

# Welcome to 5th symposium for small banks

Valiant Lounge 1

24 May 2022

# Market concentration: the paths chosen

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24 May 2022

# Agenda

1. Overview of market trends
2. Voluntary liquidation vs. lifting licence conditions
3. Mergers

# 1. Overview of market trends (1/2)

## Unterstellte Banken

per 31. Dezember

	2021	2020	2019	2018	2017
Banken	241	252	256	259	272
– davon ausländisch beherrscht	67	69	71	80	86
– davon Zweigniederlassungen ausländischer Banken	26	25	24	26	29
– davon in Aufgabe der Geschäftstätigkeit	6	6	8	7	16
Raiffeisenbanken	219	225	229	246	261
Vertretungen ausländischer Banken	44	47	51	49	53
<b>TOTAL</b>	<b>504</b>	<b>524</b>	<b>536</b>	<b>554</b>	<b>586</b>

## Unterstellte Wertpapierhäuser

per 31. Dezember

	2021	2020	2019	2018	2017
Wertpapierhäuser	45	44	46	46	48
– davon ausländisch beherrscht	11	10	9	9	12
– davon Zweigniederlassungen ausländischer Wertpapierhäuser	11	11	11	13	11
– davon in Aufgabe der Geschäftstätigkeit	1	2	3	1	6
Vertretungen ausländischer Wertpapierhäuser	31	29	35	36	41
Ausländische Teilnehmer an Schweizer Handelsplätzen	100	95	112	102	137
<b>TOTAL</b>	<b>176</b>	<b>168</b>	<b>193</b>	<b>184</b>	<b>226</b>

# 1. Overview of market trends (2/2)

## Marktentwicklung Banken und Wertpapierhäuser

### Neubewilligungen Banken und Wertpapierhäuser

Anzahl Institute, Januar bis Dezember

	2021	2020	2019	2018	2017
Banken	5	5	3	2	4
– davon Zweigniederlassungen	2	3	1	1	3
Wertpapierhäuser	1	2	2	4	2
– davon Zweigniederlassungen	0	0	0	2	1
<b>TOTAL</b>	<b>6</b>	<b>7</b>	<b>5</b>	<b>6</b>	<b>6</b>

### Marktaustritte Banken und Wertpapierhäuser

Anzahl Institute, Januar bis Dezember

	2021	2020	2019	2018	2017
Banken	3	4	2	12	9
– davon Zweigniederlassungen	2	1	1	5	4
Wertpapierhäuser	0	2	2	4	5
– davon Zweigniederlassungen	0	1	0	0	2
<b>TOTAL</b>	<b>3</b>	<b>6</b>	<b>4</b>	<b>16</b>	<b>14</b>

## **2. Voluntary liquidation vs. lifting licence conditions (1/4)**

### **1. Voluntary liquidation according to the Swiss Code of Obligations (Art. 739 et seqq. CO)**

The resolution by the annual general meeting to dissolve the company starts liquidation proceedings. This changes the company's purpose to liquidation, with the goal of deleting it from the commercial register.

### **2. Lifting licence conditions**

Following its shareholder resolution to cease all activities that require a licence, the company enters into proceedings to eliminate all its positions warranting protection, with the goal of lifting its licence conditions while continuing to operate.

## 2. Voluntary liquidation vs. lifting licence conditions (2/4)

	Voluntary liquidation	Lifting licence conditions
Resolution	Annual general meeting	Same
Governing officers	Appointment of liquidators	Current governing officers
Balance sheet	Liquidation balance sheet	Interim balance sheet
Creditor protection	Creditors are informed and asked to register their claims through a notification published three times in the Swiss Official Gazette of Commerce (SOGC) and in the form provided for in the articles of association	Same

