

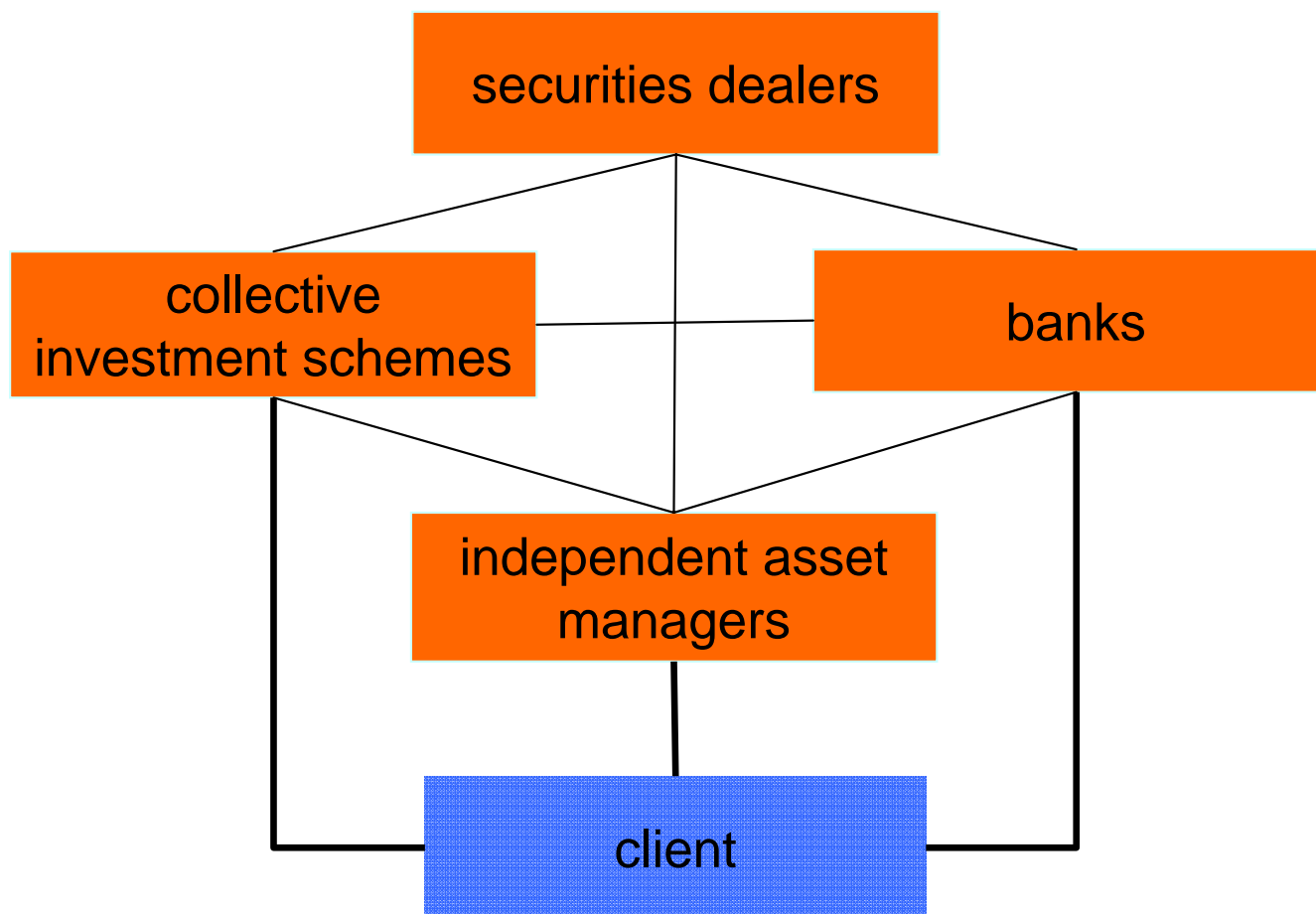
Legal Aspects and Compliance in Asset Management

