

SWISS REGULATIONS ON COLLECTIVE INVESTMENT SCHEMES - OUTLOOK TO 2015

I. Upcoming Deadlines in 2015

1. Upcoming Deadlines under the Federal Act on Collective Investment Schemes (CISA) and the Ordinance on Collective Investment Schemes (CISO)

The revised CISA and the revised CISO which entered into force on 1st of March 2013 provide for several transitional provisions. The following transition periods end on **28 February 2015**:

Asset managers of foreign collective investment schemes

(Swiss) Asset managers of foreign collective investment schemes must meet the statutory requirements until 28 February 2015 and apply for authorisation. They may continue their activities until a decision regarding their application has been reached.

Financial intermediaries

Financial intermediaries who distribute foreign collective investment schemes to qualified investors must comply with the provisions of Article 30a CISO until 28 February 2015:

“A financial intermediary may distribute foreign collective investment schemes to qualified investors in Switzerland provided it is admitted for distribution of collective investment schemes in its country of domicile and concludes a written distribution agreement with a Swiss representative pursuant to Article 131a CISO to which Swiss law is applicable.

The distribution agreement commits the financial intermediary to exclusively using fund documents that indicate the representative, paying agent and place of jurisdiction.”

Representatives of collective investment schemes

Representatives of foreign collective investment schemes and distributors which are now subject to the CISA must meet the statutory requirements and apply for authorisation until 28 February 2015. They may continue their activities until a decision regarding their application has been reached.

Foreign collective investment schemes exclusively distributed to qualified investors

Foreign collective investment schemes which are distributed exclusively to qualified investors in Switzerland must ensure that the name of the collective investment scheme does not provide grounds for confusion and that a Swiss representative and paying agent has been appointed until 28 February 2015.

High-net-worth individuals

High-net-worth individuals are no longer permitted to invest in collective investments schemes reserved for qualified investors if they have not declared that they wish to be deemed qualified investors and if they do not meet the requirements set out in the CISA until 28 February 2015.

2. Upcoming Deadlines under the SFAMA Guidelines on Duties Regarding the Charging and Use of Fees and Costs (Transparency Guidelines) of 22 May 2014

The Swiss representatives of foreign funds authorized for distribution to non-qualified investors in Switzerland have to submit the FINMA the sales prospectuses, fund contracts and investment regulations which are adapted to the Transparency Guidelines no later than 1st of June 2015 for approval. With respect to the granting of rebates, compliance with the respective provisions is only

required, once the corresponding amendments have been made to the fund contract, investment regulations or sales prospectus.

The Swiss Funds and Asset Management Association (SFAMA) drafted a model wording for the specific information to Swiss investors which takes into consideration the rules according to the Transparency Guidelines and which is to be integrated in the sales prospectus before 1st of June 2015. The draft model wording of SFAMA is currently at the FINMA for approval.

3. Upcoming Deadlines under the SFAMA Guidelines on the Distribution of Collective Investment Schemes (Distribution Guidelines) of 22 May 2014

Existing Distribution Agreements must be amended until 30 June 2015 in order to be compliant with the Distribution Guidelines. Distribution Agreements are concluded between Swiss collective investment schemes or Swiss representatives of foreign collective investment schemes on the one hand and third parties who distribute collective investment schemes on the other hand.

The Distribution Guidelines are also applicable to financial intermediaries abroad who distribute foreign collective investment schemes in Switzerland exclusively to qualified investors.

4. Upcoming Deadlines under the Code of Conduct of the Swiss Funds & Asset Management Association SFMA (Code of Conduct) of 7 October 2014

The Code of Conduct entered into force on 1st of January 2015 and applies to Swiss collective investment schemes, asset managers of collective investment schemes with their registered office or branch in Switzerland and Swiss representatives of foreign collective investment schemes (hereafter "CISA Institutions"). The Code of Conduct contains in particular duties of loyalty, duties in respect of due diligence, duties of disclosure and duties of due diligence and loyalty in the distribution of collective investment schemes.

The CISA Institutions have to implement the provisions of the Code of Conduct by adapting existing contracts until 31 December 2015.

II. FINMA Collective Investment Schemes Ordinance

The revised FINMA Collective Investment Schemes Ordinance (hereafter "CISO-FINMA") entered into force on 1 January 2015. The CISO-FINMA was adapted to be in compliance with the changes in national and international regulatory standards.

In particular the disclosure of the **PTR is no longer requested**. However, annual and semi-annual reports with balance sheet date prior to and on 31 December 2014 still have to disclose the PTR.

Furthermore, based on this ordinance the Circular 2008/37 Delegation by Fund Management Company/SICAV of 20 November 2008 is abolished. The amended rules about the **Delegation by the Fund Management Company or the SICAV**, respectively, are integrated in Art 66 of the CISO-FINMA. Art. 66 of the CISO-FINMA provides that the fund management company, the SICAVs, asset managers of collective investment schemes and representatives of foreign collective investment schemes (hereafter the "Licensees") must conclude agreements in writing wherein the delegated tasks are specified. Furthermore, these agreements have to describe the competences and responsibilities, the authorization of sub-delegation, the representative's accountability and the right

of control of the Licensees. Moreover, the delegation of tasks may not lead to a disturbance of the audit of the auditor and of the supervision of the FINMA and the CISO-FINMA provides rules in case of a delegation to a delegate abroad. In addition, the delegation of tasks may not lead to an inappropriate organisational structure of the Licensees. The organisation is not considered as appropriate in case that Licensees

- do not have the power of taking decisions in decisive tasks that belong to the board of directors or the management respectively;
- do not have the appropriate human resources and knowledge to elect, instruct, supervise and control the risks of the delegate; or
- do not have or have only limited powers to give the necessary instructions to and to exercise their rights of control of the delegate.

Moreover, the CISO allows the set-up of **Master-Feeder-structures** since 1st of March 2013 under the condition that the master-fund is a Swiss collective investment scheme of the same type as the feeder-fund. The CISO-FINMA specifies the details of such structures. In particular, the CISO-FINMA provides for the transparency towards the investors of the feeder fund, the cooperation between the master- and the feeder-fund, the avoidance of conflicts of interest and the protection of the investors in the event of the liquidation of the master-fund.

In order to minimize the risks in connection with the management of **collaterals** received in the frame of investments or on the occasion of OTC-transactions, the CISO-FINMA introduced requirements in terms of the management and the custody of collaterals. Moreover, the collaterals have to be highly liquid, they must be valued on each trading day and they must be issued by an issuer of high creditworthiness which is independent of the counterparty.

The above is a non-exhaustive overview of the amended CISO-FINMA.

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