

How investors can protect themselves against unauthorised financial market providers

Bern, 1 August 2017

Contents

Referenz:

1	Key points	3
2	No return without risk: two examples	4
3	Ten ways to protect yourself against untrustworthy providers	6
4	What action does FINMA take against unauthorised financial market providers?	7
4.1	FINMA's mandate.....	7
4.2	FINMA's approach.....	7
4.3	Measures taken by FINMA.....	8
4.4	What does FINMA do for investors?	9
5	Tactics used by unauthorised financial market providers	10
5.1	One example: the sale of worthless shares	10
5.2	Other methods and tactics	11
6	Other activities requiring authorisation	12
6.1	External asset managers	12
6.2	Online foreign exchange dealers	12
6.3	Crowdfunding	13
6.4	Virtual currencies (e.g. bitcoin).....	14

1 Key points

Referenz:

FINMA's purpose in issuing this report is threefold: to provide information about its approach to combating illegal and fraudulent financial intermediaries; to raise awareness of key areas and the methods used by illegal financial intermediaries; and to urge investors to consider their purchase decisions carefully. Before making an investment, investors should fully understand the financial product in question.

- FINMA is mandated to protect creditors, investors and policyholders and is responsible for ensuring that Switzerland's financial markets function effectively. Client protection is collective in nature: creditors and investors are protected as groups and not individually. The financial soundness (solvency) of supervised institutions is pivotal - also for their clients.
- *FINMA oversees the Swiss financial market.* It must ensure that providers who have not applied for a licence are not conducting activities requiring authorisation under financial market legislation and therefore, knowingly or unknowingly, operating illegally in the financial market.
- Under supervisory law, *FINMA cannot protect individual creditors and investors.* In many cases, investors have already suffered losses before FINMA can take action and the assets invested can no longer be recovered. Investors themselves must bring claims against providers under civil or, where necessary, criminal law.
- FINMA supervises authorised financial institutions on an ongoing basis. *FINMA does not actively monitor the financial market for potentially unauthorised providers.* Where there is reasonable suspicion of illegal activity, FINMA takes action. Every year FINMA investigates several hundred reports of potentially unauthorised activities and launches a large number of proceedings against unauthorised market participants. Reports from investors and creditors are important to FINMA but they must contain specific indications of a breach of financial market law. Normally, FINMA does not deal with general enquiries about company trustworthiness.
- Unauthorised financial providers are liable to prosecution. In such cases, FINMA files complaints with the Criminal Law Division of the Federal Department of Finance responsible for criminal prosecution.
- The returns promised by unauthorised providers at the outset are generally not paid out and are often far in excess of comparable offers from authorised (and therefore supervised) providers. This method of attracting customers is particularly effective in the current environment, in which returns on traditional investments such as savings accounts, government bonds and even shares and investment funds are relatively poor.

- Investors should consider their purchase decisions carefully. The offer, the provider, and the inherent risks should be examined closely. Ten recommendations that investors can follow to protect themselves against illegal and fraudulent providers when making investment decisions are outlined in Section 3 of this report.
- Concise information on unauthorised financial services providers is available at FINMA Public on the FINMA website. Particular attention should be paid to the warning list.

Referenz:

2 No return without risk: two examples

When someone invests money, they expect a return. Of course, no investment is completely without risk. For some time now, however, the yields from many asset classes have been close to zero. Because of the historically low interest rates, investors are tempted to entrust their assets to providers who promise significantly higher returns. The general rule is: the higher the yield, the higher the risk. The greater the return promised on an investment, the more carefully an investor should examine the offer – and the provider. Providers offering such tempting returns are frequently untrustworthy.

Investors most often lose their assets when they entrust them to unauthorised companies, frequently in the form of secured loans. Illegal providers and fraudsters are very creative and are constantly devising new business models to attract potential investors. Two recent real-life examples encountered by FINMA show ways in which unscrupulous financial service providers abuse the trust of their investors.

XYZ Crash AG: From its base in Switzerland this company accepted funds totalling several million francs, primarily from German investors. Victims of this scam invested the surrender values of their pension saving and mortgage contracts, with XYZ Crash AG promising them a multiple of what they could have expected to receive if they held the contracts until maturity. XYZ Crash AG invested the assets in projects for geothermal power stations in Germany. Investors were told that the first power station would come on stream in 2013. To attract investors, the company employed a large number of intermediaries, staged costly promotional events and advertised through an attractive website. In total, XYZ Crash AG raised more than CHF 50 million from more than 4,000 investors. Even though the company's investment strategy contained no such proposals, much of this money was then passed to a subsidiary which in turn passed 10 million dollars to another company as an unsecured loan. Following complex investigations in Switzerland and abroad, FINMA liquidated several companies in Switzerland, including XYZ Crash AG. Its investments proved worthless and

investors lost practically all of their money. FINMA imposed an advertising ban on the leading figures at XYZ Crash AG; this ban was published on FINMA's website and will remain in place for five years.

