**Webinar April 30, 2020**
**The New Swiss Financial Services Act (FinSA)**
**What managers need to know now!**

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1. Introduction

2. Focus of webinar

3. Marketing of shares of collective investment schemes

4. New client advisors and register

5. Ombudsman office

6. Representative and paying agent in Switzerland

7. New definition of qualified investors

8. Key take-aways

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# 1. Introduction

**15 June 2018**

- Swiss parliament passed Swiss Financial Services Act (FinSA) and Swiss Financial Institution Act (FinIA)
- FinSA includes new rules governing the marketing of all financial products, including investment funds

**6 November 2019**

- Federal Council adopts implementing ordinances: Swiss financial Services Ordinance (FinSO) and Swiss financial Institutions Act (FinIO)
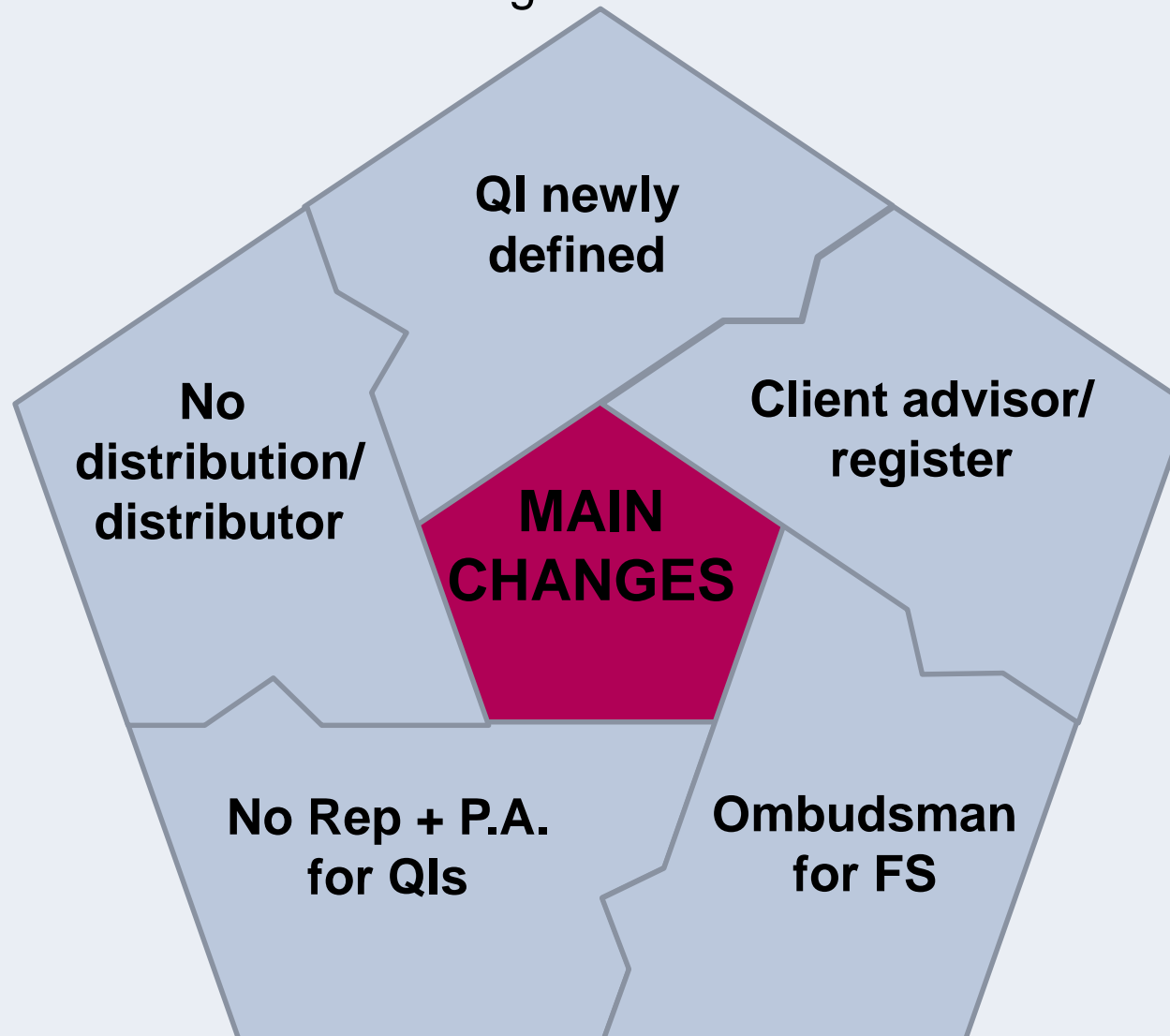
**1 January 2020**

