



Changes for existing Representatives of foreign collective investment schemes based on the new rules of conduct of the Swiss Funds & Asset Management Association SFAMA

Rules of Conduct SFAMA

What changes in terms of the scope of application of the Rules of Conduct SFAMA compared to

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The new Rules of Conduct SFAMA for Representatives of foreign collective investment schemes ("Representatives") have entered into force on January 1, 2015. The Rules of Conduct SFAMA replace the rules of conduct as of March 30, 2009 for the Swiss fund industry ("Rules

the Rules of Conduct March 30, 2009?

The Rules of Conduct SFAMA differentiate now between the provisions applicable to Representatives of foreign collective investment schemes for non-qualified investors (“Representatives-non qualified”) (duties in respect of due diligence (N 56 et seq.), duties of disclosure (N 76 et seq.) as well as duties of due diligence and loyalty in the distribution of collective investment schemes (N 111 et seq.)) and the provisions exclusively applicable to Representatives of foreign collective investment schemes for qualified investors (“Representatives-qualified”) (duties in respect of due diligence (N 56 et seq.) as well as duties of due diligence and loyalty in the distribution of collective investment schemes (N 111 et seq.)) (N 13). Representatives-non qualified are now explicitly subject to the application of the duties in respect of due diligence in the sense of and as foreseen in the Rules of Conduct SFAMA (N 56 – 75).

of Conduct March 30, 2009”).

This gap-analysis between the Rules of Conduct March 30, 2009 and the as of January 1, 2015 applicable provisions with the Rules of Conduct SFAMA in the form of FAQ inform Representatives having a FINMA-license as of January 1, 2015 about the required amendments of the existing documents and contracts respectively their new rights and obligations and in particular their date of entry.

What is the deadline for the implementation of the changes foreseen in the Rules of Conduct SFAMA?

There is a transition period until December 31, 2015 within which the Funds and their agents will have to finalize the implementation of the contracts to be amended (N 119). The transition period is explicitly only applicable to the amendment of existing contracts. All other duties, such as the multiple obligations for the issuance of new policies, must already be implemented as of January 1, 2015. You might thus have to take immediate action.

Which new obligations are applicable to Representatives-non qualified beginning January 1, 2015?

Organizational measures ensuring compliance with statutory and other duties and delegation of tasks according to the Rules of Conduct SFAMA

The Rules of Conduct SFAMA foresee now clearly that also Representatives-non qualified must have internal regulations and appropriate organization to ensure compliance with their statutory and other duties (N 60). When delegating tasks, the Representative-non qualified must now select only those agents that are adequately qualified to execute the tasks and must implement the measures necessary to ensure the correct instruction, proper supervision and monitoring of the execution (N 61).

Written definition of the organizational structures and processes and internal control systems

Representatives non-qualified must now define the organization of structures and processes, internal control systems, and allocations of competences in writing in a suitable form:

- Rules of conduct and competences for extraordinary circumstances (N 67);
- Regulations governing access to software used for valuation, recording deals, and controlling (N 68);
- Adequate risk management in accordance with the applicable provisions and regular information to the responsible body (N 69). Art. 67 to 71 rev-CISO-FINMA that have been entered into force on January 1, 2015 must in this context be considered regarding the principles of risk management, the to be enacted internal guidelines, the organization of risk management, the types of risks, processes and systems, the duties, and the responsibilities. There is however a transition period until December 31, 2015 for the implementation of the provisions regarding risk management and risk control;
- Appropriate business continuity management (BCM) (N 70). The Representative-non qualified must develop a BCM that is appropriate to its size and business activity. The Representative-non qualified must in my opinion however not apply the recommendations regarding Business Continuity Management (BCM) of the Swiss Bankers' Association by analogy. They can however serve as a guideline for the elaboration of an adequate BCM;
- Valuation of the collective investment scheme's assets (N 71);
- Constant monitoring of compliance with investment restrictions laid down in the law and regulations (compliance) (N 72);
- Rules of conduct and competences for cases in which, in addition to engaging in the fund business, the Representative-non qualified is active in the asset management, investment advice and/or safekeeping and technical administration of collective investment schemes (N 73).

Which new duties are applicable to Representatives-non qualified and Representatives-qualified simultaneously beginning January 1, 2015?

Provisions about the delegation of material duties changing the underlyings of the license according to rev-CISO-FINMA

The delegation of material duties that change the underlyings of the license of a Representative of foreign collective investment schemes to a third party requires a written agreement according to Art. 66 para. 1 and 2 rev-CISO-FINMA. This written agreement must describe the delegated duties, the competences and responsibilities, including any authorization for sub-delegation, the accountability of the agent and the control rights of the Representative. Any delegation of a duty by a Representative-non qualified requires according to the Rules of Conduct SFAMA a written contract with the same content (N 62). Art. 66 para. 1 to 4 rev-CISO-FINMA are applicable since January 1, 2015. There is no transition period. The rev-CISO-FINMA supersede in my opinion the Rules of Conduct SFAMA. That is why, subject to the requirements for an outsourcing to foreign jurisdictions, Representatives must comply with the provisions about the delegation of duties as stipulated in Art. 66 para. 1 and 2 rev-CISO-FINMA beginning January 1, 2015 and not beginning January 1, 2016 no matter the contractual nature of the delegation agreement.

Publishing performance data and disclosure of TER

The Rules of Conduct SFAMA state now clearly that Representatives must publish performance data in line with the SFAMA Guidelines on the Calculation and Publication of Performance Data (N 88) and must disclose transparently all fees and incidental costs incurred on the issue and redemption of units of collective investment schemes in line with the SFAMA Guidelines on the Calculation and Disclosure of the TER of Collective Investment Schemes (N 89).

You are kindly invited to address further questions to:

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Checklist about the deadlines and scope of the implementation for Representatives of the new respectively amended Rules of Conduct SFAMA

Only applicable to Representatives-non qualified with implementation beginning January 1, 2015

No.	Designation	Control
A	New provisions applicable beginning January 1, 2015	
1	Organizational measures ensuring compliance with statutory and other duties and delegation of duties according to the Rules of Conduct SFAMA	
2	Written definition of the organizational structures and processes and internal control systems <ul style="list-style-type: none">• Rules of conduct and competences for extraordinary circumstances• Regulations governing access to software• Adequate risk management in accordance with the applicable provisions and regular information to the responsible body• Appropriate business continuity management (BCM)• Valuation of the collective investment scheme's assets• Constant monitoring of compliance• Rules of conduct and competences for cases in which, in addition to engaging in the fund business, the Representative-non qualified is active in the asset management, investment advice and/or safekeeping and technical administration of collective investment schemes	

For Representatives-qualified and Representatives-non qualified with implementation beginning January 1, 2015

No.	Designation	Control
1	Provisions on the delegation of material tasks changing the underlyings of the license according to rev-CISO-FINMA	
2	Publishing performance data and disclosure of TER	



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