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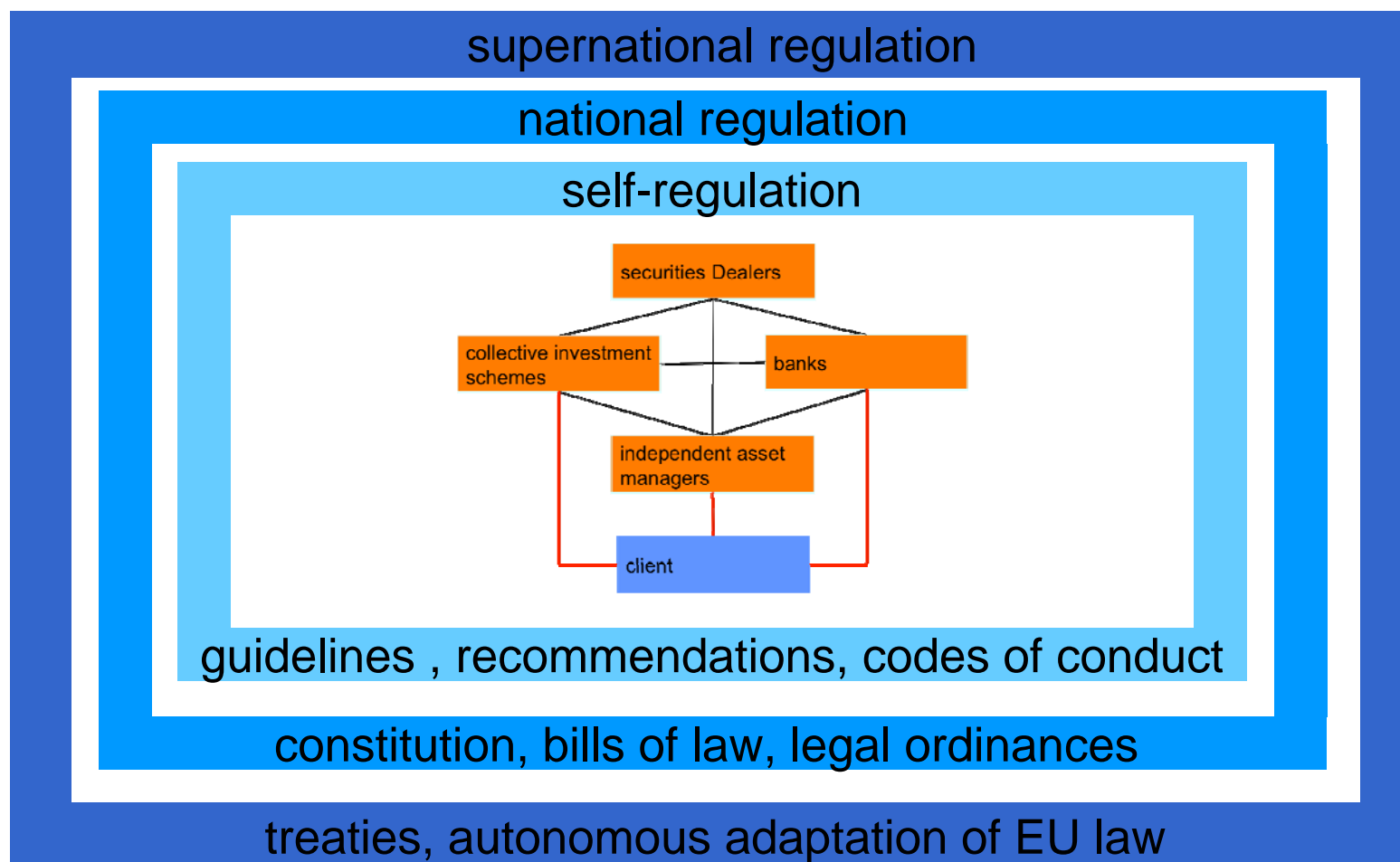
Outline

- General Swiss legal framework: an overview
- Business entry: options and legal requirements
- Full asset management (managed portfolio), advisory (ad hoc or continuous) or execution only: it makes a difference
- Compliance in operating activities: cornerstones

Asset Management – Overview on the players



General Swiss legal framework

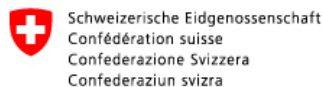


Where to find the sources of law?

Sources of law on the internet



- www.finma.ch/e/regulierung/gesetze/pages/default.aspx
(with links to self regulation organizations)



- www.admin.ch/dokumentation/gesetz/index.html?lang=en

Business entry: options and legal requirements

Independent Asset Managers

- No license required as long as
 - no interests are paid
 - no banking activities are taken
 - acting on behalf and on account of the client
- No specific qualifications required
- Membership in a SOR or direct supervision through FINMA in area of AMLA

