

NIEDERER KRAFT FREY

**REVISED FINMIA
NEW RULES ON THE HORIZON**

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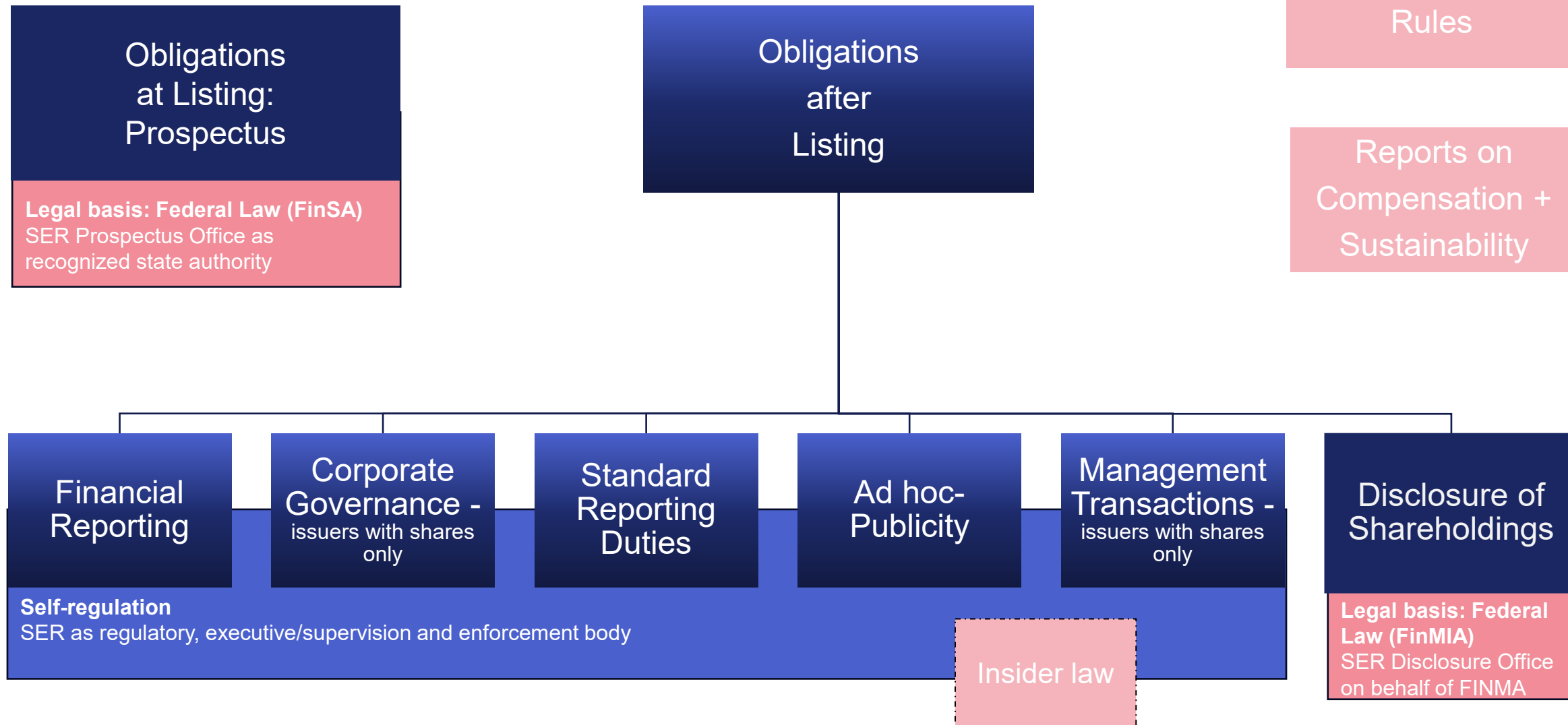
ZÜRICH - 25 SEPTEMBER 2024
SIX CONVENTION POINT

