

Client Alert



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New Rules for the Distribution of Foreign Collective Investment Schemes to Qualified Investors

On February 28, 2015, the transitional period for the implementation of the new rules governing the distribution of foreign collective investment schemes (CIS) to qualified investors (QI) will end. From March 1, 2015, the distribution of CIS to QI in or from Switzerland will require the appointment of a Swiss representative and a Swiss paying agent as well as the conclusion of written agreements with all third-party distributors.

1. Introduction

The entry into force of the latest amendments of the Swiss Federal Act on Collective Investment Schemes (CISA) and the Collective Investment Schemes Ordinance (CISO) on March 1, 2013 led to fundamental changes of the rules governing the distribution of foreign CIS to QI in or from Switzerland. The transitional period for the implementation of the new requirements will end on February 28, 2015.

2. Key Points

■ Duty to appoint a representative and a paying agent

Under the new rules, the duty to appoint a Swiss representative and a Swiss paying agent is no longer restricted to foreign CIS distributed to non-QI but will also apply to foreign CIS that solely address QI.

The Swiss representative of a foreign CIS distributed only to QI

1. shall represent the CIS towards investors;
2. must ensure that it makes available to the investors the relevant documents of the CIS (such as the prospectus, the KIIDs (if any), the fund agreement or the articles of association and the investment regulations, as applicable) and that these documents contain the minimum information required by Swiss law;
3. must conclude written distribution agreements with third-party distributors, if any (see below);
4. is generally not subject to any legal duties to notify or publish.

The respective representative and paying agency agreements must be in place before March 1, 2015. Earlier this year, the Swiss Funds & Asset Management Association (SFAMA) has published a model representative agreement in relation to the distribution of CIS to QI.

■ Duty to conclude written distribution agreements with third-party distributors

The new rules also require that written distribution agreements with all third-party distributors engaging in the distribution to QI must be concluded before March 1, 2015. According to the SFAMA Guidelines on the Distribution of Collective Investment Schemes (dated May 22, 2014), such agreements must be based on the currently valid version of the model distribution agreement issued by the SFAMA.

■ Indicative Timetable

The following timetable represents an indicative schedule for the implementation of the new requirements.

Timetable regarding the implementation of the new distribution regime for CIS distributed to QI					
2014		2015			
Q4		Q1	Q2	Q3	Q4
Identify relevant foreign CIS which are to be distributed to QI in or from Switzerland	Verify whether the relevant CIS have already appointed a Swiss representative and a Swiss paying agent . If required, prepare, negotiate and conclude Swiss representative and paying agency agreements	Prepare and negotiate content of new distribution agreements and evaluate tax implications Signing of distribution agreements and, if necessary, application for distribution license latest as per the end of transition period on February 28, 2015			Prepare for distribution audit or provide yearly confirmation of compliance

3. Conclusion

The distribution of foreign CIS to QI in or from Switzerland requires the timely appointment of a Swiss representative and a Swiss paying agent as well as the conclusion of written agreements with third-party distributors. Foreign CIS or their promoters, respectively, should accelerate the process of negotiating representative agreements, paying agency agreements and distribution agreements in order to ensure compliance with the revised law by the end of the transition period on February 28, 2015.

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