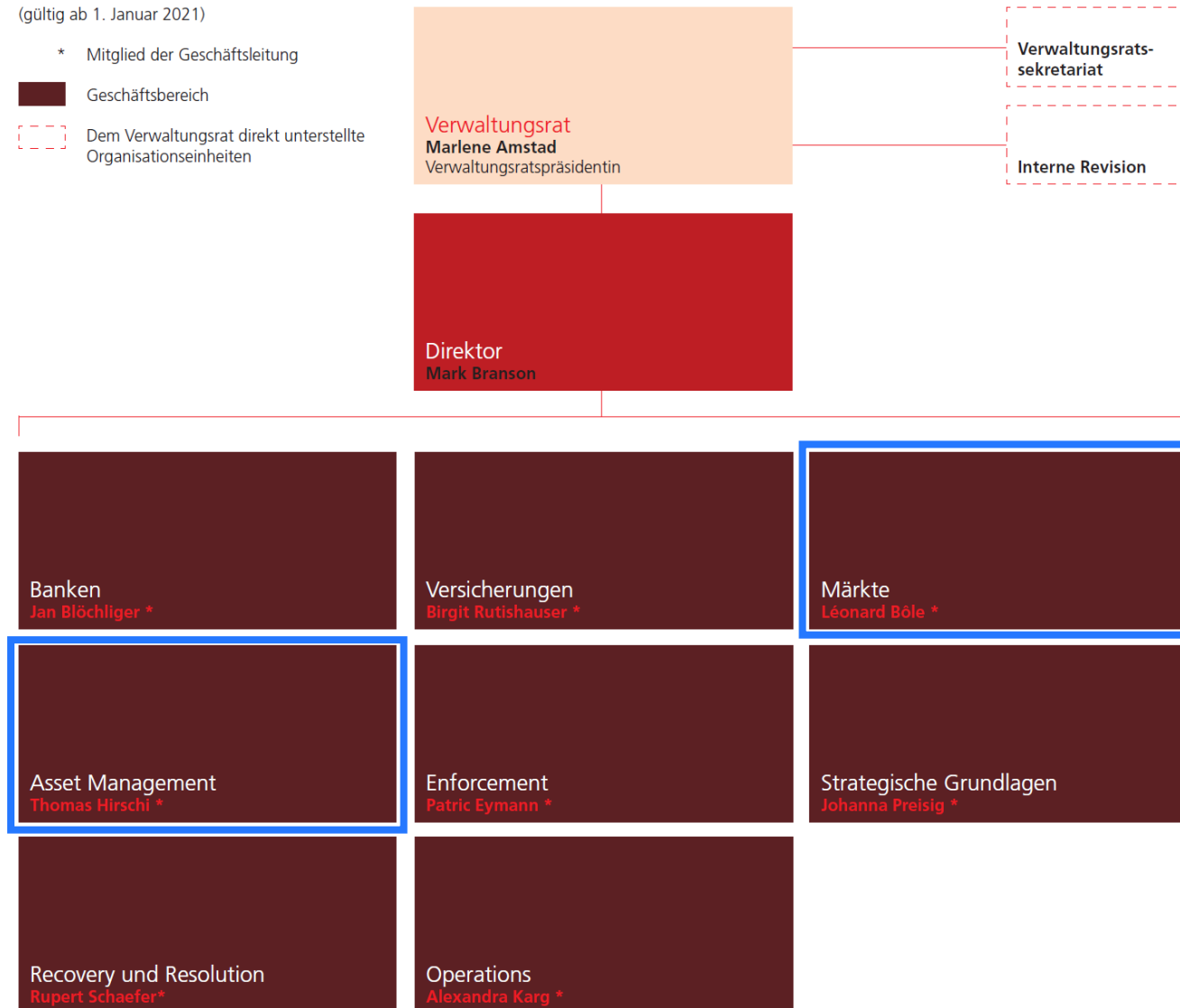
FINMA organisational chart

(gültig ab 1. Januar 2021)

