Anti-Money Laundering Control Authority

Annual report 2008

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Foreword by Peter Siegenthaler, Director of the Federal Finance Administration

When the Anti-Money Laundering Act came into force on 1 April 1998 the Anti-Money Laundering Control Authority became responsible for regulating non-banking financial intermediaries and SROs. The first objective achieved was the recognition of the self-regulatory organisations, which themselves directly supervise over 6500 members in the guided self-regulatory process. This system is the only one of its type in the world, and it is fair to say that it has proven its worth. An external assessment of Switzerland in 2005 noted that the self-regulation was internationally acknowledged. One benefit of the licensing and regulation of what is now over 434 directly subordinated financial intermediaries by the Control Authority is the fact that it has made it possible to build up the requisite expertise and constantly refine practice in the areas where the Anti-Money Laundering Act applies. Major objectives were also reached in terms of implementing and interpreting the legislation. I refer in particular to the Control Authority's ordinances on financial intermediation as a commercial undertaking and on data processing, and also to the (now-revised) Money Laundering Ordinance. The revised application guide was also published recently; this contains details on the practical scope of application of the Anti-Money Laundering Act under Art. 2 para. 3 AMLA over the last ten years, and is an important working tool for regulated bodies active in the non-banking area. The Control Authority's role in revising the Anti-Money Laundering Act, participating in the Swiss delegation in the Financial Action Task Force and in working parties involved in the fight against terrorist financing, corruption and financial criminality as well as its leading role in coordinating official action have been acknowledged both at home and abroad.

The financial crisis has shaken confidence in the large banking groups and led increasing numbers of customers to seek out independent non-bank financial advisors able to offer individual advice and customised services. The number of financial intermediaries in this area is therefore rising steadily. Customers rely on the firms they engage to be professional and conduct their business affairs in a proper manner; these in turn need competent regulation, which is just as important for the reputation of the Swiss financial markets as the regulation of banks and insurance companies.

The Control Authority handed over its responsibilities to FINMA on 1 January 2009. As a well functioning regulator it has made a great contribution to the growth seen in the market for non-bank financial services. I have no doubt that FINMA will continue this work, taking due account of the special features of the market segment and its growth potential, in the interests of the Swiss financial services industry.

I would particularly like to thank the managers and staff of the Control Authority for the years of work and commitment they put into this sometimes difficult area of financial market regulation to ensure that regulated firms fulfilled their obligations, and wish them all the best in their future activities.

Berne, March 2009 *Peter Siegenthaler*

FINMA

The three merging authorities
On 1 January 2009 the Swiss Federal Banking Commission, the Federal Office of Private Insurance and the Anti-Money Laundering Control Authority were merged to form the Swiss Financial Market Supervisory Authority (FINMA). This means that state supervision of banks, insurance companies, stock exchanges, securities dealers and other financial intermediaries have now been brought under one roof.

Legal basis
The legal basis for the new integrated supervisory authority is the Federal Act on the Swiss Financial Market Supervisory Authority (FINMASA), which was approved by parliament on 22 June 2007.

Profile
As an independent supervisory authority, FINMA protects the clients of financial markets, namely creditors, investors and insured persons, thereby strengthening confidence in the smooth functioning, integrity and competitiveness of Switzerland as a financial centre.

Organisation
FINMA has been structured as a public law institution with its own legal identity that has functional, institutional and financial independence. As an autonomous authority it is no longer part of the central federal administration but a legally independent organisation with separate powers. It is financed entirely by the fees and charges levied on the institutions it supervises.[1] FINMA has a modern organisational structure with a Board of Directors, Management Board and audit unit. The Board of Directors is FINMA's strategic body and therefore takes responsibility for strategy development, makes judgements on matters of substantial importance, issues the ordinances delegated to FINMA, decides on circulars and also oversees the Management Board, while itself being responsible for the overall management of FINMA.

Partial entry into force
The partial entry into force of FINMASA's organisational provisions on 1 February 2008 gave FINMA its own legal identity, making it independently responsible for implementing the necessary steps for its further development.

Board of Directors
At the same time as the partial entry into force of FINMASA on 1 February 2008, the Federal Council appointed seven members to FINMA's Board of Directors. The Board of Directors is chaired by Eugen Haltiner (formerly Chairman of the Banking Commission). The committee was subsequently expanded to nine members as of 1 January 2009 in line with a Federal Council Decree of 21 May 2008. Exceptionally, two vice-chairmen have been appointed for the period of office between 2009 and the end of 2011.

Director and Management Board
The Board of Directors appoints the director, subject to the approval of the Federal Council. In order to identify a suitable individual for the challenging role of director of FINMA, a recruitment process for the position was launched with a public advertisement in December 2007. The Board of Directors made its decision on 8 May 2008 and appointed Patrick Raaflaub as Director. The Federal Council approved this appointment at its meeting of 21 May 2008. The recruitment process at FINMA Management Board level began early March 2008. The Board of Directors appointed the members of the Management Board on 8 May 2008. Federal Council approval was not required.

1 see Art. 15 FINMASA

Recruitment process
Once the director and the Management Board had been appointed, the internal recruitment process began. All posts were advertised internally, and the FINMA employment contracts were issued in the fourth quarter of 2008.

Project work
The Board of Directors monitored the implementation work carried out during the development phase leading up to the operational launch of FINMA and took any decisions that were required. For example, the Board of Directors defined the primary management level of the organisational structure. It is constituted of the Large Banking Groups, Banks/Financial Intermediaries, Integrated Insurance Supervision, Insurance/Sectors, Markets, Legal/Enforcement/International and Services domains. The departments within the individual domains were defined in consultation with the FINMA Management Board. The Board of Directors also approved the Organisational and Business Regulations, the Code of Conduct, the HR directives and the 2009 budget. The balancing act required to combine the project work with day-to-day supervisory activities in the three former authorities presented a particular challenge. Managing the interfaces and coordinating the content and timeframes of the various projects was a very demanding task, which is why the process was closely monitored under the stewardship of the Chairman of the Board of Directors.

Project costs
The three merging authorities contributed a total of CHF 3.5 million in 2008, in proportions relative to their size, to cover project costs. The project costs were at the level envisaged. The Finance Administration loaned FINMA an additional CHF 7.5 million for preliminary investments. These were largely in the area of IT.

Personnel regulations
Under Art. 13 para. 1 FINMASA, FINMA employs its staff under public law. The legislator has authorised FINMA to issue its own personnel regulations. Under Art. 13 para. 2 FINMASA, the Board of Directors sets out the employment relationship in an ordinance that was approved by the Federal Council on 27 August 2008. The Board of Directors designed the FINMA staff ordinance to have a stronger focus on performance compared to the Federal Administration, coupled with flexibility in terms of remuneration.