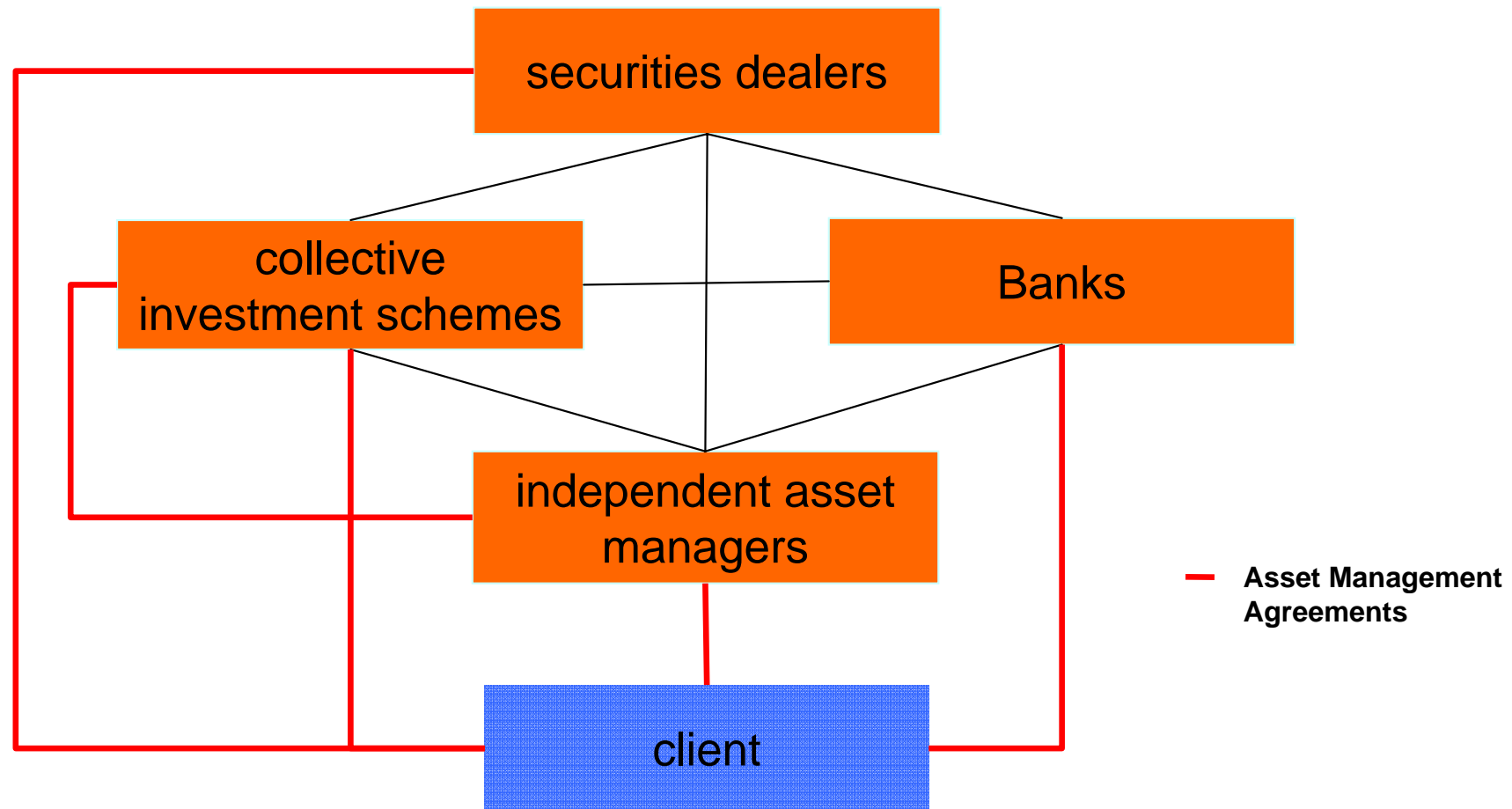
Collective Investment Schemes

- FINMA license required
- Specific personal qualifications required, in particular:
 - individuals in positions of authority must guarantee impeccable business conduct
- Minimum equity and starting capital
- Specific organization
- Supervised by FINMA (dual supervisory system)

Banks/Securities Dealers

- FINMA license required
- Specific personal qualifications required, in particular:
 - individuals in positions of authority must guarantee impeccable business conduct
- Minimum equity and starting capital
- Specific organization
- Supervised by FINMA (dual supervisory system)

Business entry: the players



Asset Management Agreements: basics

- no formal requirement, but written form in case of full asset management (FINMA-Circ. 2009/1)
- duties and liabilities according to the Swiss Code of Obligations (mandate **articles 394 et seq CO**)
 - duty to inform and report
 - liability for faithful performance
 - good faith in commercial dealings
 - responsibility for proper accounting
 - duty to deliver everything which for whatever reason has come into his possession in the course of the performance of the mandate
 - confidentiality principles

Asset Management Agreements: basics

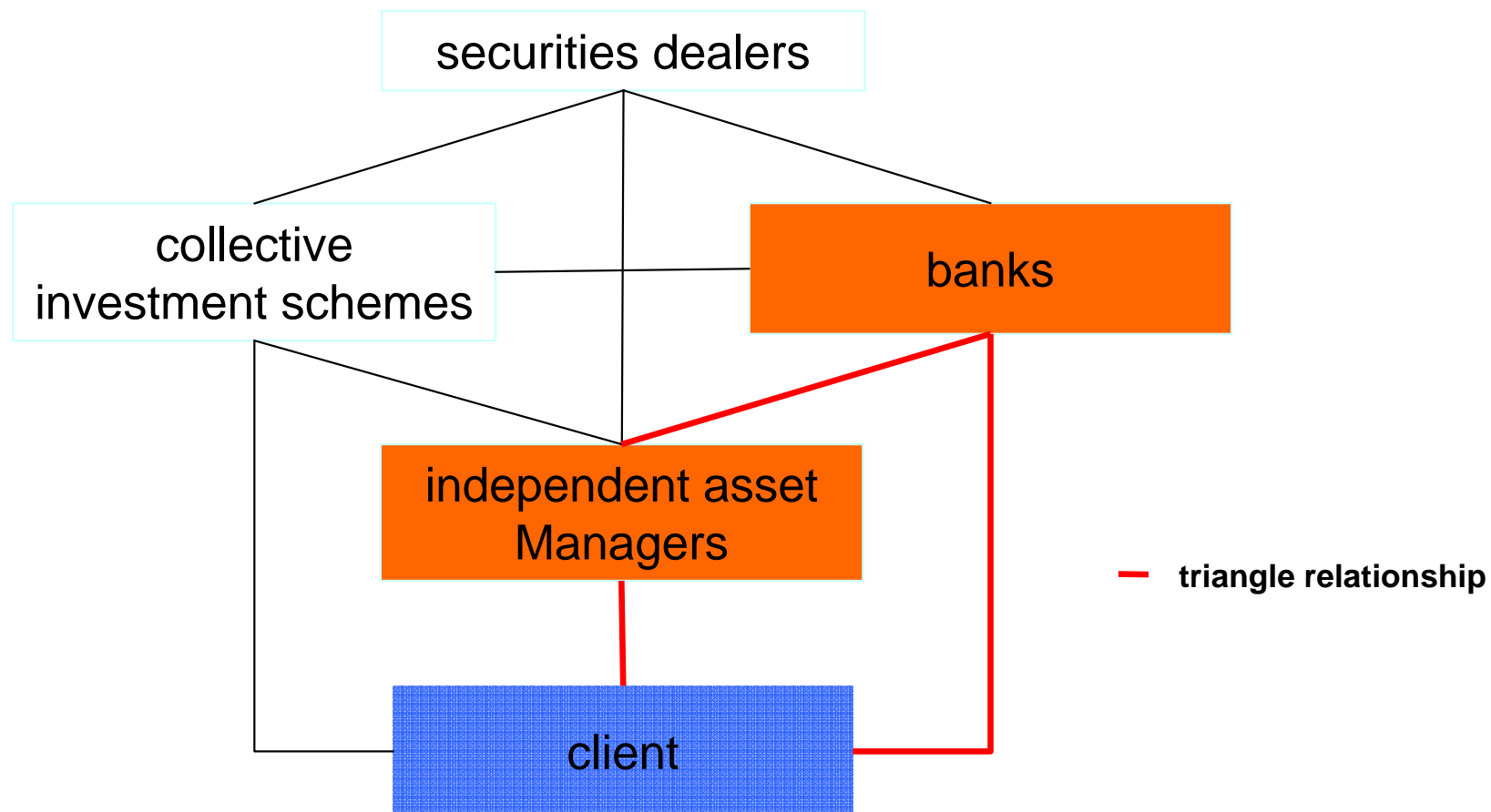
- duties are further specified through the (written) agreement and specific law terms i.p. **article 11 SESTA** for asset managers with securities dealer license
 - double legal norm: private and supervisory law
 - obliges securities dealers to inform their clients about type of transactions and investments that involve special risks
 - duty contains only general transaction and investment risks, not for the specific transaction
 - information with standardized brochures is sufficient
 - according to Federal Court decision, article 11 SESTA contains, in distinct from EU and US-law, no general duty for a suitability check
 - but, suitability check can be a contractual duty
 - intensity level in a given case depends on the type of contract, the level of trust, the experience and the financial know how of the individual client