* Mitglied der Geschäftsleitung

■ Geschäftsbereich

--- Dem Verwaltungsrat direkt unterstellte Organisationseinheiten



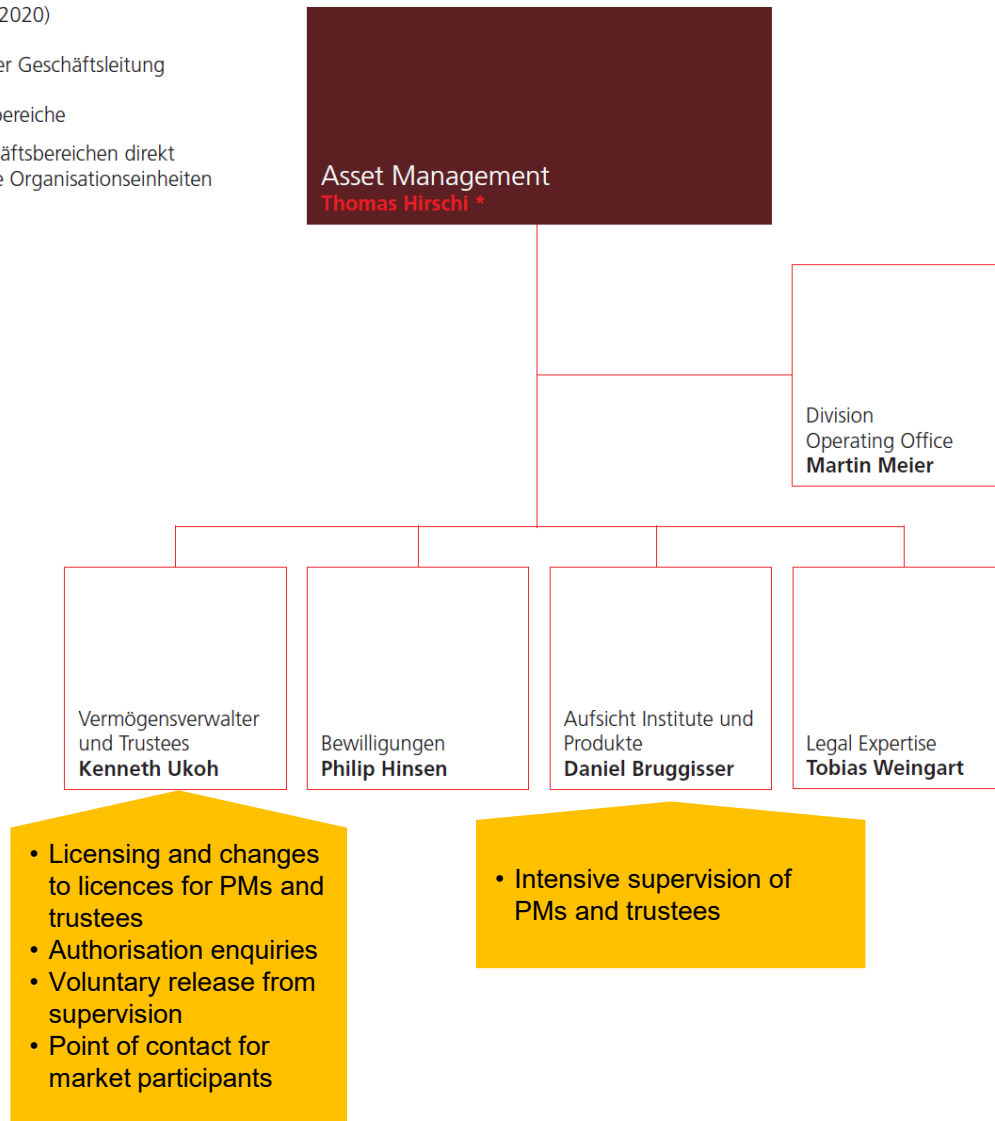
Asset Management division

(gültig ab 1. Januar 2020)

* Mitglied der Geschäftsleitung

 Geschäftsbereiche

 Den Geschäftsbereichen direkt unterstellte Organisationseinheiten



Markets division

(gültig ab 1. Juli 2019)

