



Navigating the Swiss regulatory landscape for effective distribution

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Switzerland and Luxembourg have grown in parallel as key centres for wealth management over the past 20 years and more.

Switzerland's wealth managers have often sought to domicile funds in Luxembourg for distribution back to Switzerland and further afield. Meanwhile, Luxembourg funds have successfully sought access to the many wealth managers in Switzerland over the years.

According to FINMA statistics as at 30 June 2013, out of a total of 6,106 foreign funds registered with FINMA for distribution, 4,117 are Luxembourg domiciled. Luxembourg funds benefit most from Switzerland's acceptance of foreign funds.

What changes can we foresee in the coming years?

With the revised Collective Investment Schemes Act (CISA) and the revised Collective Investment Schemes Ordinance (CISO), which both entered into force on 1 March 2013, some new rules applicable to the marketing of foreign collective investment schemes have been implemented and the private placement regime has been restricted.

Any form of advertising or offering of collective investment schemes to non-qualified investors or 'retail investors' is considered as distribution. The definition of distribution extends to public entities, pension schemes with professional treasury operations, companies with professional treasury operations and high net worth individuals (if they opted in to be considered as qualified investors).

Any type of 'distribution' will now require the appointment of a Swiss representative and paying agent. However, if distribution is limited to qualified investors only, authorisation of fund documents prior to their distribution in Switzerland is not required.

Total foreign funds registered in Switzerland



Foreign collective investment schemes already being distributed to Qualified Investors in Switzerland benefit from a 2 year transition period until they need to comply with the new rules, in particular having a Swiss Representative and paying agent appointed.

A few things not considered to be distribution include marketing to supervised financial intermediaries¹ and insurance companies, the publication of prices and similar figures by regulated financial intermediaries², the use of collective investment schemes for employee participation plans, and reverse solicitation or discretionary clients. They are therefore categorised as private placement activities which do not fall within the scope of CISA and have no additional requirements such as the appointment of a Swiss representative and paying agent or FINMA authorisation of collective investment schemes.

¹ Banks, securities dealers, fund management companies, asset managers and central banks

² Provided that the publication of this information does not contain any contact details



The below illustration reflects the new concept of distribution and requirements for each of the four categories as well as the different methods to approaching qualified investors:

Situation prior to 1 March 2013

NO PUBLIC ADVERTISING	<ul style="list-style-type: none"> • Publication of prices and similar figures by regulated financial intermediaries • Employee participation plans • Reverse solicitation exemption (including advisory client and execution-only exemptions)
	<p>Qualified investors under CISA, art. 10 para. 3</p> <ul style="list-style-type: none"> • Regulated financial intermediaries such as banks, securities dealers, fund management companies, asset managers of collective investment schemes as well as central banks • Supervised insurance companies • Clients of discretionary asset management with regulated financial intermediaries • Clients of discretionary asset management with independent asset managers (under certain additional conditions)
PUBLIC ADVERTISING	<ul style="list-style-type: none"> • Public entities and pension schemes with professional treasury operations • Companies with professional treasury operations • High net worth individuals (if opted-in)
	<ul style="list-style-type: none"> • High number of non-qualified investors

Situation after 1 March 2013

	FINMA fund approval required?	Swiss representative agent required?	Swiss paying agent required?
NO DISTRIBUTION	✗	✗	✗
	✗	✗	✗
DISTRIBUTION	✗	✓	✓
	✓	✓	✓

In 2012, the hot topic of foreign funds registered for distribution in Switzerland was FINMA's concern regarding the governance structure in place within UCITS and in particular the segregation of duties and level of participation of board members. In some cases, UCITS fund applications were on hold after FINMA's assessment of the responses provided. That said, many of these issues were resolved following the issuance of CSSF Circular 12/546 on substance requirements (in which all Luxembourg UCITS had to comply with by 30 June 2013), which addresses many of the issues that concerned FINMA.

Another significant change implemented by the revised CISA relates to the management of collective investment schemes. Under new regulations applicable from 1 March 2013, CISA now also applies to any entity managing foreign collective investment schemes from Switzerland. These entities now require FINMA authorisation and will be subject to supervision, whereas previously this was only required for investment managers of Swiss collective investment schemes.

The fact that any investment manager of foreign collective investment schemes operating from Switzerland requires authorisation is significant in light of the implementation of AIFMD. As of 23 July 2013, the management of EU alternative investment funds can only be delegated to a non-EU country provided that the investment manager in question is subject to a similar level of supervision comparable to that introduced by AIFMD. FINMA authorisation is required for entities performing asset management tasks and entities performing only advisory activities are out of scope. The lines are somewhat blurred between what is effectively classed as being management and what is considered advice but the general consensus so far is that this should be determined by questioning which entity has the power to decide on a fund's investments. Further guidance on the latter is expected to be issued by FINMA.

The regulations are changing in both Switzerland and the EU, and Luxembourg's fund industry needs to adapt to the new environment in order to benefit from the traditional access available to Swiss investors: the challenge is set.

To the point:

- Switzerland is inherently linked to Luxembourg from a wealth management perspective and vice versa, with Luxembourg funds holding the vast majority of the foreign fund market in Switzerland
- The financial regulatory landscape in Switzerland is evolving, along with several significant changes due to the revised CISA and CISO effected 1 March 2013
- The definition of what constitutes as 'distribution' in Switzerland was clearly set out in the revised Swiss law and those falling within this definition are now required to appoint a Swiss representative and paying agent. Activities falling outside of the aforementioned definition are considered as private placement
- The authorisation process of certain funds in Switzerland has been subject to significant delay, with the main bottleneck of funds requesting FINMA authorisation being substance questions on the governance structure of the UCITS. The latter was somewhat resolved by the CSSF Circular 12/546 on substance
- Under the new regulations, any entity managing foreign collective investment schemes from Switzerland will also have to be authorised and supervised by FINMA, which was not the case previously
- One element which still requires some clarification in relation to the management of collective investment schemes, is the precise definition of what is classified as management activities under the new requirements. This is important due to the fact that if an activity is only considered as 'advice', it will not require FINMA authorisation. Further FINMA guidance on the latter is anticipated