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Collective Investment Schemes in Switzerland

Practial overview and legal basis

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pwc

Introductory remarks

In December 1994 we published our first booklet on the federal act of 1995 and ordinances regarding investment funds. This and subsequent publications served many practitioners as a valuable reference guide and enjoyed great popularity. Twenty years have passed since the first publication in the field of investment funds and the Federal Act on Collective Schemes (CISA) is also about to celebrate its ten year anniversary.

Legal developments abroad, which Switzerland has to adequately implement, as well as higher expectations by regulators and investors led to an ever-faster legal development. As a result, the Swiss Financial Market Supervisory Authority revised the Ordinance of the FINMA Collective Investment Schemes as of January 1st, 2015 (CISO-FINMA) and the Swiss Funds & Asset Management Association (SFAMA) made adjustments or additions to their guidelines and directives. As of January 1st, 2016, CISA licensees have to fulfil requirements relating to risk management/risk control and the use of derivatives and by January 1st, 2017 delegated tasks have to be integrated into the organisational regulations which have to be approved by FINMA.

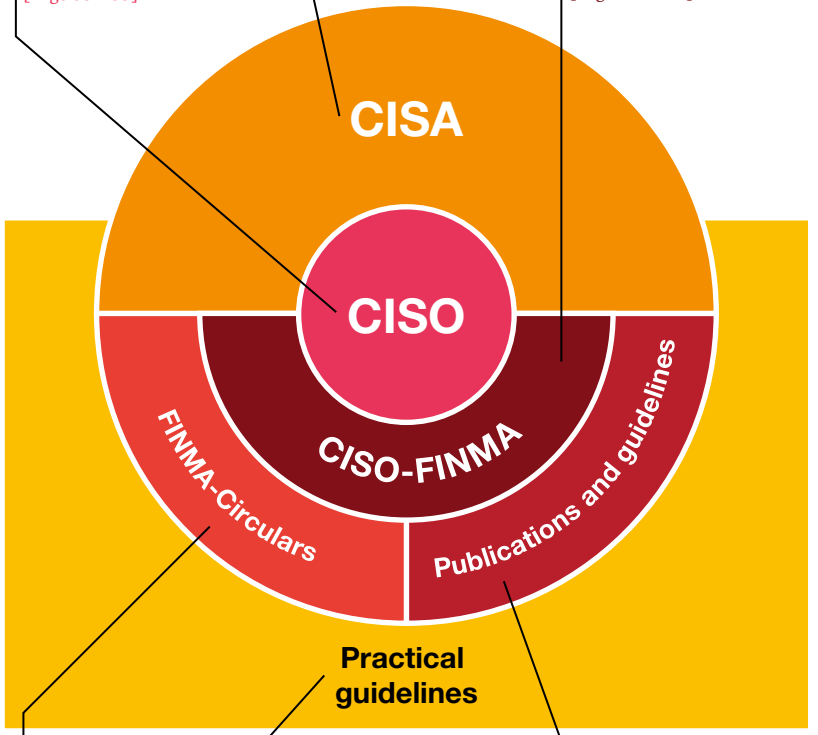
Although additional laws such as the Financial Services Act (FinSA) and the Financial Institution Act (FinIA) will soon enter into force or have already entered into force as of 1st January 2016 (Financial Market Infrastructure Act, FMIA), we have taken the opportunity to release an updated booklet.

With this present edition of Collective Investment Schemes in Switzerland we again provide you with a practical and comprehensive tool for your daily work. You will receive a good overview of the current state of Swiss legislation for collective investment schemes (incl. self-regulation) and the matters subject to mandatory authorisation and reporting. When reflecting the publications of the Swiss Financial Market Supervisory Authority and the SFAMA, we restricted ourselves to the most important documents; their most up-to-date versions can be looked up on their respective website (www.finma.ch/en or www.sfama.ch/en). Not all documents are available in English, as such we have provided a version of those in German.

We are convinced that this current edition of Collective Investment Schemes in Switzerland will be a useful companion for your daily work. On our homepage (www.pwc.ch/asset_management) you will find additional useful information as well as a regularly updated online version of this book. We would be pleased to advise you on the implementation of regulatory matters and be at your disposal for all the questions you may have.

Winter 2016/2017 PricewaterhouseCoopers AG

Overview



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Part A: Federal Act on Collective Investment Schemes (Collective Investment Schemes Act, CISA)

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

Federal Act on Collective Investment Schemes
(Collective Investment Schemes Act, CISA)

of 23 June 2006 (Status as of 1 July 2016)

The Federal Assembly of the Swiss Confederation,

based on Article 98 paragraphs 1 and 2 and 122 paragraph 1 of the Federal Constitution[1],
and having considered the Federal Council Dispatch of 23 September 2005[2],
decrees:

Title 1 General Provisions
Chapter 1 Aim and Scope of Application

Art. 1 Aim

This Act aims to protect investors and to ensure transparency and the proper functioning of the market for collective investment schemes.

Art. 2 Scope of Application

[1] This Act governs the following, irrespective of their legal status:

a. Swiss collective investment schemes and persons who are responsible for the management and distribution of such schemes, and the safekeeping of assets held in them;

b. foreign collective investment schemes which are distributed in Switzerland;

c. persons who manage foreign collective investment schemes in or from Switzerland;

d. persons who distribute foreign collective investment schemes in Switzerland;

e. persons who distribute, from Switzerland, foreign collective investment schemes which are not exclusively reserved for qualified investors as defined in Article 10 paragraph 3, 3bis or 3ter, or subject to equivalent foreign law;

f. persons who represent foreign collective investment schemes in Switzerland.[3]

[2] The following are not governed by this Act:

a. institutions and ancillary institutions in the occupational pensions sector, including investment foundations;

b. social security institutions and compensation funds;

c. public authorities and institutions;

d. operating companies which are engaged in business activities;

e. companies which by way of a majority of the votes or by any another way bring together one or more companies to form a group under single management (holding companies);

f. investment clubs whose members are in a position to manage their financial interests themselves;

g. associations and foundations as defined in the Swiss Civil Code[4];

h.[5] asset managers of collective investment schemes whose investors are qualified as defined in Article 10 paragraph 3, 3bis or 3ter and which meet one of the following requirements:

1. The assets under management, including the assets acquired through the use of leveraged finance, amount in total to no more than CHF 100 million.

2. The assets under management of the collective investment schemes consist of non-leveraged collective investment schemes where investors are not permitted to exercise redemption rights for a period of five years after their first investment is made in each of these collective investment schemes, and amount to no more than CHF 500 million.

3. The investors are exclusively group companies of the group of companies to which the asset manager belongs.

[2bis] Asset managers of collective investment schemes pursuant to paragraph 2 letter h may subject themselves to this Act if this is required by the country in which the collective investment scheme is established or distributed. The Federal Council defines the details. It may require a registration nonetheless in order to be able to collect economically significant data irrespective of whether such asset managers subject themselves to this Act.[6]

AS **2006** 5379
1 SR **101**
2 BBl **2005** 6395

3 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
4 SR **210**
5 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
6 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

[3] Investment companies in the form of Swiss companies limited by shares are not governed by this Act, provided they are listed on a Swiss exchange, or provided that:

a. only shareholders as defined in Article 10 paragraphs 3, 3bis and 3ter are entitled to participate in them; and

b. their shares are registered.[7]

[4] ...[8]

Art. 3[9] Distribution

[1] The distribution of collective investment schemes pursuant to this Act is defined as any offering of and advertising for collective investment schemes that is not exclusively directed at investors as defined in Article 10 paragraph 3 letters a and b.

[2] The following are not deemed to be distribution:

a. the provision of information and the subscription of collective investment schemes at the instigation of or at the own initiative of investors, especially in the context of investment advisory agreements or for execution-only transactions;

b. the provision of information and the subscription of collective investment schemes based on a written discretionary management agreement with financial intermediaries as defined in Article 10 paragraph 3 letter a;

c. the provision of information and the subscription of collective investment schemes based on a written discretionary management agreement with an independent asset manager which:

1. in its capacity as a financial intermediary is governed by Article 2 Paragraph 3*e* of the Anti-Money Laundering Act of 10 October 1997[10],
2. is governed by the code of conduct issued by a specific industry body, such code of conduct being recognised as the minimum standard by the Swiss Financial Market Supervisory Authority (FINMA),
3. the discretionary management agreement complies with the standards of a specific industry body, such standards being recognized as the minimum standard by FINMA;

d. the publication of prices, net asset values and tax data by regulated financial intermediaries;

e. the offering of stock option schemes in the form of collective investment schemes to employees.

7 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
8 Repealed by No I of the Federal Act of 28 Sept. 2012, with effect from 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
9 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
10 SR **955.0**

Art. 4 In-house funds

[1] This Act does not govern in-house funds of a contractual nature which are created by banks and securities dealers for the purpose of collectively managing the assets of existing clients, provided the following requirements are met:

a. Clients participate in such in-house funds exclusively on the basis of a written discretionary management agreement.

b. No unit certificates are issued.

c.[11] They do not distribute such in-house funds.

[2] The creation and dissolution of in-house funds must be notified to the audit company[12] appointed under the Swiss Banking Act and the Stock Exchange Act.

[3] In the event of bankruptcy of the bank or securities dealer, assets and rights that form part of in-house funds shall be segregated in favour of the investors.

Art. 5 Structured products

[1] Structured products, such as capital-protected products, capped return products and certificates, may only be distributed in or from Switzerland to non-qualified investors if:[13]

a. they are issued, guaranteed or secured in an equivalent manner by:[14]

1. a bank as defined in the Federal Act on Banks and Savings Banks of 8 November 1934[15],
2. an insurance company as defined in the Federal Act on the Supervision of Insurance Companies of 17 December 2004[16],
3. a securities dealer as defined in the Stock Exchange Act of 24 March 1995[17],
4. a foreign institution that is subject to equivalent standards of supervision,

b. a simplified prospectus is available for them.

[1bis] The issuing of structured products to non-qualified investors by special purpose entities is permitted if they are distributed by an institution as defined in paragraph 1

11 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
12 Term in accordance with Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829). This change has been made throughout the text.
13 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
14 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
15 SR **952.0**
16 SR **961.01**
17 SR **954.1**

letter a and equivalent security is ensured. The Federal Council defines the requirements for equivalent security.[18]

2 The simplified prospectus must comply with the following requirements:

a. It must describe, in accordance with a standard format, the key characteristics of the structured product (key data), its profit and loss prospects, together with the significant risks for investors.

b. It must be easily understood by the average investor.

c. It must make reference to the fact that the structured product is neither a collective investment scheme, nor does it require the authorisation of FINMA.