## 2. Voluntary liquidation vs. lifting licence conditions (3/4)

	Voluntary liquidation	Lifting licence conditions
Corporate purpose and name	Limitation of the purpose to reducing activity Addition of the words “in liquidation” to the corporate name	Amendment of the articles of association and organisational regulations (elimination of activity requiring a licence and any references to banking activity in the corporate name)
Other duties	Terminate outstanding business dealings, collect debts, sell assets and execute company commitments	Same, but limited to business activity requiring a licence
Audit firm	Issuance of a final report, confirmation of the end of the liquidation and that there are no objections to deletion from the commercial register	Issuance of a final report, confirmation of no more activity requiring a licence or any interests warranting protection and no objections
Prudential supervision	The company remains subject to FINMA supervision until it is deleted from the commercial register	The company remains subject to FINMA supervision until notification of the decision to lift licence conditions



## 2. Voluntary liquidation vs. lifting licence conditions (4/4)

### Recurring problems

#### Clients

- Disputes
- Dormant assets
- Uncooperative clients

#### Assets

- Illiquid assets
- Undeclared assets

#### Licence conditions

- Suitable organisation
- Capital

## 3. Mergers (1/8)

### Types of mergers

Merger by **absorption** results in the acquisition of one company by another (Art. 3 para. 1 let. a MergA)

Merger by **combination** results in combining two companies into one new entity (Art. 3 para. 1 let. b MergA)

### 3. Mergers (2/8)

#### Cross-border mergers

- Merger from abroad to Switzerland (Art. 163a PILA)

A Swiss company may acquire a foreign company (**absorption by immigration**) or form a new Swiss company with a foreign company (**combination by immigration**).

- Merger from Switzerland abroad (Art. 163b para. 1 PILA)

A foreign company may acquire a Swiss company (**absorption by emigration**) or form a new foreign company with a Swiss company (**combination by emigration**).

## 3. Mergers (3/8)

### Simplified merger

- When a company acquires a wholly owned **subsidiary** (Art. 23 para. 1 let. a MergA) or
- When two **sister companies** merge (Art. 23 para. 1 let. b MergA).

### 3. Mergers (4/8)

#### Main characteristics

- Merger agreement in writing
- Merger report
- Verification of agreement, report and balance sheet by a certified auditor
- Members' right of inspection (30 days before decision)
- Publicly certified merger decision (approval by general meeting)
- Maintain ownership shares and full membership rights
- Capital increase
- Balance sheet  $\leq$  6 months old

## 3. Mergers (5/8)

### Mergers

- Merger agreement
- Merger report
- Verification for an auditor
- Right of inspection
- Resolution of merger by the annual general meeting

### Simplified merger

- Simplified merger agreement
- Optional merger report
- No need for verification
- No right of inspection
- Resolution of merger by the board of directors

### 3. Mergers (6/8)

#### Main information to be provided to FINMA

- Merger agreement
- Merger report
- Merger balance sheet (pro forma after merger)
- Report of the certified auditor
- Merger resolutions of both institutions
- Statement of position of the acquiring bank's audit firm (compliance with licence conditions)
- Confirmation of no objections to the deletion of the acquired entity by its audit firm
- Impact of the merger on the acquiring company's licence conditions (articles of association, organisational regulations, governing officers, organisation, activity, treatment of any subsidiaries, branches, representative offices, consolidated supervision, activity related to investment funds, etc.)

### 3. Mergers (7/8)

#### Legal effects

- The merger takes effect upon its **entry in the commercial register** (Art. 22 para. 1 1st sentence MergA)
- From that date, all of the transferring company's assets and liabilities are **transferred by operation of law and in a single transaction** (transfer by universal succession) to the acquiring company (Art. 22 para. 1 2nd sentence MergA)
- **Deletion** of the transferring company is simultaneous with registration of the merger (Art. 21 para. 3 MergA)