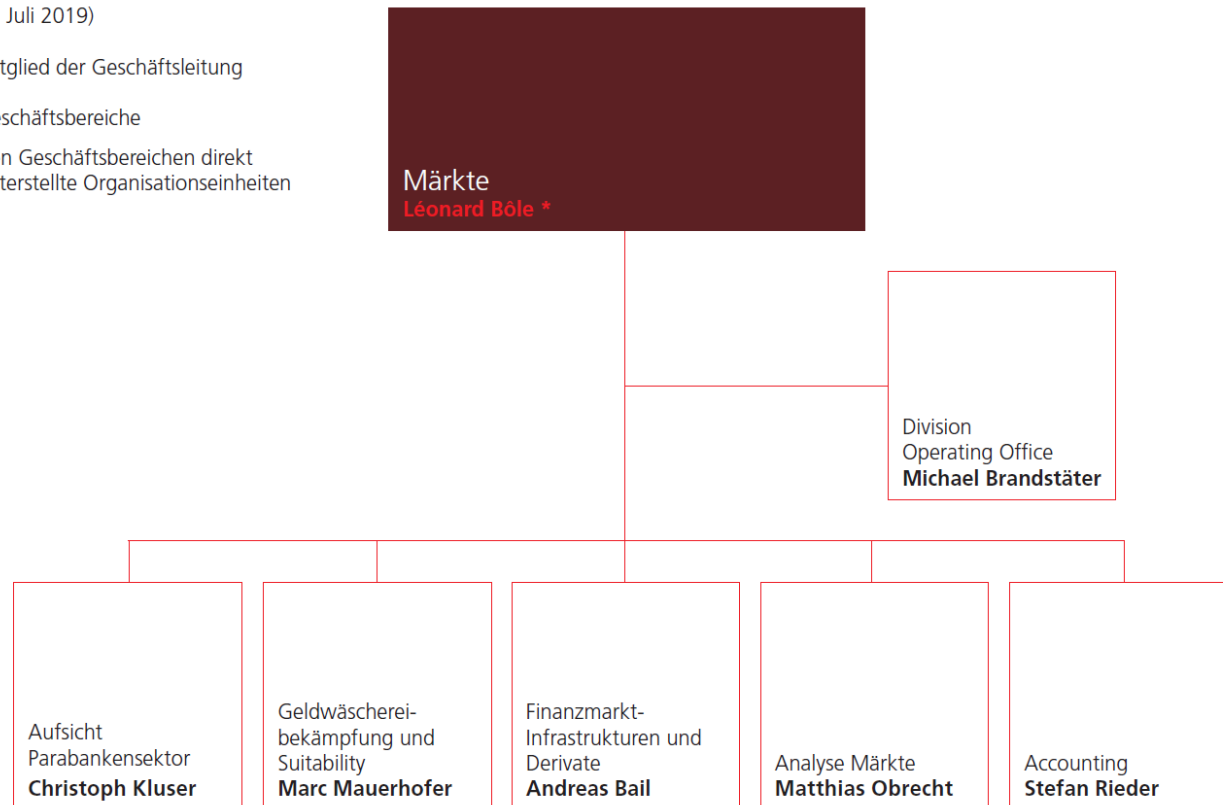
* Mitglied der Geschäftsleitung



Geschäftsbereiche



Den Geschäftsbereichen direkt
unterstellte Organisationseinheiten



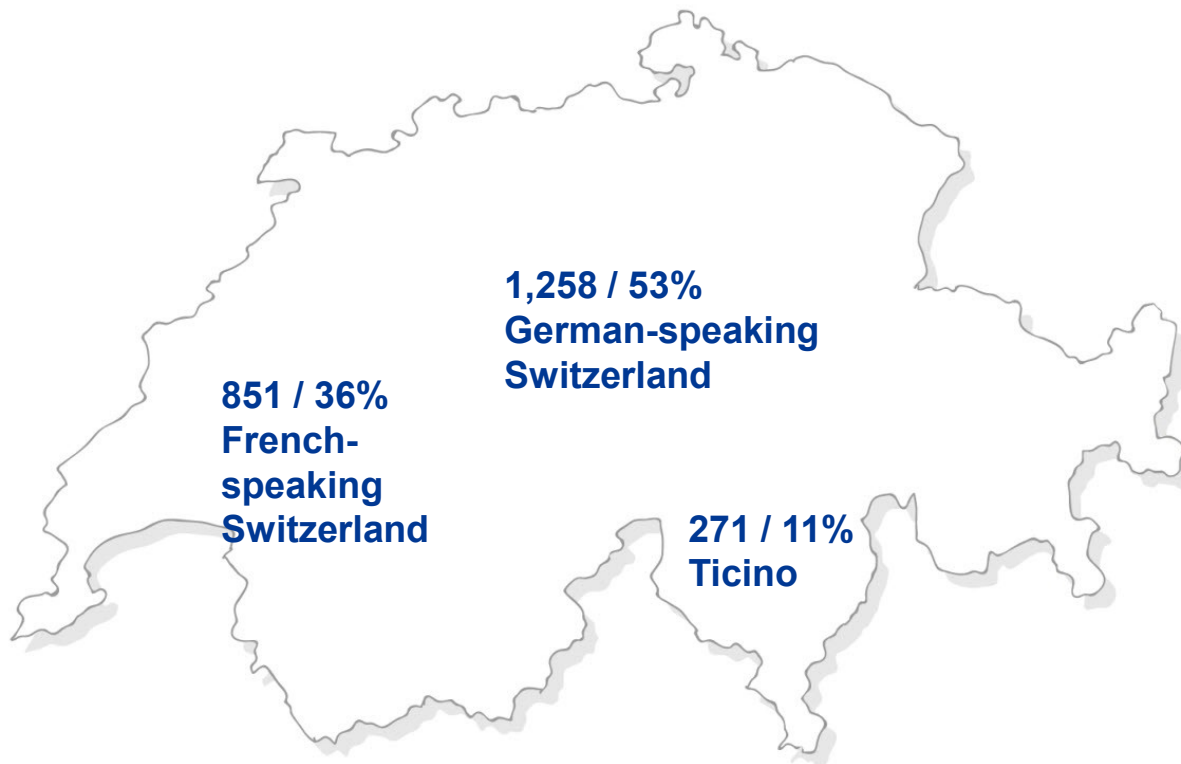
- Licensing of SOs
- Supervision of SOs

New supervised community of portfolio managers and trustees

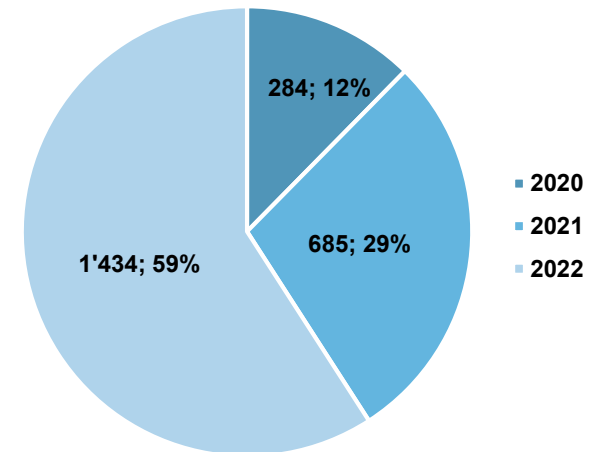
- **2,521** portfolio managers and trustees will apply for a FINMA licence before the end of 2022, according to reports received
- Market studies show that portfolio managers manage client assets of between CHF 475 and CHF 600bn in Switzerland and Liechtenstein. This corresponds to a market share of around 11%*
- Heterogeneous supervised community with variations in company size (including sole traders), client structures and business models
- No “one size fits all” approach, but instead risk-based checking of licence applications to ensure uniform quality standards
- A FINMA licence is an opportunity / seal of quality

Distribution of applications based on reports received

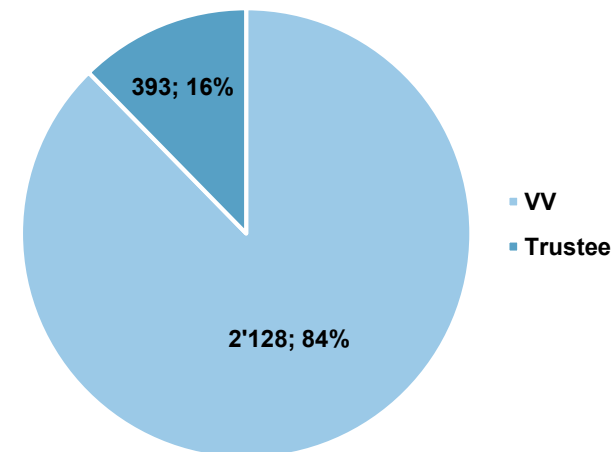
Region



Year



Licence type



Assisting the new supervised community during the licensing process

✓ Proactive information

- FINMA has held a total of six information events in the three parts of Switzerland (ZH/GE/TI), which were attended by almost 1,500 interested parties
- Further information about the FinSA/FinIA and a mailbox for enquiries are available on the FINMA homepage

