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Zürich^{UZH}**

Law Institute

**bratschi
wiederkehr
& buob**

FinTech Enterprises – Which Protection for «Depositors»?

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FinTech Activities

Payment Services

Crowdfunding & Crowdlending

Decentralized Ledger Technologies

Robo Advice & Deposit Marketplaces



Payment Services

Technical Issues (Device, Access, Channel)

Involved Market Participants

Types of Services

- **Payment Services**



- Information Services



Crowdfunding

Crowddonating

Crowdsupporting

Crowdlending



Crowdinvesting



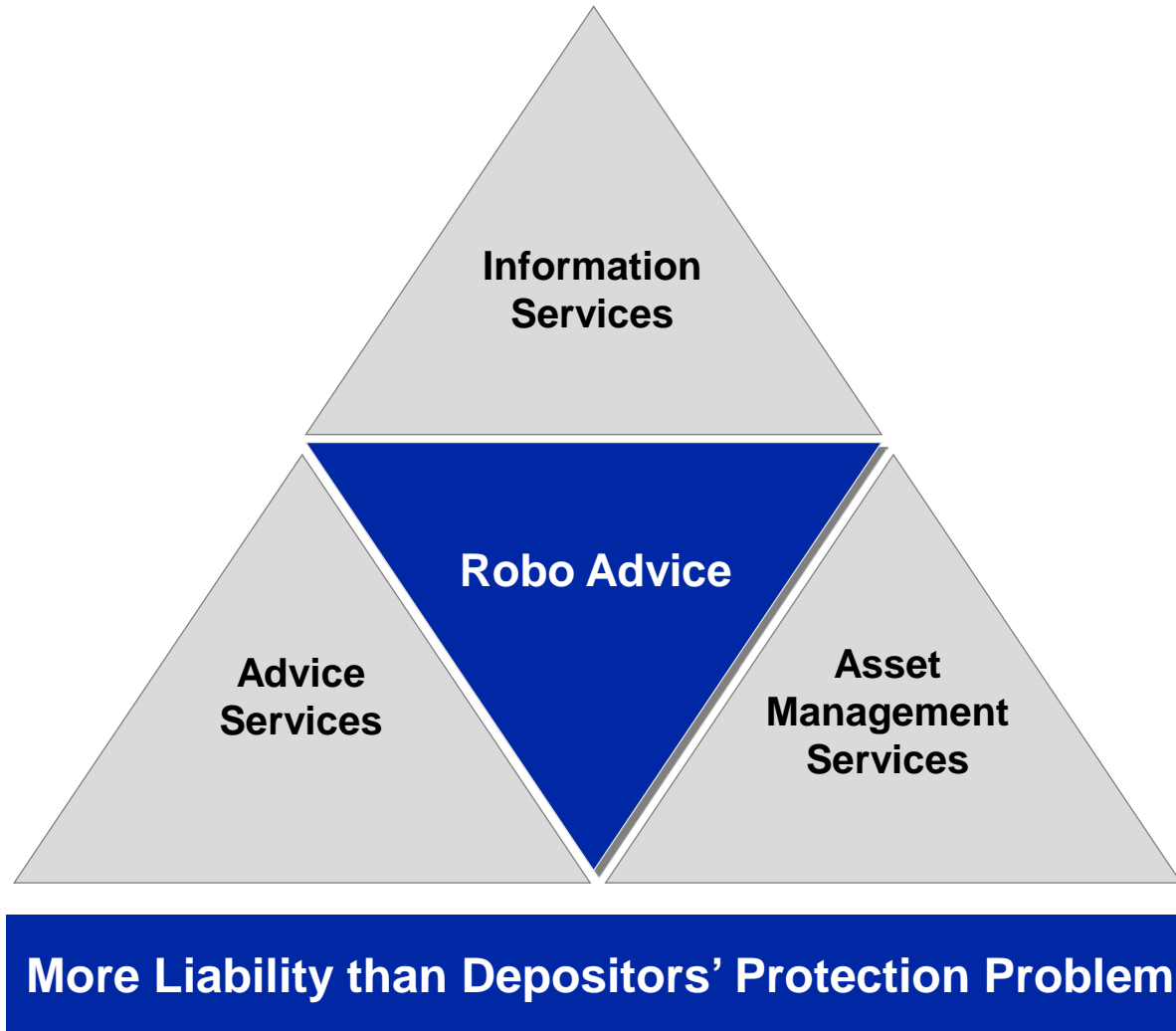
Decentralized Ledgers

Virtual Currencies (Value Transfers)



Transaction Platforms

Smart contracts





Present Depositors' Protection

Covered Financial Intermediaries

Specific Substantive Exceptions

Crowdlending (Crowdfunding)

