

Newsletter March 2015

New model annex “Information for investors in Switzerland” for prospectuses of foreign collective investment schemes – Action required

1. Background

The prospectuses of foreign collective investment schemes (CIS) must provide for specific information for investors in Switzerland such as representative and paying agent in Switzerland. According to the Guidelines on Duties regarding the Charging and Use of Fees and Costs (Transparency Guidelines), which the Swiss Funds and Asset Management Association (SFAMA) issued on 22 May 2014, additional information regarding the payment of retrocessions and rebates must now be provided to investors in Switzerland.

Therefore, the SFAMA issued a revised model annex “Information for investors in Switzerland” dated 5 March 2015 on 17 March 2015, as acknowledged by the FINMA (hereafter “Model Annex”).

2. What is new?

2.1 Disclosure about retrocessions

Retrocessions are payments made by the CIS, the fund management company or the management company (as the case may be) and their agents as remuneration for distribution activities in respect of fund units in Switzerland. The Model Annex clarifies that retrocessions are not considered as rebates even if they are ultimately passed on to the investors.

The Model Annex provides for three alternative wordings in terms of retrocessions one of which has to be used as applicable in the individual case:

- retrocessions may be paid in the context of distribution in Switzerland. If retrocessions are paid, the particular distribution services (such as e.g. organization of road shows, attending fairs or events, etc.) for which retrocessions are paid have to be specified without naming the service providers.
- No retrocessions are paid.
- If the law of the country of domicile of the CIS or the fund management company (as the case may be) provides for stricter rules than Swiss law in respect to the payment of retrocessions in a country other than the country of domicile, these stricter rules al-

so apply to the distribution in Switzerland and they have to be described accordingly.

2.2 Disclosure about rebates

Rebates are direct payments made by the CIS or the fund management company or the management company (as the case may be) and their agents to investors upon their request, in order to reduce the fees or costs incurred by the investor in question. They are permitted provided that

- they are paid from fees received by the CIS, the Fund Management Company or the Management Company (as the case may be) and therefore do not represent an additional charge to the fund's assets;
- they are granted on the basis of objective criteria;
- all investors who meet these objective criterias and demand rebates are also granted these rebates within the same timeframe and to the same extent.

The Model Annex provides also for three alternative wordings in the context of the rebates one of which has to be used as applicable in the individual case:

- rebates may be paid in case of distribution activities in or from Switzerland; the aforementioned conditions under which the payment of rebates are allowed have to be mentioned as well as the objective criteria for the granting of rebates, such as e.g. volume, amount of fees generated by the investor, investment behaviour shown by the investor, investor's willingness to provide support in the launch phase of a CIS, etc.
- No rebates are granted.
- If the law in the country of domicile of the CIS or the fund management company (as the case may be) explicitly provides for stricter rules than Swiss law, they must also apply to the distribution in Switzerland and these stricter rules have to be described.

3. Which foreign funds are affected by the disclosure of retrocessions and rebates?

The Model Annex clarifies that it applies to both CIS which are distributed to non-qualified investors and CIS which are exclusively distributed to qualified investors. However, section 4 of the Model Annex regarding publications is not applicable to foreign funds which are exclusively distributed to qualified investors.

CIS which are distributed to non-qualified investors have to use the wordings in the Model Annex and the wordings given in the Model Annex may not be changed.

As a consequence, also CIS which are distributed exclusively to qualified investors will have to make statements on the payment of retrocessions and rebates. Furthermore, place of performance and jurisdiction must be also for these CIS at the registered office of the Swiss representative.

4. Deadline for the corresponding adaptation of the prospectuses of CIS

The prospectuses of the CIS distributed in or from Switzerland have to be adapted to these new requirements until 1st of June 2015.

The adapted prospectuses of CIS which are distributed to non-qualified investors have to be filed with the FINMA on 1st of June 2015 at the latest. However, the industry is currently asking for an extension of this deadline at the FINMA. Because it is unclear at present if and when an extension period would be granted, we recommend that the specific information for Swiss investors in the prospectuses is amended according to the Model Annex before 1st of June 2015.

5. Action required by the CIS

The CIS will have to clarify as soon as possible

- a) whether retrocessions are paid.

If yes ---> the particular distribution services (such as organization of road shows, attending fairs or events, etc.) for which retrocessions are paid have to be specified.

If no ---> no further action required except for the respective mention in the annex with the specific information for Swiss investors.

- b) whether rebates are paid:

If yes ---> the objective criteria have to be defined on the basis of which rebates may be paid.

If no ---> no further action required except for the respective mention in the annex with the specific information for Swiss investors.

- c) whether the law of the country of domicile of the CIS or the fund management company provides for stricter rules on retrocessions / rebates as Swiss law and these rules are mandatorily applicable to the distribution in Switzerland.

- If yes ---> description of the stricter foreign rules on retrocessions/rebates in the annex with the specific information for investors in Switzerland.

- If no ---> see 5.a) and b).

The content of this Newsletter does not represent legal advice and may not be used as such. For a personal consultation, please get in touch with your contact at Suter Howald Attorneys at Law. Should you have further questions in relation to the topics in this Newsletter, please contact:

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