FINMASA executing ordinances
The Federal Council issued two implementing ordinances relating to FINMASA that entered into force on 1 January 2009. These are the ordinance governing the levying of fees and charges by FINMA and the financial market audit ordinance. Fees and charges are largely based on the previously applicable fee arrangements of the Banking Commission, the Federal Office of Private Insurance and the Anti-Money Laundering Control Authority. FINMA's finance and accounting unit seeks to allocate costs by applying the «originator pays» principle wherever possible. The financial market audit ordinance groups together the provisions governing financial market auditing in a single ordinance.

Operational launch of FINMA
With the full entry into force of FINMASA on 1 January 2009, FINMA took over operational supervisory activities at the existing locations of the three merging authorities. The move to a joint FINMA location at Einsteinstrasse in Bern is scheduled for the second quarter of 2009.

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Abbreviations used

AMLA	Anti-Money Laundering Act
AMLCA	Anti-Money Laundering Control Authority
CDB 08	Due Diligence Agreement of the Swiss Bankers Association
DSFI	Directly Subordinated Financial Intermediary
FAC	Federal Administrative Court
FATF	Financial Action Task Force
FCA	Federal Customs Administration
FDF	Federal Department of Finance
FEDPOL	Federal Office of Police
FFA	Federal Finance Administration
FINMA	Financial Market Supervisory Authority
FINMASA	Financial Market Supervision Act
FOPI	Federal Office of Private Insurance
GRECO	Group of States against Corruption
MLO AMLCA	Money Laundering Ordinance of AMLCA
MLO SFBC	Money Laundering Ordinance of the SFBC
MROS	Money Laundering Reporting Office Switzerland
OAGS	Office of the Attorney General of Switzerland
SAP	Service for Analysis and Prevention
SFBC	Swiss Federal Banking Commission
SFGB	Swiss Federal Gaming Board
SRO	Self-Regulatory Organisation

Summary

Legal basis

Revision to the Money Laundering Ordinance: The Anti-Money Laundering Act was revised as part of the implementation of the revised recommendations of the FATF and the third FATF evaluation report on the Swiss system for combating money laundering and terrorist financing. As a consequence, the Control Authority thoroughly revised the Money Laundering Ordinance. The Ordinance of the Swiss Financial Market Supervisory Authority on the Prevention of Money Laundering and Terrorist Financing in the Rest of the Financial Sector (FINMA Money Laundering Ordinance 3, MLO-FINMA 3), entered into force on 1 January 2009. It now also extends to preventing terrorist financing. In addition, it introduces a new definition of the term 'transfer of money and assets,' relaxations in the area of identifying contract partners and organisational simplifications.

Fundamental ruling regarding factoring/forfaiting: In 2004 a cooperative which is active in the factoring/forfaiting business for its members demanded a challengeable decision from the Control Authority in respect of its subordination under the Anti-Money Laundering Act. The Control Authority ruled in favour of subordination, pointing to the wording of AMLA, which explicitly mentions factoring as an activity subject to AMLA. In a judgment dated 30 November 2007 the Federal Supreme Court granted the cooperative's appeal against the ruling of the Control Authority. The ruling was justified on the grounds that the activity in question was a credit business which objectively provided no opportunities for money laundering. In future it will be necessary to examine on a case by case basis how the new interpretation of the Federal Supreme Court is to be applied.

Federal Supreme Court ruling on the supervisory levy: With effect from 1 January 2006 AMLA introduced an annual supervisory levy for SROs and DSFIs to cover the costs of providing regulation. Ten out of the eleven SROs appealed against the decrees of the Control Authority for the 2006 supervisory levy. In 2007 the Federal Administrative Court ruled that passing on the costs of providing regulation was in accordance with the intention of the legislative branch, that the amount of the costs passed on was not open to challenge and that the ordinance of the Federal Council had a sufficient legal basis. However, the body issuing the ordinance was found to have exceeded its discretion in charging separate basic and additional levies. The Court then redetermined the supervisory levies. In autumn 2008 the Federal Supreme Court confirmed the findings of the Administrative Court in principle, stating that the issue of constitutionality had already been examined and approved by the legislative branch. Passing on the full costs of the Control Authority to the bodies supervised was permitted under the law. However, the Federal Council had exceeded its discretion in setting the basic levy. It therefore referred the matter back to the Control Authority for the individual levies to be recalculated and new decrees were issued in November 2008. In the future the supervisory levy will be charged on the basis of the FINMA Fees Ordinance.

Self-regulatory organisations

SRO audit standards: The Control Authority asked the SROs to draw up industry-wide recommendations for raising the comparability and informative value of their audit reports and submit these to the SRO Forum for discussion. Proposed solutions were established covering the content of the audit report, the level of detail of the audit results and the production of working

papers. The SRO Forum anticipates reaching a decision on implementation in 2009.

Review of the status quo as part of SRO supervision 2008: Instead of the standard annual audit, this year a review of the status quo was held with every SRO. These meetings were mainly used to pass on information about FINMA and the nature of future regulation. The revisions to SRO rule books following the amendments to the legal basis, particularly AMLA and the MLO AMLCA, were also discussed. The aim was to ensure that both sides were optimally prepared for the transition to FINMA.

Coordination conference: All of the eleven recognised SROs took part in a coordination conference on 2 December 2008. Instead of the workshops held in previous years, three speeches were delivered. In the first of these Jean-Christophe Oberson, a member of the board of OAR-G, spoke of the experiences of an SRO with regulation by the Control Authority. The second address, by Alain Robert, Managing Director and Head of Wealth Management & Business Banking for UBS Switzerland, considered the crisis in the financial sector in Switzerland. The third presentation was made by Eugen Haltiner, Chairman of the Board of Directors of FINMA and Urs Zulauf, Head of Legal, Enforcement and International at FINMA, on the role of FINMA in Swiss financial markets. Peter Siegenthaler, Director at the FFA, gave a review of the ten-year history of the Control Authority, closing with an expression of thanks to the SROs for their good cooperation.

Directly subordinated financial intermediaries

Licences: In 2008 59 financial intermediary licenses were granted, roughly the same as the previous year; this exceeded expectations for the year. No applications had to be rejected. One application was not considered, however, as the SFBC had already ordered the liquidation of the applicant at the time it was submitted

AMLA audits 2008: In 2008 the Control Authority carried out for the last time the regular AMLA audits to verify that due diligence requirements had been met by those financial intermediaries directly subordinated to it. These established that, with only a few exceptions, due diligence obligations were being carried out well to very well. The rare grave shortcomings mainly related to identifying contractual parties, establishing beneficial owners, performing special duties to investigate and the need to obtain documentation and information. By contrast, risk management and the implementation of reporting requirements and asset freezes in the cases examined presented no problems.

Change of AMLA auditor project: FINMA will not itself function as an audit firm (new FINMASA term, previously auditor) or carry out regular AMLA audits. Financial intermediaries must therefore select an external audit firm approved by FINMA, in accordance with the new provisions of AMLA which entered into force on 1 January 2009. In order to ensure a smooth transition to the new system, the Control Authority ordered the DSFIs in question to find an external audit firm in 2008 so, with a few well-founded exceptions, the switchover was complete by the end of the year.