Referenz:

Main Capital Solutions: Henning Blechs Schmid, the owner of Main Capital Solutions, used a Bermuda-based company, which he owned, to buy shares in a variety of small companies. He then sold these to investors via a specially founded company with its registered office in Delaware, a US tax haven. What investors did not know was that Blechs Schmid was selling them the shares at a much higher price than he had bought them for, even though the purchase contracts specifically stated that investors would only pay the original purchase price for the shares and that Blechs Schmid would only receive 20% of any net profit on the investment. Once this fraud was detected, the Zurich public prosecutor's office began proceedings against Blechs Schmid and froze his remaining assets. In this case, FINMA was able to rely on documents seized by the public prosecutor during a search of the offices of Main Capital Solutions in Zurich. It rapidly became clear that the Bermuda company did not in fact operate from this Caribbean country but instead from the offices of Main Capital Solutions. In other words, Main Capital Solutions and the Bermuda-based company were carrying out unauthorised issuing activities from within Switzerland. They had raised around CHF 60 million from around 30 individuals. FINMA ordered both companies to be liquidated. Since they were illiquid and over-indebted, FINMA initiated bankruptcy proceedings. In addition, FINMA banned Henning Blechs Schmid, the company's owner, from carrying out any activity requiring authorisation. The ban was published on FINMA's website for a period of five years.

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

3 Ten ways to protect yourself against untrustworthy providers

Referenz:

By applying the following ten rules, you can reduce the likelihood of falling victim to fraudsters:

1. **Take sufficient time** when making investment decisions. Never let yourself be put under pressure. Always diversify your investments: do not put all your eggs in one basket.
2. **Carry out your own checks** on providers and products. Do not be dazzled by fancy prospectuses or skilful telemarketing. Use Google or other search engines to find information about providers and products.
3. Check whether the providers have been issued with a **FINMA licence** by consulting the [list of institutions](#). Be aware that not every institution subject to FINMA supervision has been placed under intensive prudential supervision.
4. You should also check whether the providers appear on [FINMA's warning list](#). If so, you should exercise extreme caution.
5. Check if the company appears in the **Commercial Register** for Swiss providers at www.zefix.ch. Frequent changes of company name, address or authorised signatories should make you suspicious.
6. For **providers and offerings from other countries**, always ask yourself whom you can contact if problems arise and how you can make a claim if necessary (against whom, where, and at what cost).
7. Consult appropriate **online forums and consumer websites**. Any evidence you find of investors who have already suffered losses or are feeling uncertain should be taken as a warning sign.
8. **Compare** the products, returns and commissions with those of other providers. If they are considerably better than those of institutions licensed by FINMA in particular, you should be cautious.
9. The novelty of innovative technologies and products (such as virtual currencies) makes them attractive, but they also harbour risks. Real game-changers are rare. Find out what you are dealing with and only invest when you understand what the investment involves.
10. Remember the **basic rule for making investments**: high returns usually go hand in hand with a high risk of incurring losses. The chances of losing are generally higher than those of making potential returns.

4 What action does FINMA take against unauthorised financial market providers?

Referenz:

4.1 FINMA's mandate

FINMA is mandated to protect creditors, investors and policyholders. It is also responsible for ensuring that Switzerland's financial markets function effectively. In order to fulfil this statutory mandate, it monitors licensed institutions – in particular, banks, exchanges, securities dealers, collective investment schemes and insurance companies. Other professional financial service providers, such as asset managers and companies offering credit or leasing arrangements, are supervised to ensure that they comply with the rules on money laundering.

FINMA is also responsible for enforcing authorisation requirements and activity bans set out in financial market law. In other words, FINMA takes action against individuals and companies conducting unauthorised activities.

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

4.2 FINMA's approach

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

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

Each year FINMA receives several hundred reports, which it pursues with the necessary diligence. However, in view of its limited personnel resources, it must prioritise the reports that it receives. High priority is accorded to all cases in which information is received from multiple sources, a very large number of investors are affected or large sums of money are involved. FINMA also reacts immediately when anyone advertises their services using FINMA's protected logo or falsely claims to be authorised by FINMA. The

aim here is to prevent investors basing decisions on incorrect assumptions. FINMA can only follow up specific indications of a breach of financial market law. Normally, FINMA does not deal with general reports or enquiries such as “Is X a trustworthy company?”, “Should I invest in Y?” or “Does Z have a licence?”.