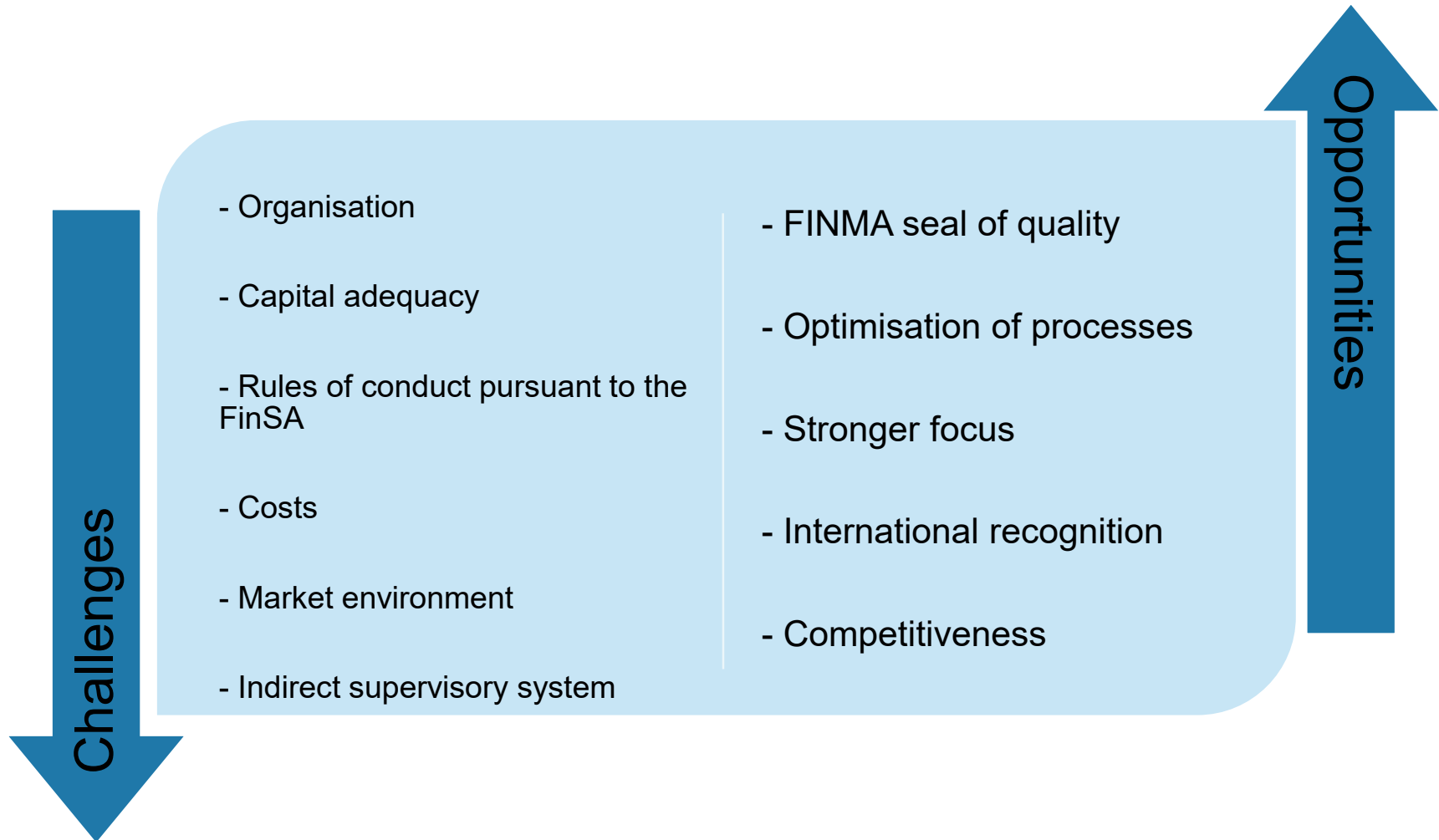
✓ Dialogue with the industry

- FINMA is in close contact with various associations, as well as the supervisory organisations

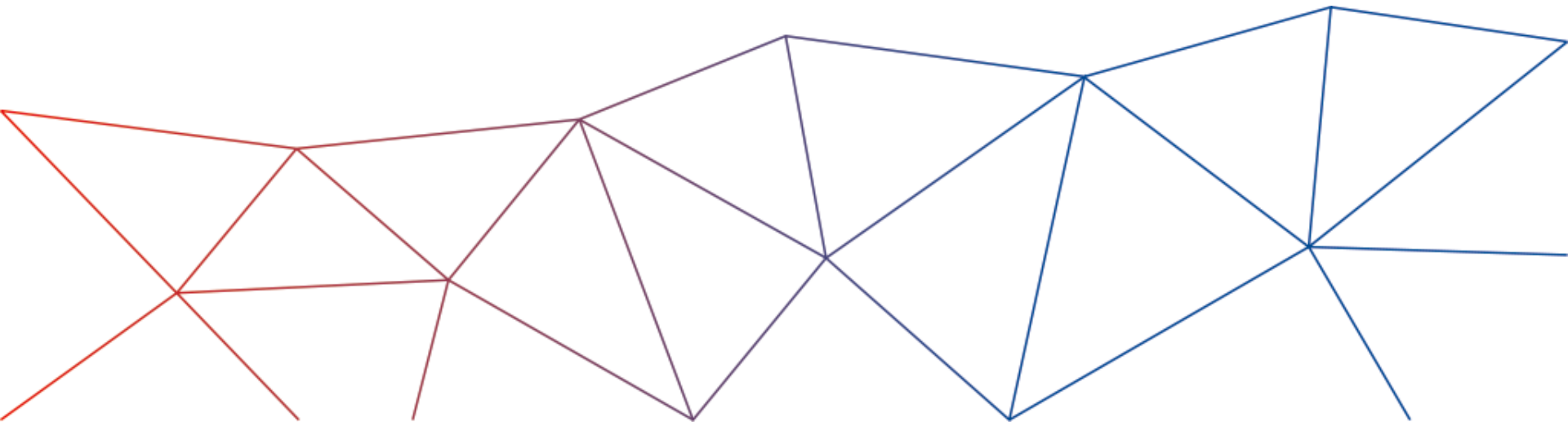
✓ Efficient processes

- New organisational unit within the Asset Management division
- As far as possible, the processes will be handled electronically and automatically via the FINMA survey and application platform (EHP). Additional aids such as explanatory videos will be provided for this.

Challenges and opportunities



II. Current legal situation



A look at the new institutional and regulatory landscape

Preparations for the implementation of the Financial Institutions Act (FinIA) and Financial Services Act (FinSA) are complete

- **5 supervisory organisations (SOs)** for the supervision of portfolio managers and trustees
- **3 registration bodies** for client advisers
- **2 reviewing bodies** for prospectuses