Asset Management Agreements: terms

execution only	advisory (ad hoc or continuous)	full asset management
<ul style="list-style-type: none"> • execution according to client's instructions / orders • standardized risk disclosure 	<ul style="list-style-type: none"> • know your customer • individualized risk disclosure <p>... according to instruction / orders by manager</p>	<ul style="list-style-type: none"> • continuously on development

**the more duties,
the higher the
risk of liability**

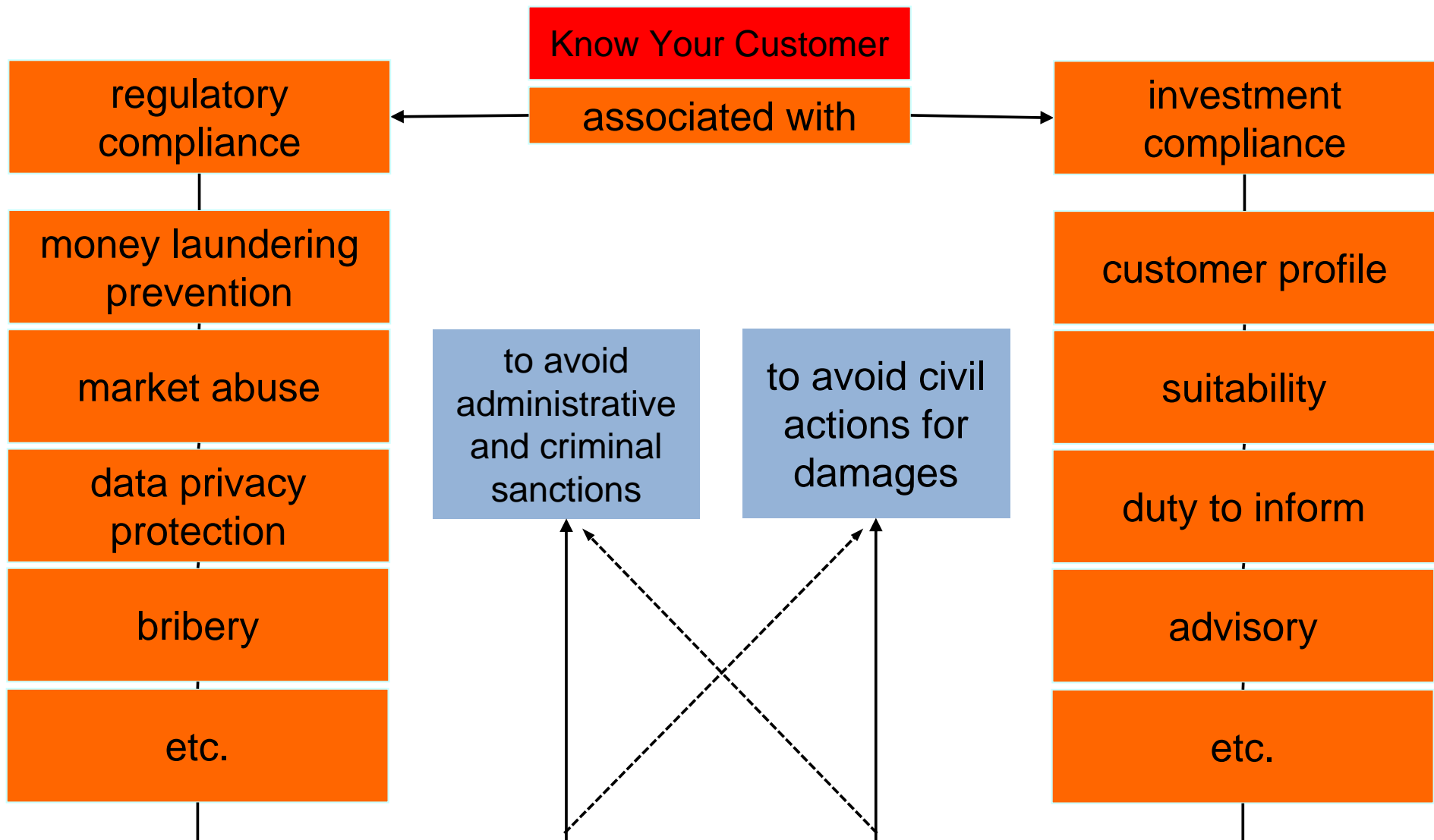
Asset Management Agreement: triangle relationship