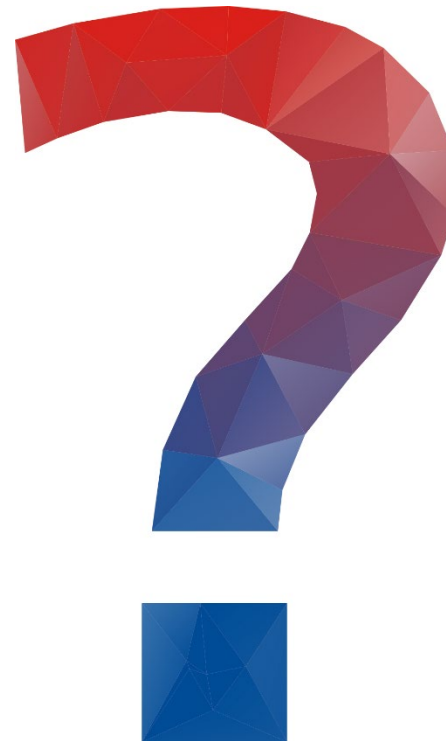
### 3. Mergers (8/8)

#### Creditor protection

The acquiring company **secures the claims** of creditors of the merging companies if the creditors so demand within **three months** of the effective date of the merger (Art. 25 para. 1 MergA).

The creditors are informed of their rights by **notification published three times in the SOGC** (Art. 25 para. 2 1st sentence MergA).

Since registration of the merger results in deletion of the transferring bank, **creditors must be notified three times** in the SOGC.





# Cryptoassets

Status of regulatory developments on international and national level

Christian Capuano, Head of risk management - Banks

24 May 2022

## Crypto assets in scope of regulatory developments

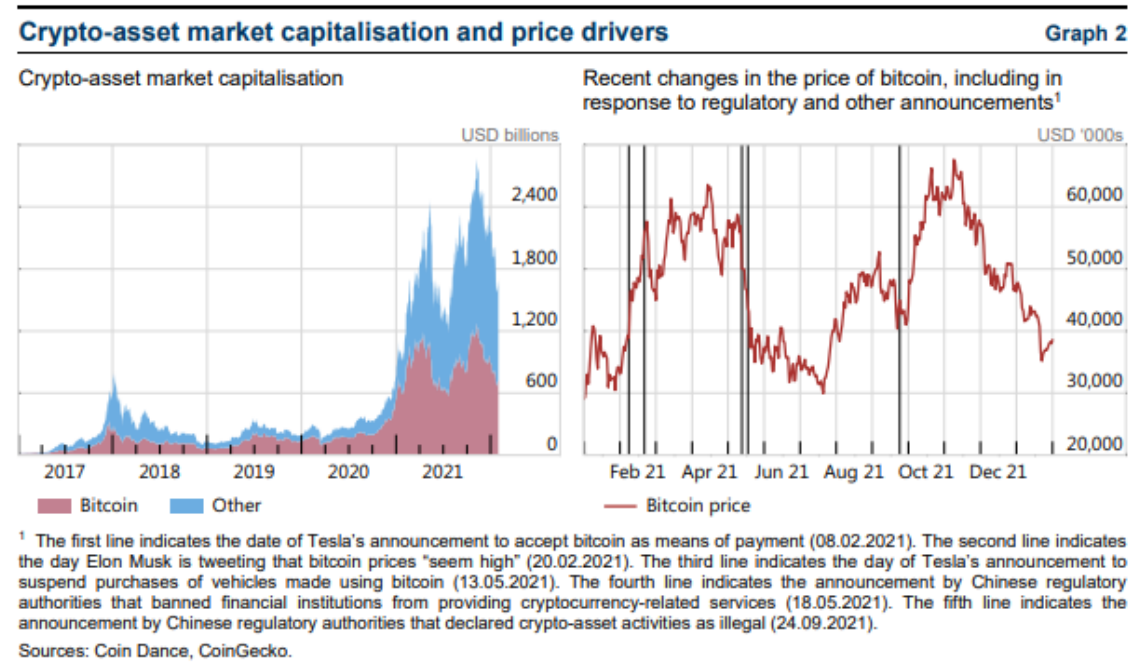
### Which cryptoassets?