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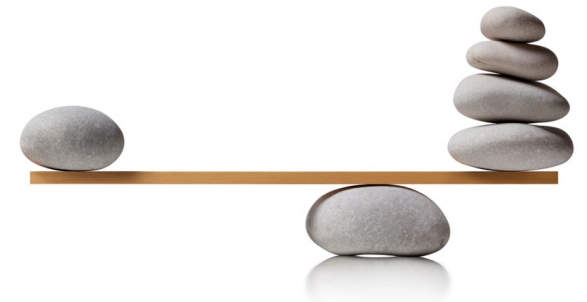
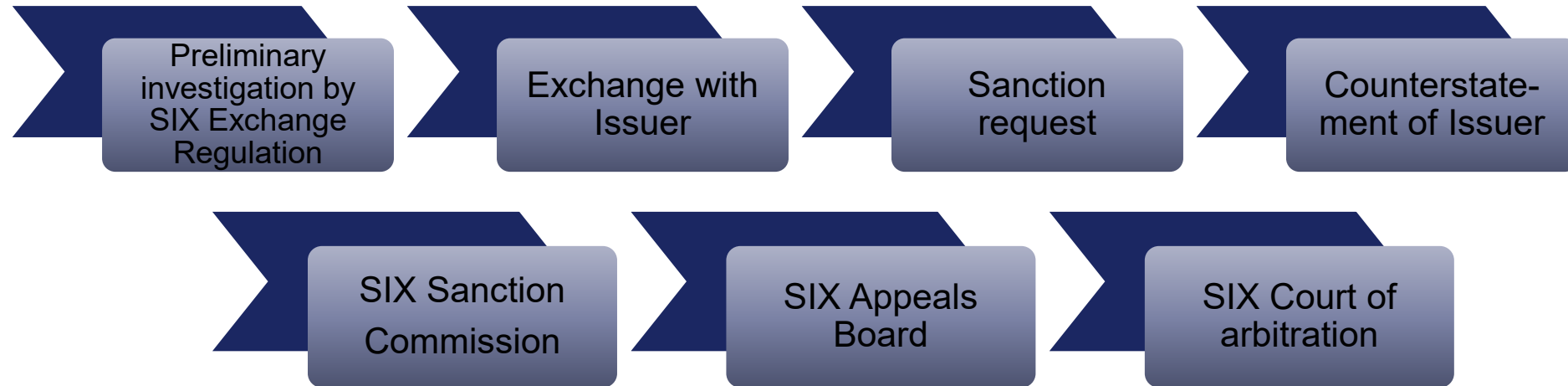
- 1) Status Quo - Issuer Disclosure Obligations
- 2) Revised FinMIA - Selection of Revised Rules
- 3) Sanction Proceeding under Revised FinMIA

Issuer Disclosure Obligations - Status Quo

Overview of Issuer Disclosure Obligations



What happens in case of a potential violation?



Revised FinMIA

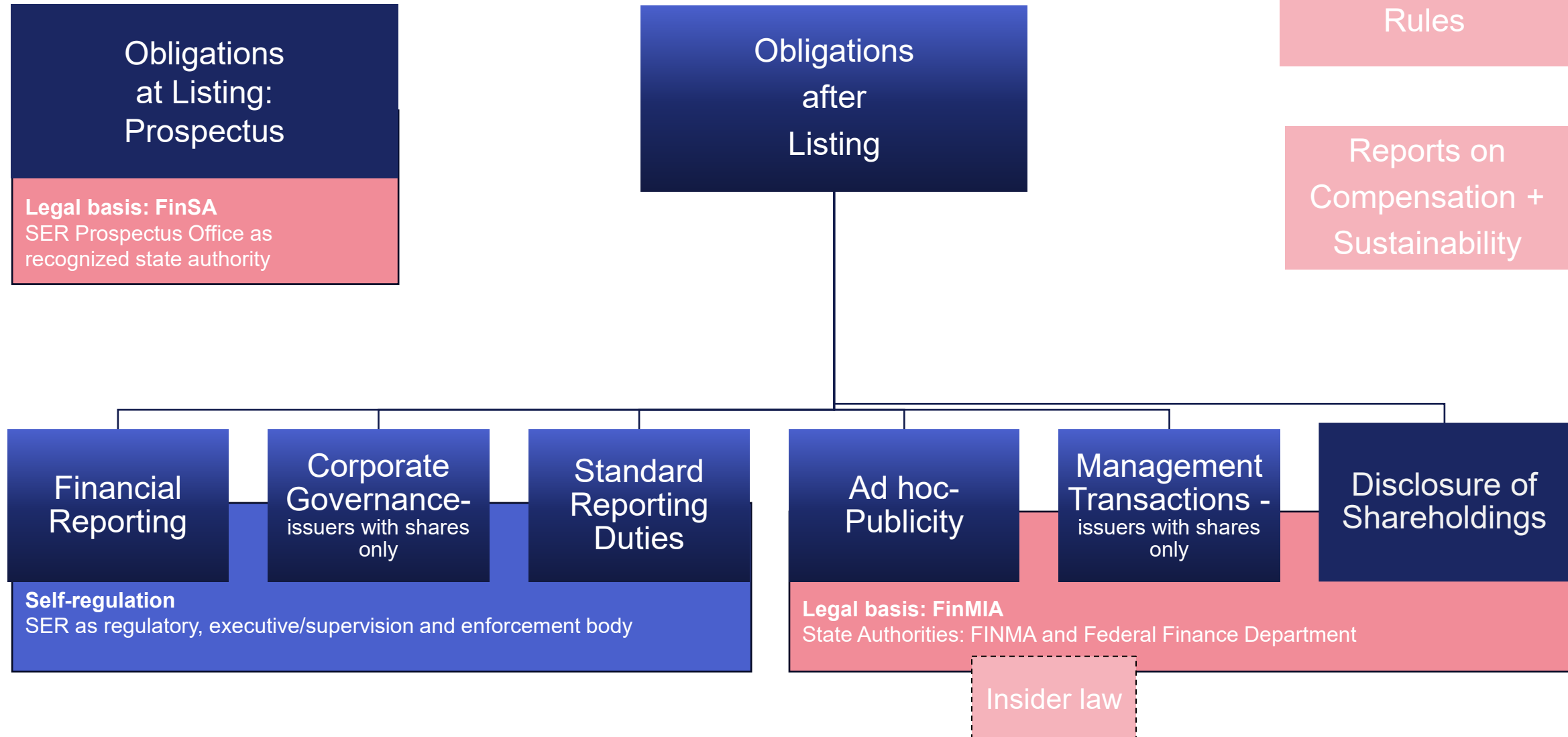
Transfer of Issuer Obligations to Federal Law

