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# Swiss investment funds regulation – Upcoming implementation deadlines

The amended Swiss regulation of investment funds (Collective Investment Schemes Act **(CISA)** and Collective Investment Schemes Ordinance), which entered into force on 1 March 2013, entailed important changes in particular with respect to the concept of distribution as well as regarding the provisions applicable to foreign funds and their representatives, distributors and asset managers.

This newsletter highlights the main transitional rules under which action needs to be taken in the first half of 2015.

## Transitional rules under the CISA

**1. Foreign funds**

As set out in our newsletter of March 2013, the new CISA now also regulates the distribution of foreign funds to qualified investors in Switzerland and imposes an obligation on such funds to nominate a Swiss representative and paying agent. Foreign funds had two years, i.e. until **28 February 2015**, to fulfill the requirement of a representative and paying agent.

**2. Representatives of foreign funds**

Representatives of foreign funds distributed to qualified investors in Switzerland are now also regulated under the new CISA. Those entities which have already been acting as representatives of foreign funds distributed to qualified investors in Switzerland prior to the entry into force of the new CISA on 1 March 2013 have until **28 February 2015** to comply with the new statutory requirements and to submit their authorisation request to FINMA. Representatives which engaged in this activity only after 1 March 2013 had to comply with the statutory requirements straightaway, and do thus not benefit from the transitional rules.

**3. Distributors of foreign funds**

Distributors of foreign funds to qualified investors in Switzerland are now also governed by the CISA regulation. Those of them who engaged in this activity only after the entry into force of the new CISA on 1 March 2013 do not benefit from the transitional rules and therefore had to comply straightaway with the statutory requirements.

Swiss distributors of foreign funds for qualified investors in Switzerland, which have already been exercising their activity as distributors before 1 March 2013, have until **28 February 2015** to comply with the statutory requirements and to file an authorisation request with FINMA. As to financial intermediaries domiciled abroad distributing foreign funds to qualified investors in Switzerland, they must be subject to appropriate supervision in their country of domicile and have concluded a written distribution agreement with the Swiss representative by the **28 February 2015** deadline.

**4. Asset managers of foreign funds**

Asset managers of foreign funds are now also subject to the regulation of the CISA. Those of them who have already been exercising their activity before 1 March 2013 must file their request for authorisation with FINMA by **28 February 2015**.

## SFAMA Self-Regulation

Following the revision of the CISA, the Swiss Funds & Asset Management Association (**SFAMA**) has adapted its code of conduct as well as its guidelines on distribution and transparency. The Swiss Financial Market Supervisory Authority (**FINMA)** has recognized this self-regulation as a minimum standard applicable to the funds' industry.

**1. Distribution Guidelines**

The Guidelines on the Distribution of Collective Investment Schemes (**Distribution Guidelines**) came into force mid-2014. Essentially, they require the fund providers (i.e. fund managers, SICAFs, SICAVs and representatives of foreign funds distributed in Switzerland) to select the distributors with due care and to cooperate with and supervise them in a systematic manner. For fund distributors, the Distribution Guidelines contain rules regarding their organisation as well as information and documentation duties. Fund providers and distributors must conclude written distribution agreements on the basis of the SFAMA model that basically covers the rights and obligations of the parties, the possibility and conditions of a sub-delegation to further distributors as well as remuneration aspects. The transitional rules of the Distribution Guidelines stipulate that existing distribution (and sub-distribution) agreements must be adapted by the fund providers and distributors by **30 June 2015** at the latest.

**2. Transparency Guidelines**

The Guidelines on the requirements for charging fees and costs incurred and the purpose for which they are used (**Transparency Guidelines**) also became effective mid-2014 and contain transitional provisions. Their purpose is for the investors to be duly informed of the fees and costs charged to the fund's assets and their use. Fund providers must adapt their fund documentation and distribution agreements accordingly, disclose the fees and additional costs in the annual report and revise their internal guidelines and processes regarding retrocessions (disclosure) and discounts granted to investors (objective criteria for discounts and disclosure requirement). Eventual stricter foreign rules regarding the distribution in Switzerland prevail and must be explicitly specified in the annex to the sales documentation. Fund managers respectively SICAVs have until **1 March 2015** and the representatives of foreign funds distributed in Switzerland until **1 June 2015** to submit the amended fund documentation to FINMA for their approval.

## Conclusion

Foreign funds as well as representatives, distributors and asset managers of foreign funds that have started their activities in Switzerland before 1 March 2013 need to take immediate action so as to comply with the requirements of the CISA by 28 February 2015.

Furthermore, fund providers and distributors must amend their distribution agreements according to the Distribution Guidelines by 30 June 2015. Fund managers respectively SICAVs and the representatives of foreign funds must align their fund documentation with the Transparency Guidelines and submit them to FINMA for approval by 1 March 2015 respectively 1 June 2015.

## Contact

The content of this newsletter is for information purposes only and does not constitute a legal advice or opinion. Should you require specific advice in this matter, please get in touch with your usual contact at ALTENBURGER LTD legal + tax or with one of the below authors of this newsletter.

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