3 A provisional simplified prospectus including indicative information must be made available free of charge to interested persons prior to subscribing the product or prior to concluding an agreement to subscribe the product. In addition, the definitive simplified prospectus must be made available free of charge to interested persons on issue or on concluding an agreement to subscribe the product.[19]

4 The requirement under Article 1156 of the Swiss Code of Obligations[20] for a prospectus shall not apply in this case.

5 In all other respects, structured products are not governed by this Act.

Art. 6 Delegation to the Federal Council

1 Within the framework of the implementing regulations, the Federal Council may fully or partially subject the collective investment schemes, similar schemes or companies to this Act, or fully or partially exempt asset-pooling constructs or companies from being subjected to this Act, provided that the protective purpose of this Act is not impaired.

2 For consultation purposes, it submits the relevant provisions to the committee responsible, in accordance with Article 151 paragraph 1 of the Parliament Act of 13 December 2002[21].

Chapter 2 Collective Investment Schemes

Art. 7 Definition

1 Collective investment schemes are assets raised from investors for the purpose of collective investment, and which are managed for the account of such investors. The investment requirements of the investors are met on an equal basis.

2 Collective investment schemes may be open or closed-ended.

18 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
19 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
20 SR **220**
21 SR **171.10**

3 The Federal Council may stipulate a minimum number of investors in accordance with the legal status and target group.[22]

4 In the case of single investor funds, the fund management company and the investment company with variable capital (SICAV) may delegate the investment decisions to the single investor. FINMA may exempt them from the duty to subject themselves to supervision recognised under Article 31 paragraph 3 and Article 36 paragraph 3, respectively.[23]

Art. 8 Open-ended collective investment schemes

1 Open-ended collective investment schemes may be in the form of a contractual fund (Art. 25 et seq.) or SICAV (Art. 36 et seq.).

2 With open-ended collective investment schemes, investors have either a direct or indirect legal entitlement, at the expense of the collective assets, to redeem their units at the net asset value.

3 Each open-ended collective investment scheme has its own fund regulations. In the case of contractual funds this is the collective investment contract (fund contract), and in the case of SICAVs it is the articles of association and the investment regulations.

Art. 9 Closed-ended collective investment schemes

1 Closed-ended collective investment schemes may be in the form of a limited partnership for collective capital investments (Art. 98 et seq.) or an investment company with fixed capital (SICAF, Art. 110 et seq.).

2 In the case of closed-ended collective investment schemes, investors have neither a direct nor an indirect legal entitlement at the expense of the collective assets to the redemption of their units at the net asset value.

3 Limited partnerships for collective investment are based on a company agreement.

4 SICAFs are based on articles of association and issue a set of investment regulations.

Art. 10 Investors

1 Investors are natural and legal persons, as well as general and limited partnerships, which hold units in collective investment schemes.

2 Collective investment schemes are open to all investors, except where this Act, the fund regulations or the articles of association restrict investor eligibility to qualified investors.

22 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
23 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

[3] Qualified investors pursuant to this Act specifically include:[24]

a.[25] regulated financial intermediaries such as banks, securities traders, fund management companies and asset managers of collective investment schemes, as well as central banks;

b. regulated insurance institutions;

c. public entities and retirement benefits institutions with professional treasury operations;

d. companies with professional treasury operations;

e. and f. …[26]

[3bis] High-net-worth individuals may declare in writing that they wish to be deemed qualified investors. In addition, the Federal Council may make such persons' suitability as qualified investors dependent on certain conditions, specifically technical qualifications.[27]

[3ter] Investors who have concluded a written discretionary management agreement as defined in Article 3 Paragraph 2b and c are deemed qualified investors unless they have declared in writing that they do not wish to be deemed as such.[28]

[4] The Federal Council may deem other categories of investors to be qualified.

[5] The FINMA may fully or partially exempt collective investment schemes from certain provisions of this Act, provided that they are exclusively open towards qualified investors and that the protective purpose of this Act is not impaired, specifically from the provisions concerning:[29]

a.[30] …

b. the requirement to produce a prospectus;

c. the requirement to produce a semi-annual report;

d. the requirement to provide investors with the right to terminate their investment at any time;

e. the requirement to issue and redeem units in cash;

f. risk diversification.

24 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 June 2013 (AS **2013** 585; BBl **2012** 3639).
25 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 June 2013 (AS **2013** 585; BBl **2012** 3639).
26 Repealed by No I of the Federal Act of 28 Sept. 2012, with effect from 1 June 2013 (AS **2013** 585; BBl **2012** 3639).
27 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 June 2013 (AS **2013** 585; BBl **2012** 3639).
28 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 June 2013 (AS **2013** 585; BBl **2012** 3639).
29 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 June 2013 (AS **2013** 585; BBl **2012** 3639).
30 Repealed by No I of the Federal Act of 28 Sept. 2012, with effect from 1 June 2013 (AS **2013** 585; BBl **2012** 3639).

Art. 11 Units

Units are claims against the fund management company conferring entitlement to the assets and income of the investment fund or interests in the investment company.

Art. 12 Protection against confusion or deception

[1] The designation «collective investment scheme» must not provide any grounds for confusion or deception, in particular in relation to the investments.

[2] Designations such as «investment fund», «investment company with variable capital», «SICAV», «limited partnership for collective investment», «investment company with fixed capital» and «SICAF» may only be used for the relevant collective investment schemes governed by this Act.[31]

Chapter 3 Authorisation and Approval

Section 1 General

Art. 13 Authorisation requirement

[1] Any party responsible for the management of a collective investment scheme, the safekeeping of the assets held in it or the distribution of it to non-qualified investors must obtain authorisation from FINMA.[32]

[2] The following are required to obtain authorisation:

a. fund management companies;

b. SICAVs;

c. limited partnerships for collective investment;

d. SICAFs;

e.[33] custodian banks of Swiss collective investment schemes;

f.[34] asset managers of collective investment schemes;

g. distributors;

h. representatives of foreign collective investment schemes.

[3] Asset managers of collective investment schemes, distributors and representatives who are already subject to other equivalent official supervisory control may be granted exemption from the authorisation requirements by the Federal Council.[35]

31 Amended by No III of the Federal Act of 25 Sept. 2015 (Law on Business Names), in force since 1 July 2016 (AS **2016** 1507; BBl **2014** 9305).
32 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
33 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
34 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

4 ...[36]

5 The persons cited in paragraph 2 letters a-d may only be entered in the Commercial Register once authorisation has been granted by FINMA.

Art. 14 Authorisation requirements

1 Authorisation is granted if:

a. the persons responsible for management and the business operations have a good reputation, guarantee proper management, and possess the requisite specialist qualifications;

b. the significant equity holders have a good reputation and do not exert their influence to the detriment of prudent and sound business practice;

c. compliance with the duties stemming from this Act is assured by internal regulations and an appropriate organisational structure;

d. sufficient financial guarantees are available;

e. the additional authorisation conditions listed in the relevant provisions of the Act are met.

1bis Insofar as the financial guarantees are used to meet minimal capital requirements, the Federal Council may stipulate higher capital requirements than required by the Code of Obligations[37].[38]

1ter The Federal Council may stipulate additional authorisation conditions in accordance with international developments. It may also make its granting of authorisation dependent on the conclusion of professional indemnity insurance or on evidence of financial guarantees.[39]

2 Furthermore, FINMA may make its granting of authorisation dependent on compliance with the codes of conduct of a specific industry body.

3 The following are deemed to be significant equity holders, provided they directly or indirectly control at least 10 percent of the capital or votes in the persons specified in Article 13 paragraph 2 or can materially influence their business activities in another way:

a. natural and legal persons:

b. general and limited partnerships;

35 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
36 Repealed by No I of the Federal Act of 28 Sept. 2012, with effect from 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
37 SR **220**
38 Inserted by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
39 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

c. financially related parties which meet this criterion on a combined basis.[40]

Art. 15 Duty to obtain approval

1 The following documents are required for obtaining the approval of FINMA:

a. for investment fund, the collective investment contract (Art. 25);

b. for SICAVs, the articles of association and investment regulations;

c. for limited partnerships for collective investment, the company agreement;

d. SICAFs, the articles of association and investment regulations;

e.[41] the relevant documents of foreign collective investment schemes which are distributed to non-qualified investors.

2 If an investment fund or SICAV is structured as an open-ended collective investment scheme with subfunds (Art. 92 et seq.), each subfund or category of shares requires individual approval.

Art. 16 Change in circumstances

If there is a change in the circumstances underlying the authorisation or approval, FINMA's authorisation or approval must be sought prior to the continuation of activity.

Art. 17 Simplified authorisation and approval procedure

The Federal Council may specify a simplified authorisation and approval procedure process for collective investment schemes.

Section 2[42] Asset Managers of Collective Investment Schemes

Art. 18 Organisation

1 Asset managers of collective investment schemes with their registered office in Switzerland may be:

a. legal persons in the form of companies limited by shares, partnerships limited by shares or limited liability companies;

b. general and limited partnerships;

c. Swiss branches of a foreign asset manager of collective investment schemes, provided:

40 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
41 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
42 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

1. the asset manager, including its branch, is subject to an appropriate supervisory control at its registered office,
2. the asset manager is adequately organised and has commensurate financial resources and qualified personnel to operate a branch in Switzerland, and
3. an agreement exists on cooperation and the exchange of information between FINMA and the relevant foreign supervisory authorities.

2 FINMA may make asset managers of collective investment schemes which belong to a financial group or conglomerate subject to group or conglomerate supervision if required by international standards.

3 FINMA may in justified instances grant collective investment schemes full or partial exemption from provisions of this Act, provided:

a. the protective purpose of this Act is not impaired; and

b. the asset management of collective investment schemes has been transferred to them by the following persons only:
   1. licensees pursuant to Article 13 paragraph 2 letters a–d and f, or
   2. foreign fund management companies or companies which in terms of organisation and investor rights are subject to regulations which are equivalent to the provisions of this Act.

Art. 18*a* Duties

1 The asset manager of collective investment schemes ensures the proper conduct of portfolio and risk management for one or more collective investment schemes.

2 It may in the course of such duties additionally perform administrative activities, subject to the provisions of Article 31.

3 In addition, it may perform the following ancillary services in particular:

a. fund business for foreign collective investment schemes, provided an agreement exists on the cooperation and the exchange of information between FINMA and the relevant foreign supervisory authorities in relation to the fund business and the foreign law requires such an agreement;

b. discretionary management of individual portfolios;

c. investment advisory services;

d. distribution of collective investment schemes;

e. representation of foreign collective investment schemes.

Art. 18*b* Delegation of tasks

1 Asset managers of collective investment schemes may delegate specific tasks, provided this is in the interest of efficient management.

2 They shall appoint only those persons who are properly qualified to execute the task, and ensure they receive the instruction, monitoring and control required for the implementation of the tasks assigned.

3 They may only delegate investment decisions to asset managers of collective investment schemes who are subject to recognised supervision.

4 Where foreign law requires an agreement on the cooperation and the exchange of information with foreign supervisory authorities, they may only delegate investment decisions to asset managers abroad where such an agreement exists between FINMA and the relevant foreign supervisory authorities.

Art. 18*c* Changes

FINMA must be notified in advance of any change in asset manager for collective investment schemes.

Section 3 Distributors

Art. 19

1 ...[43]

1bis A financial intermediary may only distribute foreign collective investment schemes intended solely for qualified investors if it is subject to appropriate supervision in Switzerland or its country of domicile.[44]

2 The Federal Council defines the authorisation conditions.

3 In particular, it may make authorisation dependent on adequate financial and professional guarantees on the part of the distributors.

4 ...[45]

Chapter 4 Code of Conduct

Art. 20 Principles

1 Licensees (authorised parties) and their agents shall fulfil the following requirements in particular:[46]

43 Repealed by No I of the Federal Act of 28 Sept. 2012, with effect from 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
44 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
45 Repealed by No I of the Federal Act of 28 Sept. 2012, with effect from 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
46 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

a. duty of loyalty: they act independently and exclusively in the interests of the investors;

b. due diligence: they implement the organisational measures that are necessary for proper management;

c.[47] duty to provide information: They ensure the provision of transparent financial statements and provide appropriate information about the collective investment schemes which they manage and distribute and the assets which they hold in safekeeping; they disclose all charges and fees incurred directly or indirectly by the investors and their appropriation; they notify investors of compensation for the distribution of collective investment schemes in the form of commissions, brokerage fees and other soft commissions in a full, truthful and comprehensible manner.

2 FINMA may specify minimum standards in the form of the codes of conduct of industry bodies.

3 Licensees shall take all necessary precautions to ensure that all duties in relation to all their business activities are performed properly.[48]

Art. 21 Investments

1 The licensees and their agents pursue an investment policy that at all times corresponds with the investment characteristics of the collective investment scheme as set out in the relevant documents.

2 In respect of the purchase and sale of assets and rights on their own behalf as well as that of third parties, they are only entitled to receive the fees specified in the relevant documents. Commissions and other financial benefits must be credited to the collective investment scheme.

3 Assets acquired for their own account may only be purchased at market price, while any sale of own-account assets must also be at market price.

Art. 22 Securities transactions

1 Counterparties for securities trades and other transactions must be carefully selected. They must offer a guarantee of best execution in terms of price, time and quantity.

2 The choice of counterparties must be reviewed at regular intervals.

3 Agreements which curtail the freedom of decision of the licensees or their agents are not permitted.

47 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
48 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

Art. 23 Exercising membership and creditors' rights

1 The membership and creditors' rights associated with the investments must be exercised independently and exclusively in the interests of the investors.

2 Article 685*d* paragraph 2 of the Code of Obligations[49] does not apply to investment funds.

3 If a fund management company manages several investment funds, the level of the participation with respect to the percentage limit set out in Article 685*d* paragraph 1 of the Code of Obligations is calculated individually for each investment fund.

4 Paragraph 3 also applies to each subfund of an open-ended collective investment scheme as defined in Article 92 et seq.

Art. 24 Further rules of conduct[50]

1 The licensees shall take the measures required to ensure the legitimate acquisition of clients and the objective provision of advice to the latter.

2 If they engage the services of third parties in the distribution of units in collective investment schemes, they shall conclude distribution agreements with these third parties.

3 The licensees and third parties engaged to distribute units shall record in writing the client's requirements that they have ascertained and the reasons for each recommendation for investment in a specific collective investment scheme. This written record is handed over to the client.[51]

Title 2 Open-Ended Collective Investment Schemes

Chapter 1 The Contractual Fund

Section 1 Definition

Art. 25

1 The contractual fund (investment fund) is based on a collective investment agreement (fund contract) under which the fund management company commits itself to:

a. involving investors in accordance with the number and type of units which they have acquired in the investment fund;

b. managing the fund's assets in accordance with the provisions of the fund contract at its own discretion and for its own account.

2 The custodian bank is a party to the contract in accordance with the tasks conferred on it by the law and by the fund contract.

49 SR **220**
50 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 Jan. 2014 (AS **2013** 585; BBl **2012** 3639).
51 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 Jan. 2014 (AS **2013** 585; BBl **2012** 3639).

[3] The investment fund must have the stipulated minimum assets. The Federal Council determines the level thereof, and the period in which it must be accumulated.

Section 2 The Fund Contract

Art. 26 Content

[1] The fund management company draws up the fund contract and, with the consent of the custodian bank, submits it to FINMA for approval.

[2] The fund contract sets out the rights and duties of the investors, the fund management company and the custodian bank.

[3] The Federal Council determines the minimum contents.[52]

Art. 27 Amendments to the fund contract

[1] Amendments to the fund contract must be submitted by the fund management company, with the consent of the custodian bank, to FINMA.

[2] If the fund management company amends the fund contract, it must publish a summary of the significant amendments in advance, in which reference is made to the locations where the full wording of the contractual amendments may be obtained free of charge.

[3] These publications must inform investors of their right to lodge objections with FINMA within 30 days of their publication. The procedure is based on the Federal Act on Administrative Procedure of 20 December 1968[53]. Investors must furthermore be made aware that they may request the repayment of their units in cash, while observing the contractual or regulatory notice period.[54]

[4] FINMA publishes its decision in the media of publication.

Section 3 The Fund Management Company

Art. 28 Organisation

[1] The fund management company must be a company limited by shares with its registered office and main administrative office in Switzerland.

[2] It must have a minimum capital. The Federal Council shall decide such amount.

[3] The share capital must be divided into registered shares.

52 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
53 SR **172.021**
54 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

[4] The fund management company must have an organisational structure that is appropriate to the tasks conferred on it. It sets out the duties and responsibilities in the articles of association and in the organisational regulations.

[5] The persons holding executive powers at the fund management company and custodian bank must be independent of the other party.

Art. 29[55] Objects

[1] The primary object of the fund management company is the conduct of fund business. In addition, it may provide the following ancillary services:

a. discretionary management of individual portfolios;
b. investment advisory services;
c. safekeeping and technical administration of collective investment schemes.

[2] The conduct of fund business for foreign collective investment schemes is governed by Article 18*a* paragraph 3 letter a.

Art. 30 Duties

The fund management company manages the fund at its own discretion and in its own name but for the account of the investors. In particular:

a. it decides on the issue of units, investments and their valuation;
b. it calculates the net asset value;
c. it determines issue and redemption prices in addition to income distributions;
d. it exercises all rights associated with the investment fund.

Art. 31 Delegation of duties

[1] The fund management company may delegate investment decisions as well as specific tasks, provided this is in the interest of efficient management.

[2] It shall appoint only those persons who are properly qualified to execute the task, and ensure they receive their instruction, monitoring and control required for the implementation of the assigned tasks.

[3] It may only delegate investment decisions to asset managers of collective investment schemes who are subject to a recognized supervision.[56]

[4] Where foreign law requires an agreement on cooperation and the exchange of information with foreign supervisory authorities, it may only delegate investment decisions to asset managers abroad where such an agreement exists between FINMA

55 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
56 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

and the relevant foreign supervisory authorities for the investment decisions concerned.[57]

5 For collective investment schemes subject to simplified distribution in the European Union under a specific treaty, investment decisions may not be delegated to the custodian bank or to other companies whose interests may conflict with those of the fund management company or the investors.[58]

6 The fund management company is liable for the actions of its agents as if they were its own.[59]

Art. 32 Capital adequacy

1 There must be an appropriate relationship between the equity of the fund management company and the total assets of the collective investment schemes that it manages. The Federal Council regulates this relationship.

2 In special cases, FINMA may grant a relaxation of the requirements or may order a tightening thereof.

3 The fund management company may not invest the prescribed equity in fund units which it itself has issued, nor may it lend the equity to its shareholders or to closely connected natural and legal persons. The holding of liquid assets with the custodian bank is not deemed to be lending.

Art. 33 Rights

1 The fund management company is entitled to:

a. receive the fees stipulated in the fund contract;

b. be exempt from any liabilities which may have arisen in the course of the proper execution of its duties;

c. receive reimbursement of the expenses incurred in connection with such liabilities.

2 These payments are made from the assets of the investment fund. Investors are not held personally liable.

Art. 34 Change of fund management company

1 The rights and duties of the fund management company may be transferred to another fund management company.

57 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
58 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
59 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

2 In order to be effective, the transfer agreement between the outgoing and incoming fund management company must be in writing, have the consent of the custodian bank and be approved by FINMA.

3 Prior to approval by FINMA, the outgoing fund management company publishes the proposed change in the media of publication.[60]

4 The investors must be informed in these publications of their right to lodge objections with FINMA within 30 days from publication. The procedure is based on the Federal Act on Administrative Procedure of 20 December 1968[61].[62]

5 FINMA authorises the change of fund management company if the legal requirements have been met and the continuation of the investment fund is in the interest of the investors.

6 It publishes its decision in the media of publication.

Art. 35 Segregation of fund assets

1 In the case of bankruptcy, assets and rights belonging to the fund management company will be segregated in favour of the investors. The same is true for the schedule of debts, assets and income potential. The fund management's claims are subject to Article 33.[63]

2 Debts of the fund management company which do not arise under the fund contract may not be set off against claims of the investment fund.

Chapter 2 Investment Company with Variable Capital

Section 1 General Provisions

Art. 36 Definition and duties [64]

1 SICAV is a company:

a. whose capital and number of shares are not specified in advance;

b. whose capital is divided into company and investor shares;

c. for whose liabilities only the company's assets are liable;

d. whose sole object is collective capital investment.

2 A SICAV shall have a minimum level of assets. The Federal Council determines the level and the period within which it must be accumulated.

60 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
61 SR **172.021**
62 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
63 Amended by Annex No 3 of the Federal Act of 18 March 2011 (Securing Investments), in force since 1 Sept. 2011 (AS **2011** 3919; BBl **2010** 3993).
64 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

3 The SICAV may only delegate investment decisions to asset managers of collective investment schemes subject to recognised supervision. Articles 30 and 31 paragraphs 1-5 apply mutatis mutandis.[65]

Art. 37 Formation

1 The formation of a SICAV is based on the provisions of the Code of Obligations[66] regarding the formation of companies limited by shares, with the exception of the provisions regarding contributions in kind, acquisitions in kind and special privileges.

2 The Federal Council specifies the minimum investment amount for a SICAV on its formation.[67]

3 …[68]

Art. 38 Company name

1 The company name must contain a description of the legal status or the abbreviation thereof (SICAV).

2 In all other respects, the provisions of the Code of Obligations[69] regarding the name of companies limited by shares apply.

Art. 39 Capital adequacy

1 There must be an appropriate relationship between the holdings of the company shareholders and the total assets of the SICAV. The Federal Council regulates this relationship.

2 In special cases, FINMA may grant a relaxation of the requirements or may order a tightening thereof.

Art. 40 Shares

1 The company shares are registered.

2 The company and investor shares have no nominal value and must be fully paid up in cash.

3 The shares are freely transferable. The articles of association may restrict investor eligibility to qualified investors if the shares of the SICAV are not listed on an exchange. If the SICAV withholds its consent to a transfer of the shares, Article 82 applies.

65 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
66 SR **220**
67 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
68 Repealed by No I of the Federal Act of 28 Sept. 2012, with effect from 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
69 SR **220**

4 The articles of association may specify different categories of shares, to which different rights are assigned.

5 The issuing of participation certificates, dividend right certificates and preference shares is prohibited.

Art. 41 Company shareholders

1 The company shareholders contribute the minimum holding necessary for the formation of the SICAV.

2 They resolve the dissolution of the SICAV and its subfunds in accordance with Article 96 paragraphs 2 and 3. [70]

3 In all other respects, the provisions regarding the rights of the shareholders (Art. 46 et seq.) apply.

4 The rights and duties of the company shareholders pass to the purchaser on the transfer of the shares.

Art. 42 Issue and redemption of shares

1 Unless the law and articles of association provide otherwise, a SICAV may at any time issue new shares at the net asset value and must, if requested by a shareholder, at any time redeem issued shares at the net asset value. This requires neither an amendment to the articles of association nor an entry in the Commercial Register.

2 A SICAV may not hold treasury shares, whether directly or indirectly.

3 The shareholders have no entitlement to the portion of newly issued shares corresponding to their previous holding. In the case of real estate funds, this is subject to Article 66 paragraph 1.

4 In all other respects, the issue and redemption of shares is conducted in accordance with Articles 78 to 82.

Art. 43 Articles of association

1 The articles of association must contain provisions concerning:

a.. the company name and its registered office;
b. the objects;
c. the minimum investment amount;
d. the convening of general meetings;
e. the executive and governing bodies;
f. the media of publication.

2 To be effective, the articles of association must include provisions on the following:

70 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

a. the term;
b. the restriction of shareholder eligibility to qualified investors and associated limitation of the transferability of shares (Art. 40, Para. 3);
c. the categories of shares and rights associated therewith;
d. the delegation of management and representation, and the attendant procedural details (Art. 51);
e. the passing of resolutions by means of correspondence.

Art. 44 Investment regulations

A SICAV shall produce a set of investment regulations. Its contents are based on the provisions regarding the fund contract, unless the law and articles of association provide otherwise.

Art. 44*a*[71] Custodian bank

[1] The SICAV must appoint a custodian bank in accordance with Articles 72–74.

[2] FINMA may grant exemptions from this duty if justified, provided:

a. the SICAV is exclusively open to qualified investors;
b. one or more institutions which are subject to equivalent supervision execute the transactions related to settlement and specialise in such transactions (prime broker); and
c. it is ensured that the prime broker or the foreign supervisory authority responsible for the prime broker will provide FINMA with all the information and documents that it requires to carry out its duties.

Art. 45[72] Relationship with the Financial Market Infrastructure Act

The provisions on public takeover offers (Arts. 125 to 141 of the Financial Market Infrastructure Act of 19 June 2015[73]) do not apply to SICAVs .

71 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
72 Amended by Annex No 9 of the Financial Market Infrastructure Act of 19 June 2015, in force since 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).
73 SR **958.1**

Section 2 Shareholders' Rights and Obligations[74]

Art. 46 Membership rights

[1] Any person recognised as a shareholder by the SICAV may exercise membership rights.

[2] The shareholders may represent their shares at a general meeting in person or be represented by a third party. Unless the articles of association provide otherwise, the third party need not be a shareholder.

[3] A SICAV shall keep a register of the shares, in which the names and addresses of company shareholders are recorded. It shall also keep a register under Article 697*l* of the Code of Obligations[75] of the beneficial owners of the shares held by company shareholders.[76]

[4] The articles of association may specify that the company shareholders and investor shareholders are both entitled to at least one seat on the board of directors in the case of self-managed as well as externally managed SICAVs.[77]

Art. 46*a*[78] Company shareholders' obligation to give notice

[1] Company shareholders whose shares are not listed on a stock exchange are subject to the obligation to give notice under Article 697*j* of the Code of Obligations[79].

[2] The consequences of failure to comply with obligation to give notice are governed by Article 697*m* of the Code of Obligations.

Art. 47[80] Voting rights

[1] Each share carries one vote.

[2] The Federal Council may authorise FINMA to order the splitting or merging of shares in a share class.

74 Amended by No I 6 of the Federal Act of 12 Dec. 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS **2015** 1389; BBl **2014** 605).
75 SR **220**
76 Second sentence inserted by No I 6 of the Federal Act of 12 Dec. 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS **2015** 1389; BBl **2014** 605).
77 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
78 Inserted by No I 6 of the Federal Act of 12 Dec. 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS **2015** 1389; BBl **2014** 605).
79 SR **220**
80 Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

Art. 48 Inspection rights

Inspection rights are based on the provisions of the Code of Obligations[81] regarding the shareholders' inspection rights unless this Act provides otherwise.

Art. 49 Other rights

In all other respects, Articles 78 et seq. apply.

Section 3 Organisation

Art. 50 General meeting

[1] The supreme governing body of the SICAV is the general meeting of shareholders.

[2] The general meeting is held every year within four months of the close of the business year.

[3] Unless otherwise provided for by the Federal Council, in all other respects, the provisions of the Code of Obligations[82] regarding the general meetings of companies limited by shares apply.[83]

Art. 51 Board of directors

[1] The board of directors consists of at least three but no more than seven members.

[2] The articles of association may authorise the board of directors to transfer management and representation in full or in part to individual members or third parties in accordance with the organizational regulations.

[3] The persons holding executive powers at the SICAV and custodian bank must be independent of the other party.

[4] The board of directors draws up the prospectus as well as the Key Investor Information Document or the simplified prospectus.[84]

[5] The administration of a SICAV may only be delegated to an authorised fund management company in accordance with Article 28 et seq.

[6] Unless otherwise provided for by the Federal Council, in all other respects, the provisions of the Code of Obligations[85] regarding the board of directors of companies limited by shares apply.[86]

81 SR **220**
82 SR **220**
83 Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
84 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
85 SR **220**
86 Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

Art. 52 Audit company

A SICAV shall appoint an audit company (Art. 126 et seq.).

Chapter 3 Types of Open-Ended Collective Investment Schemes and Investment Regulations

Section 1 Securities Funds

Art. 53 Definition

Securities funds are open-ended collective investment schemes which invest their assets in securities and comply with the laws of the European Communities.

Art. 54 Permitted investments

[1] Securities funds may invest in transferable securities issued on a large scale and in non-securitised rights having the same function (uncertified securities) and which are traded on a stock exchange or another regulated market that is open to the public, in addition to other liquid financial assets.

[2] The fund management company may also hold a limited volume of other securities and rights, as well as adequate liquidity.

Art. 55 Investment techniques

[1] The fund management company and the SICAV may employ the following investment techniques for the purpose of efficient management:

a. securities lending;
b. repurchase agreements;
c. borrowing of funds, though only on a temporary basis and up to a certain percentage;
d. pledging or transferring the ownership of collateral, however, only up to a certain percentage.

[2] The Federal Council may permit other investment techniques such as short selling and the granting of loans.

[3] It defines the percentage limits. FINMA regulates the details.

Art. 56 Use of derivatives

[1] The fund management company and the SICAV may conduct transactions in derivatives provided:

a. such transactions do not result in a change to the investment characteristics of the securities fund;

b. they have an appropriate organisational structure and adequate risk management;

c. the persons entrusted with processing and monitoring are qualified to do so, and can at all times comprehend and track the effect of the derivatives used.

2 The overall exposure to transactions involving derivatives may not exceed a certain percentage of the fund's net assets. Exposure to transactions involving derivatives must be calculated in relation to the statutory and regulatory limits, specifically with regard to risk diversification.

3 The Federal Council determines the percentage rate. FINMA regulates the details.

Art. 57 Risk diversification

1 In relation to their investments, the fund management company and SICAV must comply with the principles of risk diversification. As a rule, they may invest only a certain percentage of the fund's assets in the same debt issuer or company.

2 The voting rights acquired through the purchase of securities or rights in a single debt issuer or company may not exceed a certain percentage.

3 The Federal Council decides the percentage rates. FINMA regulates the details.

Section 2 Real Estate Funds

Art. 58 Definition

Real estate funds are open-ended collective investment schemes which invest their assets in real estate.

Art. 59 Permitted investments

1 Real estate funds may invest their assets in:

a. property, including fixtures and fittings;

b. investments in and claims on real estate companies whose sole objective is the purchase and sale and/or the rental and lease of their own property, provided that at least two thirds of their capital and voting rights are incorporated in the investment fund;

c. units in other real estate investment funds and listed real estate investment companies amounting to no more than 25% of the fund's total assets;

d. foreign real estate securities whose value can be adequately valued.

2 Co-ownership of property is permitted only if the fund management company or the SICAV can exert a dominant influence.

Art. 60 Securing liabilities

In order to secure their liabilities, the fund management company and SICAV must maintain an adequate proportion of the fund's assets in short-term fixed-interest securities or in funds available at short notice.

Art. 61 Use of derivatives

The fund management company and SICAV may conduct derivative transactions provided they comply with the investment policy. The provisions concerning the use of derivatives for securities funds (Art. 56) shall apply accordingly.

Art. 62 Risk diversification

Investments must be diversified by type of property, purpose of use, age, building fabric and location.

Art. 63 Special duties

1 The fund management company shall bear responsibility with regard to the investors for ensuring that the real estate companies belonging to the real estate fund comply with this Act and with the fund regulations.

2 The fund management company, custodian bank and its agents, as well as closely related natural and legal persons, may not acquire real estate assets from real estate funds or assign any such assets to them.

3 A SICAV may not acquire any real estate assets from the company shareholders, their agents, or closely connected natural or legal persons, nor may it assign such assets to them.

4 If justified, individual situations may arise where FINMA may grant an exemption from the ban on transactions with closely related persons as defined in paragraphs 2 and 3 if this is in the interest of the investors. The Federal Council regulates the exemption criteria.[87]

Art. 64 Valuation experts [88]

1 The fund management company and the SICAV shall appoint at least two natural persons or one legal person as valuation experts. Appointments require the approval of FINMA.[89]

2 Approval is granted if the valuation experts:[90]

87 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
88 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
89 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
90 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

a. possess the necessary qualifications;

b. are independent;

c.[91] …

[3] The valuation experts must conduct their valuations with the due diligence and expertise required of a valuation expert.[92]

[4] FINMA may make recognition dependent on the conclusion of professional indemnity insurance or on the evidence of financial guarantees.[93]

[5] It may stipulate additional requirements for the valuation experts and describe the valuation methods to be adopted.[94]

Art. 65 Special powers

[1] The fund management company and the SICAV may commission the construction of buildings provided the fund regulations explicitly permit the purchase of building land and the execution of construction projects.

[2] They may pledge land and cede the rights of lien as collateral; however, the encumbrance may not exceed on average a certain percentage of the market value of all real estate assets.

[3] The Federal Council defines the percentage rate. FINMA regulates the details.

Art. 66 Issue and redemption of units

[1] The fund management company and the SICAV must offer new units first to existing investors.

[2] The investors may request the redemption of their units at the end of a financial year provided they give twelve months' prior notice.

Art. 67 Trading

The fund management company and the SICAV ensure that real estate fund units are regularly traded via a bank or a securities dealer on a stock exchange or over the counter.

91 Repealed by No I of the Federal Act of 28 Sept. 2012, with effect from 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
92 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
93 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
94 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

Section 3 Other Funds for Traditional and Alternative Investments

Art. 68 Definition

Other funds for traditional and alternative investments are open-ended collective investment schemes that are neither securities funds nor real estate funds.

Art. 69 Permitted investments

[1] In particular, investments in securities, precious metals, real estate, commodities, derivatives, units of other collective investment schemes, as well as other assets and rights, are permitted for other funds for traditional and alternative investments.

[2] The following investments in particular may be conducted for these funds:

a. those that have only limited marketability;

b. those that are subject to strong price fluctuations;

c. those that exhibit limited risk diversification;

d. those that are difficult to value.

Art. 70 Other funds for traditional investments

[1] Other funds for traditional investments include open-ended collective investment schemes which in terms of their investments, investment techniques and investment restrictions exhibit a risk profile that is typical for traditional investments.

[2] Other funds for traditional investments are subject to the provisions concerning the use of investment techniques and derivatives for securities funds.

Art. 71 Other funds for alternative investments

[1] Other funds for alternative investments include open-ended collective investment schemes whose investments, structure, investment techniques (short-selling, borrowing of funds, etc.) and investment restrictions exhibit a risk profile that is typical for alternative investments.

[2] Leverage is permitted only up to a certain percentage of the fund's net assets. The Federal Council determines the percentage rate. FINMA regulates the details.

[3] Reference must be made in the fund name, as well as in the prospectus and marketing material, to the special risks involved in alternative investments.

[4] The prospectus must be offered free of charge to interested persons prior to an agreement being concluded or prior to subscription.

[5] FINMA may allow the transaction-related settlement services of a directly investing other fund for alternative investments to be provided by a regulated institution specializing in such transactions (prime broker). It may specify which monitoring functions must be undertaken by the fund management company and the SICAV.

Chapter 4 Common Provisions

Section 1 Custodian Bank

Art. 72 Organisation

[1] The custodian bank must be a bank pursuant to the Federal Act on Banks and Savings Banks of 8 November 1934[95] and have an appropriate organisational structure to act as custodian bank to collective investment schemes.[96]

[2] In addition to the persons entrusted with the management of the business operations, the persons entrusted with the tasks of custodian bank activity must also comply with the requirements laid down in Article 14 paragraph 1 letter a.

Art. 73 Duties

[1] The custodian bank is responsible for the safekeeping of the investment fund's assets, the issue and redemption of units, as well as payment transfers on behalf of the investment fund.

[2] It may transfer the responsibility for the safekeeping of the investment fund's assets to third-party custodians and collective securities depositories in Switzerland or abroad, provided this is in the interest of efficient safekeeping. Investors must be informed in the prospectus about the risks associated with such transfers.[97]

[2bis] Financial instruments may only be transferred (paragraph 2) to regulated third-party custodians and collective securities depositories. This does not apply to mandatory safekeeping at a location where the transfer to regulated third-party custodians and collective securities depositories is not possible, in particular due to mandatory legal provisions or to the investment product's modalities. Investors must be informed in the product documentation of safekeeping by non-regulated third-party custodians or collective securities depositories.[98]

[3] The custodian bank ensures that the fund management company or the SICAV complies with this Act and with the fund regulations. It verifies whether:[99]

a. the calculation of the net asset value and of the issue and redemption prices of the units is in compliance with this Act and with the fund regulations;

b. the investment decisions are in compliance with this Act and with the fund regulations;

c. the income is appropriated in accordance with the fund regulations.

95 SR **952.0**
96 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
97 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
98 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
99 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

[4] The Federal Council regulates the requirements for acting as a custodian bank and may specify parameters for the protection of the securities investments.[100]

Art. 74 Change of custodian bank

[1] In the case of investment funds, the provisions concerning a change of fund management company (Art. 34) also apply accordingly to a change of custodian bank.

[2] In the case of a SICAV, a change of custodian bank requires written agreement and must be approved in advance by FINMA.

[3] FINMA shall publish its decision in the media of publication.

Section 2 Prospectus, Key Investor Information Document and Simplified Prospectus [101]

Art. 75 Prospectus

[1] The fund management company and the SICAV shall publish a prospectus for each open-ended collective investment scheme.

[2] The prospectus shall include the fund regulations in cases where interested persons are not notified as to where such regulations may be separately obtained prior to an agreement being concluded or prior to subscription. The Federal Council determines which other information must be contained in the prospectus.

[3] If requested, the prospectus must be provided free of charge to interested persons prior to an agreement being concluded or prior to subscription.

Art. 76[102] Key Investors Information Document and simplified prospectus

[1] A document containing key information for investors must be published for securities funds and other funds for traditional investments, while a simplified prospectus must be published for real estate funds.

[2] The Key Investor Information Document contains factual information on the key features of the collective investment scheme concerned. It shall be presented in such a way that investors understand the nature and risks of the collective investment scheme and can make informed investment decisions on that basis.

[3] The simplified prospectus contains a summary of the key information provided in the prospectus. It must be easy to understand.

100 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
101 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
102 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 June 2013 (AS **2013** 585; BBl **2012** 3639).

4 The Federal Council determines the key characteristics and information. The FINMA may formalize the key information in accordance with international developments.

5 The Key Investor Information Document and simplified prospectus must be made available free of charge to any interested person prior to subscription of the product and prior to concluding an agreement for subscription of the product

Art. 77[103] Common provisions

1 Reference must be made to the prospectus and the Key Investor Information Document or the simplified prospectus in all advertising material, citing where such documents may be obtained.

2 The prospectus, the Key Investor Information Document or the simplified prospectus and any amendment to such documents must be submitted to the FINMA forthwith.

Section 3 Position of Investors

Art. 78 Purchase and redemption

1 On concluding a contract, or subscribing and paying in cash, investors acquire:

a. in the case of an investment fund, a claim against the fund management company to participate in the assets and income of the investment fund in accordance with the fund units they acquire;

b. in the case of a SICAV, an interest in the company and its unappropriated net earnings in accordance with the shares they acquire.

2 They are, in principle, entitled at all times to request the redemption of their units and payment of the redemption amount in cash. Unit certificates must be returned for cancellation purposes.

3 In the case of collective investment schemes with various unit classes, the Federal Council regulates the details.

4 FINMA may allow a derogation from the duty to make payments in and out of the fund in cash.

5 In the case of collective investment schemes with subfunds, the asset entitlements are based on Article 93 paragraph 2 and Article 94 paragraph 2.

Art. 79 Exceptions from the right to redeem at any time

1 In accordance with the investment provisions (Art. 54 et seq., Art. 59 et seq. and Art. 69 et seq.), the Federal Council may in the case of collective investment

103 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 June 2013 (AS **2013** 585; BBl **2012** 3639).

schemes whose value is difficult to ascertain, or which have limited marketability, specify exemptions from the right to redeem at any time.

2 However, it may only suspend the right to redeem at any time for a maximum period of five years.

Art. 80 Issue and redemption price

The issue and redemption prices of the units are based on the net asset value per unit on the day of valuation, plus or minus any fees and expenses.

Art. 81 Deferred repayment

1 The Federal Council determines in which instances the fund regulations may specify a limited deferment of the repayment of the units in the interest of all investors.

2 FINMA may in exceptional instances grant limited deferment for the repayment of the units in the interest of all investors.

Art. 82 Enforced redemption

The Federal Council enforces redemption if:

a. this is necessary to safeguard the reputation of the financial market, and specifically to combat money laundering;

b. the investor no longer meets the statutory, regulatory or contractual requirements, or the requirements set out in the articles of association, for participation in a collective investment scheme.

Art. 83 Calculation and publication of the net asset value

1 The net asset value of an open-ended collective investment scheme is calculated at the market value as of the end of the financial year, and on each day on which units are issued or redeemed.

2 The net asset value per unit represents the market value of the fund's assets, less all the fund's liabilities, divided by the number of units in circulation.

3 FINMA may permit a method of calculating the net asset value(s) that differs from that specified in paragraph 2, provided such method meets international standards and the protective purpose of this Act is not impaired as a result.

4 The fund management company and the SICAV publish the net asset values at regular intervals.

Art. 84 Right to information

1 The fund management company and the SICAV shall on request supply investors with information concerning the basis for the calculation of the net asset value per unit.

2 If investors express an interest in more detailed information on specific business transactions effected by the fund management company or the SICAV, such as the exercising of membership and creditors' rights, or on risk management, they must be given such information at any time.[104]

3 The investors may request at the courts of the registered office of the fund management company or the SICAV that the audit company or another expert investigate the matter which requires clarification and furnish the investors with a report.

Art. 85 Claim for reimbursement

If the open-ended collective investment scheme is unlawfully denied asset entitlements or benefits are withheld from it, the investors may claim compensation from the open-ended collective investment scheme concerned.

Art. 86 Representative of the investors

1 The investors may request that the courts appoint a representative if they wish to pursue a claim for damages in favour of the open-ended collective investment scheme.

2 The court shall give notice of the appointment in the media of publication of the open-ended collective investment scheme.

3 The representative has the same rights as the investors.

4 If the representative files an action for damages in favour of the open-ended collective investment scheme, the investors may no longer exercise their individual right to file such an action.

5 Unless the court decides otherwise, the expenses incurred by the representative are paid by the investment fund.

Section 4 Accounting, Valuation and Financial Statements

Art. 87 Accounting duty

Separate books of account must be kept for each open-ended collective investment scheme. Unless this Act or the implementing regulations provide otherwise, Article 662 et seq. of the Code of Obligations[105] apply.

Art. 88 Valuation at market value

1 Investments which are listed on a stock exchange or another regulated market open to the public shall be valued at the prices paid on the main market.

104 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
105 SR **220**. Today, Art. 957 et seq.

2 Other investments for which no current price is available must be valued at the price that would probably be obtained in a diligent sale at the time of valuation.

Art. 89 Annual and semi-annual report

1 An annual report shall be published for each open-ended collective investment scheme within four months of the close of the financial year; it shall contain the following data in particular:

a. the annual accounts consisting of a statement of net assets or the balance sheet and the profit and loss account, together with information concerning the appropriation of net income and the disclosure of expenses;

b. the number of units redeemed and newly issued during the financial year, as well as the final balance of the issued units;

c. the inventory of the fund's assets at market value and the resulting value (net asset value) of a fund unit as of the last day of the financial year;

d. the valuation principles as well as the principles used for the calculation of the net asset value;

e. a breakdown of the buy and sell transactions;

f. the names of persons and companies to which duties have been entrusted;

g. information relating to matters of particular economic or legal significance, specifically:
   1. amendments to the fund regulations,
   2. material questions concerning interpretation of this Act and the fund regulations,
   3. a change of fund management company and custodian bank,
   4.[106] changes concerning the executive officers at the fund management company, SICAV or asset manager of collective investment schemes,
   5. legal disputes;

h. the performance of the open-ended collective investment scheme, possibly benchmarking it with comparable investments;

i. a brief report by the audit company regarding the information mentioned above, as well as the items set out in Article 90 in the case of real estate funds.

2 The statement of net assets of the investment fund and the balance sheet of the SICAV must be prepared on the basis of market values.

3 A semi-annual report must be issued within two months after the end of the first half of the financial year. The report contains an unaudited statement of net assets or unaudited balance sheet and income statement, as well as information as per Paragraph 1b, c and e.

106 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

4 The annual and semi-annual reports shall be filed with FINMA the latest at the time of publication.

5 These are made available for inspection free of charge to interested parties for ten years.

Art. 90 Annual accounts and annual report of real estate funds

1 The annual accounts of a real estate fund consist of a consolidated statement of net assets or balance sheet and profit and loss account of the real estate fund and the associated real estate companies. Article 89 applies accordingly.

2 The statement of net assets must show property assets at market value.

3 The inventory of the fund's assets must state the purchase price and estimated market values of the individual property assets.

4 In addition to the information required as per Article 89, the annual report and the annual accounts shall contain the particulars of the valuation expert, the valuation methods and the capitalisation and discounting rates applied.

Art. 91 Supervisory requirements

FINMA issues additional regulations concerning the duty to maintain books of account, valuation, financial statements and publication requirements.

Section 5 Open-Ended Collective Investment Schemes with Subfunds

Art. 92 Definition

In the case of an open-ended collective investment scheme with subfunds (umbrella fund), each subfund constitutes a collective investment scheme in its own right and has its own net asset value.

Art. 93 Umbrella funds

1 In the case of an umbrella fund, investors are only entitled to the income and assets of the respective subfund in which they are participating.

2 Each subfund is liable only for its own liabilities.

Art. 94 SICAV with subfunds

1 Investors are only entitled to participate in the assets and income of the respective subfund in accordance with the number of shares they hold.

2 Each subfund is liable only for its own liabilities. In contracts with third parties, a SICAV must disclose that liability is restricted to a single subfund. If the restriction

is not disclosed, a SICAV is liable with its entire assets, subject to Article 55 and Article 100 paragraph 1 of the Code of Obligations[107].

Section 6 Restructuring and Dissolution

Art. 95[108] Restructuring

1 The following restructurings of open-ended collective investment schemes are permitted:

a. a merger through the transfer of assets and liabilities;

b. a conversion to a different legal status of a collective investment scheme;

c. in the case of SICAVs: the transfer of assets in accordance with Articles 69–77 of the Mergers Act of 3 October 2003[109].

2 A restructuring in accordance with paragraph 1 letters b and c may only be entered in the Commercial Register following FINMA's approval in accordance with Article 15.

Art. 96 Dissolution

1 An investment fund is dissolved:

a. if it was formed for an unlimited period: on notice by the fund management company or the custodian bank;

b. if it was formed for a fixed period: on expiry of such period;

c. by order of FINMA:

1. if it was formed for a fixed period: based on reasonable cause, at the request of the fund management company or the custodian bank,
2. if the minimum assets fall below the required amount,
3. in the cases specified in Article 13 paragraph 3 et seq.

2 A SICAV is dissolved:

a. if it was formed for an unlimited period: by resolution of the company shareholders, provided such resolution is carried by at least two thirds of the company shares;

b. if it was formed for a fixed period: on expiry of such period;

c. by order of FINMA:

1. if it was formed for a fixed period: based on reasonable cause, by resolution of the company shareholders, provided such resolution is carried by at least two thirds of the company shares,

107 SR **220**
108 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
109 SR **221.301**

2. if the minimum assets fall below the stipulated amount,
3. in the cases specified in Article 133 et seq.;

d. in the other cases specified by the Act.

[3] For the dissolution of subfunds, paragraphs 1 and 2 apply accordingly.

[4] The fund management company and the SICAV shall notify FINMA of the dissolution forthwith, and shall announce the dissolution in the media of publication.

Art. 97 Consequences of dissolution

[1] Following its dissolution, an investment fund or SICAV may neither issue nor redeem any units.

[2] In the case of an investment fund, investors have a claim to a proportionate share of the proceeds of liquidation.

[3] In the case of a SICAV, investors have the right to a proportionate share of the proceeds of the liquidation. The rights of company shareholders are subordinate. In all other respects, Articles 737 et seq. of the Code of Obligations[110] apply.

Title 3 Closed-Ended Collective Investment Schemes

Chapter 1 The Limited Partnership for Collective Investment

Art. 98 Definition

[1] A limited partnership for collective investment is a partnership whose sole object is collective investment. At least one member bears unlimited liability (general partner), while the other members (limited partners) are liable only up to a specified amount (limited partner's contribution).

[2] General partners must be companies limited by shares with their registered office in Switzerland. They may only be active as a general partner in one limited partnership for collective investment.

[2bis] The conditions for obtaining an authorisation as defined in Article 14 also apply to the general partners.[111]

[3] Limited partners must be qualified investors as defined in Article 10 paragraph 3.

Art. 99 Relationship to the Code of Obligations

Unless this Act provides otherwise, the provisions of the Code of Obligations[112] concerning limited partnerships apply.

110 SR **220**
111 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
112 SR **220**

Art. 100 Commercial Register

[1] The partnership exists on being entered in the Commercial Register.

[2] Notification of the facts to be entered or any amendments thereto must be signed by all general partners in the Commercial Register or submitted in writing together with notarised signatures.

Art. 101[113] Partnership name

The partnership name must contain a description of the legal status or its permitted abbreviation.

Art. 102 Partnership agreement and prospectus

[1] The partnership agreement must contain provisions regarding:

a. the partnership name and its registered office;
b. the object;
c. the company name and the registered office of the general partners;
d. total limited partners' contributions;
e. the duration;
f. the conditions of the limited partners' joining and departing;
g. the maintenance of a register of limited partners;
h. the investments, investment policy, investment restrictions, risk diversification, the risks associated with investment, and the investment techniques;
i. the delegation of management and representation;
j. the appointment of a custodian bank and a paying agent.

[2] The partnership agreement must be in writing.

[3] The prospectus specifically sets out the information contained in the partnership agreement in accordance with paragraph 1 letter h.

Art. 103 Investments

[1] The partnership conducts investments in risk capital.

[2] The Federal Council may also permit other investments.

Art. 104 Non-competition clause

[1] The limited partners are entitled without the consent of the general partners to conduct other business transactions for their own account and on behalf of third parties and to participate in other companies.

113 Amended by No III of the Federal Act of 25 Sept. 2015 (Law on Business Names), in force since 1 July 2016 (AS **2016** 1507; BBl **2014** 9305).

2 Unless the partnership agreement provides otherwise, the general partners may without the consent of the limited partners conduct other business transactions for their own account and on behalf of third parties and participate in other companies, provided this is disclosed and the interests of the limited partnership for collective investment are not impaired as a consequence.

Art. 105 Joining and departure of limited partners

1 Where specified by the partnership agreement, the general partner may decide on the joining and departure of limited partners.

2 This is subject to the provisions of the Code of Obligations114 regarding the exclusion of owners of the limited partnership.

3 The Federal Council may prescribe compulsory exclusion. This shall be based on Article 82.

Art. 106 Inspection and information

1 The limited partners are entitled to inspect the business accounts of the partnership at any time. Business confidentiality with regard to the companies in which the limited partnership invests shall be preserved.

2 The limited partners are entitled to obtain information about the business performance of the partnership at least once every quarter.

Art. 107 Audit company

The partnership shall appoint an audit company (Art. 126 et seq.).

Art. 108 Financial statements

1 With respect to the financial statements of the partnership and the valuation of the assets, Article 88 et seq. apply accordingly.

2 Internationally recognised standards must be observed.

Art. 109 Dissolution

The partnership is dissolved:

a. by resolution of the owners;

b. for the reasons set forth in this Act and in the partnership agreement;

c. by order of FINMA in the cases specified in Article 133 et seq.

114 SR **220**

Chapter 2 The Investment Company with Fixed Capital

Art. 110 Definition

1 SICAF is a company limited by shares pursuant to the Code of Obligations115 (Art. 620 et seq. CO):

a. the sole object of which is the investment of collective capital;

b. the shareholders of which are not required to be qualified pursuant to Article 10 paragraph 3; and

c. which is not listed on a Swiss stock exchange.

2 There must be an appropriate relationship between a SICAF's equity and its total assets. The Federal Council defines this relationship.116

Art. 111 Company name

1 The company name must contain the designation of its legal status or the abbreviation thereof (SICAF).

2 In all other respects, the provisions of the Code of Obligations117 regarding the name of companies limited by shares apply.

Art. 112 Relationship with the Code of Obligations

Unless this Act provides otherwise, the provisions of the Code of Obligations118 concerning companies limited by shares apply.

Art. 113 Shares

1 The share capital is fully paid up.

2 The issuing of voting shares, participation certificates, dividend right certificates and preference shares is prohibited.

3 The Federal Council may specify compulsory redemption. This is laid down in Article 82.

Art. 114119 Custodian bank

The SICAF must appoint a custodian bank in accordance with Articles 72–74.

115 SR **220**
116 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
117 SR **220**
118 SR **220**
119 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

Art. 115 Investment policy and investment restrictions

[1] A SICAF defines the investments, investment policy, investment restrictions, risk diversification, together with the risks associated with the investments, in the articles of association and in the investment regulations.

[2] The investments are subject to Article 69; Articles 64, 70 and 71 apply accordingly.

[3] Resolutions to amend the investment regulations must be passed by a majority of votes at the general meeting.

Art. 116 Prospectus

A SICAF shall produce a prospectus. In this respect Articles 75 and 77 apply accordingly.

Art. 117 Financial statements

With respect to the financial statements, Article 89 paragraph 1 letters a and c-i, paragraphs 2-4 and Article 90 apply accordingly in addition to the statutory provisions concerning accounting standards.

Art. 118 Audit company

A SICAF shall appoint an audit company (Art. 126 et seq.).

Title 4 Foreign Collective Investment Schemes

Chapter 1 Definition and Approval

Art. 119 Definition

[1] The following are considered foreign open-ended collective investment schemes:

a. assets that were accumulated on the basis of a fund contract or another agreement with similar effect for the purpose of collective investment and are managed by a fund management company with its registered office and main administrative office abroad;

b. companies and schemes with their registered office and main administrative office located abroad whose purpose is collective capital investment and whose investors have a legal right with regard to the company itself, or with regard to a closely associated company, to the redemption of their units at the net asset value.

[2] Closed-end collective investment schemes are deemed to be companies and schemes with their registered office and main administrative office located abroad whose purpose is collective capital investment and whose investors have no legal right with regard to the company itself, or with regard to a closely connected company, to the redemption of their units at the net asset value.

Art. 120 Duty to obtain approval

[1] Prior to distributing foreign collective investment schemes in or from Switzerland to non-qualified investors this must be approved by FINMA. The representative shall submit the relevant binding documents such as sales prospectus, articles of association and fund contract to FINMA.[120]

[2] Approval is granted if:

a.[121] the collective investment scheme, fund management company or company, asset manager of the collective investment scheme and depository are subject to public supervision intended to protect investors;

b.[122] with regard to organization, investor rights and investment policy, the fund management company or company and the depository are subject to regulations which are equivalent to the provisions of this Act;

c. the designation of the collective investment scheme does not provide grounds for confusion or deception;

d. a representative and a paying agent are appointed for the distribution of units in Switzerland;

e.[123] there is an agreement on cooperation and the exchange of information between FINMA and the relevant foreign supervisory authorities for distribution.

[2bis] The representative and the paying agent may only end their mandate with FINMA's prior approval.[124]

[3] The Federal Council may specify a simplified, fast-track approval procedure for foreign collective investment schemes provided such investments have already been approved by a foreign supervisory authority, such arrangement being reciprocal.

[4] Foreign collective investment schemes which are only distributed to qualified investors do not require approval but must meet the conditions pursuant to paragraph 2 letters c and d at all times.[125]

Art. 121 Paying agent

[1] The paying agent must be a bank pursuant to the Federal Act on Banks and Savings Banks of 8 November 1934[126].

120 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
121 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
122 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
123 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
124 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
125 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
126 SR **952.0**

2 The investors may request the issue and redemption of the units from the paying agent.

Art. 122 International treaties

Assuming the mutual recognition of regulations and measures of an equivalent standard, the Federal Council may conclude international treaties which specify that collective investment schemes from the signatory countries merely have a duty to register rather than the duty to obtain approval.

Chapter 2
Representatives of Foreign Collective Investment Schemes

Art. 123 Mandate

1 Prior to distributing foreign collective investment schemes in or from Switzerland, the fund management company or the company must appoint a representative to undertake the duties specified in Article 124, subject to the provisions of Article 122.[127]

2 The fund management and the investment scheme company undertake to provide the representative with the information the latter may require for the performance of its tasks.

Art. 124 Duties

1 The representative represents the foreign collective investment scheme with regard to investors and FINMA. The representative's powers of representation may not be restricted.

2 The representative observes the statutory obligations to report, publish and inform, as well as the codes of conduct of industry bodies which have been declared to be the minimum standard by FINMA. The representative's identity must be disclosed in every publication.

Art. 125 Place of performance

1 The place of performance for units of the foreign collective investment schemes distributed in Switzerland is the registered office of the representative.

2 It shall continue to be the registered office of the representative after the revocation of authorisation or following the dissolution of the foreign collective investment scheme.

127 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

Title 5 Audit[128] and Supervision
Chapter 1 Audit

Art. 126 Appointment

1 The following persons must appoint an audit company licensed by Federal Audit Oversight Authority under Article 9*a* paragraph 1 of the Auditor Oversight Act of 16 December 2005[129] to carry out an audit under Article 24 of the Financial Market Supervision Act of 22 June 2007[130]:[131]

a. fund management companies for themselves and for the investment funds they manage;

b. SICAVs;

c. limited partnerships for collective investment;

d. SICAFs;

e.[132] asset managers of collective investment schemes;

f. representatives of foreign collective investment schemes.

2 ...[133]

3 The same audit company must examine the following:

a. the fund management company and the investment funds it manages;

b. the SICAV and any fund management company that it appoints pursuant to Article 51 Paragraph 5.

4 FINMA may grant exceptions in the cases given in paragraph 3 letter b.

5 The persons named in paragraph 1, managed investment funds and any real estate companies belonging to real estate funds or real estate investment companies must have their annual accounts and if applicable their consolidated accounts audited by a state supervised audit firm in accordance with the principles of the Code of Obligations[134] on the ordinary audit.[135]

128 Term in accordance with Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829). This change has been made throughout the text.
129 SR **221.302**
130 SR **956.1**
131 Amended by Annex No 4 of the Federal Act of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).
132 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
133 Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
134 SR **220**
135 Inserted by Annex No 4 of the Federal Act of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

6 The Federal Council shall regulate the details. It may authorise FINMA to issue implementing provisions on matters of limited scope, and in particular on largely technical matters.[136]

Art. 127–129[137]

Art. 130[138] Duty to provide information

1 The valuation experts and real estate companies belonging to the collective investment scheme shall provide the audit company with full access to the accounting records, the accounting vouchers, the records and to the reports of the valuation experts; moreover, they shall supply them with all the information needed to perform the audit function.

2 The audit company of the custodian bank and the audit company of the other licensees cooperate with each other.

Art. 131[139]

Chapter 2 Supervision

Art. 132[140] Supervision

1 FINMA issues the necessary authorisations and approvals pursuant to this Act and supervises compliance with the statutory, contractual and regulatory provisions as well as the provisions of the articles of association.

2 It does not review the expediency of the business decisions taken by the licensees.

Art. 133[141] Supervisory instruments

1 In the event of infringements of the contractual or regulatory provisions or of the provisions of the articles of association, the supervisory instruments pursuant to

136 Inserted by Annex No 4 of the Federal Act of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).
137 Repealed by Annex No 4 of the Federal Act of 20 June 2014 (Consolidation of Oversight through Audit Companies), with effect from 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).
138 Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
139 Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
140 Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
141 Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

Articles 30–35 and 37 of the Financial Market Supervision Act of 22 June 2007[142] apply mutatis mutandis.[143]

2 Article 37 of the Financial Market Supervision Act of 22 June 2007 also applies mutatis mutandis to approval under the present Act.

3 If the investors' rights appear to be endangered, FINMA may order the licensees to provide the necessary collateral.

4 If an enforceable order issued by FINMA is not complied with after prior warning within the deadline that has been set, FINMA may itself carry out the required actions at the expense of the negligent party.

Art. 134[144] Liquidation

Licensees from which authorisation has been withdrawn or collective investment schemes from which approval has been withdrawn may be liquidated by FINMA. The Federal Council regulates the details.

Art. 135 Measures in the case of non-authorised or non-approved activity

1 Where persons operate without any authorisation or approval, FINMA may order that the collective investment scheme be dissolved.