- Disclosure of
 - Insider Information (Ad hoc Publicity) and
 - Management Transactions**transferred to Federal Law** in FinMIA

- with the **consequence** of:
 - FINMA supervision
 - Administrative and criminal sanction proceedings

- Introduction of new obligations

Overview of Issuer Disclosure Obligations



Selection of Revised Rules

Publication of Insider Information (Ad hoc Publicity) (art. 37b Revised FinMIA)



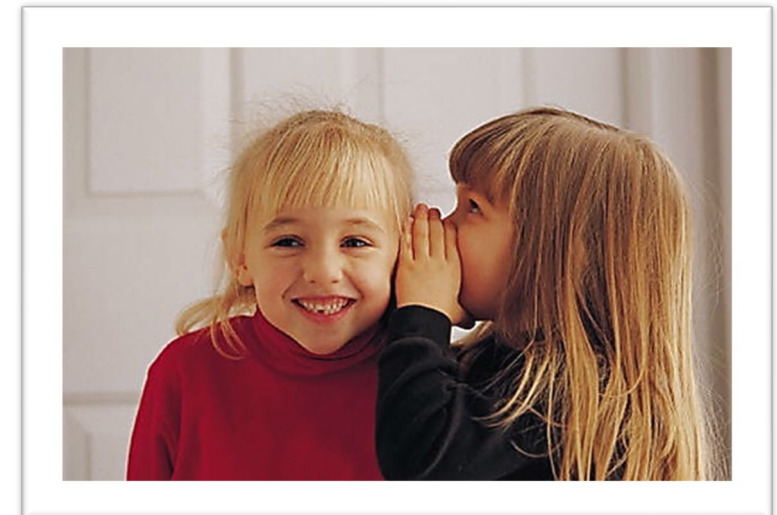
- Transfer of art. 53 f. of the SIX Listing Rules to Federal Law
- New term "insider information" instead of "price-sensitive fact" – difference ?
- Explanatory Report (Erläuterungsbericht) states that **current case law and practice of SIX will be largely adopted**
- Will need further clarification in the implementing provisions

Insider Lists (art. 37a Revised FinMIA)

- From currently best practice to **new obligation to maintain Insider Lists**

Insider List = record of time at which insider information was created and who became aware of it at what time

- Similar to Watch List requirements for financial institutions (FINMA RS 2013/8)
- Applicable **also for issuers of bonds**
- Obligation to keep lists for 15(!) years
- Nb: non-compliance is **subject to criminal law**



Management transactions (art. 37c Revised FinMIA)



- Transfer of art. 56 f. of the SIX Listing Rules to Federal Law
- Extension of reporting obligation to **issuers of bonds & derivatives** (so far only of shares)
- **Publication of name and function** of the person subject to the reporting obligation; similar to EU

Management transactions: Subjects of Reporting Duty



Company = issuers listed with shares, bonds or derivatives



Managers = members of the executive committee and board of directors



Related parties of such Managers

➤ erga omnes applicability

Black-out periods (art. 37c Revised FinMIA)

- Most issuers have recurring black-out periods around the publication of financial information in their internal guidelines
- Statutory black-out periods for management transactions shall be **introduced into Federal Law**, similar to EU law
- Nb: transactions during black-out periods are **subject to criminal law** (regardless of whether they are actual insider trading)

Large Shareholder Disclosure (art. 120 FinMIA)