- Cryptoassets are defined as private digital assets that depend primarily on cryptography and distributed ledger or similar technology  
Financial Stability Board (2020): <https://www.fsb.org/wp-content/uploads/P131020-3.pdf>
- Digital assets are a digital representation of value, which can be used for payment or investment purposes or to access a good or service
- In practice, regulatory developments have the following assets in scope:
  - Tokenised traditional assets
  - Stablecoins
  - Unbacked cryptoassets
  - Derivatives with underlying any cryptoasset

## International developments: 2020-2021

### Crypto assets identified as one of the key policy priority

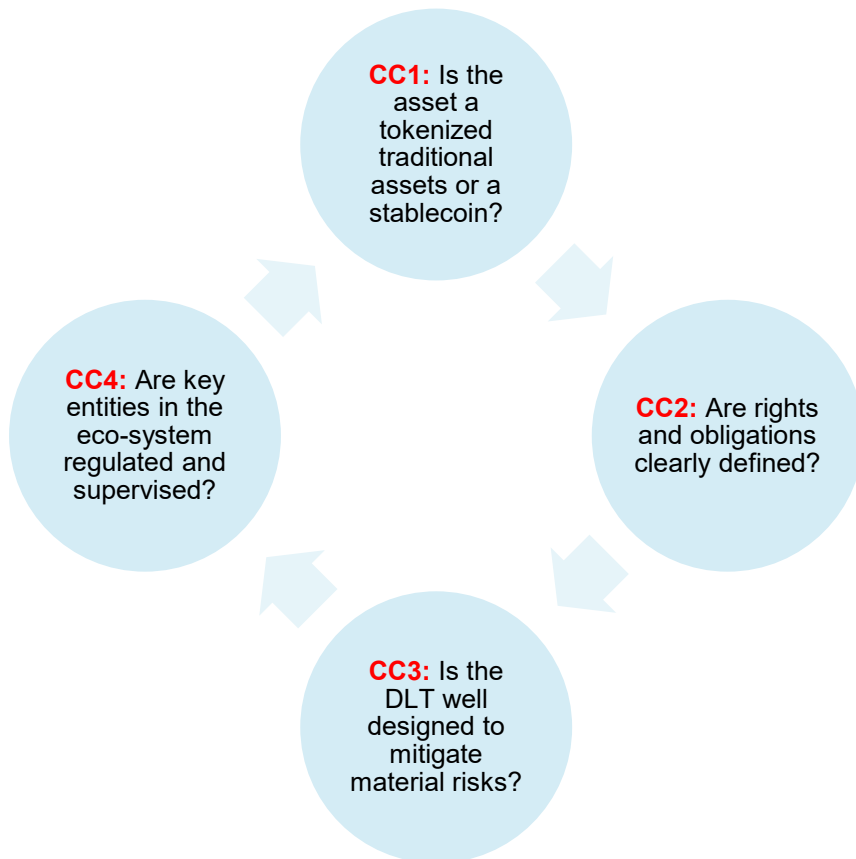
- In 2020, the Basel Committee on Banking Supervision (BCBS) identified cryptoassets as a policy priority, and established a dedicated workstream to define the prudential treatment of cryptoassets.
- The Financial Stability Board (FSB) is also following closely the developments, in particular for what concerns the global growth in digital-coins and the risks these assets might pose for financial stability



## BCBS 2021 Consultation 1/2

### BCBS June 2021 consultative paper – step 1: classification conditions

- Assets are screened against 4 classification conditions (CC) – if they pass all conditions, cryptoassets qualify for **group 1**



- Assets that fail even one condition would flow into **group 2**

## BCBS 2021 Consultation 2/2

### BCBS June 2021 consultative paper – **step 2: prudential requirements**

**Group 1 Assets** would be considered to pose equivalent prudential risks as traditional (non-tokenized) assets



**Similar** prudential treatment as traditional assets

**Group 2 Assets** would be considered to pose significantly higher prudential risks as traditional assets



**Penalized** with a very conservative prudential treatment, e.g. no netting of long and short positions and capital required similar to a deduction (risk weights of 1250%).

