



FBT
A V O C A T S

Regulation of Trustees and Asset Managers

Me Fabianne de Vos Burchart

AIBL, 20 October 2017

Presentation

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III. Notions of «*Trustee*» and «*Portfolio Manager*»

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VI. Supervision

VII. Enforcement Proceedings and Criminal Sanctions



I. Introduction

↪ *Financial Institutions Act (FinIA)*

- Sets the basic requirements for **acting as a financial institution** in or from Switzerland

↪ *Financial Services Act (FinSA)*

- Sets the basic requirements for the **provision of financial services** in or from Switzerland
- Governs the **offering of financial instruments**



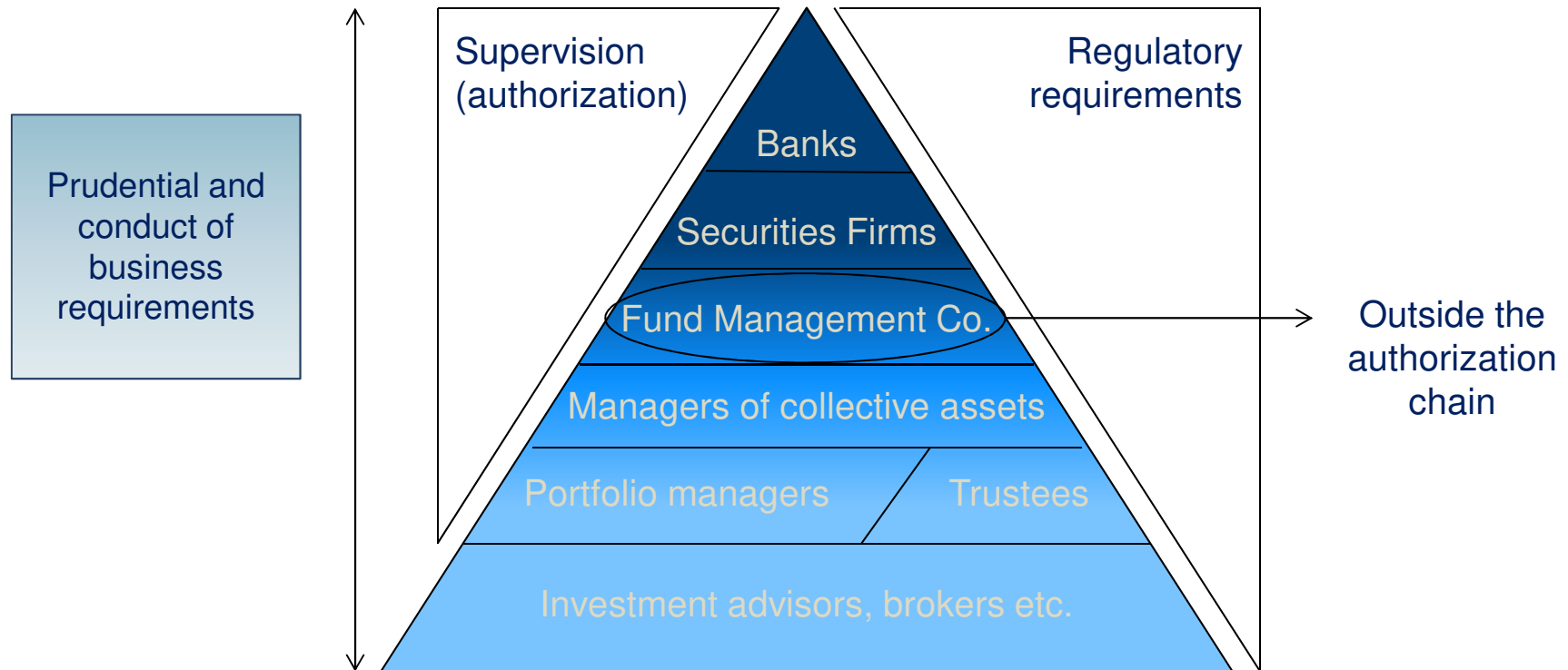
I. Introduction



II. Regulatory Framework



Regulatory pyramid



Source: Documentation de base sur le Message concernant la loi sur les services financiers (LSFin) et la loi sur les établissements financiers (LEFin) du 4.11.2015, p. 6

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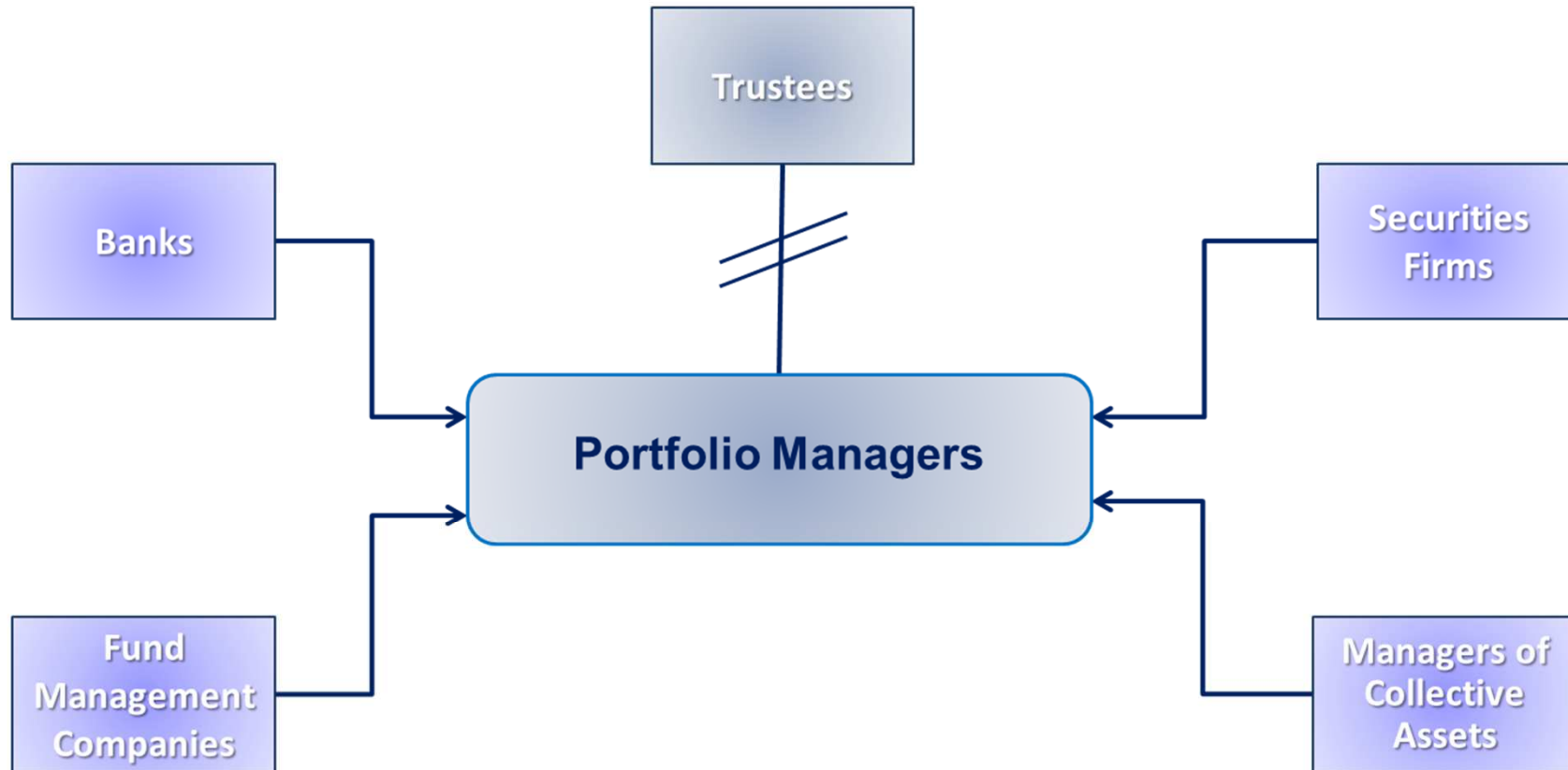
II. Regulatory Framework

↳ *Authorization chain*



II. Regulatory Framework

↳ *Authorization chain*



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III. Notions of «*Trustee*» and «*Portfolio Manager*»

↳ *Who is a trustee?*

« *A trustee is a person who, on a professional basis, **manages or disposes of a separate fund** for the benefit of a beneficiary or for a specified purpose based on the instrument creating a trust within the meaning of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on Their Recognition* » (Art. 16 § 2 D-FinIA)



III. Notions of «*Trustee*» and «*Portfolio Manager*»

↳ *Who is a portfolio manager?*

« A portfolio manager is a person who, on a professional basis, may dispose of clients' **assets within the meaning of Art. 3 let. d no. 1 to 4 FinSA (clients' financial instruments?)** in their name and on their behalf on the basis of a mandate» (Art. 16 § 1 D-FinIA)



IV. Prudential Requirements

Structural requirements

- Sole proprietorship, commercial enterprise or cooperative (Art. 17 § 1 D-FIA)
- Registration in the commercial register after having been issued an authorization (Art. 4 § 2 and Art. 17 § 2 D-FIA)

Organisational requirements

- Appropriate corporate management and organisation (Art. 8 § 1 D-FIA)
- Risk management and effective internal control systems (Art. 8 § 2 and 18b D-FIA)
- Effective place of management is Switzerland (Art. 9 D-FIA)



IV. Prudential Requirements

↪ *Capital and collateral requirements*

- Minimum paid up capital of CHF 100,000 (Art. 19 § 1 D-FIA)
- **Adequate collateral** or professional liability insurance (Art. 19 § 1bis D-FIA)
- Adequate equity capital, i.e. ¼ of fixed costs (Art. 19a D-FIA)

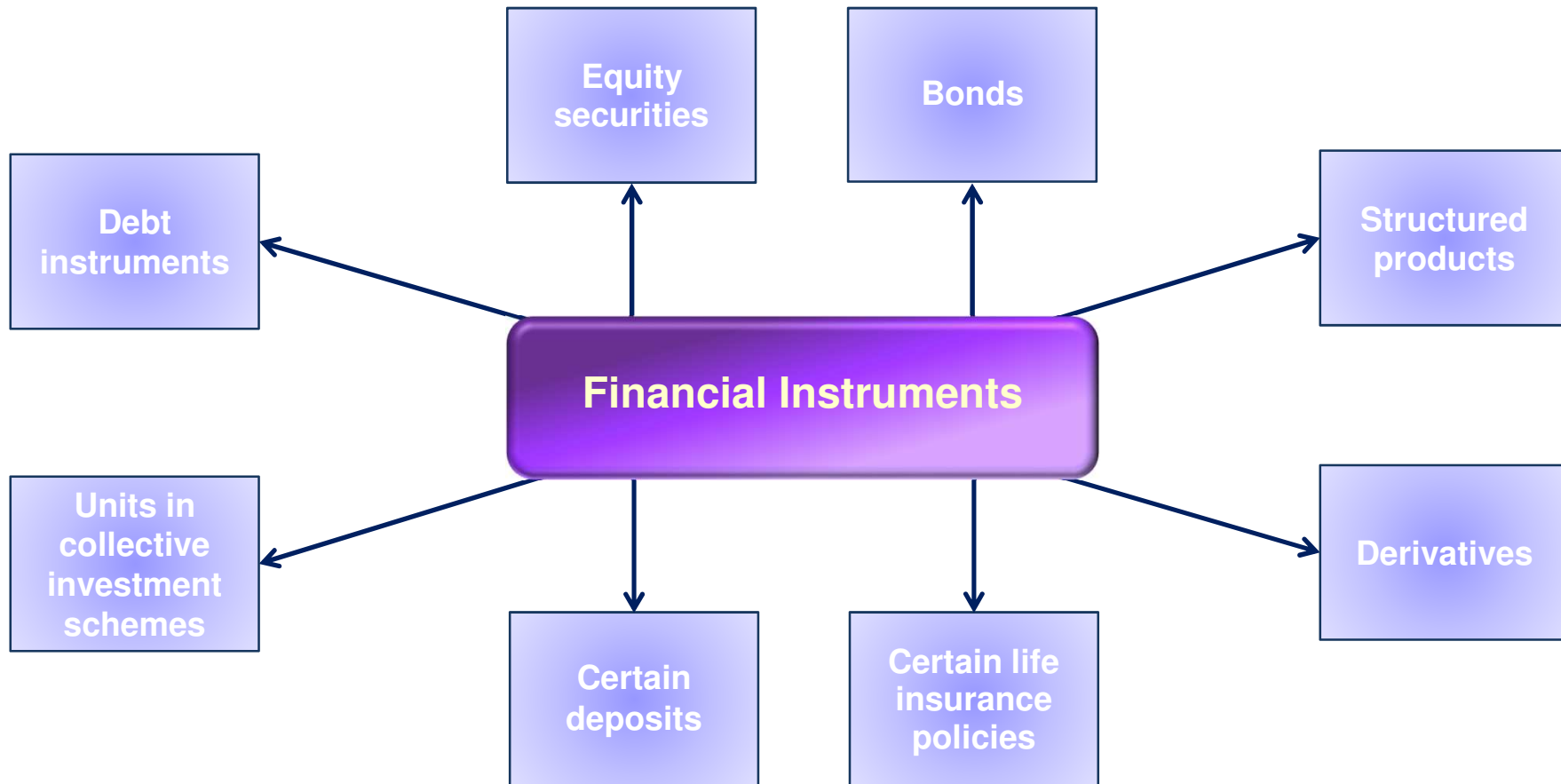
↪ *Personal requirements*

- Trustee/portfolio manager, managers and qualified shareholders must provide guarantee of proper business conduct
- Good reputation and professional qualification (Art. 10 D-FIA) and dual qualified management in principle (Art. 18a D-FIA)



V. Conduct of Business Requirements

↳ *Products*



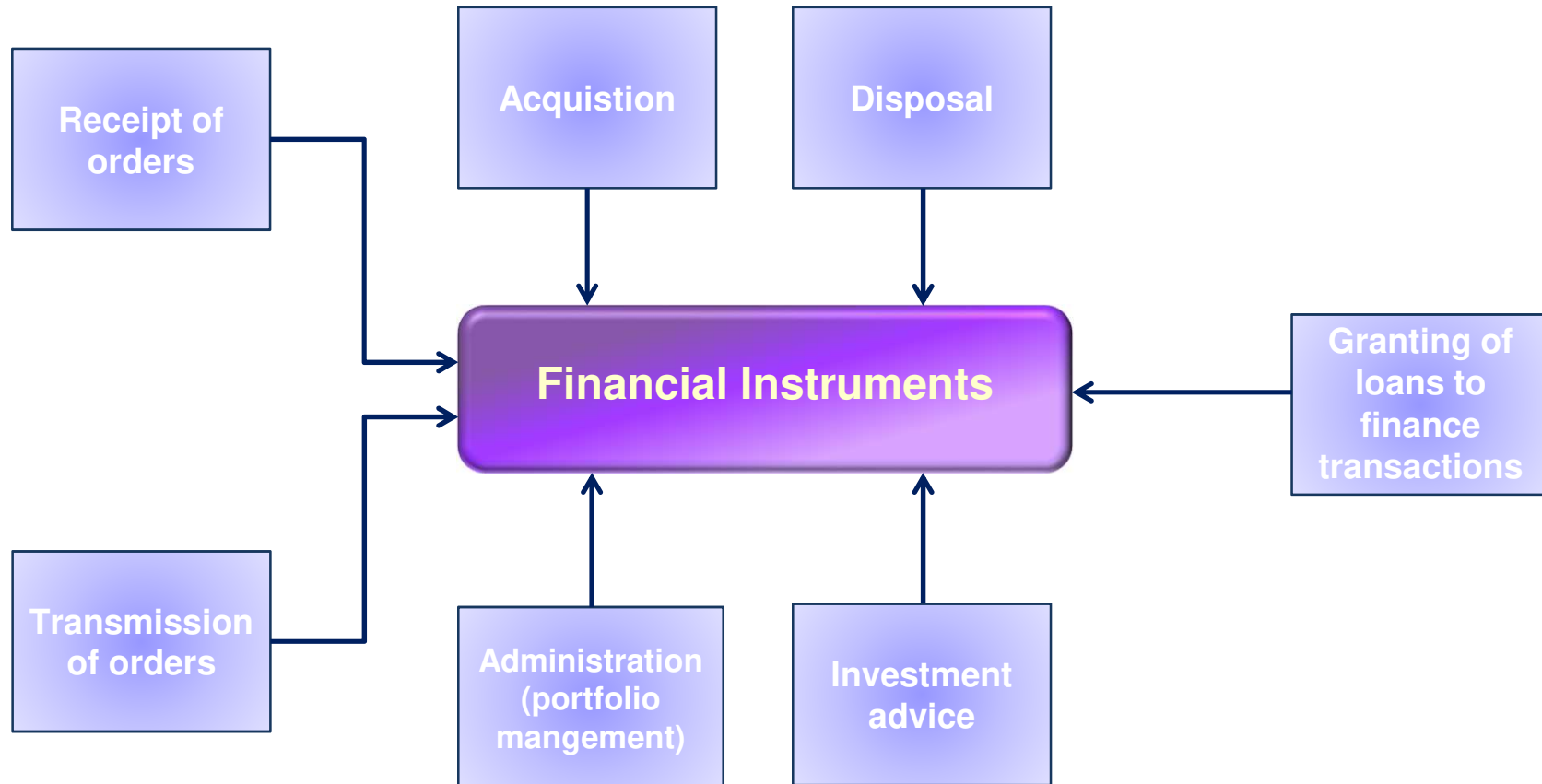
V. Conduct of Business Requirements

↪ *Activities*

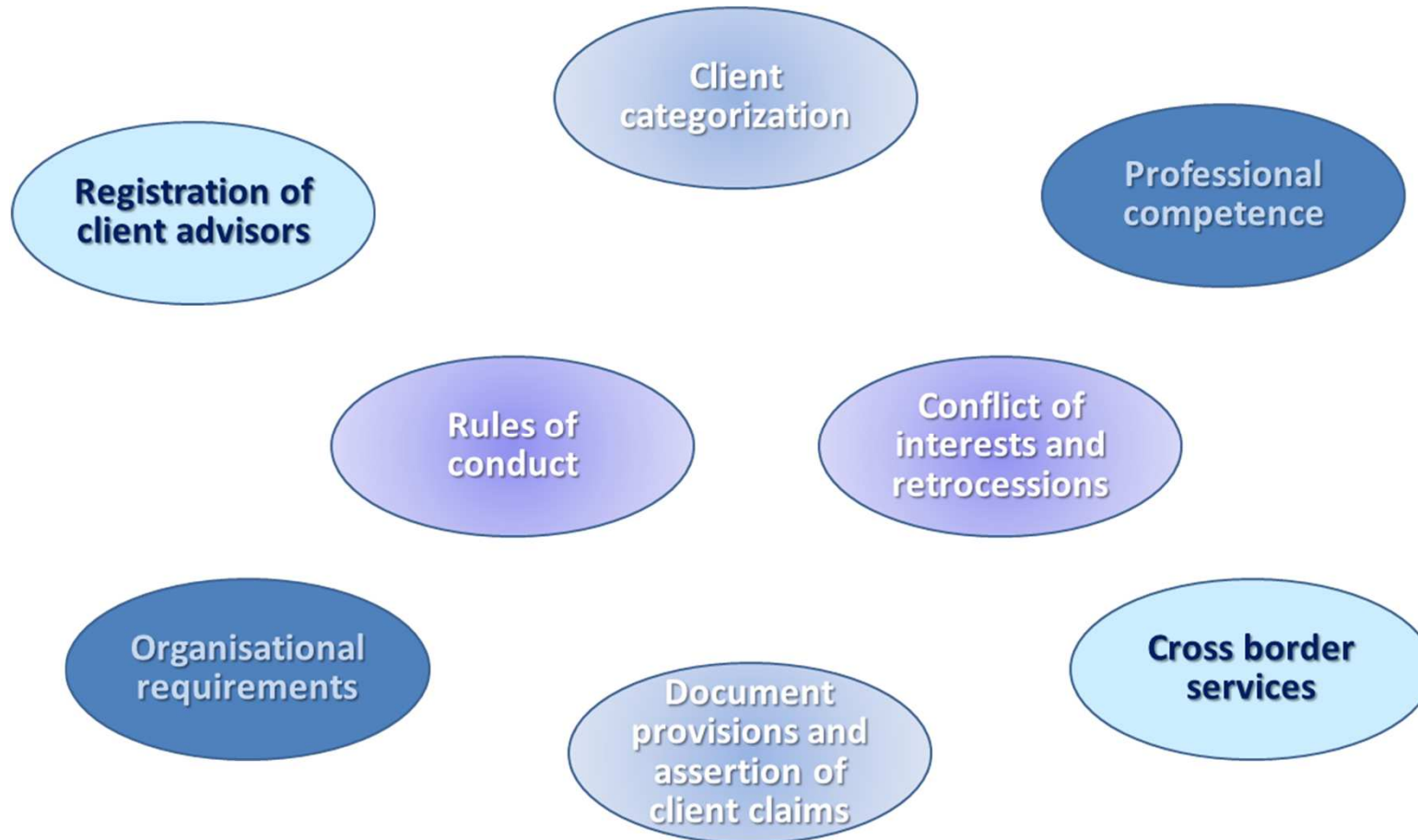


V. Conduct of Business Requirements

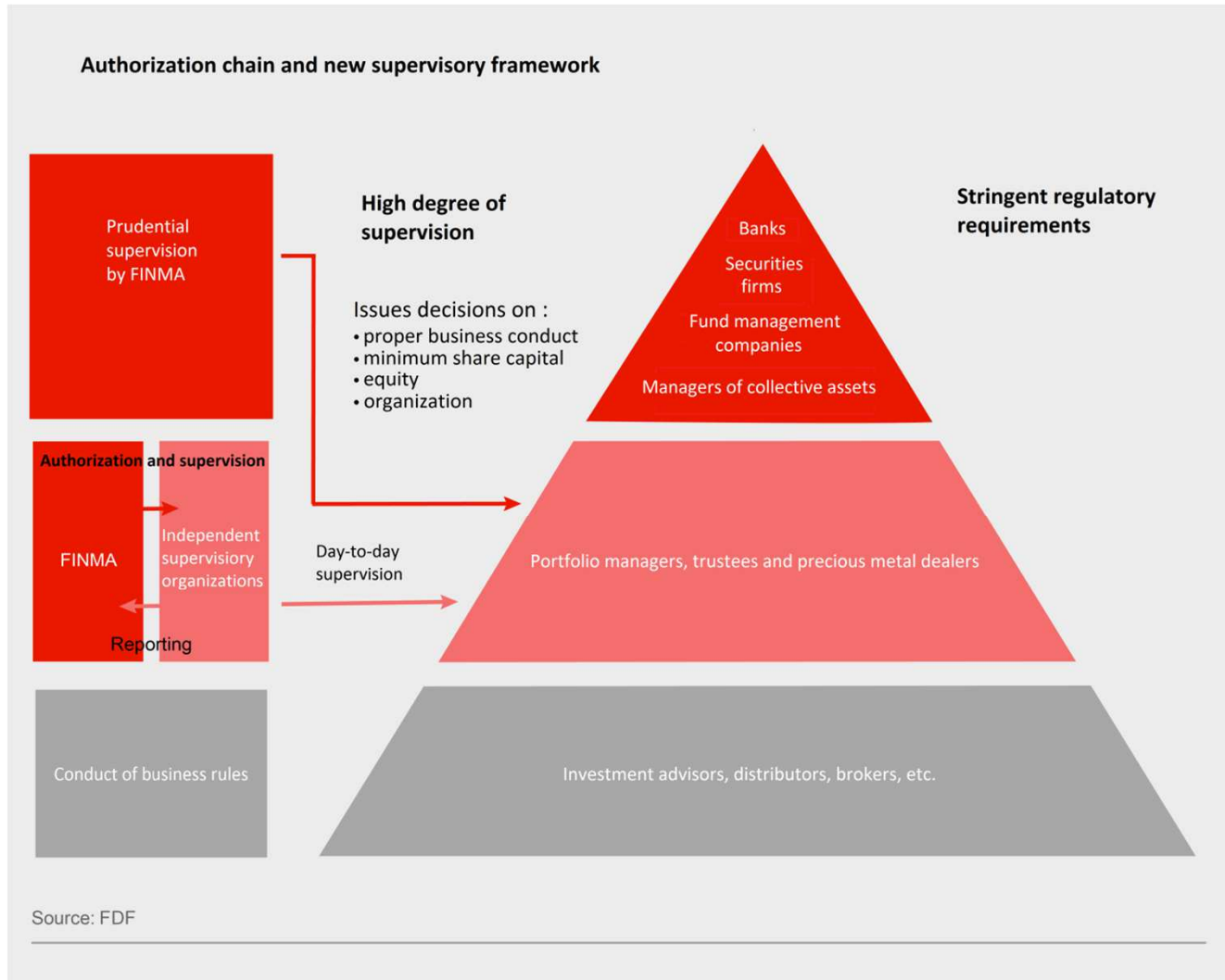
↪ *Financial services*



V. Conduct of Business Requirements



VI. Supervision



VII. Enforcement Proceedings and Criminal Sanctions

Enforcement proceedings (administrative sanctions)

- The term «enforcement» covers all of FINMA's investigations, proceedings and measures in relation to violations of supervisory law
- Precautionary measures or measures to restore compliance with the law, withdrawing authorization, liquidating unauthorized companies, issuing industry bans, ordering the disgorgement of profits generated illegally and publishing final rulings naming those involved

Criminal sanctions

- The competence lies in principle with the Federal Department of Finance, unless the Financial Market Supervision Act or the relevant Financial Market Act provides otherwise



Thank you for your attention!

Me Fabianne de Vos Burchart
fdevosburchart@fbt.ch