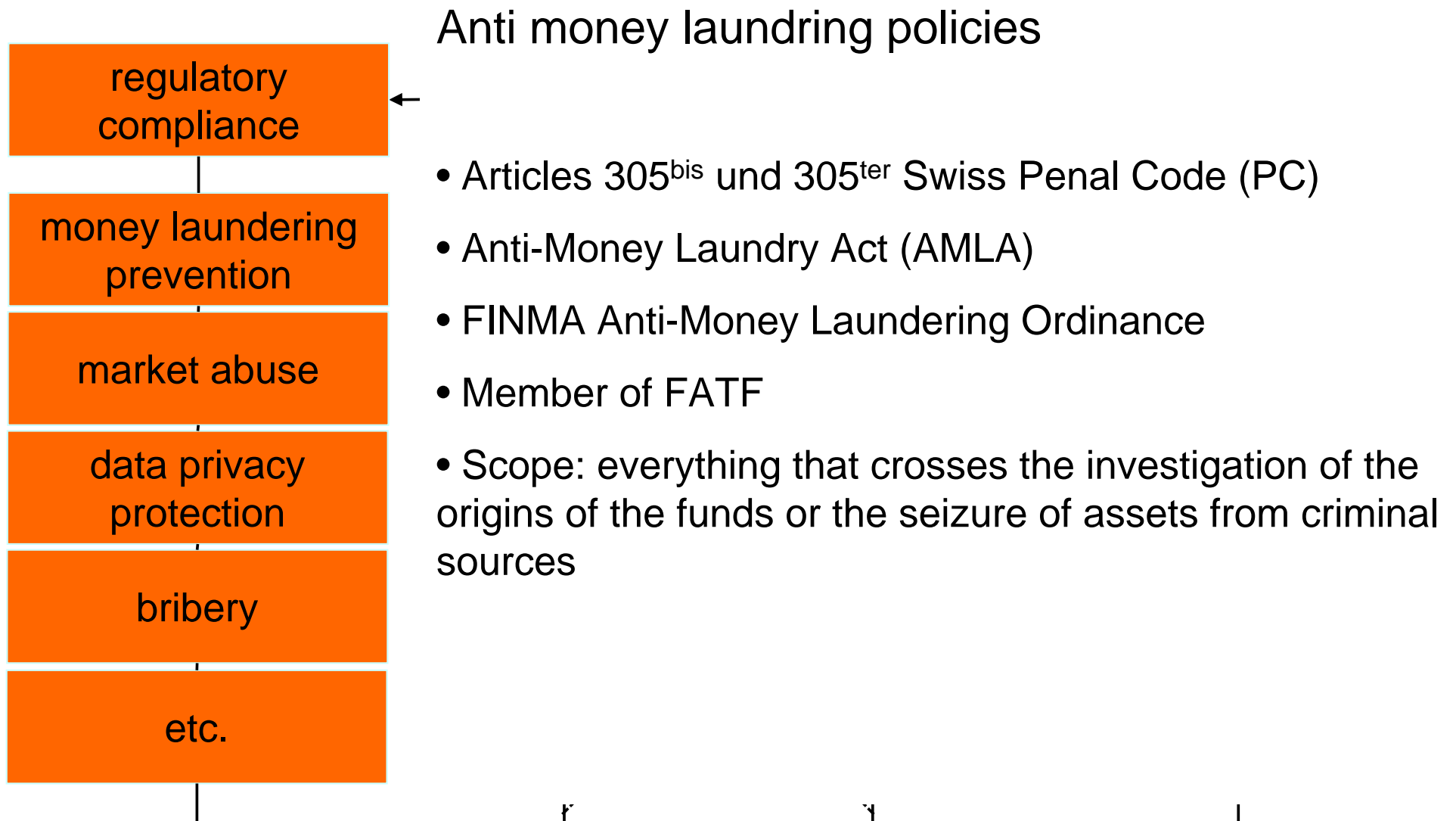
Asset Management Agreement: triangle relationship

- Contractual qualifications
- Contractual obligations
- Supervision of independent asset manager by bank?
- Retrocession