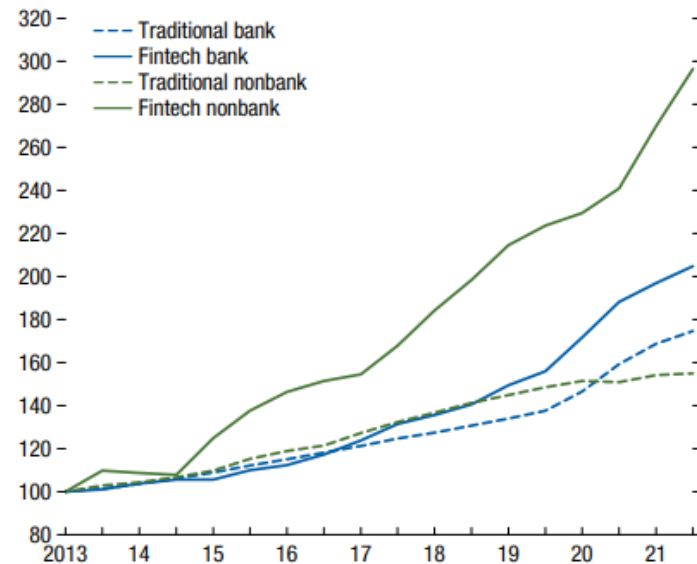


# 2022 International developments

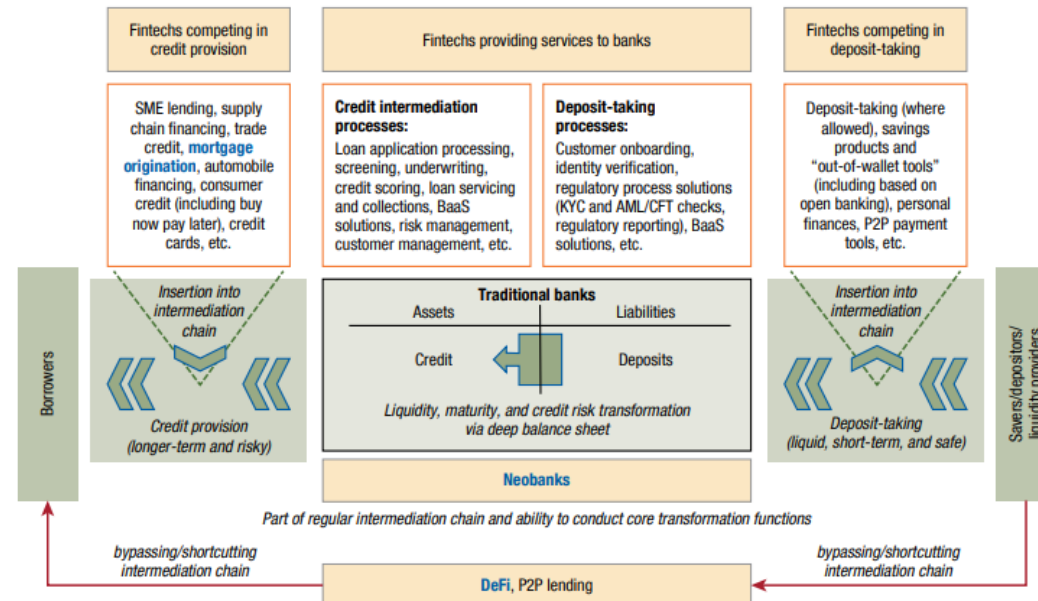
## Cryptoassets remain a key policy priority together with overall Fintech developments

- The regulatory community and international agencies continue to (i) analyze the risks and opportunities posed by cryptoassets as these are linked with developments in Fintech; (ii) work to improve and finalize the prudential treatment for the banking sector.