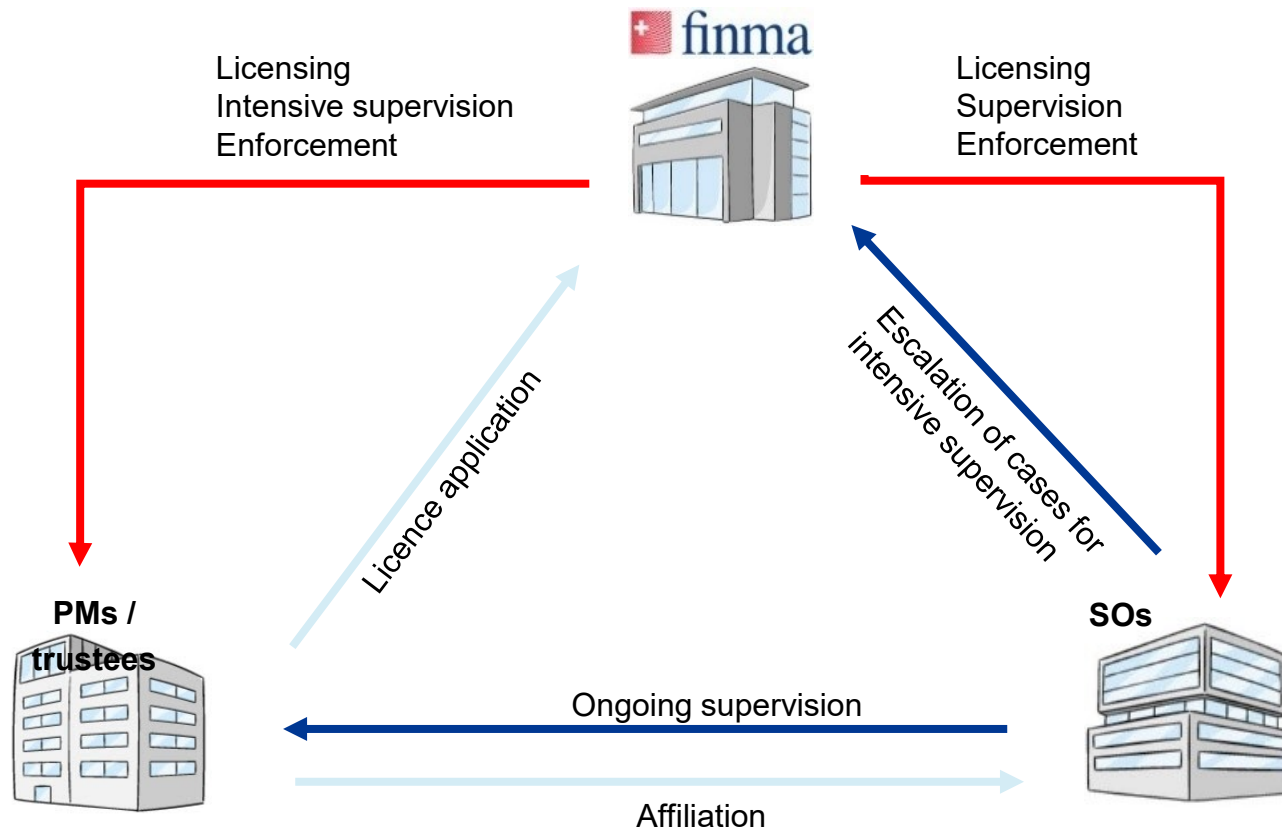
Implementing regulation adopted

- **FinIO-FINMA** enters into force on 1 January 2021

Transitional periods

- Portfolio managers and trustees must apply for a licence from FINMA by the end of 2022, which includes proving that they are affiliated to an SO
- Portfolio managers and trustees who commenced operations in 2020 must contact FINMA without delay and be affiliated to an SO by 6 July 2021 at the latest and submit a licence application to FINMA

New supervisory structure for portfolio managers / trustees



Supervision requirement

Who is subject to supervision?

Portfolio managers

- Manage assets in the name of and on behalf of clients
- Managers of collective assets below the thresholds defined in Article 24 para. 2 FinIA are deemed to be portfolio managers

Trustees

- Manage a separate fund based on the instrument creating a trust within the meaning of the Hague Convention

Commerciality
≡ existing AMLA regulation

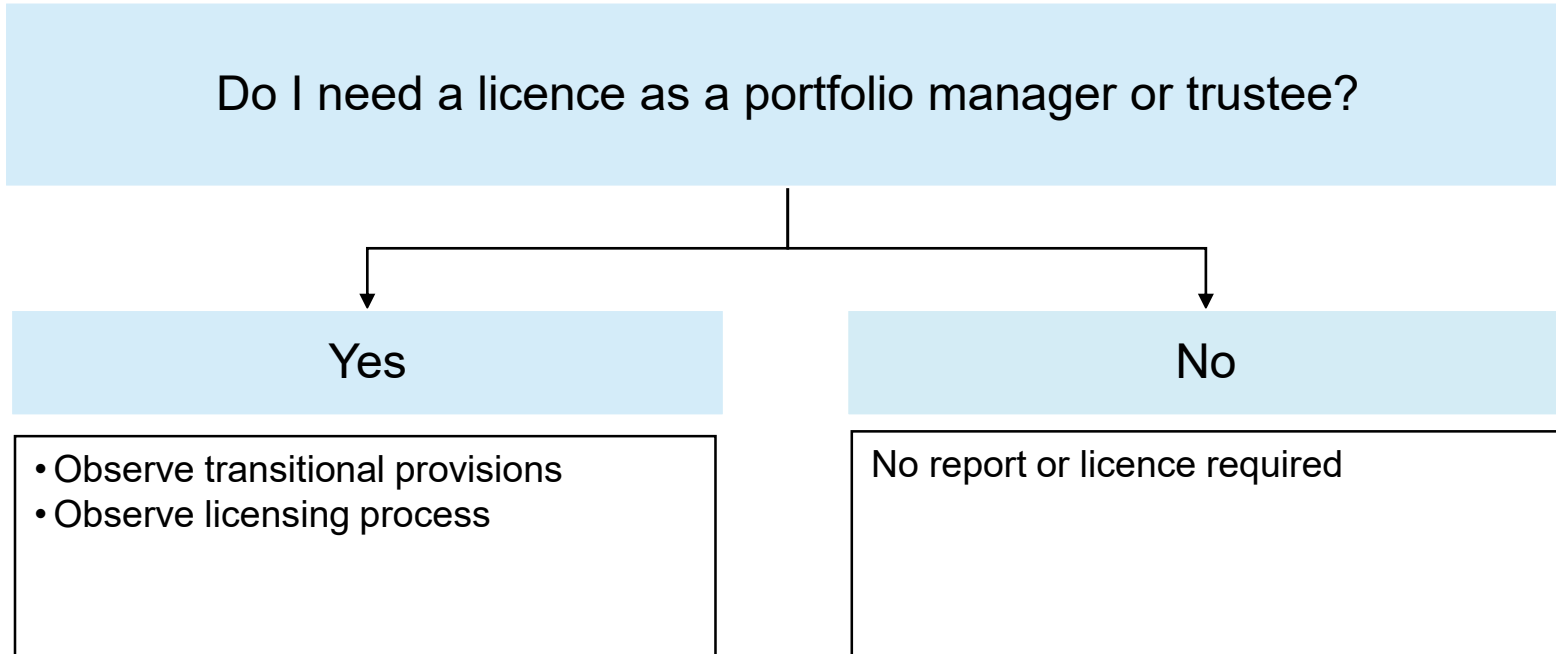
Supervision requirement

Exemptions

Business ties (Art. 3 FinIO)	<ul style="list-style-type: none">• Provision of financial services or services in the capacity of trustee for other companies or units of the same group
Family ties (Art. 4 FinIO)	<ul style="list-style-type: none">• Single family offices / private trust companies that are directly or indirectly controlled by persons who have family ties with one another• Relatives by blood or by marriage, spouses, coheirs
Employee participation schemes (Art. 5 FinIO)	<ul style="list-style-type: none">• Plans which are directed at employees who are not under notice• Investment in the company of the employer or in a group company
Lawyers and notaries	<ul style="list-style-type: none">• Insofar as they are bound in their activities by professional secrecy
Legally regulated mandates (Art. 6 FinIO)	<ul style="list-style-type: none">• Advance care directive• Deputyship• Executorship, estate administration