Compliance in operating activities: cornerstones



Compliance in operating activities: cornerstones



Compliance in operating activities: cornerstones

money laundering prevention

- Duty to verify the identity of the contracting partner and the beneficial owner

higher compliance requirements in businesses with political exposed persons

further investigations in case of suspicious or unusual transactions (i.e. transaction without economic reasons)

transaction monitoring

staff training

- Duty to report to the authorities in case of reasonable doubts that assets

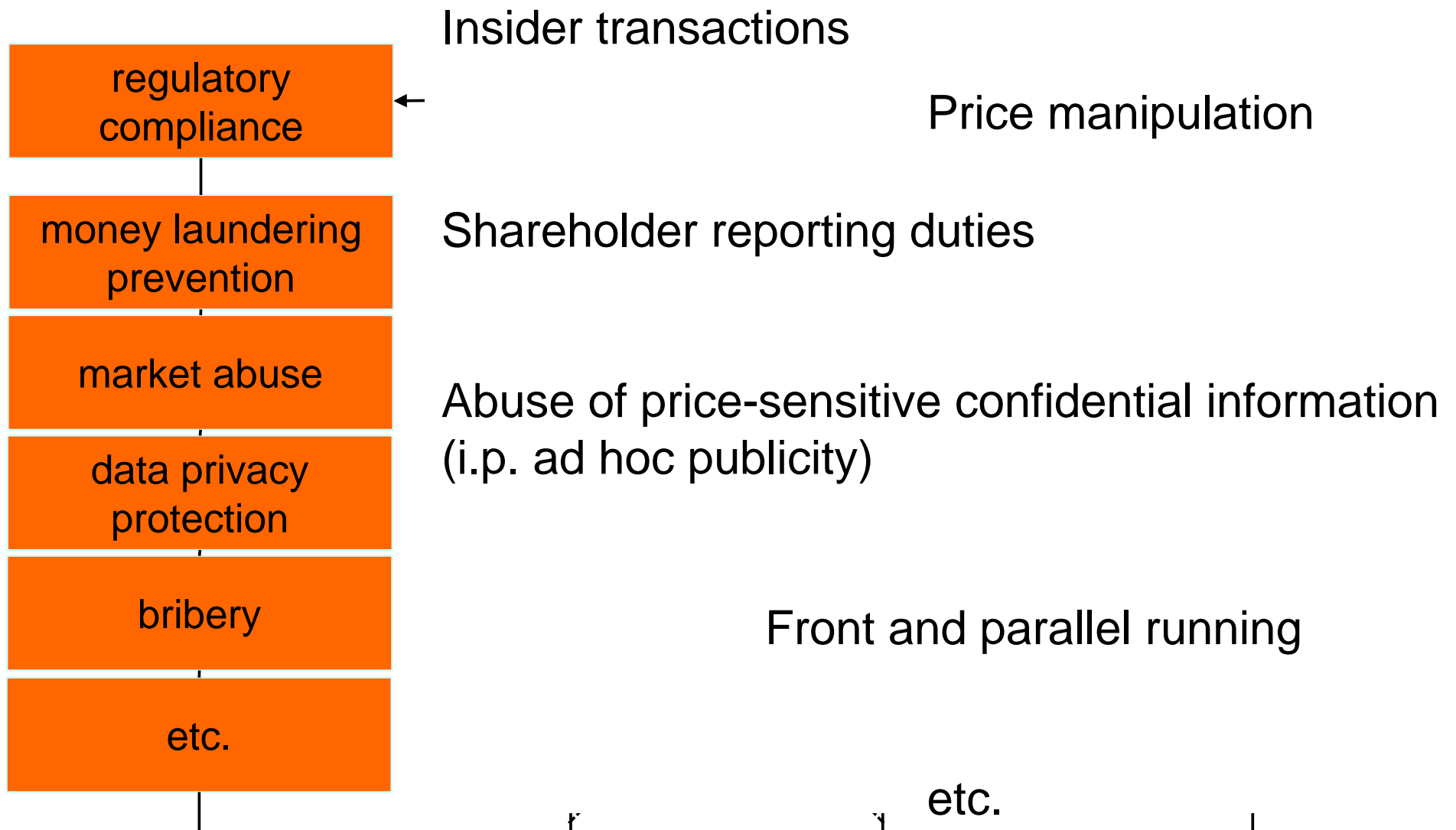
are or have been involved in a criminal act