1. Growth of Assets of Fintech Lenders (2013:H1=100)



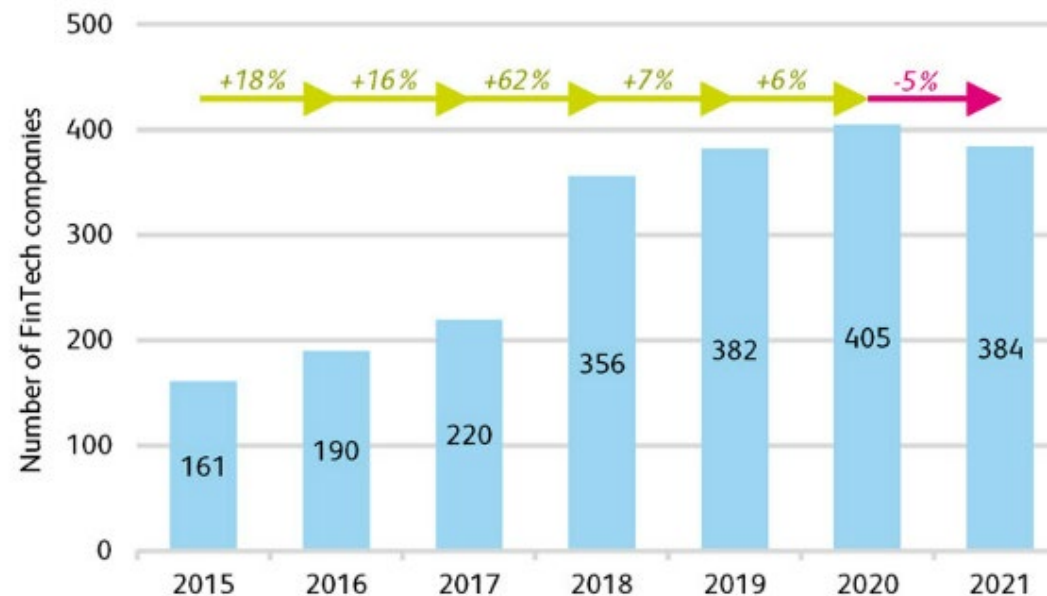
Fintechs insert themselves into the financial intermediation chain or circumvent it in the case of DeFi.



## National developments

### National developments in regulation follow the international timeline

- FINMA has not issued any regulation on the prudential treatment of cryptoassets
- FINMA is actively contributing to the international developments, in particular at BCBS and FSB
- FINMA provides feedback on the prudential treatment for exposures that supervised entities might incur.
- Developments in FinTech and cryptoassets are an important supervisory theme, as the number of Swiss FinTech companies has been growing and remained relatively stable in the recent past (see chart)



Source: Lucerne University of Applied Sciences, March 2022

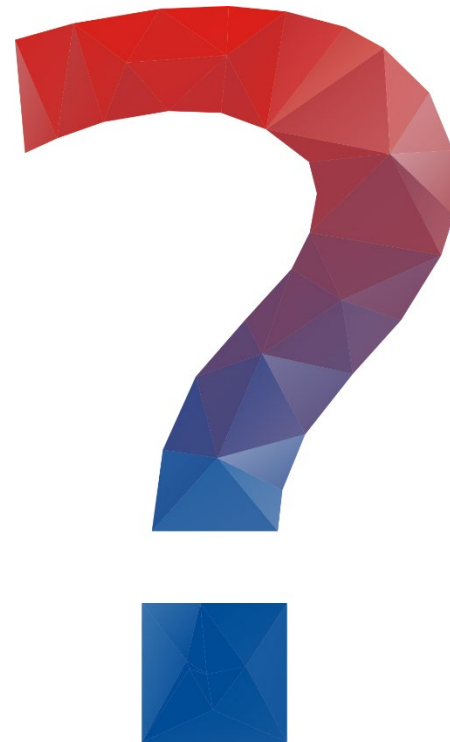
## Realistic next steps in regulatory developments

### International timeline

- We expect the BCBS to issue a second consultative paper in the summer of 2022.
- Based on the feedback received, it is realistic to expect the Committee will work to finalize the framework by the end of 2022.
- It remains uncertain whether an international consensus will be reached timely by year end.

### National timeline

- FINMA does not intend to publish any regulation before an international agreement.
- FINMA will continue to follow and contribute to the international developments on cryptoassets' regulation.
- Please approach FINMA in case your financial institution intends to have exposures to cryptoassets to discuss the appropriate prudential requirements that might apply in the concrete case.



# Time for lunch

Guten Appetit! Bon appétit! Buon appetito! Enjoy your meal!

24 May 2022