Referenz:

How FINMA proceeds depends primarily on the case in question. The first step is to assess whether compliance with the law can be restored without recourse to formal proceedings. This may be the case, for example, if the market participants in question change their business model, contracts or advertising, appoint a FINMA-accredited auditor, go into voluntary liquidation, obtain authorisation from FINMA, or join a self-regulatory organisation.

In all cases, the company, its business model and its key executives should be seen to be trustworthy, and no investors' assets should appear to be at risk. In addition, there must be no indications of criminal offences. The management and companies must cooperate with FINMA and react promptly and honestly. FINMA writes to the companies affected, may seek dialogue with some of them, and requires them to provide confirmations.

Here are some figures on unauthorised financial intermediaries from 2016: FINMA received 700 reports of alleged unauthorised activity by companies. FINMA undertook 298 investigations into unauthorised financial intermediaries. In total, 26 illegally active companies were liquidated or forced into insolvency.

4.3 Measures taken by FINMA

If there are specific indications of a serious breach of financial market law and if compliance with the law cannot be restored in any other way, FINMA initiates enforcement proceedings against the provider in question and, where appropriate, against the individuals involved. In proceedings of this kind, FINMA is mandated to establish the facts and take action against the companies and individuals.

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

Once the relevant facts are established and if the suspicion of a breach of financial market law is confirmed, FINMA issues a final ruling in which it specifies the measures necessary to restore compliance with the law. Where unauthorised providers are concerned, this is frequently the liquidation of the company. In this case, FINMA appoints a liquidator whose activities it then monitors. If the company is over-indebted or illiquid, bankruptcy proceedings are initiated. Either FINMA itself or an external bankruptcy liquidator will wind up the company.

Referenz:

FINMA can then ban those responsible from performing and/or advertising the unauthorised activity (activity and advertising bans). It can also prohibit individuals from practising a particular profession (industry ban) or confiscate profits resulting from a breach of financial market legislation (disgorgement of profits order). Excerpts from the final ruling – specifically, advertising and industry bans – may be published as a deterrent. FINMA also files complaints with the Criminal Law Division of the Federal Department of Finance (FDF).

If unauthorised activity is suspected and if the provider in question fails to meet its obligation to provide the information requested, FINMA may be unable in some cases to clarify the suspicions and order / enforce any necessary measures. This may be the case, for example, if the provider has no physical presence in Switzerland, but there is nevertheless some connection with Switzerland (e.g. a false Swiss address or phone number on the website or in advertisements or other documentation). In these cases, FINMA publishes the names of the companies or individuals on its warning list (<https://www.finma.ch/en/finma-public/warning-list/#Order=1>) and on the alerts portal of the International Organization of Securities Commissions IOSCO (https://www.iosco.org/investor_protection/?subsection=investor_alerts_portal). Where appropriate, FINMA will also block access to the company's website and Swiss phone numbers.

4.4 What does FINMA do for investors?

FINMA takes reports of unauthorised activity seriously and investigates them thoroughly. Reports from investors help FINMA to identify illegal providers of financial services and take action against them. However, FINMA can only follow up specific indications of a breach of financial market law. General reports or questions such as “Is X a trustworthy company?”, “Should I invest in Y?” or “Does Z have a licence?” do not suffice.

Informants cannot, however, expect FINMA to update them about its investigations and proceedings. Reporting an incident does not establish any right for an individual to become a party to the proceedings. They must assert their interests through civil or criminal proceedings. As a matter of principle, FINMA does not provide information about its proceedings. Even if

specifically asked to do so, FINMA will not confirm, deny or comment on investigations. It reserves the right to correct false or misleading information. FINMA cannot express an opinion on civil law disputes; this is a matter for the civil courts.

Referenz:

FINMA maintains a list of supervised institutions. If investors are uncertain, they can find out from the FINMA website (<https://www.finma.ch/en/finma-public/authorised-institutions-individuals-and-products/>) whether a company or individual has been authorised by FINMA. If uncertainties remain, questions can be directed to questions@finma.ch.

5 Tactics used by unauthorised financial market providers

5.1 One example: the sale of worthless shares

FINMA regularly becomes aware of cases in which aggressive methods are used to sell shares in alleged start-up companies. The sellers generally charge a substantial commission. As a result, the purchase price of the shares is much higher than their face value. The companies in question are often allegedly active in particularly attractive areas of the economy such as alternative energy (wind and solar power), commodities (gold mines, crude oil etc.) or medical technology. These worthless shares are intensively advertised and marketed.