are subject of money laundering

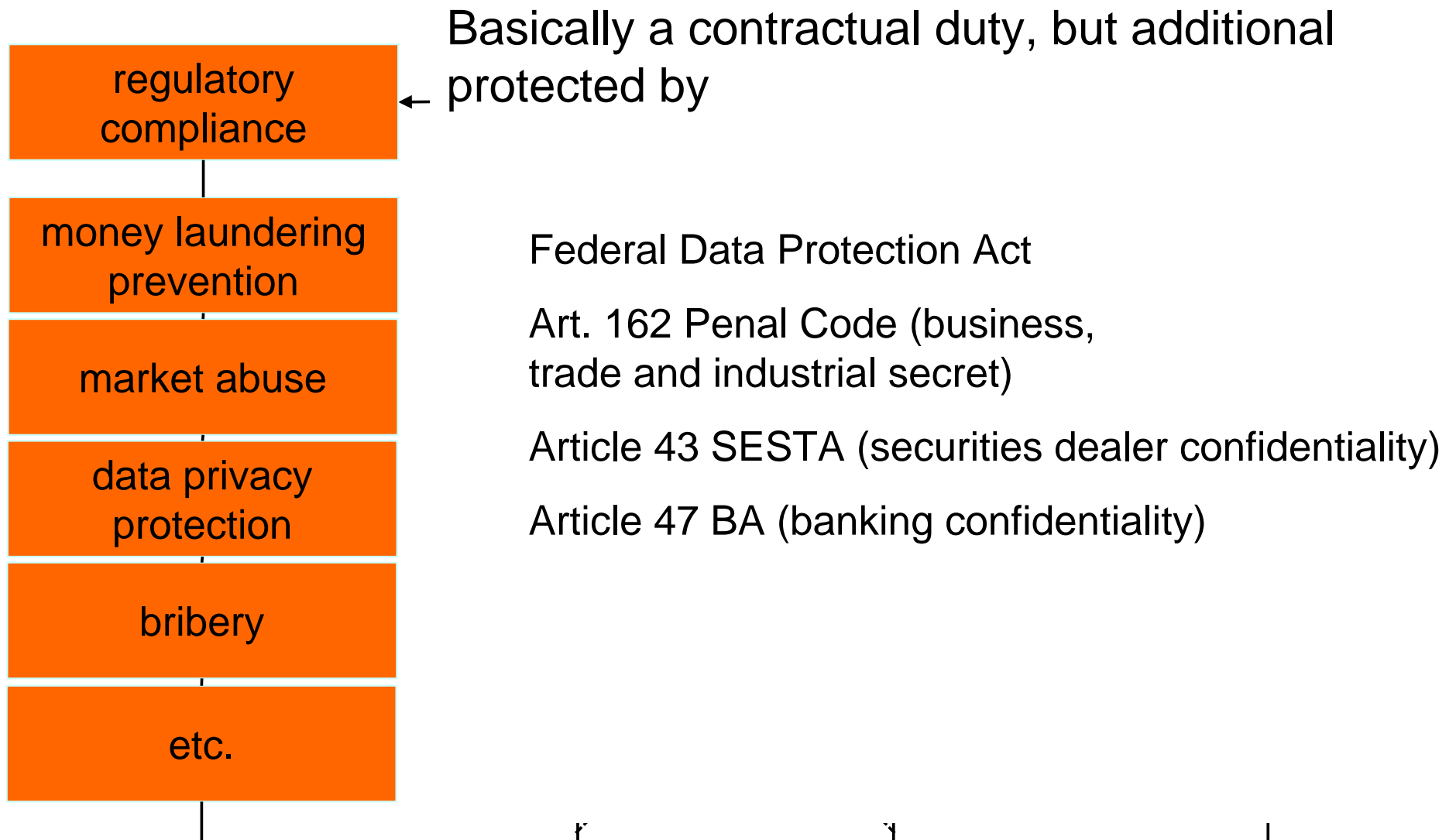
economically belong to a criminal organization

- Criminal liability is a corporate as well as a personal and individual liability

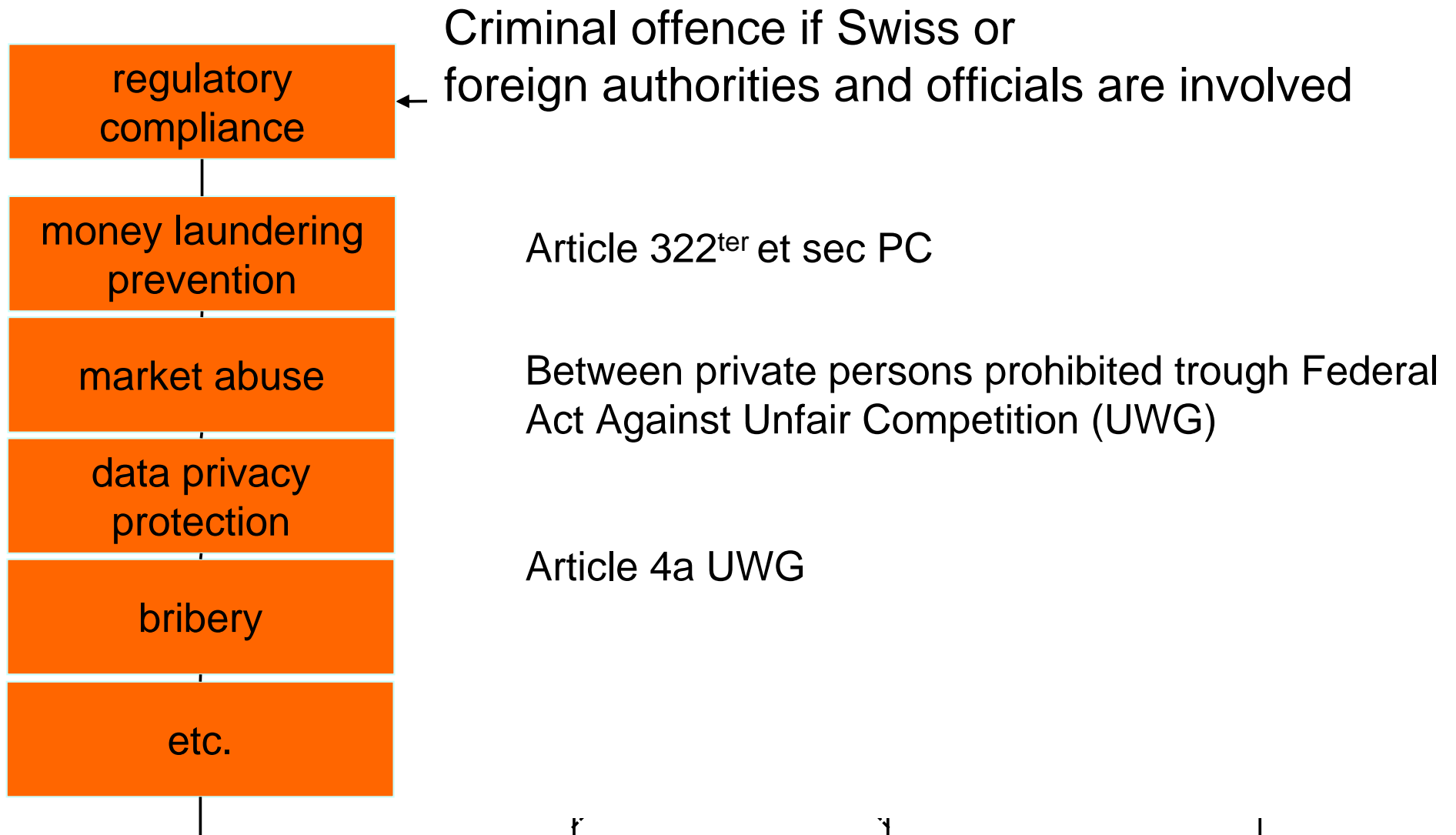
Compliance in operating activities: cornerstones