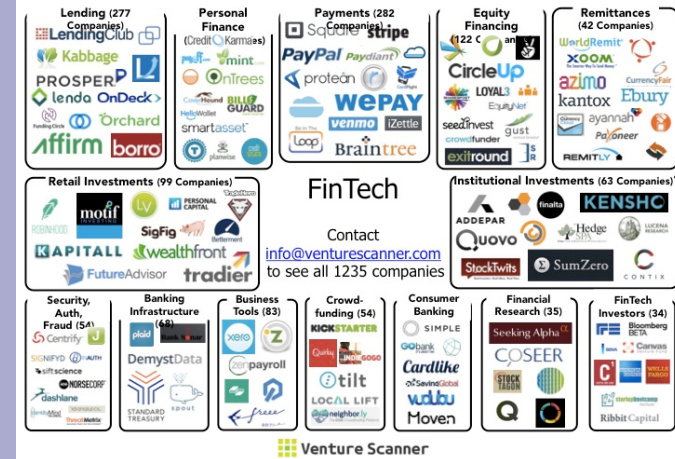


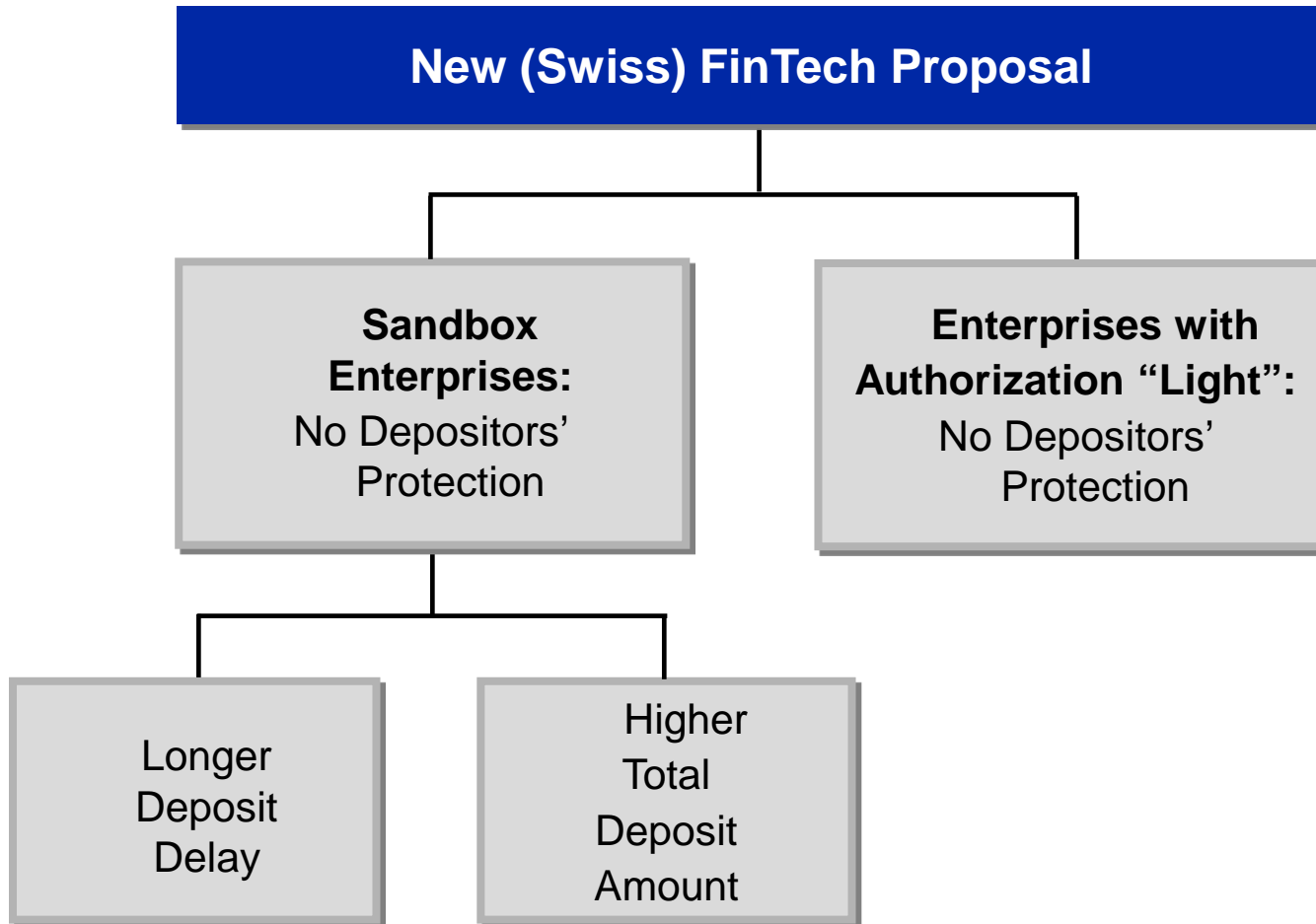
Payment Services under Certain Circumstances



Decentralized Ledger Technologies under
Certain Circumstances









Depositors' Risks

Longer Deposit Delay/Higher Total Deposit Amount

Risk Analysis Depending on FinTech Category

Awareness of Risks: Alternative Protection Mechanisms



Alternative Protection Mechanisms

Information Requirement

Size of Deposited Amounts

Prudential Regulation in Case of “Light” Authorization

Data Security





Regulations Abroad



European Union



Germany



United Kingdom



United States



European Union



E-Money Directive II

Payment Services Directive II

Dir. 2014/49: Deposit Guarantee for Certain Platforms

Further Activities



Germany



Crowdfunding

Virtual Currencies

Use of Custodian Bank



United Kingdom

Payment Services

Crowdfunding

Regulatory Sandbox

Access to Financial Ombudsman Service and
to Financial Services Compensation Scheme



United States



Payment Services

Crowdfunding

Virtual Currencies

FinTech Bank Charter



United States: e.g. *Betterment*

SIPC (not FDIC) Protected (up to \$500,000 per Account Type)

Only in Case of Bankruptcy (not Fraud)

“In the unlikely event that Betterment was to close, your money would remain safe, and you would simply choose a new home for it. Betterment’s corporate money is completely separate from your customer money at all times, and Betterment is not allowed to use your money to pay for its operations or anything other than investing for you. You own all the underlying securities in your Betterment portfolio, and if you close your account your money will be transferred back to your linked checking account. If we were to close, the funds would be transferred to the broker of your choosing.”



Outlook

- Liberalization of Regulatory Regime for FinTech Enterprises
- Restraints in Depositors' Protection
- No Harmonization on the International Level
- Alternative Protection Mechanisms
- New Definition of "Depositor"?