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

However, in most cases these companies are no more than shells which never become operationally active. Usually the money raised is immediately withdrawn from the companies which are then liquidated after a certain time. Experience has shown that investors generally suffer a total loss. The individuals behind schemes of this kind usually operate via nominees, which means that it is difficult to hold them to account under either supervisory or criminal law.

In these cases, FINMA's hands are often bound because FINMA authorisation is not required for selling one's own shares or simply brokering the purchase of shares. These practices are not prohibited under supervisory law. FINMA can intervene, where appropriate, in two cases:

firstly, if shares are sold by third parties on a commercial basis in the primary market. This may constitute an issuing activity that requires authorisation. Secondly, if the purpose of a company is pure financial investment, this may make it an investment company requiring authorisation.

Referenz:

Before considering buying shares in unknown start-up companies, you should look at the proposition very carefully. The first port of call should be the *Commercial Register*. If the *company name and registered office* change frequently or if there have been *numerous capital increases* involving shares with very small nominal values (often referred to as penny stocks), this can be a warning sign. We also recommend that you check the company's *business results* to find out whether the share price is in any way realistic.

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

Even if the security being offered for sale has an official security number, this provides very little by way of a guarantee. A security number is a unique identifier assigned in Switzerland by SIX Financial Information to identify securities and financial instruments. However, the security number merely confirms that the security in question exists. It does not guarantee that a product is a sound investment proposition. Even an investment fund which is domiciled in the Cayman Islands or Antigua and not authorised for sale in Switzerland can have a Swiss security number, and this is no guarantee that it will be possible to sell the fund units at a later date.

5.2 Other methods and tactics

Fraudsters use a wide variety of methods and tactics, and their repertoire is constantly being expanded and modified to reflect technological developments. The most recent cases known to FINMA involve companies claiming to have business activities outside Switzerland. These may be mines of various kinds (including gold mines), forests in South America, olive farms in Spain or wind farms in Romania and Poland. In these cases, it is difficult for investors to find out whether they are receiving anything of real value in return for their investments or whether the company in question is even operational. The same applies to purported cryptocurrencies or virtual currencies, which are increasingly being offered from Switzerland.

Other schemes offer gold or platinum or securities based on these precious metals. However, once investors have purchased the precious metals, which many people still regard as essentially secure, they are not delivered.

Alternatively, victims may be attracted by offers of private debt rescheduling but first they must make a substantial advance payment, and the loans for settling the debts are then not forthcoming.

Referenz:

The watchword in all these cases is the same: *If you are in any doubt, steer clear of transactions and offers of this kind.*

6 Other activities requiring authorisation

6.1 External asset managers

Asset managers have an important and useful function in financial intermediation. Here too, however, there are dangers for investors. Customer complaints received by FINMA show that there are asset managers who have power of attorney over their customers' assets but do not use it in the customers' best interests.

It is important to bear in mind that even if external asset managers are directly supervised by FINMA (i.e. DSFIs), their activities as asset managers are not monitored by the supervisory authority continuously and on the basis of strict criteria (prudential supervision). FINMA has no statutory basis for the prudential supervision of external asset managers. External asset managers who are directly supervised by FINMA are only checked to ensure that they comply with the provisions governing the prevention of money laundering.

Investors themselves must define their investment strategy and address the question of risk diversification. Common sense and a healthy dose of scepticism are useful here. Investors should keep a critical eye on the asset manager's investment activities and ask themselves whether the investments being made match the investor's risk profile and are sufficiently diversified. It is also vitally important that the asset managers should avoid conflicts of interest.

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

6.2 Online foreign exchange dealers

Ever since 2008, foreign exchange dealers domiciled in Switzerland have been obliged to hold a banking licence. All foreign exchange dealers were given more than a year to either cease operations or submit a licence

application to FINMA. Since the threshold for a banking licence is high, most foreign exchange dealers ceased operating in Switzerland. However, FINMA has received increased numbers of customer complaints regarding non-Swiss foreign exchange dealers offering their services online via electronic platforms. These companies frequently have a contact address in Switzerland and use Swiss bank accounts for their transactions.

Referenz:

From FINMA's perspective, this type of business model effectively means that the company has opened a branch office in Switzerland and must therefore be licensed by FINMA. If FINMA becomes aware of illegal foreign exchange dealing, it takes action. However, FINMA cannot proceed directly against these companies if they are merely pretending to have a physical presence in Switzerland in order to benefit from the Swiss financial centre's good name. Its only possible sanction in these cases is to block the company's phone and fax numbers and website. In cases like this, FINMA publishes the name of the illegal foreign exchange dealer on its warning list.