Supervision requirement

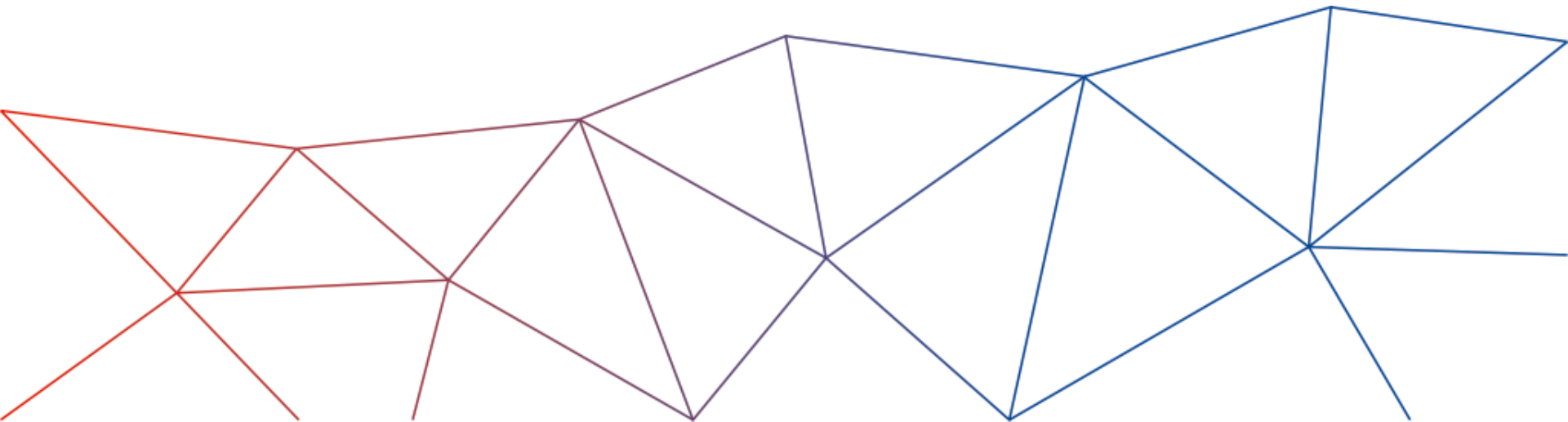
Authorisation enquiry to FINMA



Uncertainty regarding the supervision requirement?

- Own analysis, possibly with the involvement of third parties
- Possibility of submitting an authorisation enquiry to FINMA
 - Written application with justification as to why subject to supervision or not
 - Detailed description of the business model
 - Subject to a fee; costs dependent on complexity and quality of the application

II. Risk-based checking of licence applications



Authorisation conditions

Basic principles



Authorisation conditions

Risk management

Basic principles

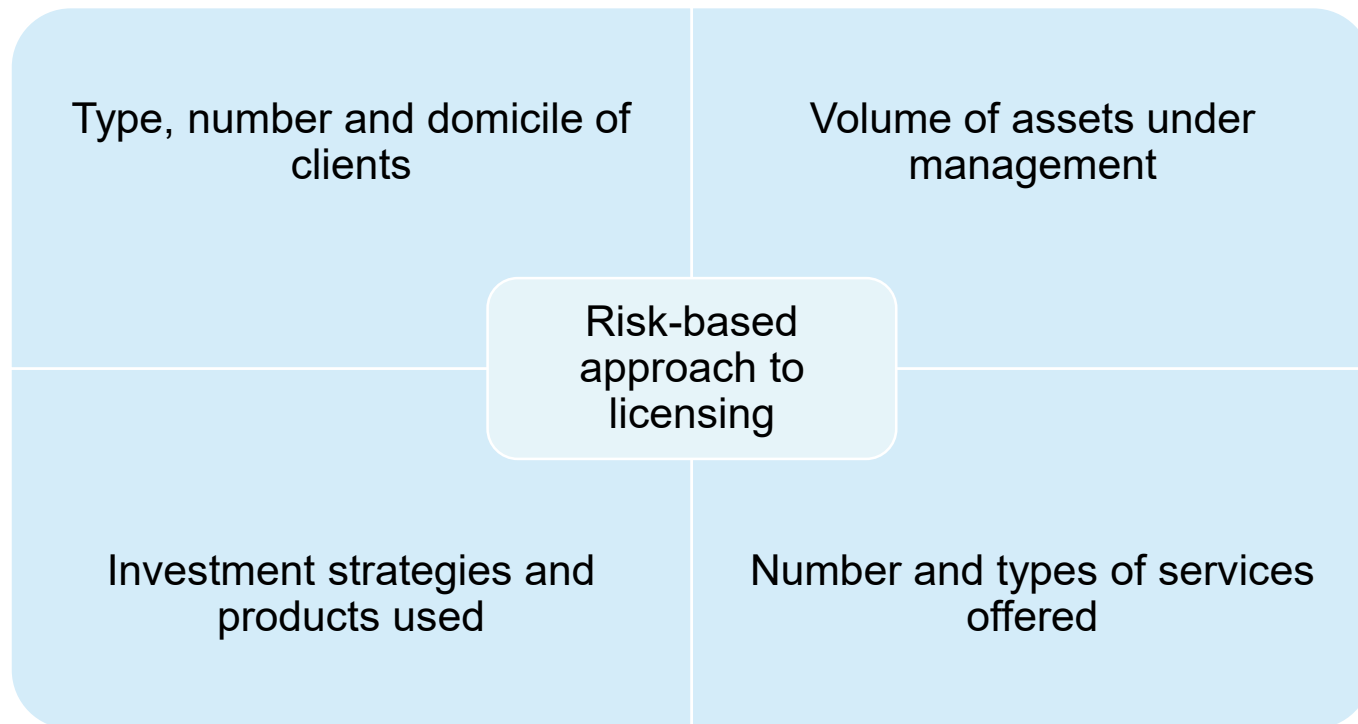
- Must have adequate risk management in place
- Effective internal controls are in place
- Ensures that statutory and internal provisions are complied with
- Sets out the basic principles of risk management and defines risk tolerance
- All business activities are covered
- All material risks must be
 - identified
 - assessed
 - controlled
 - monitored

Organisation

- Perception of qualified managers, qualified employees or delegation to a qualified external body
- Persons who perform risk management tasks must not be involved in the performance of activities they monitor
- Risk management is not required to be independent of revenue-based activities if the portfolio manager or trustee:
 - a. is a company which has five or fewer full-time positions or annual gross earnings of less than CHF 2 million; and
 - b. adheres to a non-high-risk business model.

Authorisation conditions

Risk-based approach to licensing



Authorisation conditions

Focus on conduct when checking applications

Confidence in functioning financial markets and in financial service providers is of key importance for client protection.