Rulings / measures by the Control Authority / sanctions

Withdrawal of licence / judgment of the Federal Administrative Court dated 23 June 2008: In 2006 the Control Authority withdrew the licence of a company that was mainly active in setting up and running domicile companies on the grounds of serious breaches of AMLA and

ordered it to be wound up. In a judgment dated 23 June 2008 the Federal Administrative Court granted the company's appeal and overturned the ruling of the Control Authority. The court justified this on the grounds that the grave shortcomings had since been remedied, and as such the ruling of the Control Authority had to be regarded as disproportionate at the present time.

Measures to rectify irregularities: The majority of breaches of due diligence were either of a strictly formal nature or only minor material shortcomings, and hence could be resolved by means of a follow-up letter, a written document similar to an official decree. In other instances there was no need for an official decree because the financial intermediaries accepted the threatened measures during the legal hearing.

Market regulation

A review on eight years of market regulation: The Control Authority took on the legal task of regulating the market in April 2000, the date from which financial intermediaries were required to obtain a licence and/or join an SRO. The aim of this regulation was, on the one hand, to ensure that all financial intermediaries then applied for a license and/or joined an SRO on pain of liquidation or winding-up proceedings being launched against them, and on the other hand to enforce prevention by means of an active presence in the market. These actions were based on information from the financial markets themselves or from other official bodies. In addition to this reactive market regulation, the Control Authority also carried out «pro-active» regulation based on its own sector-specific or geographically-focused research.

Audit

Updating the list of accredited lead auditors and registering as an AMLA auditor with the Audit Supervisory Authority: In view of the transfer of data to FINMA the Control Authority updated its database of accredited lead auditors by sending out a questionnaire to all AMLA auditors (in future to be referred to as audit firms). The survey revealed that nearly all previously accredited persons have been definitively or provisionally registered with the Federal Audit Supervision Authority.

Coordination with other official agencies

Three meetings took place at which information was exchanged between the official government agencies engaged in combating money laundering (AMLA CA, FOPI, SFBC, SFGB, MROS, FEDPOL/DAP, OAGS). This cooperation will be continued in a suitable form now that FINMA has been set up. Since 1 February 2009 the Federal Customs Administration (FCA) which has recently been given new legal duties in combating money laundering and terrorist financing has also been involved.

International affairs

Financial Action Task Force on Money Laundering (FATF): As before, the FATF comprises 32 member states and two member organisations; the joining procedures for South Korea and India are still underway. As part of the third round of country evaluations, 2008 saw six reports from member states received and published by the plenary meeting of the FATF. In 2008 Switzerland reported on progress made for the second time and will submit its final report in 2009.

During the year the FATF published an open declaration to various states on the poor implementation of international standards on combating money laundering and terrorist financing.

A review of the principles of the FATF was launched under the presidency of Brazil, which commenced in July 2008. Where possible, however, there should be no changes to the 40+9 recommendations before the third country evaluation cycle has been completed.

Other work carried out by the FATF during the year included a «best practice paper» on combating trade-based money laundering and a comprehensive typology report in the context of the financial provisions of the UN security council resolutions to counter proliferation of weapons of mass destruction.

1 Introduction

Until 31 December 2008 the Anti-Money Laundering Control Authority was the regulatory agency for financial intermediaries in the non-banking sector 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. In order to carry out such activities these financial intermediaries must be members of a recognised SRO or be licensed by the regulator. The regulator's task is of a preventative nature and regulatory activity is restricted to ensuring compliance with the duties set down in the Anti-Money Laundering Act.

This annual report is intended to provide full and transparent information on the activities of the Control Authority in 2008. Once the tasks of the Control Authority have been assumed by FINMA in 2009, this information will in future be provided by that body.

2 Staff matters

The project to launch FINMA resulted in staff reductions and restructuring at the Control Authority in 2008. From 2009 the duties of the Control Authority will be carried out by various domains and divisions of FINMA; consequently, the Control Authority was wound up with effect from 31 December 2008. Directly subordinated financial intermediaries will in future be regulated by the Banks/Financial Intermediaries domain, and SROs by the Legal/Enforcement/International domain. Enforcement will also no longer be involved in regulating DSFIs or SROs.

Between August and December 2008 16 members of staff left the Control Authority, most to take up new jobs in federal or cantonal government or the private sector. Considerable commitment from the remaining staff, fixed-term appointments and temporary workers ensured that the remaining work could be completed. Apart from carrying out all the other tasks of the Control Authority, one major challenge was to issue the decree on supervision costs to all supervised entities. For the DSFIs this related to the years 2007 and 2008, and for the SROs the years 2006–2008. The dispatch to the Federal Archive of all files to be retained also had to be finished; this involved around 2,000 dossiers.

We would like at this point to express our sincere thanks to our staff for all the work they put in to maintain operations under difficult circumstances. We are convinced that their qualifications will enable them to be successful in their future careers.

3 Legal basis

3.1 Revision of the Anti-Money Laundering Act AMLA

Two legal amendments came into force in 2008 which significantly altered the import of the Anti-Money Laundering Act. Firstly, on 15 October 2008 the Federal Council voted for the Federal Act on the Swiss Financial Market Supervisory Authority of 22 June 2007 (Financial Market Supervision Act, FINMASA) to enter into full legal effect on 1 January 2009. Some provisions of this act, allowing for the organisational structure of FINMA to be set up during the course of 2008, had been in force since 1 February 2008. Secondly, on 3 October 2008 parliament approved the Federal Act on Implementing the Revised Recommendations of the FATF (the FATF Implementation Act). This act and the amendments to AMLA it contains, with the exception of Art. 41 - Federal Council Decree on Export Provisions, were set to come into force on 1 February 2009.

The main amendments to AMLA arising out of FINMASA are the following:

— The wording of the act has been adjusted to bring it in line with the new organisational structure resulting from the creation of FINMA.
— The regulatory agency involved in combating money laundering is now the newly implemented FINMA, which is the result of the merger of the SFBC, FOPI and AMLCA, and the SFGB. The rules governing the areas of responsibility have also had to be altered accordingly.
— Another change which is consistent with FINMASA terminology is the replacement of the term «auditor» with «audit firm». There are new rules in AMLA covering registration as an AMLA audit firm.
— A new legal basis has been created to launch a publicly accessible electronic directory of all financial intermediaries belonging to an SRO.
— In the future FINMA and the SROs will be able to exchange relevant information.
— The offence of failing to observe reporting requirements will now be subject to a higher fine and made stricter by extending it to cover cases of negligence.
— The offences of carrying on a business without a licence and disregarding official decrees have also been tightened and revised in FINMASA.