- Entry into force FinSA, FinIA and respective ordinances
- Substantial adaptations of other laws including Swiss Collective Investment Scheme Act (CISA) along with implementing ordinance (CISO)

# 2. Focus of Webinar limited to:

Main Impact of FinSA/FinIA on Fund Regulations

# 3. Marketing shares of collective investment schemes

| Before 2020 | Since 2020 |
|---|---|
| **CISA** | **FinSA** |
| Only funds in scope | All financial Services (including marketing funds) |
| | Offers (financial instruments) |
| Distribution | Advertisement (financial instruments [and *services*?]) |

# Question 1

No more "distribution" concept

New legal qualification for marketing funds in Switzerland?

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# 3. Marketing shares of collective investment schemes
## 3.1 Marketing as a financial service?

| FinSA Art. 3 lit. c | FinSO Art. 3 Para. 2 |
|---|---|
| Activities **for (end) clients**<br>**1. acquisition or disposal FS**<br>2. receipt/transmission of orders re FS<br>3. portfolio management<br>4. investment advice<br>5. loans to finance transactions with FS<br><br><br>Exemptions:<br>"Cross border reverse solicitation" | **"…any activity addressed directly at certain clients that is specifically aimed at the acquisition or disposal of a financial instrument."** |

Financial Service Consequences:
– Registration as client advisor/Affiliation ombudsman
– Client segmentation
– Conduct and organisational rules (see slide 3.1.1)

# 3. Marketing shares of collective investment schemes
## 3.1.1 New conduct and organisational rules

- Provision of information (about the service provider, ombudsman, risks)
- Suitability/appropriateness tests for investments based on the client segment
- Documentation and reporting obligations
- Transparency and duty of care obligations (including best execution)

Exemptions:
Largely not applicable to services to institutional and professional investors!

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# 3. Marketing shares of collective investment schemes
## 3.2 Marketing as an offer?

| FinSA Art. 3 lit. g | FinSO Art. 3 Para. 5 |
|---|---|
| "an *offer* is any invitation to acquire a *financial instrument* that contains sufficient information on the terms of the offer and the financial instrument itself;" | "An offer within the meaning of Article 3 letter g FinSA exists if a communication of any kind is made which:<br><br>a. contains sufficient information on the terms of the offer and the financial instrument; and<br><br>b. is customarily intended to draw attention to a certain financial instrument and to sell it." |
| Exemption:<br>Reverse solicitation: if offer made upon request and initiative of client without advertisement | |

Consequences:
– Documentation obligations (prospectus, Swiss kid)
– **Foreign** fund **retail** clients: appointment of rep and paying agent + FINMA approval
– HNWI only: Rep + paying agent (also after transitional period)

# 3. Marketing shares of collective investment schemes
## 3.3 Marketing as advertising?

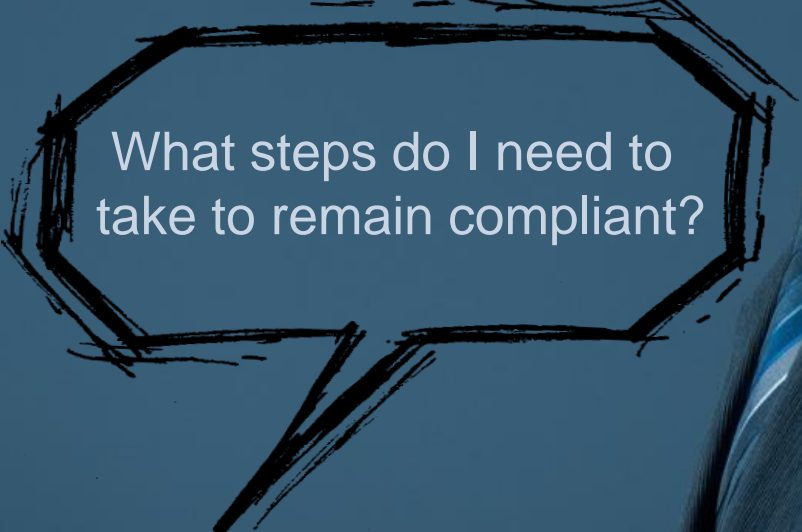| FinSA Art. 68 | FinSO Art. 95 |
|---|---|
| – No legal definition of advertising!<br><br>– Only reference to advertising is for **financial instruments**<br><br>– What about advertising financial services, e.g. portfolio management? | Subject to exemptions, "any form of communication directed at investors with the purpose to draw attention upon particular **financial services** or financial instruments" |

Consequences:
– Advertisement must be recognizable as such
– **Advertising of foreign** funds to **retail** clients: appointment of rep and paying agent + FINMA approval
– HNWI only: Rep + paying agent (also after transitional period)

# Question 2

New requirements to market in Switzerland?

What steps do I need to take to remain compliant?

# 4. New client advisors and register

## Who needs to register?

"Client advisors" of Swiss and foreign Financial Service Providers (natural persons) must be registered in a new Advisor Register

## Exemptions?

Advisors of Swiss and foreign prudentially regulated Financial Service Providers for registration

## Conditions?

– Sufficient professional knowledge
– Sufficient knowledge of the Conduct Rules
– Professional liability insurance (can be fulfilled by employer)
– Directly or indirectly affiliated with an ombudsman

## Timing?

Registration within six months of first authorization of a client advisor register

# 5. Ombudsman office

## Who needs to join?

- All financial institutions must be affiliated with an Ombudsman
- Pure mediation function
- Parties may in any case proceed before a civil court
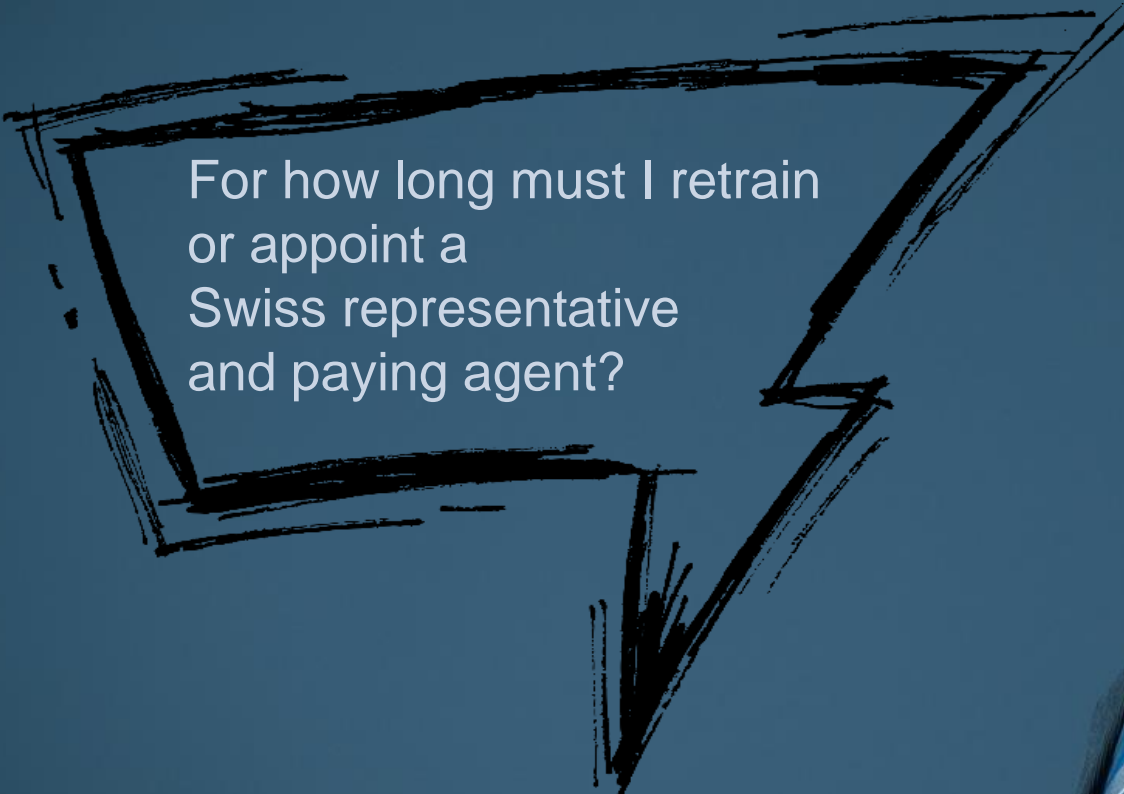- Pending mediation proceedings with the Ombudsman are ended with the beginning of formal litigation



## Exemptions?

Cross-border reverse solicitation (?)

## Timing?

Within 6 months of approval of first ombudsman office

# Question 3

For how long must I retrain
or appoint a
Swiss representative
and paying agent?

# 6. Representative and paying agent in Switzerland

- No more requirement to appoint a representative and a paying agent for offering collective investment schemes to qualified investors **except** for

- high net worth individuals or private investment structures established for them who declare that they want to be treated as professional investors (opt-out)

Effective 1.1.2022 or earlier if FinSA compliant

**1** Prolongation of current CISA provisions until FinSA compliant:
-Rep + P.A. for non-regulated QIs
-Distribution agreement with 3rd parties

**2** Rep + P.A.:
-HNWI with opt-out
-foreign funds for non-QI

**1**

**2**

CISA I                                    CISA II

FinSA
FinIA

1.1.2020          1.1.2021          1.1.2022          1.1.2023
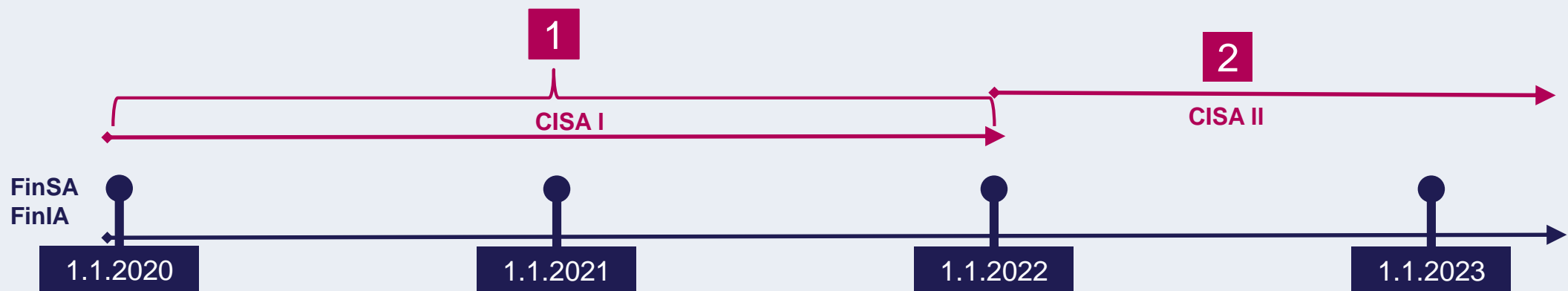
# 7. New definition of qualified investors in CISA

| Institutional Clients | Professional Clients |
|---|---|
| ▪ Regulated financial intermediaries<br>▪ Insurance companies<br>▪ Foreign prudentially supervised clients<br>▪ Central banks<br>▪ Supranational and national public law entities with professional treasury | ▪ Public entities, pension funds and other pension schemes with professional treasury<br>▪ Companies with professional treasury<br>▪ Large companies (2 of 3 conditions):<br>  ▪ Balance sheet CHF 20 mio<br>  ▪ Turnover CHF 40 mio<br>  ▪ Equity CHF 20 mio<br>▪ High net worth individuals with opt-out (assets reduced to 2 mio)<br>▪ Private investment structures with professional treasury<br>▪ Clients with discretionary AM or advisory agreement (CISA) |

**Qualified investors**

CISA reference to FinSA PC + clients with discretionary or advisory agreements

# 7. New definition of qualified investors

## 7.1  Options for Clients

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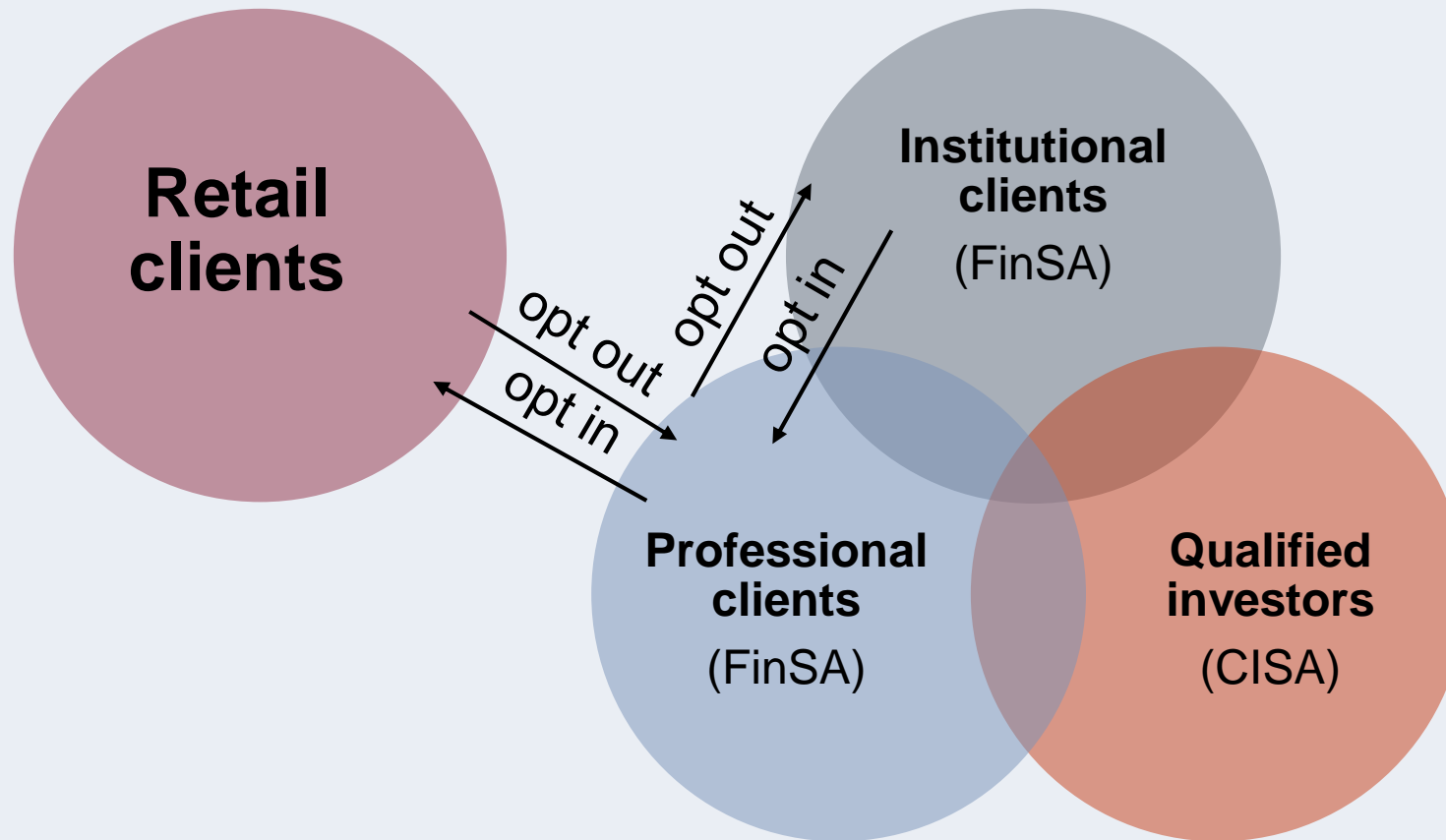
# Key take-aways

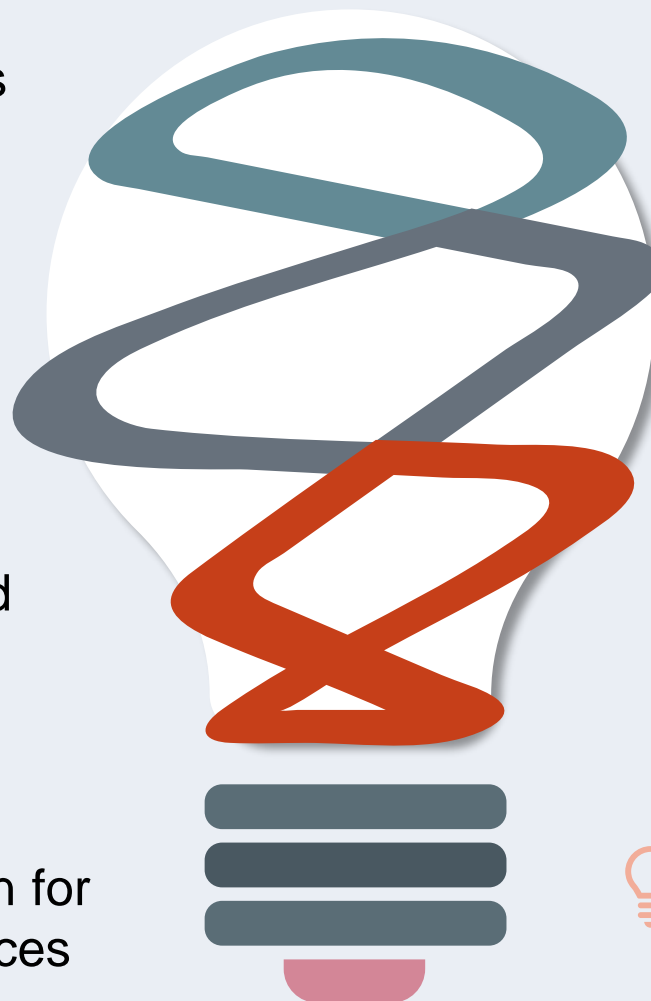💡 Major shake-up of the Swiss regulations on marketing funds in Switzerland

💡 No more distribution or distribution license

💡 New definition of qualified investors

💡 New client segmentation for providing financial services

💡 Different deadlines for different steps

💡 Adapted rules on reverse solicitation

💡 Adapt your situation regarding appointments of Swiss representative and paying-agent

💡 Potential obligations to register with a client advisor register and join an ombudsman office

💡 New rules of conduct

# Disclaimer

– This presentation does not constitute legal advice

– It does not contain comprehensive information on the current status of the relevant Swiss legislation

– It is only intended to provide a high-level overview of the addressed topics

– For legal advice, please contact your legal advisor or Stephanie Comtesse at the address provided on the next page

# Thank you for your attention!

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## Practice Areas

- Funds, Financial Products & Asset Management
- M&A and Private Equity
- Capital Markets, Banking, Finance and Fintech

## Languages

- English
- French
- German