SUITABILITY

Suitability of products and services for clients

- Implementation of the new FinSA requirements
- Client relationships with unrestricted powers of attorney
- Use of financial instruments with conflicts of interests

CROSS-BORDER

Cross-border business activities

- Market access (legal and liability risks)
- Large number of clients from different jurisdictions

ANTI-MONEY LAUNDERING REQUIREMENTS

Money laundering and financial crime

- Foreign / off-shore custodian banks
- Large number of high-risk business relationships / PEP

MARKET CONDUCT

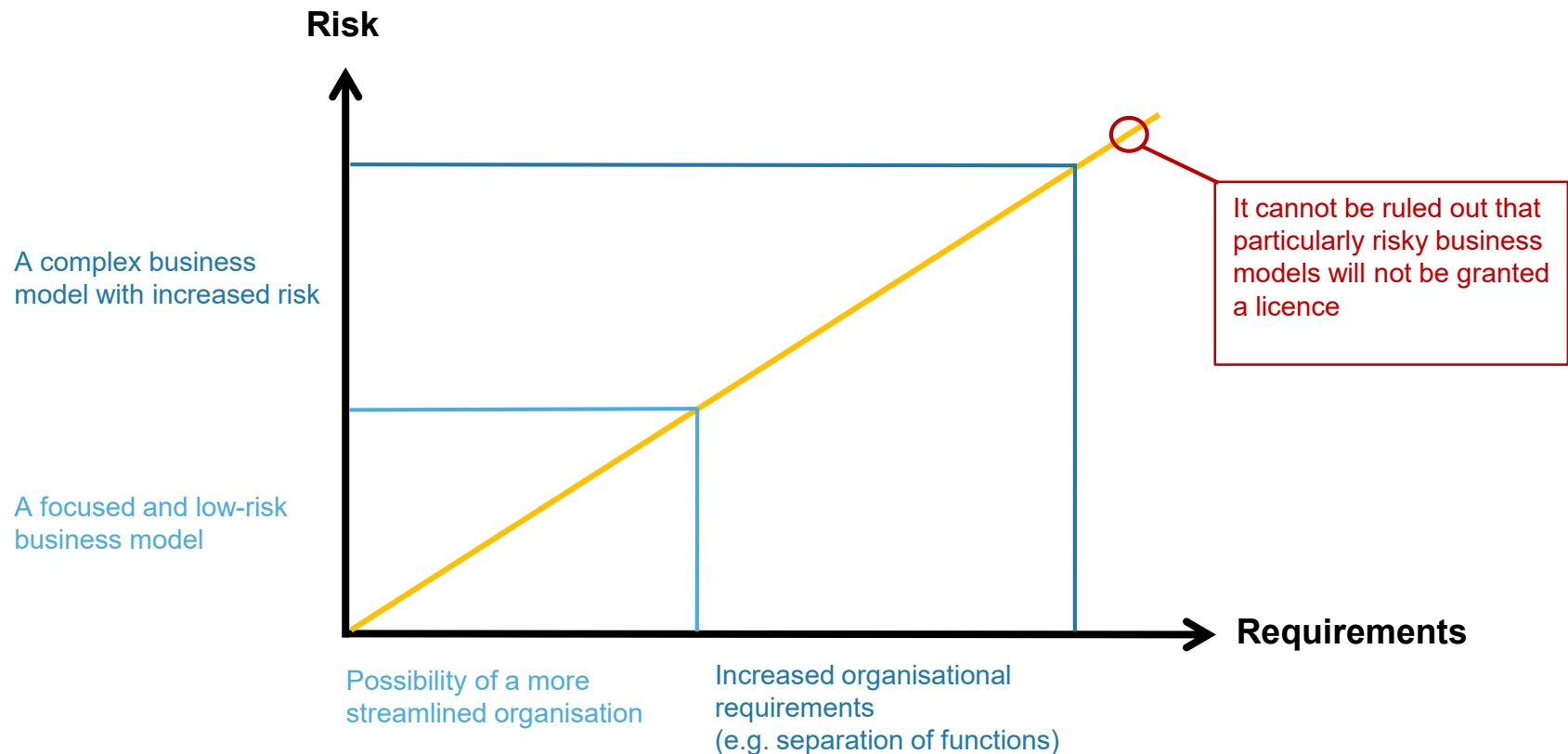
Market integrity

- Insider trading and market manipulation
- Front running / churning

Various business models involve a wide range of different risks in the four conduct areas. These risks must be limited and monitored by means of appropriate processes and controls.

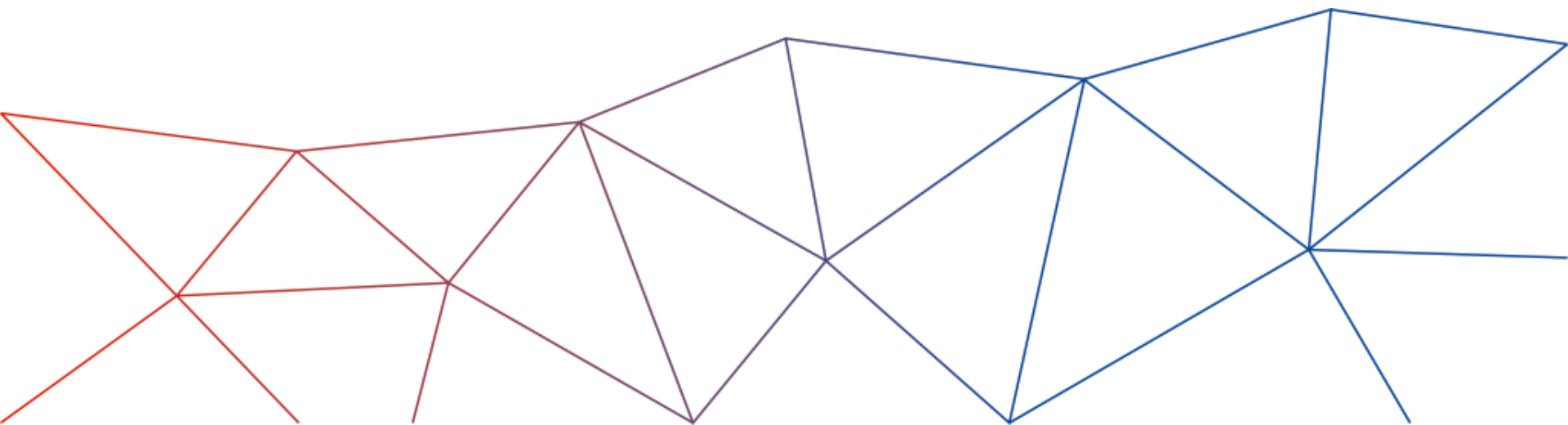
Authorisation conditions

Appropriateness of risk management



The higher the risks inherent in a business model, the higher the requirements with regard to adequate risk management and effective controls