The main amendments to AMLA arising out of the FATF Implementation Act are as follows:

— The scope of the Anti-Money Laundering Act has now been extended to cover combating money laundering and terrorist financing.
— When identifying a legal entity as a contracting party the person acting on behalf of that party must also be identified and the terms of their power of attorney for the contracting party noted.
— The nature and purpose of the business relationship desired must be identified using a risk-based approach.
— There is no need to carry out due diligence for transactions involving small amounts where there are no grounds for suspicion.
— There is now a duty to report as soon as negotiations are broken off.
— The ban on passing on information does not apply in respect of financial intermediaries who are in a position to block the assets concerned, or within a group, or in respect of other financial intermediaries who have a contractual relationship with the same party relating to the same assets.
— Financial intermediaries filing a report are no longer only exempt from liability and criminal prosecution in cases where they have acted with due diligence; this now applies as long as the report is filed in good faith. The exemption now also applies to SROs.
— The Reporting Office may not pass on the names of the financial intermediary or staff filing the report to foreign criminal investigation agencies.

— The Federal Council is now responsible for issuing implementation orders regarding AMLA. These may be delegated to FINMA or the SFGB for matters that are technical or of lesser significance.

3.2 Revision of the Money Laundering Ordinance of the AMLCA

In view of the revision of AMLA to implement the 40 recommendations of the FATF, the Control Authority decided to partly revise the relevant ordinance. The amendments planned were also intended to codify existing practice.

A change in strategy resulted in what was intended to be a partial revision becoming a total revision of the ordinance. The Ordinance of the Swiss Financial Market Supervisory Authority on the Prevention of Money Laundering and Terrorist Financing in the Rest of the Financial Sector (FINMA Money Laundering Ordinance 3, MLO-FINMA 3) entered into force on 1 January 2009, apart from the provisions which under Art. 49 of the revised ordinance which took effect at the same time as the revised Anti-Money Laundering Act on 1 February 2009.

Like the ordinance it replaces, MLO-FINMA 3 applies to financial intermediaries under Article 2 para. 3 AMLA. Features of the new ordinance include express reference to terrorist financing and a new definition of the term «transfers of money and assets». It also introduces simplifications to the process of identifying contract partners, gathering information on business relationships and organisational issues.

3.3 Revision to the practical commentary provided by the Control Authority

In 2008 the Control Authority subjected its commentary on the scope of application of AMLA in the non-banking sector to a thorough review and revised it to reflect the most recent judgments of the Federal Supreme Court on issues of subordination and previously unpublished practical interpretations. In addition to these material changes, the arrangement of subjects and the user-friendliness of the commentary were also improved. The compilation of the practical interpretation of Art. 2 para. 3 AMLA was also given footnotes providing references and commentary. This was published on the website, allowing it to be used as a working instrument by financial intermediaries and SROs in the non-banking sector and ensure continuity in terms of interpretation following the transfer of the Control Authority's tasks to FINMA.

3.4 Ruling of the Federal Supreme Court on the subordination of factoring / forfaiting

In summer 2004 a cooperative that disputed being deemed a financial intermediary within the definition of Art. 2 para. 3 AMLA demanded a challengeable decision from the Control Authority on its subordination under AMLA.

The cooperative was invoiced for goods delivered to members of the cooperative. It paid the amount owed to the supplier who issued the invoice, less a contractually agreed fee. The cooperative then passed the original invoice on to the relevant member, which settled its debt to the cooperative. The credit risk was borne by the cooperative.

Given that this is definitely considered factoring and that the Anti-Money Laundering Act explicitly mentions factoring as an activity (Art. 2 para. 3a AMLA), the Control Authority held that the cooperative in question was a financial intermediary. The cooperative filed an appeal against this decision with the legal department of the Federal Finance Administration and then with the Federal Supreme Court.

On 30 November 2007 the Federal Supreme Court ruled (2A.62/2007) that the activities of the cooperative were not subject to the Anti-Money Laundering Act. As part of its deliberations the court considered the separate contractual arrangements surrounding the factoring and examined each of these for subordination. The conclusion reached by the court was that the contractual relationship between the cooperative and the various suppliers was a credit transaction. The money laundering risk implicit in the payment of interest and principal in such activities would in fact justify subordination to AMLA. However as payments only moved from the cooperative to the suppliers, and these do not repay either interest or principal because of the offsetting undertaken, objectively speaking the suppliers had no ability to launder money. It was therefore held that the Anti-Money Laundering Act did not apply in this case.

In other words, the Federal Supreme Court placed a higher priority on the aim and purpose of the Act than on its actual wording. However, it does not seem appropriate to cast the entire practice of the Control Authority as regards subordination into doubt on the basis of this judgement. In future it will be necessary to examine on a case by case basis how the new interpretation of the Federal Supreme Court is to be applied.

3.5 Federal Supreme Court ruling on the supervisory levy

As part of the Federal cost-cutting programme of 2003, the legal basis was created in AMLA for an annual supervisory levy to cover the costs of regulation. This measure took effect from 1 January 2006. According to the implementation provisions of the Federal Council, the supervisory levy for SROs consisted of a basic levy and an additional levy. Under the basic levy, 25 percentage of the costs relevant for SROs were spread equally over all SROs. The remaining 75 percentage were allocated based on the number of affiliated financial intermediaries and the previous year's gross income.

Ten out of the eleven SROs filed appeals with the FDF against the decrees of the Control Authority for the 2006 supervisory levy. They claimed that the supervisory levy was an unconstitutional tax, that it had been calculated incorrectly, and that the formula in the ordinance contained factors not provided for under the law. The intention of the legislative branch, they argued, was that the supervisory levy should only cover the actual costs of regulation, not any additional costs incurred by the Control Authority. In its response to the appeal the Control Authority stuck to the way it had calculated the supervisory levy, maintaining that the intention of the legislative branch had been to pass on the full costs of the Control Authority to those supervised.

On 1 January 2007 these outstanding matters came under the aegis of the newly created Federal Administrative Court, which had been established as part of the major shake up of the judicial system. This court ruled in November 2007 that passing on the costs of regulation was in accordance with the intention of the legislative

branch and the meaning and purpose of Article 22 AMLA. As Federal laws can be determinant for all authorities that apply the law, it ruled that the question of constitutionality could be left open. The extent of the costs passed on by the Control Authority was also held to match the intention of the legislative branch. However, the fixed basic levy was held to breach the legal calculation criteria and to cause unequal legal treatment. In the case of the smallest SRO the basic levy amounted to 82 percentage of its total supervisory levy, with the result that the overwhelming share of the levy it was being charged had been calculated using criteria that had no legal basis. The court therefore concluded that the body issuing the ordinance had exceeded its discretion under Art. 22 para. 3 AMLA and that the rules for the basic levy were unlawful and could not be applied. It then redetermined the supervisory levies for each of the SROs which had appealed on the basis of the number of their affiliated financial intermediaries and their gross income.