Compliance in operating activities: cornerstones



Compliance in operating activities: cornerstones



Compliance in operating activities: cornerstones

Duty to identify customer's

- risk capacity and awareness
- risk appetite
- investment object / intention
- financial know how



Compliance in operating activities: cornerstones

Find suitable product according to consumer profile in terms of

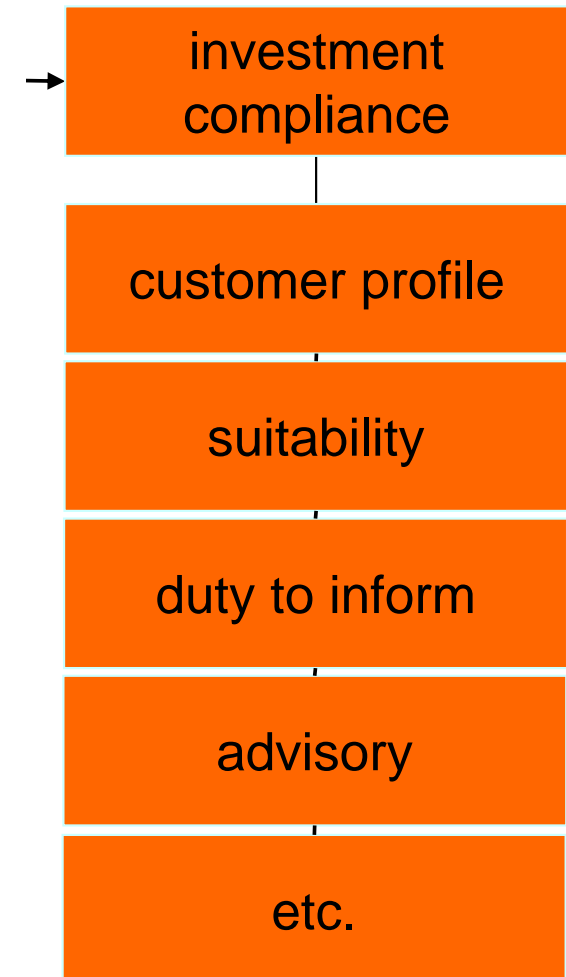
- risk of loss
- return on investment potential
- negotiability
- etc.



Compliance in operating activities: cornerstones

Duty to inform customer about

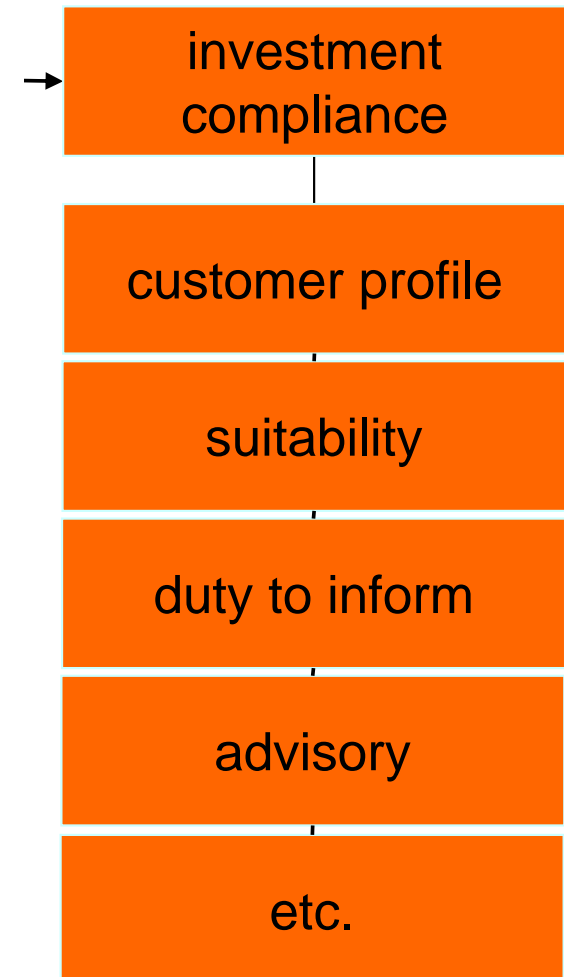
- product profile (return on investment potential and risk of loss)
- development of portfolio and necessary steps



Compliance in operating activities: cornerstones

With respect to the customer profile

- transparent information
- acting in accordance with industry codes of conduct
- acting with good faith in commercial dealings



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