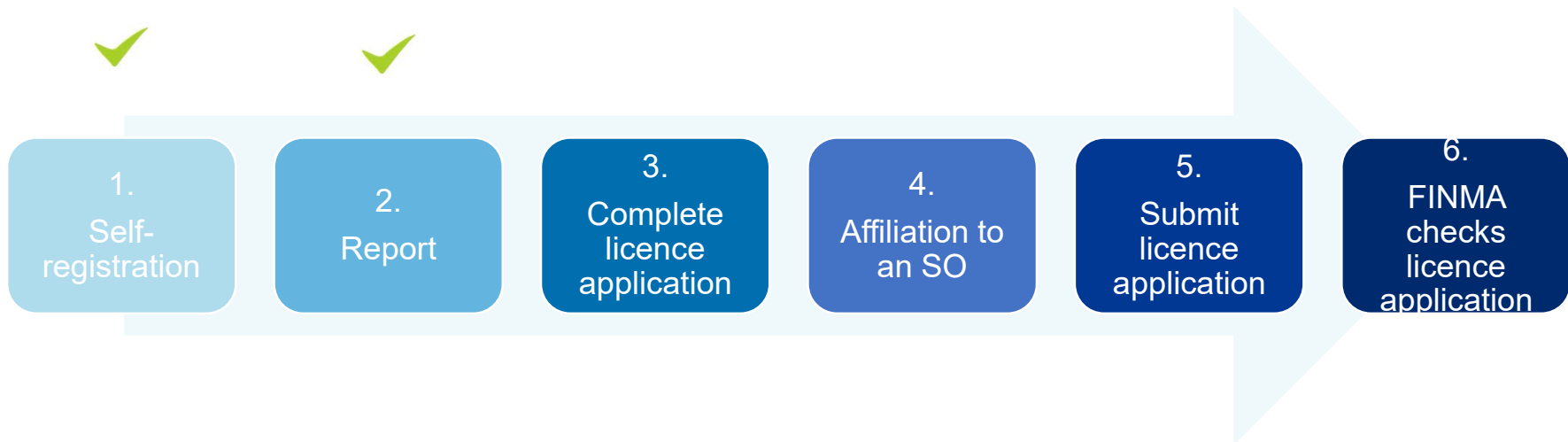
IV. Licensing process



Licensing process in general

- Electronically via the FINMA survey and application platform ([EHP](#))
- No licence audit report required

The pathway to licensing consists of the following steps:



Survey and application platform (EHP)

- Electronic submission of surveys, reports and applications
- Free to use
- Encrypted transfer of data
- Various quality checks
- Access to the EHP is effected via 2-factor identification, for which a mobile phone is required

The goal is the secure, paperless and efficient electronic processing of licence applications and data

Accessing the EHP



▼ Bewilligung ▼ Überwachung ▼ Durchsetzung ▼ Dokumentation ▼ FINMA

FINMA Public

Eidgenössische Finanzmarktaufsicht FINMA

Willkommen



Einfach erklärt


Die Aufgaben der
FINMA, erklärt für
Bürger und Gläubiger.

> FINMA Public

Top-Links

- > Informationen für Vermögensverwalter und Trustees
- > Liste aller bewilligten Institute und Produkte
- > Warnliste der FINMA
- > Von der FINMA eingesetzte Untersuchungsbeauftragte
- > Sanierungs- und Konkursverfahren der FINMA

1 2 3 4 5



Portal

Abmelden

Anwendungen

Willkommen,

Klicken Sie unten auf die jeweilige Schaltfläche, um zur entsprechenden Anwendung zu gelangen. Es werden nur die für Sie verfügbaren Anwendungen angezeigt. Falls Ihnen eine Anwendung fehlt, wenden Sie sich bitte an das Service Desk.

EXTRANET-Anwendungen



Licensing process



- Licence application is only available in the EHP
 - A full PDF version is available on the FINMA homepage as a guide
- Applicant completes the application including the required documents
- Applicant grants the SO the right to access the licence application in the EHP

Licensing process



- After being authorised to do so, the SO is able to view the information in the licence application
- Advantage: Information and documents only need to be compiled once and can be used for the SO affiliation and the FINMA licence
- SOs can transfer the data to their own systems
- Close communication and cooperation between FINMA and the SO
- After the check has been completed successfully, the SO uploads the confirmation of affiliation to the licence application

Licensing process



- After the confirmation of SO affiliation has been received, the complete application can be sent to FINMA via the EHP
- Submission is possible without a signature
- Original documents must be kept by the applicant

Licensing process



- Initial feedback on application within 20 working days
- Tariff for the ruling on the issuance of a licence as a portfolio manager or trustee: CHF 2,000 to 20,000
- Does not include the costs of the affiliation process and ongoing supervision by the SO

Aids and support

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- [Sanierungs- und Konkursverfahren der FINMA](#)
- [Sanktionen und FATF-Statements](#)
- [Erhebungs- und Gesuchsplattform \(EHP\)](#)
- [Zustellplattform](#)

Alles zur FINMA
Ziele
Organisation
Arbeiten bei der FINMA
Tätigkeiten
Prüfwesen
Beauftragte der FINMA
Nationale Zusammenarbeit
Internationale Zusammenarbeit
Extranet
FINMA-Portal
Erhebungs- und Gesuchsplattform
 > Institut mit FINMA-Zulassung
 > Institut ohne FINMA-Zulassung
 > Kontenplanbasierte Erhebung
 > Support
Zustellplattform
Versandplattform
Veranstaltungen

EHP-Support

Häufig gestellte Fragen

[Zugang zur Erhebungs- und Gesuchsplattform \(EHP\)](#)

[Erhebungen in der EHP](#)

[Gesuche und Meldungen in der EHP](#)

[EHP-Lieferschein](#)

Benutzerhandbücher

[Online Hilfe](#)
Erhebungs- und Gesuchsplattform (EHP)
Zuletzt geändert: 03.09.2018 Grösse: 1,68 MB Sprache(n): >DE >FR >IT >EN

[Die Rolle des Berechtigungsverantwortlichen](#)
Zuletzt geändert: 13.07.2020 Grösse: 1,07 MB Sprache(n): >DE >FR >IT >EN

[Technische Voraussetzungen zur Erhebungs- und Gesuchsplattform der FINMA](#)
Zuletzt geändert: 05.03.2019 Grösse: 0,3 MB Sprache(n): >DE >FR

[Nutzungsmodalitäten zur Erhebungs- und Gesuchsplattform der FINMA](#)
Zuletzt geändert: 27.07.2018 Grösse: 0,18 MB Sprache(n): >DE >FR

Aktuell

Suchbegriff...



Medienmitteilung, Meldung

Thema

Erklärvideo



Bewilligungsprozess für Vermögensverwalter und Trustees

Videoanleitung Bewilligungsprozess – Gesuch erstellen



IV. Questions

Any questions...

...of a technical nature?

→ FIDLEG-FINIG@finma.ch

...concerning the EHP or IT?

→ www.finma.ch/ehp-support

Swiss Financial Market Supervisory Authority FINMA

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**HERZLICHEN
DANK!**