Both the SROs and the Control Authority then appealed to the Federal Supreme Court against this ruling. In autumn 2008 the Federal Supreme Court confirmed the findings of the Administrative Court in principle, noting that it had recently affirmed this opinion and adopted Article 22 AMLA in FINMASA. Passing on the full costs of the Control Authority to the bodies supervised was permitted under the law, it found. In the matter of the basic levy the Federal Supreme Court held that the Federal Council had exceeded the discretion granted it under Article 22 AMLA. It stated that the supervisory levy owing for 2006 had to be recalculated and allocated to the individual SROs using the same rules for all SROs (including those which had not appealed). The matter was therefore referred back to the Control Authority for the individual levies to be recalculated.

The Control Authority issued a new decree in November 2008 setting the supervisory levies on the basis of the number of financial intermediaries affiliated to each SRO and its gross income. One SRO has filed an appeal against these decrees. In future the supervisory levy will be charged on the basis of the FINMA Fees Ordinance.

4 Relations with self-regulatory organisations (SROs)

4.1 SRO audit standards

Every SRO has its own model for audit reports. As many auditors work for several SROs and produce reports with varying levels of significance, the Control Authority suggested that SROs set up a working party to discuss the requirements to be placed upon the audit reports and present the results to the SRO Forum. There is no intention to set rules for SROs on the form and content of audit reports; rather the aim is that recommendations be drawn up to help reach a common standard for them. Based on a proposal by the Control Authority the working party came up with suggestions covering the features of audit reports, details to be provided on shortcomings, production of working papers and the definition of audit procedures and the activities of the financial intermediary and the client structure. A decision on implementing these will have to be taken by the SRO Forum during 2009.

4.2 Investigative proceedings in the SRO area

Good cooperation between authorities in matters of administrative assistance meant that investigations into SRO members and sanctions procedures against them were launched in parallel with more serious criminal proceedings into alleged narcotics offences and bribery of foreign officials In some areas of financial services, such as transfers of money and assets, stricter control is needed in order to capture all accessory parties without exception and to prevent sub-agent relationships being formed. Tightening controls here is good for the reputation of the sector, which provides services for an important part of the payment services industry. In some cases where payment services are being provided for fiduciaries, increased attention must be paid to deviations from the client profile and increased risks, specifically when large amounts are being broken down. It is very important in such instances to establish the economic rationale of the transactions. We would therefore like to remind all those concerned that where there is a suspicion that the rules of an SRO are being breached it is mandatory to investigate the circumstances, so that any sanctions which may be necessary can be decided. In order to implement the rule books, the Control Authority can issue decrees that irregularities be rectified, or that investigations be carried out, or that decisions be taken as to how to proceed under the self-regulatory arrangements.

4.3 Review of the status quo as part of SRO supervision 2008

The annual audit is an important part of the Control Authority's regulation of the eleven recognised SROs, a point that was emphasised in the last country evaluation carried out on Switzerland by the Financial Action Task Force (FATF). The special circumstances this year made it necessary for the audit to take a slightly different form. This time, a consideration of mechanisms and special features since the last audit was not the focus of attention. As part of the reviews of the status quo carried out with each SRO after October 2008 they were advised of the state of preparations for the merger of the different bodies to create FINMA, and the first specific information was passed on about the future form that regulation by FINMA will take. A second major issue was revising SRO rule books following the changes to AMLA, MLO AMLCA, and the CDB 08 and the SFBC MLO, which took effect in summer 2008 and have some impact on the para-banking sector. The Control Authority itself was keen to establish the details of how much time and effort would be required to change the rule books, so it could plan for the use of its own resources. Finally, the reviews provided an opportunity to discuss individual points such as minor outstanding issues and staff changes. The aim of the 2008 status

quo review meetings was to ensure that everything necessary was done by both the SROs and the regulator to permit a smooth transition to FINMA.

4.4 Coordination conference

On 2 December 2008 the Control Authority held its seventh annual coordination conference; all eleven SROs took part. The agenda was adapted compared to previous years to reflect the fact that this was the last one to be held under the auspices of the Control Authority. Instead of holding workshops in the morning, as was previous practice, three speeches were given; these were all greeted with great interest. The first of these was given by Jean-Christophe Oberson, a member of the board of OAR-G, who spoke of the experiences of an SRO with regulation by the Control Authority. Then came an address on the crisis in the financial sector in Switzerland from Alain Robert, Managing Director and Head of Wealth Management & Business Banking for UBS Switzerland. In the afternoon the presentations ended with Eugen Haltiner, Chairman of the Board of Directors of FINMA, and Urs Zulauf, Head of Legal Enforcement International, talking about the role of FINMA in Swiss financial markets. Peter Siegenthaler, Director at the FFA, gave a review of the ten-year history of the Control Authority, closing with an expression of thanks to the SROs for their good cooperation. The SRO Forum praised the work of the Control Authority over the past decade and the participants bid a rousing farewell to it as a part of the Federal Finance Administration. The conference ended with SRO representatives enjoying an aperitif to the musical accompaniment of the Sweet Lorraine jazz band and singer Birgit Ellmerer.

5 Directly subordinated financial intermediaries (DSFIs)

5.1 Introduction and general

In 2008 62 people applied to the Control Authority for a licence to conduct financial intermediary business. 59 licences were granted during the year. The number of applications received in 2008 was roughly the same as the previous year, although the Control Authority had planned for a decline. No applications had to be rejected. Those applications where there might have been good grounds for rejections were withdrawn. Last year for the first time ever, an application for a licence was not considered. The decision to do this was taken because the deadline for submitting the application set for the financial intermediary in question by the Banking Commission had expired and it had already been determined when the application was submitted that the Banking Commission would order it to be liquidated.

There were many cases where applications were incomplete or undocumented. Applicants had particular difficulties with the Control Authority's insistence that they demonstrate due diligence requirements are being implemented. However, there were no instances where the Control Authority resorted to the option open to it under the Federal Administrative Procedures Act of refusing to consider an application. Declining to consider applications would increase the risk of illegal and hence unregulated activity and lead to unnecessary judicial actions. Instead, the Control Authority reminded applicants that they were obliged to cooperate in establishing all the circumstances and granted an extension period for completing the application. The drawback of this approach is that some applications can take an unusually long time if the financial intermediaries request extensions to the deadlines set them or have to be issued with reminders.

The licensing decree explicitly advises financial intermediaries that any changes to the basis on which a licence was granted must be advised promptly to the Control Authority and the appropriate documents submitted, and that publication by the intermediary does not relieve him or her of this duty. This usually relates to changes in internal organisation, a switch of AMLA auditors, internal audit or AMLA specialist unit, change of address or registered office, or the liquidation, deletion or bankruptcy of financial intermediaries directly subordinated to the Control Authority. In 2008 the duty to provide this information was once again not met satisfactorily. Ultimately, failing to notify the Control Authority creates unnecessary additional work and leads to higher fees than would be incurred if information obligations were observed correctly.

5.2 AMLA revision 2008

In 2008 the Control Authority carried out for the last time the regular AMLA audits to verify that due diligence requirements had been met by those financial intermediaries directly subordinated to it. Other financial intermediaries were examined by their appointed AMLA auditors and the AMLA audit reports submitted to the Control Authority for consideration. Overall the results of the audits were favourable.

5.2.1 Results of the AMLA audits and findings

The results of AMLA audits in 2008 were almost entirely positive. The implementation of due diligence by financial intermediaries is functioning well to very well, and now that the Anti-Money Laundering Act has been in force for ten years this is carried out as a matter of routine by many intermediaries. Serious or repeated breaches of due diligence obligations were only discovered in

isolated cases. Consequently, the Control Authority had to resort to disciplinary proceedings to rectify irregularities on far fewer occasions than in previous years.

The shortcomings found mainly related to errors of form in implementing due diligence requirements or to minor errors of substance. Serious errors of substance were only found in isolated cases; these related mainly to carrying out due diligence requirements in respect of identifying the contracting party, determining the beneficial owner and performing special duties to investigate or provide documentation. There were only a few cases in 2008 where the organisational measures that DSFIs are obliged to take to implement their duties fell short of requirements. The issue of determining and implementing criteria to identify business relationships and transactions subject to increased risk, which was criticised in the 2007 annual report, was no longer a major problem in 2008. There was therefore a significant improvement in risk management compared to previous years. There were no recorded breaches of the obligation to report suspicious cases to the Money Laundering Reporting Office Switzerland (MROS), and also no breaches of asset freezes. Nor were there any breaches of the need to repeat the identification process for a contracting party or to determine a beneficial owner. However, examination of the AMLA audit reports threw up several instances where financial intermediaries had reorganised their internal structures in ways which affected their ongoing compliance with the licensing basis and which had not been reported with the necessary documentation as required.

5.2.2 Overview of shortcomings identified

The shortcomings most commonly identified were the following:

Breaches of duty to seek identification: identification of contracting parties did not meet the formal legal standards. Client files only contained copies of the identification documents, not certified copies. In other cases the copy did not have a date or signature or bear the statement that the original had been seen.

Breaches of duty to determine the beneficial owner: in some cases no enquiries were made at all as to the beneficial owner, in other cases the mandatory information in Form A was missing and/or this had been signed by the DSFI.

Breaches of special duty to investigate: there were a few instances where the Control Authority found that the duty to carry out further investigations into especially risky business relationships and/or transactions was either not carried out properly or not carried out at all. These mainly involved DSFIs active in money transfers or in managing and administering off-shore structures, trusts or domiciliary companies. This is particularly problematic because these activities are especially risky compared to other financial intermediation business regulated by AMLA. As in previous years, it was found that the special investigations had been carried out but that the results had not been written down.

Breaches of duty to keep documentation: these are mostly the inevitable consequence of breaching the special duty to investigate. If no special investigations are carried out, there are no results to be kept in a written record; thus the duty to keep documentation is automatically breached.

Breaches of duty to supply information: The Control Authority found when examining AMLA audit reports and carrying out on the spot checks that financial intermediaries had not reported changes in their internal organisation and requested approval as required. Most of these cases involved changes in administration or business management, or in the persons exercising an AMLA function. To date the Control Authority has declined to open disciplinary procedures for breaches of the duty to supply information. However, it did initiate proceedings for changes to the licensing basis and insisted that the intermediaries concerned submit the necessary documents to the Control Authority for consideration after the fact. The Control Authority then issued a decree approving the changes in the internal company structure, for which it charged a fee. There was not a single case where the changes made to internal company structure by a financial intermediary had to be rejected.

5.3 Measures by the Control Authority / sanctions

5.3.1 Withdrawal of licence to conduct financial intermediary business; ruling of the Federal Administrative Court dated 23 June 2008

In a ruling dated 22 June 2006 the Control Authority withdrew the licence to conduct financial intermediary business from a company which was mainly involved in establishing and managing domiciliary companies. Since the company's main activity was financial intermediation, the withdrawal of the licence made it necessary for the Control Authority to liquidate it. The Control Authority justified its ruling with reference to the identification of serious and repeated breaches of AMLA.

The company filed an appeal against this decision with the Federal Administrative Court. The court issued its judgment on 23 June 2008. This acknowledged that the audit carried out by the Control Authority had found serious breaches of AMLA. However, the court noted that these shortcomings had since been remedied. As a result, at the time of issuing its judgment, two years after the decision by the Control Authority, the withdrawal of the licence had to be held inappropriate. The Federal Administrative Court therefore overturned the decision of the Control Authority.

This ruling by the FAC raises an interesting question. The Control Authority is required by law to take steps to remedy breaches of anti-money laundering legislation where these are discovered (Article 20 AMLA). In this specific case the Control Authority found serious and repeated breaches of AMLA and therefore took the necessary steps to remedy them. Since the appeal procedure lasted over two years, the appellant had sufficient time to make good some of the shortcomings and alter the state of affairs which had led to the Control Authority's decision. This raises the question of whether the length of the appeal proceedings and the consideration of new circumstances is hindering efficient intervention by the Control Authority in the financial markets. Taking new facts into consideration is certainly supported by the academic doctrine cited by the court. Nevertheless, it is surprising that the appellant was given the opportunity to come up to scratch in respect of the requirements of AMLA while the proceedings were under way, all the more so as the Control Authority was required to pay compensation to the appellant in addition to seeing its decision overturned. One part of academic doctrine specifies that new circumstances which emerge during an appeal can have

a negative impact on the costs and expenses of an appellant where the appellant could have introduced them at an earlier stage (cf. Procédure administrative, by Benoît Bovay, Editions Staempfli, Bern, 2000, p. 495). Our view is that the courts should apply this principle analogously if the appellant uses the time taken by proceedings to make good the shortcomings found.

5.3.2 Measures to rectify irregularities

As stated above, most directly subordinated financial intermediaries met their due diligence obligations as required by law. Only in a few cases was the Control Authority obliged to open proceedings to ensure irregularities were rectified. Since most breaches found were matters of form or only minor matters of substance there was generally no need to issue decrees and matters were settled with follow-up letters. A follow-up letter is a written document similar in nature to a decree, requiring a financial intermediary to do something or to cease doing something. The Control Authority sent 25 follow-up letters in 2008.

In some cases there was no need for a follow-up letter because the audit report or comments on the audit report submitted by the DSFI had shown that the intermediary had already started or completed measures to remedy the shortcomings on its own initiative, without the Control Authority needing to issue any further instructions.

In other cases it was not necessary to issue decrees ordering remediation because the intermediaries in question had agreed to the measures threatened by the Control Authority during the legal hearing. In each case these measures involved appointing an external, independent person to serve as an internal controller.

There was one instance where the Control Authority was not able to make contact with a financial intermediary carrying out money transfers, either in writing or on the phone. As the intermediary could also not be found at his registered office or business premises it was not possible to carry out the 2007 AMLA audit in a proper fashion. The Control Authority therefore withdrew the intermediary's licence and ordered that the company be liquidated.

There was a further case of a DSFI, also active in the money transfer business, with whom the Control Authority was unable to establish written or telephone contact. A site visit revealed that the business premises had been abandoned. The Control Authority therefore withdrew its licence. In this instance there was no need for liquidation, since money transfers were not the intermediary's main business.

5.4 Change of AMLA auditor project

The Financial Market Supervision Act (FINMASA) and the associated integration of the Control Authority into the Swiss Financial Market Supervisory Authority (FINMA) also involved a change in the system of regular formal AMLA audits of financial intermediaries. Unlike the Control Authority, FINMA will not itself act as an AMLA auditor (an AMLA audit firm, in the new terminology), and will therefore not carry out any AMLA audits. In future FINMA will only conduct checks at the premises of financial intermediaries where this is necessary or required as part of what is

known as an extraordinary AMLA audit. Under the new provisions of the Anti-Money Laundering Act that came into force at the same time as FINMASA on 1 January 2009, every financial intermediary must appoint a FINMA-approved external audit firm as its formal AMLA auditor. The licensing requirements for AMLA audit firms are contained in the new FINMASA.

At the start of 2008 the Control Authority was the formal ALMLA auditor for 78 of the roughly 400 directly subordinated financial intermediaries. With FINMASA and the associated system changes coming into effect on 1 January 2009, these will have to appoint a new AMLA audit firm in 2009 and have them approved by FINMA. In order to make it easier for FINMA to launch its operations the Control Authority gave advance warning to all financial intermediaries affected in early 2008, and asked them to appoint a new AMLA audit firm and submit the statement of acceptance of appointment for approval by mid-2008. The Control Office then approved the appointment by means of a decree. In future, audits to confirm that the licensing basis and due diligence requirements are being observed will only be conducted by external AMLA audit firms.

The change of AMLA auditor project was successfully completed by the end of 2008. With only a few justified exceptions the change in the system was complete at year-end.

6 Market regulation

The Control Authority has regulated the market in accordance with its legal mandate since April 2000, the date from which all professional non-bank financial intermediaries in Switzerland were required to belong to an SRO or be licensed by the Control Authority. Part of this regulation involved carrying out formal administrative proceedings to grant retrospective licences to financial intermediaries who had been acting illegally, i.e. without being licensed or being members of an SRO, or ensuring they joined an SRO, or if necessary launching liquidation or winding up proceedings to remove them permanently from the market. The other aim of the Control Authority's regulatory activities has been to have a deterrent effect by being a clearly visible and active presence in the market.

Proceedings launched by the Control Authority were triggered either by information received from the financial markets themselves, e.g. from clients, intermediaries or competitors, or from other regulatory authorities active in financial markets or criminal investigation agencies. In addition to such reactive regulation, the Control Authority also proactively regulated. Financial intermediaries carrying out illegal activities were investigated in focused sector-specific or geographic operations. This proactive regulation and the profile it achieved in the market place was particularly effective in encouraging the market to put its own affairs in order, and reinforced the awareness that the market was regulated and that action could and would be taken against unlicensed financial intermediaries. Especially in such a large and diverse market as the non-banking sector, which has a range of very different intermediaries, it is essential for official regulation to be proactively managed and to have a clear presence.

In its eight years of market regulation the Control Authority launched a total of 2,073 proceedings against financial intermediaries suspected of illegal activities. Of these, 205 resulted in retrospective licences being granted or the intermediary joining an SRO. In 201 cases the intermediary being investigated went bankrupt or ceased trading as a result of going into liquidation while the proceedings were under way. In 14 cases the Control Authority ordered liquidation or winding up using its powers under AMLA. The directly or indirectly measureable success rate was thus over 20 percentage. Very positive reports from the market, especially from the regulated intermediaries themselves and the SROs, always showed that the Control Authority's regulation also achieved a deterrent success that cannot be directly measured.

7 Audit

Updating the list of accredited lead auditors and registering as an AMLA auditor with the Audit Supervision Authority

There were various reasons why the Control Authority decided to update its database of accredited lead auditors for audits of DSFIs:

— To pass on up-to-date information to the successor organisation FINMA;
— To enter the additional accreditation as an AMLA auditor in the public database of the Federal Audit Supervision Authority;
— To catch up on unreported staff departures from accredited auditors.

All AMLA auditors therefore received a letter asking them to confirm to the Control Authority the names of accredited lead auditors. The responses also enabled us to determine to what extent lead auditors had already applied to the Audit Supervision Authority for registration as auditors or audit experts. We were pleased to note that nearly all accredited persons were definitively or provisionally registered with the Audit Supervision Authority. One major exception was those lead auditors who do not meet the criteria for registration because their training was in law. To date this has not been an issue for being accredited with the Control Authority as an AMLA auditor.

8 Coordination with other official agencies

8.1 Official coordination

As part of the official coordination platform, three meetings took place where those federal agencies engaged in combating money laundering (AMLCO, FOPI, SFBC, SFGB, MROS, FEDPOL/DAP and the OAGS) exchanged relevant information and discussed current cooperation issues. Although the creation of FINMA will see three of the participants in these discussions merge from 2009, everyone involved emphasised how important it will be to maintain this platform in future. The Federal Customs Administration took part in the last of these meetings, its first attendance. From 1 February 2009 one of the statutory duties of the FCA will be to participate in combating money laundering and terrorist financing.

8.2 FINMA

The extensive project work was coming to an end during the year under review. The burden on staff who had to carry on their daily work while also taking part in various FINMA projects was heavy. The Control Authority was closely involved in the project work, but despite the difficult working conditions we were able to carry out our duties with no material impact on the directly subordinated intermediaries or the SROs. Over the year 13 members of staff left as a result of the reorganisation of financial market supervision, which meant a significant loss of expertise. This sharp fall in headcount led to bottlenecks that were successfully resolved with no loss of quality thanks to focused working practices.

9 International affairs

9.1 Financial Action Task Force on Money Laundering (FATF)

Working group and plenary meetings of the FATF took place during the year in Paris in February, in London in June, in Ottawa in September (working groups only) and in Rio de Janeiro in October; these were attended by a representative of the Control Authority as a member of the Swiss delegation. In July 2008 the United Kingdom took over the presidency from Brazil.

There were no changes to the membership of the FATF during the year: it currently has 32 member states and two member organisations. The applications for South Korea and India are still being processed. Eight further regional organisations constituted in a similar way to the FATF have the status of associate members. The role played by these organisations in the FATF and joint cooperation in implementing FATF recommendations will be given greater emphasis in future.

As part of the third round of country evaluations, 2008 saw six reports from direct member states (Singapore, Canada, Hong Kong, Russia, Japan and Mexico) received and published by the plenary meeting of the FATF. All the countries evaluated showed a wide range of shortcomings with regard to the implementation of the recommendations, so these members will have to submit a report on progress being made in improvements in 2010 as part of the standard follow-up process.

Similar reports were submitted by a total of twelve countries during the year, some for the first time, some for the second or third time. Switzerland reported on the progress it had made for the second time after 2007 and submitted its final report in February 2009.

In February and October 2008 the FATF issued a public declaration to various states and territories that do not belong to the FATF, drawing attention to their inadequate implementation of international standards on combating money laundering and terrorist financing. There was a particular warning of the dangers to the international financial system posed by Iran and Uzbekistan and a call for increased vigilance in handling financial transactions for these countries.

The Brazilian presidency saw a period of review of the mechanisms, processes and recommendations of the FATF with respect to their functionality, practicality and efficiency. At the same time it was also decided not to make any changes, particularly to the 40+9 recommendations, before the end of the third cycle of country evaluations unless absolutely necessary.

One result of the closer cooperation with the private sector was that in 2008 six reports were published containing guidelines on risk-based implementation of standards in various areas of financial intermediation, including legal professionals and trust and company service providers.

A best practice paper on improving measures against trade-based money laundering was drafted and published. A report was also published on the problems of money laundering and terrorist financing in internet-based trading businesses and payments systems. The FATF drew up a comprehensive typology report dealing with the implementation of various resolutions of the UN security council on financing the proliferation of weapons of mass destruction.

9.2 GRECO country evaluation

The Council of Europe's Group of States Against Corruption (GRECO) evaluated Switzerland for the first time in 2007. The result was an evaluation report that was approved by the plenary meeting of GRECO in April 2008.

This acknowledges that Switzerland has made significant efforts to prevent and combat corruption. At the same time, the report makes 13 recommendations to further expand preventive measures. A deadline of October 2009 has been set for Switzerland to produce an implementation report and submit it to GRECO.

One of the GRECO recommendations is that Switzerland should recognise serious cases of bribery of individuals as a crime and thus a predicate offence for money laundering. Since 1 July 2006 bribery of individuals has been an offence under the Unfair Competition Act (Article 4a UWG), which treats it as a misdemeanour.

10 Statistics

10.1 Control Authority

10.1.1 Decrees

The Control Authority issued 1304 decrees in 2008. These related to the following areas:

(in brackets: prior year figures)		
a) Licences and accreditations		
— Financial intermediaries	59	(54)
— Auditors	3	(5)
— Applications declined/not considered	1	(4)
b) Staff changes		
— SROs	17	(12)
— Financial intermediaries	36	(41)
— Lead auditors	13	(6)
c) Proceedings completed		
— Licensing	13	(13)
— Market regulation	131	(291
d) Supervisory levy	890	(439)
e) Miscellaneous		
— Changes to SRO rule books and bye-laws	6	(12)
— Licences lapsed	37	(31)
— Licences withdrawn	2	(1)
— Liquidation	1	(2)
— Other	95	(56)

10.1.2 Criminal charges

— For illegal activity	4	(5)
— For disobeying a decree	0	(1)
— Other	0	(0)

10.1.3 Audits carried out by the Control Authority

— SRO audits/reviews	10	(9)
— Market supervision audits	0	(0)
— DSFI audits	81	(108)

10.1.4 Subordinated institutions and companies

— SROs	11	(11)
— DSFIs	434	(412)
— Accredited auditors	108	(106)

10.1.5 Complaints

Some decrees of the Control Authority were taken to appeal. This was the situation:

— Appeals outstanding at end-2007	11	(14)
— Appeals submitted in 2008	10	(13)
— Appeals decided or withdrawn in 2008	11	(8)
— Appeals outstanding at end-2008	0	(14

10.2 SROs

Affiliated financial intermediaries (as at 20 December 2008)

— ARIF	484	(474)
— OAD FCT	536	(541)
— OAR-G	349	(314)
— PolyReg	837	(778)
— SRO Post	3	(3)
— SRO SAV/SNV	1124	(1095)
— SRO SBB	10	(10)
— SRO SLV	49	(45)
— SRO STV/USF	589	(573)
— SRO VSV	832	(809)
— VQF	1733	(1651)
Total	**6546**	**(6293)**

10.2.2 Sanctions

— Warnings, reprimands and cautions	166	(186)
— Fines and penalties	122	(114)
— Expulsions	71	(48)
Total	**359**	**(348)**

10.2.3 Breakdown of directly subordinated and affiliated financial intermediaries by area of activity

— Asset management	40.9	(44.9)
— Fiduciary activity, managing domiciliary companies, trustee services, payments in the name and on account of third parties, payment services	39.9	(39.7)
— Lawyers and notaries	18.1	(18.6)
— Credit, leasing, factoring, forfaiting	3.7	(3.7)
— Insurance broking	3.3	(3.4)
— Foreign exchange (bureaux de change, hotels, petrol stations)	2.4	(2.5)
— Foreign exchange trading	2.4	(2.4)
— Money transfers	2.0	(2.0)
— Commodity and precious metal trading	1.4	(1.3)
— Security transport and safekeeping of valuables	1.0	(0.9)
Total	115.1	(119.4)

Depending on activities, any one financial intermediary may be listed under up to three categories.

11 Closing comments

It is unusual to end an annual report with closing comments. In the present case, however, it seems appropriate to make an exception, as this is the last annual report the Control Authority will issue. Once its tasks have been taken over by the Swiss Financial Market Supervisory Authority on 1 January 2009 the Control Authority will cease to exist. The work of the Control Authority initially took place under difficult circumstances in 1998–2001. During this period the SROs were set up and recognised by the Control Authority. Over the period 2002–2004 the Control Authority concentrated on building up modern supervision and regulation to prevent money laundering; from 2005 up to now the aim has been to optimise working efficiency with those regulated, the authorities involved and staff. The long path we have all travelled since the Anti-Money Laundering Act came into force on 1 April 1998 has left traces behind. At this point we would like to recall the licensing of 11 SROs with around 6,500 members and more than 430 DSFIs, the accreditation of over 100 auditors, the regulations on money laundering (such as the Money Laundering Ordinance of the Anti-Money Laundering Control Authority, the Ordinance of the Anti-Money Laundering Control Authority concerning Financial Intermediation in the Non-Banking Sector as a Commercial Undertaking, the Professional Activity Ordinance, the Data Processing Ordinance), the establishment of a commentary on practical interpretation, the international legal assistance provided, the role played in the international bodies of the FATF, the World Bank and the UN and the coordination with other official agencies; these are just a few of the traces. Traces have also been left by our staff, who have worked to see that supervision and regulation were carried out appropriately, with the result that Switzerland's unique system of self regulation is acknowledged both at home and abroad. This achievement is due not least to the cooperation displayed by those who were regulated and the support we enjoyed from the Federal Finance Administration. We are convinced that supporting professional deterrence of money laundering will continue to bear fruit and promote the reputation of financial intermediaries under the aegis of the new Swiss Financial Market Supervisory Authority.

Stephan Stadler, Chief a.i AMLCA 2008