6.3 Crowdfunding

FINMA has noticed that more and more project initiators and investors are looking for alternatives to banks. Internet-based *crowdfunding* platforms act as intermediaries between investors and project initiators on a private basis. Project initiators use a crowdfunding platform to say how much money they need, what they need it for, and how much interest they are willing to pay. Anyone who wants to invest at the terms indicated can do so via an internet platform.

Since there is a huge variety of crowdfunding platforms, there is no one answer to the question of whether such platforms require authorisation. FINMA must review each business model on a case-by-case basis. In general, if the money raised is only brokered via the platform and is not centrally pooled in the platform operators' accounts in any way, they are acting within the law and do not require authorisation. The situation is different, however, for project initiators who accept funds via a crowdfunding platform (e.g. borrowers) but do not comply with the requirements of the Banking Ordinance (BO), as this may mean they require authorisation by FINMA (see in particular Art. 5 para. 3 let. c and Art. 6 BO). The revised BO, which came into force on 1 August 2017, relaxes certain legal requirements in ways that also benefit crowdfunding. The deadline for forwarding the funds is extended from 7 working days to 60 days. Subject to certain conditions, companies can also accept deposits up to CHF 1 million without a licence regardless of the number of depositors (see also 6.4 below).

Potential investors should be aware that they are acting at their own risk. They are providing funding on a private basis, the repayment and interest payments of which depend on the project initiators' financial circumstances. Investors should therefore be well informed about the person to whom they

are lending. The general principle applies: the higher the promised returns, the higher the risk.

Referenz:

6.4 Virtual currencies (e.g. bitcoin)

More and more goods are being bought online. This development inevitably leads to online cash flows. Originally these cash flows took place via conventional channels (i.e. credit card companies, specialised payment services such as PayPal etc.), but more recently virtual currencies (e.g. bitcoin) have been created by private individuals. Trading in bitcoins takes place in a completely decentralised environment, independent of state institutions and banks. Bitcoins can be exchanged for real currencies such as euros or dollars at bitcoin exchanges.

One feature of bitcoins is that the identification of trading partners requires separate technical measures. Because of this anonymity they play a special role in the black economy. Payments made using bitcoins cannot be reversed. Once the funds have been transferred, they cannot be recovered by a central authority, nor is it possible for users who do not know their trading partners to identify them or hold them to account if problems arise. Furthermore, the exchange rates of virtual currencies are subject to extreme fluctuations. For these reasons, trading in bitcoins with unauthorised traders presents increased risks of fraud, money laundering and outright loss.

While supervisory law contains no specific provisions relating to bitcoin or other virtual currencies, trading in them may require authorisation depending on the business model in question. For example, if deposits are accepted from more than 20 individuals, this in principle requires a banking licence because it is deemed to constitute commercial activity. From 1 August 2017, however, the activity is not considered commercial if the deposits do not exceed CHF 1 million (regardless of the number of depositors) and the depositors were informed before making their deposit that the company is not supervised and the deposits are not protected. The company can only invest and pay interest on the deposits if its principal activity is industrial/commercial. A banking licence is also no longer required if the deposits are forwarded or repaid within 60 days. This compares with 7 days prior to 1 August 2017. Companies with business models which involve the professional buying and selling of bitcoin or other virtual currencies in exchange for legal tender are subject to the Anti-Money Laundering Act (AMLA). Businesses that fall into this category must either join a FINMA-accredited self-regulatory organisation (SRO) or apply to FINMA for a DSFI licence.

Recently, FINMA has been paying increasing attention to companies offering investors the chance to purchase the company's own or other virtual currencies, holding out the prospect of price gains similar to those of bitcoin. These virtual currencies are often integrated into a multilevel marketing system: investor A is promised commissions for recruiting new investors B and C; if B

and C recruit further investors, both they and A are supposed to benefit under what amounts to a pyramid scheme. However, it is typically difficult to establish how exactly the business model operates. Unlike bitcoin, for example, these virtual currencies are often not administered decentrally. If these companies offer (conditional) repayment undertakings to investors on a commercial basis, they require a licence from FINMA under the Banking Act. It may also make their activities subject to AMLA. FINMA recommends examining investments in virtual currencies carefully and acting only where the provider's business model is genuinely clear and transparent. Fraudsters may be attempting to cash in on the hype surrounding virtual currencies.

Referenz: