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CAN THE FEDERAL COUNCIL'S PROPOSALS REINVIGORATE THE SWISS FINTECH AND CRYPTO SECTOR?

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In October 2025, the Swiss Federal Council proposed two new licensing regimes – a payment institution and a crypto institution license – intended to replace the fintech license, which has not lived up to expectations. This article, focusing on the crypto institution license, assesses whether the new framework has the potential to reinvigorate Switzerland's fintech and crypto sector. In particular, it examines the proposed regulatory requirements for crypto institutions, which closely mirror those applied to securities firms, in relation to the business models and risk profiles of such institutions as well as the regulatory regimes of peer jurisdictions. The analysis demonstrates that, in an increasingly competitive environment, the license will likely not be attractive enough to achieve its stated aims and risks driving innovation elsewhere.

By Lukas Staub

1) Introduction and Status-quo in Swiss Fintech Regulation

In 2019, Switzerland introduced the 'fintech license' with considerable fanfare, at a time when fintech was high on the political agenda. Since then, only six companies have obtained this license, two of which have already been placed into liquidation. There is general consensus that the fintech license has not lived up to expectations in practice. The reasons for this include the artificial limitation to CHF 100 million in total deposits, the limitations to building attractive business models within the license's restrictions and a mostly negative interest environment limiting profitability for fintechs that are neither allowed to pass on negative interest rates nor to invest the assets.

Since 2019 fintech business models have moved far beyond traditional payments and initial coin offering *en vogue* at the time and now encompass stablecoins, tokenization of real-world assets and open finance. In terms of regulation, Switzerland was a pioneer at the time, but other countries have since caught up and went further. The EU introduced a comprehensive and unified regulatory framework for crypto services across the Union with MiCA, and Singapore's Payment Services Act has been expanded several times already to also cover stablecoins. These are just two examples how other jurisdictions created legal certainty for novel payment and crypto services. The most recent push for deregulation by the current U.S. administration with the GENIUS Act as well as various lower-level legislative and administrative measures further increases the competitiveness of providing crypto services in a regulated environment.

That said, the Swiss financial market regulatory framework remains very attractive for business models that are subject to anti-money laundering (AML) obligations only without requiring a FINMA license. In particular, the affiliation with self-regulatory organizations (SRO) provides a flexible and business-friendly regime for engaging in such business models in an AML-compliant manner with a reasonable time to market. However, the market requires scalable

business models in a regulated environment beyond what can be provided under an SRO-affiliation – permitting deposit-taking, stablecoins, and integrated service offerings across crypto, securities and payments.

Against this background, the Swiss legal and regulatory framework for fintech looks increasingly dated. Such services can today effectively only be provided in a scalable manner with a full banking license – which is unobtainable for most fintech players given the minimum capital requirement of CHF 10 million alone, not to mention all other requirements applicable to banks. The problem is particularly acute in the stablecoin sector, where Switzerland has largely ceded the market to foreign players. Even CHF stablecoins are now being issued mostly abroad, either in offshore jurisdictions with little or no regulatory oversight or, as the latest development, from the EU under a MiCA license.

That Switzerland's regulatory regime for fintechs has substantial gaps is not a new finding. Already in 2022 the Federal Council found in two reports on digital finance and the fintech license, respectively, that the Swiss regulatory regime should be developed further in these respects.

Finally, in October 2025 the Federal Council delivered its proposals to remedy these gaps by proposing two new licenses to be introduced into the Financial Institutions Act (FinIA) as follows:

- A new payment institution license for providing payment services in a manner similar to what is permissible under the current fintech license plus, as an important addition, issuing stablecoins; and
- A new crypto institution license for providing certain custody and trading services in relation to crypto assets thereby primarily bringing under prudential regulations services that previously did not require licensing.

This article discusses whether the proposed crypto institution license has the potential to reinvigorate the Swiss fintech and crypto sector. For an assessment of the payment institution, please see the contribution by Benjamin Leisinger and Fabrice Eckert in this issue of CapLaw.

2) The Proposed Crypto Institution¹

Swiss Stablecoins and Trading Tokens. To understand the services for which the new crypto institution license will be required, one must examine the proposed changes to the Financial Services Act (FinSA) where two new terms are being introduced:

- “Stable crypto-based payment means”, in essence single currency stablecoins issued in Switzerland (“Swiss Stablecoins”); and

¹ See Erläuternder Bericht zur Eröffnung des Vernehmlassungsverfahrens: <https://cms.news.admin.ch/dam/en/der-schweizerische-bundesrat/bqoaKNhbpGcb/finig-erlaeuternder-bericht-de.pdf>

- “Crypto-based assets of a trading nature”, in essence all payment tokens that are not financial instruments, not Swiss Stablecoins, not bank deposits and not issued by a central bank or government (“Trading Tokens”)

The Crypto Institution’s Scope. The newly proposed crypto institution license covers a range of services related to Swiss Stablecoins and Trading Tokens, namely custody, staking, customer trading and certain forms of short-term proprietary trading. The license essentially carries forward the collective custody of certain payment tokens currently included in the fintech license and expands the licensing requirement to services previously not subject to a licensing requirement (although they may be subject to AML requirements, including SRO affiliation²).

To this end, crypto institutions will be able to accept deposits and maintain customer accounts for settlement purposes, similar to what a securities firm can do for its customers. Also, crypto institutions will be permitted to operate organized trading facilities for Trading Tokens only. Unlike for traditional financial instruments, portfolio management for Trading Tokens is out of scope and hence remains permissible without a license.

Notably, the proposal expressly excludes for the crypto institution to engage in any business that comes with balance sheet-risks including offering margin trading to customers or short selling on own account, i.e., activities that currently on own account can be done without a license even in financial instruments. According to the Federal Council’s report, own trading will also include currency exchange for tokens, i.e., for tokens unlike for any other means of payment the simple exchange of two tokens would require a license.

Systematics and License Hierarchy. It is envisaged that the crypto institution will be integrated into the FinIA’s license hierarchy in a one-way fashion upwards, but not downwards. In consequence, banks and securities firms may engage in the activities of a crypto institution without an additional license but the crypto institution cannot engage in any other activities. In particular, the crypto institution cannot provide any services for traditional securities (such as those of a portfolio manager) or engage in the activities of a payment institution.

According to the accompanying report, it will be necessary not only to obtain different licenses for different services, but such licenses will only be granted to separate legal entities. Consequently, for example, issuing a stablecoin and operating a trading platform for Trading Tokens would require two separate entities with separate licenses, each subject to separate capital requirements.

Regulatory Requirements for Securities Firms Apply. The report expressly states that the licensing and regulatory requirements for crypto institutions are largely based on those applicable to securities firms. Since securities firms constitute the second highest licensing category, FINMA treats them largely similar to banks. This means that securities firms are authorized

² We note that trading on own account in digital assets lacks the third-party aspect and is thus under current laws not only permissible without license but also without AML compliance (although the federal report seems to indicate otherwise).

and supervised by the same team at FINMA, subject to largely the same requirements and applications have to use identical forms.

Even though the report indicates that the implementing ordinance will take into account the different risk profile of a crypto institution, it appears that by and large the requirements of a securities firm will apply. For example, the draft applies to crypto institutions group supervision requirements (art. 51z VE-FinIA) identical to those of securities firm (art. 49 FinIA) and thus substantially higher than those for a manager of collective assets (art. 30 FinIA).

Conduct Rules for Financial Instruments Extended to Trading Tokens. While the proposals maintain in principle the separation of (traditional) financial instruments and tokens, most of the conduct rules in the FinSA designed for financial instruments are nonetheless extended to the newly defined Trading Tokens. These include, in particular, the appropriateness and suitability tests (art. 11-14 FinSA), transparency and care in client orders (art. 17-19 FinSA), and extensive organizational measures (art. 21-27 FinSA). Additionally, a white paper obligation for issuing certain tokens, similar to the existing prospectus requirements, has been proposed.

3) Assessment and Comparison to Peer Jurisdictions

The Federal Council is to be commended for identifying core issues in Swiss financial market regulation for fintechs, such as the very limited attractiveness of the existing fintech license and the lack of a viable regime for providing services in relation to payment tokens in a regulated manner and stablecoins in particular. Also, the need for greater transparency in the crypto markets and increased regulation of trading venues in this space is evident. The Federal Council's proposals address these issues with targeted regulation, which is welcome from both a business and a client protection perspective.

However, the proposals unfortunately fall short of striking the right balance between keeping the Swiss regulatory regime attractive for innovative business models while increasing customer protection and ensuring international competitiveness and compatibility. Quite to the contrary, under the current proposals it seems likely that one license with limited attractiveness to businesses (fintech license) will be replaced with two licenses destined for the same fate (crypto and payment institution licenses).

Inflated Regulatory Standard. The Federal Council's proposals treat the activities and risk profile of a crypto institution equally with that of a securities firm. This, however, violates the "same risks, same rules" approach, since crypto institutions will have a much smaller risk profile than securities firms, in particular for the following reasons:

- Scope of permissible services: A securities firm's license allows to provide a much broader range of services including those of portfolio managers and managers of collective assets. Further, securities firms are not subject to additional restrictions on their business such as those for 'uncovered trades'. In comparison, the scope of business for crypto institutions will remain quite narrowly defined, even though the inclusion of settlement accounts, similar

to securities firm but not possible with comparable licenses in certain other jurisdictions, is welcome.

- Size of addressable market: The market a securities firm can engage in is much larger than a crypto institution's market. Recently, worldwide crypto market capitalization had reached about 7% of the size of the S&P 500 index but with market corrections the global crypto market is now closer to 4% of the U.S. equities index – and much less of the overall market for financial instruments. In other words, crypto institutions can engage in a market that is only a fraction of the size open to securities firms.
- Interconnectedness: The crypto market remains much less interconnected with minimal impact on the wider economy and minimal importance for household and pension savings. In particular, while pension schemes are heavily invested in bond and equity markets, they are subject to strict limitations when investing in crypto markets. Hence, the need for public protection in the crypto market remains much lower.

For these reasons, it is entirely inadequate to require the regulatory standard of a securities firm for the crypto institution, given its much smaller risk profile. The much more appropriate regulatory standard would be that of the manager of collective assets. Accordingly, regulatory requirements, in particular but not limited to capital and group supervisory requirements as well as other requirements yet to be determined at ordinance level, should not exceed those of a manager of collective assets.

Lack of International Competitiveness. For a small, open economy without passporting regimes such as Switzerland, international competitiveness should be a core objective. Otherwise, its market will only be served on a cross-border basis or not at all, with all respective negative impact on the economy and employment.

In line with the lower risk profile, relevant peer jurisdictions such as Singapore impose much more moderate requirements for institutions dealing in crypto currencies. For example, even the highest category of licenses under the Payment Services Act, the Major Payment Institution, requires a minimum capital of only SGD 250,000 (c. CHF 150,000)³. Similarly, in the EU the requirements under MiCA are generally lower. For example, minimum capital requirements range from EUR 75,000 to 150,000 (less than CHF 140,000). So in comparable jurisdictions the capital requirements are not only far away from the securities firm (CHF 1.5m), but even lower than the Swiss manager of collective assets (CHF 200,000).

Furthermore, we are not aware of either the EU or Singapore imposing consolidated supervision regimes similar to those for banks (or credit institutions) on crypto asset service providers, as is envisaged by the Federal Council. Against this background, also from a perspective of international competitiveness, the requirements of a manager of collective assets are not only much more adequate, but are already at the higher end of what similar jurisdictions require.

³ A higher minimum capital may be required to issue certain types of stablecoins, but that is not a business the Swiss crypto institution would be allowed to engage in at all.

Artificial Boundaries. The current proposals create two new, entirely separate licenses, thereby breaking the hierarchy of institutions introduced with the FinIA. In addition, according to the report, the ordinance will go further and require separate legal entities for each license, at least with respect to the payment institution.

Consequently, various integrated business models will not be possible at all, unless the institution is willing to apply for a full banking or at least a securities firm license. For example, to operate a marketplace for payment tokens and issue a corresponding CHF stablecoin for settlement, two separate entities with two licenses and double the corporate efforts, capital requirements etc. would be required. Considering that each of these entities would already be subject to higher regulatory requirements than under comparable regimes in the EU or Singapore, such a regime will be prohibitive for many players. In addition, in many jurisdictions various licenses can also be combined in a single entity (e.g., in Singapore licenses under the Payment Services Act and the Securities and Futures Act can be obtained by the same entity) further reducing administrative burdens and avoiding silos.

It would be crucial for the new licenses to be fully integrated into the FinIA licensing hierarchy at the same level as the manager of collective assets in order to remain attractive. Otherwise, Switzerland should not be surprised if even already regulated entities relocate their digital assets teams to other jurisdictions such as Singapore, as has already been observed in practice.

Overly Expansive Conduct Rules. The Federal Council's assessment that transparency and customer protection in crypto markets should be increased is supportable. Consequently, also the introduction of additional transparency requirements, the white paper obligation and elementary duties of care such as best execution appear appropriate. However, given that the Federal Council concedes that the newly defined Trading Tokens do not constitute financial instruments, the financial services rules should only be applied where actually required in order to maintain proportionality. In particular, suitability and appropriateness requirements should remain applicable to financial instruments only and should not be extended to crypto assets which do not have the same importance for the wider economy or for household and pension savings. This is also the approach followed by many leading financial markets including Singapore and the US⁴. The suitability and appropriateness requirements for Trading Tokens should therefore be removed from the proposal.

Time to Market. In any competitive market, time to market is of the essence for the viability of any business model. In this regard, it is crucial for businesses, in particular start-ups, to be able to obtain licenses within a competitive timeframe. However, the naturally higher risk nature of innovative sectors and start-ups frequently conflicts with the more risk-averse and detail-focused approach of traditional financial market regulation as well as resource constraints at regulators. While it is accepted in the market that obtaining a banking license may take 18 months or more, lower level licenses should be obtainable much more quickly – another factor that limits the current fintech license's attractiveness. One key measure to keep licensing timelines reasonable

⁴ Although we understand that the EU with MiCA has taken a similarly restrictive stance as foreseen in the Federal Council's proposal.

for the crypto institution is of course to limit the regulatory standard to that of a manager of collective assets. In addition, Switzerland should also consider going one step further and introducing for example mandatory deadlines for the authorities to process applications as art. 63 MiCA does for the EU.

4) Conclusions and Outlook

While the current proposals address gaps in the Swiss financial market regulation such as the lack of suitable regulatory regimes for stablecoins or trading venues for digital assets, it is unfortunately difficult to agree with the title of the Federal Council's press release "*Federal Council moves forward with stablecoins and crypto*".

For a small, open economy such as Switzerland without a large common market like the EU or the US and in the absence of any passporting regimes into such markets, it is crucial to balance regulation and market attractiveness. The proposed licenses, while addressing key gaps in current legislation, do not strike the right balance. The envisaged regulatory standard is inappropriately high for the risks these business models pose and creates artificial silos, rendering the licenses internationally all but competitive.

While a small number of highly localized Swiss players may be interested in the new licenses, it seems likely that not only internationally oriented business will look elsewhere, but even local Swiss business may be conducted on a cross-border basis with lesser requirements and a shorter time to market. Unfortunately, this is not a new story. It is the same story as that of the Swiss fintech versus EU/UK e-money licenses: while many e-money license holders are flourishing including major financial players such as Revolut and Wise, the Swiss fintech license remains an absolute niche product.

In conclusion, it remains crucial for Switzerland to address the gaps identified by the Federal Council as soon as possible – the earlier the new licensing regimes become available, the greater the chance that Swiss financial markets can leverage innovations such as stablecoins rather than ceding the field to foreign competitors offering their services on a cross-border basis across Europe. However, it is to be hoped that the final legislation will be more balanced and proportionate, enabling the Swiss fintech sector to return to growth.

Lukas Staub (lukas.staub@lenzstaehelin.com)