- **Cancellation of 3%-threshold**
 - entry threshold at 5% of the voting rights
 - also for reporting duty under takeover law
- Slight elimination of criminal liability, in particular for violations of subsequent reporting obligations due to changed information
 - but no "de minimis"- exemption for minor and negligent cases
- No introduction of legal obligation to use electronic filing platforms (OLSDigital)
 - as long as no obligation, pdf-notifications are still valid
- Various organizational amendments re Disclosure Offices / FINMA. For example, Disclosure Offices extended competences re filing, while FINMA involved only in serious cases

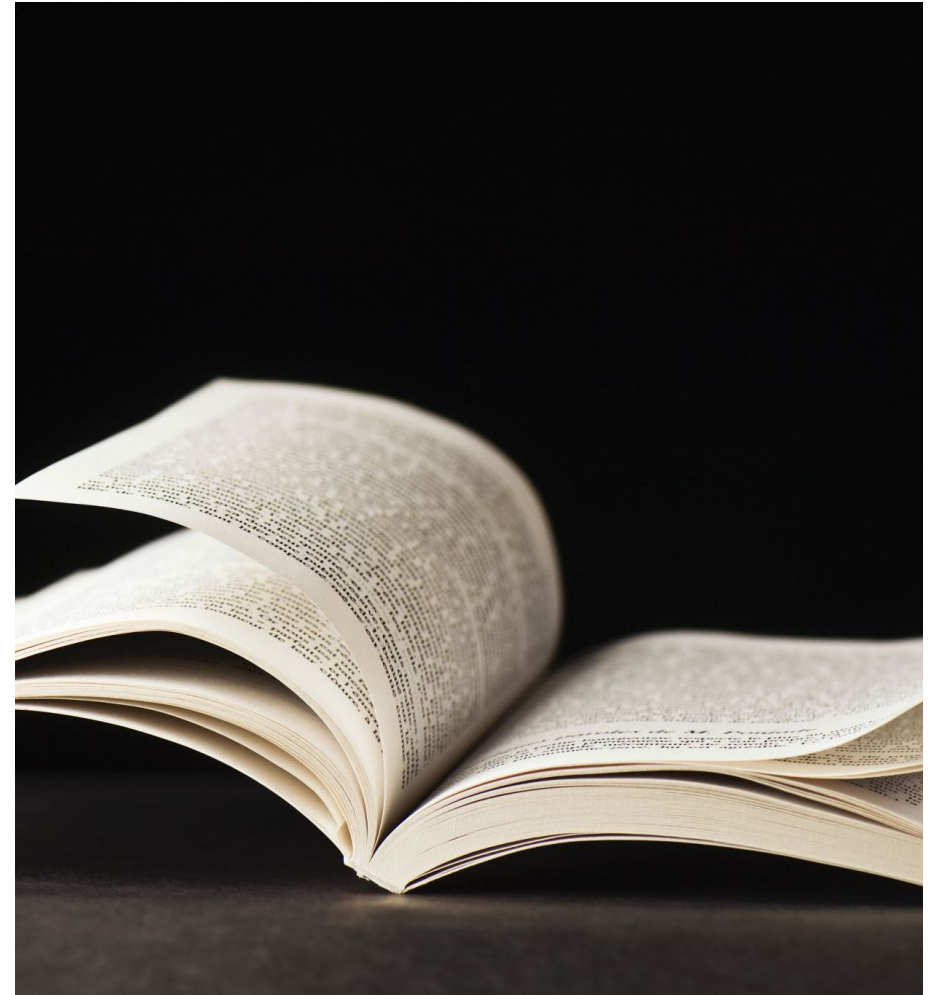
Sanction Proceedings under Revised FinMIA

What happens in case of a potential violation?



FINMA Procedure

- Issuers have a **direct supervisory relationship with FINMA**
- **FINMA instruments** (see art. 29 et seq. FINMASA) applicable to issuers/persons obliged to report:
 - duty to provide information to FINMA
 - enforcement proceedings
 - confiscation of profits
- Parallel administrative and criminal proceedings



Criminal Procedure

- **FINMA forwards report** to the Federal Department of Finance (FDF)
- **FDF can take direct action against issuers/ persons obliged to report** (no longer only against issuers)
- Appeal courts in criminal proceedings (pursuant to FINMASA / Criminal code)



Criminal Procedure: Fines



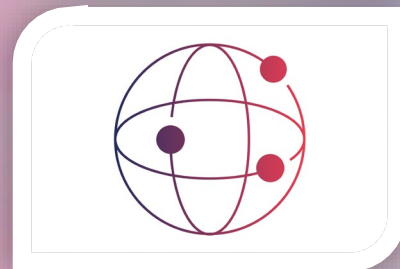
Proposed **reduction of fines:**

- Now:
 - intent max. CHF10 mio
 - negligence max. CHF1 mio
- Revised FinMIA:
 - intent max. CHF500k
 - negligence max. CHF100k
- Exemption for "de minimis"-violations

Thank you for your attention

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