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Amendments in the Ordinance on Collective Investment Schemes-FINMA (CISO-FINMA) concerning Swiss Representatives of Foreign Funds, effective as of 1 January 2021

The publication and information duties of the Swiss representatives of foreign collective investment schemes are currently specified in more detail in the FINMA Circular 2013/9 “Distribution of Collective Investment Schemes” (hereafter the “**FINMA-Circular**”). They will be integrated in the CISO-FINMA and the FINMA-Circular will be abolished as of 1 January 2021.

This applies in particular to the publication duties with regard to the subscription and redemption prices and NAVs. Furthermore, the CISO-FINMA expressly requires now that notifications about amendments in the fund documents are to be published in the publication organs in Switzerland at the same time as they are made available to the investors in the home country. This requirement of equal treatment of the investors is in principle not new. Currently the FINMA application forms ask for the date of the notification of the investors about amendments in the home country and, if the notification was not made at the same time in Switzerland, for the reasons of such a discrepancy. According to the FINMA-explanatory report, only such amendments are to be published in Switzerland, which also are to be published in the home country. The publication in Switzerland has to be made in the language of the prospectus that is offered in Switzerland to non-qualified investors. Furthermore, the publication in Switzerland has to contain the specific information for Swiss investors. As a consequence of the foregoing, the foreign funds have to plan and coordinate their notifications to the investors closely with the Swiss representative.

Moreover, also the information duties of the Swiss representative as specified in the FINMA-Circular will now be integrated in the CISO-FINMA. This applies in particular to the duty to inform the FINMA without delay (i) in the event of liquidation or merger of collective investment schemes or in case of change of the legal form of a collective investment scheme, (ii) in case that a collective investment scheme or a sub-fund is not launched or ceases to be offered in Switzerland, or (iii) in the event that the repayment of shares is deferred. Furthermore, as a new rule, the Swiss representative will have to inform the FINMA without delay in the event

that the fund management company decides to apply a Gating procedure.

Ombudsman Affiliation Requirement limited as of 1 February 2021

The current legal situation requires all financial service providers to be affiliated to an ombudsman by 25 December 2020. As from 1 February 2021, the ombudsman affiliation requirement will only apply to financial service providers that serve retail clients. It will then no longer apply to financial service providers serving solely institutional or professional clients (excluding high-net-worth retail clients who have declared themselves to be professionals).

In order to avoid a situation, that financial service providers who serve solely institutional or professional clients have to be affiliated to an ombudsman before 25 December 2020, only to be released from this duty a few weeks later, it has been agreed with the FINMA that the FINMA will not enforce this requirement in the period between 26 December 2020 and 31 January 2021.

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