2 To safeguard the interests of investors, FINMA may order that the collective investment scheme be changed to another legal status.

Art. 136 Other measures

1 In justified cases, FINMA may, in accordance with Article 64, appoint valuation experts to value the assets of real estate funds or real estate investment companies.

2 It may dismiss the valuation experts appointed by the real estate fund or by the real estate investment company.

Art. 137[145] Initiation of bankruptcy proceedings

1 Where there is justified concern that a licensee as defined in Article 13 paragraph 2 letters a–d or f is excessively indebted or has serious liquidity problems and there is no prospect of restructuring or restructuring has failed, FINMA shall withdraw authorisation from the licensee, initiate bankruptcy proceedings and make this public.[146]

142 SR **956.1**
143 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
144 Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
145 Amended by Annex No 3 of the Federal Act of 18 March 2011 (Securing Investments), in force since 1 Sept. 2011 (AS **2011** 3919; BBl **2010** 3993).
146 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

[2] The provisions on composition proceedings (Art. 293–336 of the Federal Act of 11 April 1889[147] on Debt Enforcement and Bankruptcy, DEBA), on a stay of proceedings for companies (Art. 725 and 725*a* of the Code of Obligations[148]) and on notification of the court (Art. 728*c* para. 3 of the Code of Obligations) do not apply to the licensee referred to in paragraph 1.

[3] FINMA appoints one or more bankruptcy liquidators. These are subject to supervisory control by FINMA and shall provide FINMA with a report if requested.[149]

Art. 138[150] Conduct of bankruptcy proceedings

[1] The bankruptcy order has the effect of a commencement of bankruptcy proceedings pursuant to Articles 197-220 DEBA[151].

[2] The bankruptcy proceedings are conducted in accordance with Articles 221–270 DEBA. Article 138 letters a-c remain subject to reservation.

[3] FINMA may issue different rulings and orders.

Art. 138*a*[152] Creditors' meetings and creditors' committees

[1] The bankruptcy liquidator may apply to FINMA for the following:

a. to constitute a creditors' meeting and determine its powers as well as the necessary attendance and voting quorums necessary to pass resolutions;

b. to designate a creditors' committee and determine its composition and powers.

[2] In the case of a SICAV with subfunds as defined in Article 94, a creditors' meeting or creditors' committee may be established for each subfund.

[3] FINMA is under no obligation to follow the proposals of the bankruptcy liquidator.

Art. 138*b*[153] Distribution and closure of the proceedings

[1] The distribution list is not published.

[2] Following the distribution, the bankruptcy liquidator shall provide FINMA with a final report.

[3] FINMA issues the necessary orders for the closure of the proceedings. It announces the closure publicly.

147 SR **281.1**
148 SR **220**
149 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
150 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
151 SR **281.1**
152 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
153 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

Art. 138*c*[154] Foreign insolvency proceedings

Articles 37*f* and 37*g* of the Federal Act on Banks and Savings Banks of 8 November 1934[155] apply to recognising foreign bankruptcy decrees and insolvency measures, as well as for coordination with foreign insolvency proceedings.

Art. 138*d*[156] Appeals

[1] In bankruptcy proceedings, creditors and owners of an authorised party covered by Article 137 paragraph 1 may appeal only against realisation actions. Appeals pursuant to Article 17 DEBA[157].

[2] Appeals in bankruptcy proceedings have no suspensive effect. The instructing judge can restore the suspensive effect on request.

Art. 139[158] Duty to provide information

[1] Persons who perform a role in the context of this Act must provide FINMA with all the information and documents that it requires to carry out its duties.

[2] FINMA may order licensees to provide it with the information it requires to carry out its duties.[159]

Art. 140 Service of judgments

The cantonal civil courts and the Federal Court shall provide FINMA with a full copy of their decisions in civil disputes between a person or company subject to this Act and an investor, in their entirety and free of charge.

Art. 141[160]

Art. 142[161]

Art. 143[162]

154 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
155 SR **952.0**
156 Inserted by Annex No 9 of the Financial Market Infrastructure Act of 19 June 2015, in force since 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).
157 SR **281.1**
158 Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
159 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
160 Repealed by Annex No 9 of the Financial Market Infrastructure Act of 19 June 2015, with effect from 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).
161 Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
162 Repealed by Annex No 9 of the Financial Market Infrastructure Act of 19 June 2015, with effect from 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).

Art. 144 Collection and reporting of data [163]

[1] FINMA is authorised to collect data concerning licensees' business activities and the trend of collective investment schemes in order to maintain market transparency or to execute its supervisory function. It may appoint third parties to collect this information or order licensees to submit this data themselves.[164]

[2] Third parties appointed to collect data must treat such data as confidential.

[3] The statistical reporting duties vis-à-vis the Swiss National Bank, as specified in the Swiss National Bank Act of 3 October 2003[165], together with the right of FINMA and the Swiss National Bank to exchange data are reserved.

Title 6 Liability and Criminal Provisions

Chapter 1 Liability

Art. 145 Principle

[1] Any person who breaches their duties is liable to the company, the individual investors and the company's creditors for the losses resulting therefrom, unless they prove that they are not at fault. Any person involved in the establishment, management, asset management, distribution, auditing or liquidation of any of the following entities may be held liable:

a. the fund management company;
b. the SICAV;
c. the limited partnership for collective investment;
d. the SICAF;
e. the custodian bank;
f. the distributor;
g. the representative of foreign collective investment schemes;
h. the audit company;
i. the liquidator.

[2] Liability as defined in paragraph 1 also applies to the valuation expert and the representative of the investors.[166]

[3] Any person who assigns the fulfilment of a task to a third party is liable for the losses caused by that third party unless they prove that they applied the degree of due diligence with regard to the selection, instruction and monitoring required in the

163 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
164 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
165 SR **951.11**
166 Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

given circumstances, subject to Article 31 paragraph 5, and Article 73 paragraph 2.[167]

[4] The liability of the executive and governing bodies of the fund management company, SICAV and SICAF is based on the provisions of the Code of Obligations[168] governing companies limited by shares.

[5] The liability of a limited partnership for collective investment is based on the provisions of the Code of Obligations governing limited partnerships.

Art. 146 Joint and several liability and recourse

[1] If more than one person is liable to pay compensation, each of them is liable jointly and severally to the extent that the loss is attributable directly to them by reason of their fault and the circumstances.

[2] The claimant may file a claim for the overall loss against more than one party jointly, and may request that in the same proceedings the court determine each individual defendant's liability to pay compensation.

[3] The court, taking all circumstances into consideration, determines recourse among the parties.

Art. 147 Time limits

[1] The right to claim damages expires five years after the day on which the person affected became aware of the loss and of the person liable to pay compensation, but not later than one year after redemption of a unit and in all cases not later than ten years after the harmful act.

[2] If the proceedings relate to an offence punishable act for which criminal law prescribes a longer limitation period, this period also applies to the civil claim.

167 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
168 SR **220**

Chapter 2 Criminal Provisions

Art. 148 Felonies and misdemeanours[169]

[1] Any person who wilfully does any of the following is liable to a custodial sentence not exceeding three years or to a monetary penalty:[170]

a.[171] …

b. establishes a collective investment scheme without approval or authorisation;

c.[172] …

d.[173] distributes domestic and foreign collective investment schemes without approval or authorisation;

e. fails to maintain the books of account in an orderly manner or does not archive company books of account, records and documents as prescribed;

f. in the annual accounts, annual report, semi-annual report, prospectus, the Key Investor Information Document or simplified prospectus, or in other information:[174]

1. provides false information or withholds material facts,
2. does not provide all the mandatory information;

g. with respect to the annual accounts, annual report, semi-annual report, prospectus, Key Investor Information Document or simplified prospectus:[175]

1. fails to produce them or fails to produce them in an orderly manner,
2. fails to publish them or fails to publish them by the specified deadline,
3. fails to submit them to FINMA or fails to submit them to FINMA by the specified time,

4.[176] …

169 Amended by No I 1 of the Federal Act of 12 Dec. 2014 on Expanding the Offence of Breach of Professional Confidentiality, in force since 1 July 2015 (AS **2015** 1535; BBl **2014** 6231 6241).
170 Amended by No I 1 of the Federal Act of 12 Dec. 2014 on Expanding the Offence of Breach of Professional Confidentiality, in force since 1 July 2015 (AS **2015** 1535; BBl **2014** 6231 6241).
171 Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
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173 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
174 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
175 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
176 Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

h. provides false information to the audit company, the investigating officer, the administrative receiver, the liquidator or FINMA or refuses to provide the requested information;

i.[177] …

j. as valuation experts, commit a gross breach of the duties assigned to them;

k. discloses confidential client information that has been entrusted to a person in their capacity as a member of an executive or governing body, employee, agent or liquidator of a fund management company, or that such person has become party to in the course of their duties, even after termination of the official or contractual relationship or the professional activity.

l.[178] discloses confidential information disclosed to them under letter k to other persons or exploits such information for their own benefit or for the benefit of another person.

[1bis] Any person who secures a financial advantage for themselves or for another person through an act under paragraph 1 letters k or l shall be liable to a custodial sentence not exceeding five years or to monetary penalty.[179]

[2] Where the offender acts through negligence, the penalty is a fine not exceeding CHF 250,000.

[3] …[180]

Art. 149 Contraventions

[1] Any person who wilfully does any of the following is liable to a fine not exceeding CHF 500,000:

a. commits a breach of the provision concerning the protection against confusion or deception (Art. 12);

b. provides non-permissible, false or misleading information in advertising material for a collective investment scheme;

c.[181] distributes an in-house fund;

d. fails to file the required notification with FINMA, the Swiss National Bank or investors, or provides false information therein;

177 Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
178 Inserted by No I 1 of the Federal Act of 12 Dec. 2014 on Expanding the Offence of Breach of Professional Confidentiality, in force since 1 July 2015 (AS **2015** 1535; BBl **2014** 6231 6241).
179 Inserted by No I 1 of the Federal Act of 12 Dec. 2014 on Expanding the Offence of Breach of Professional Confidentiality, in force since 1 July 2015 (AS **2015** 1535; BBl **2014** 6231 6241).
180 Repealed by Annex No 9 of the Financial Market Infrastructure Act of 19 June 2015 with effect from 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).
181 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

e. distributes a structured product to non-qualified investors without:[182]
   1. complying with the conditions of Article 5 Paragraph 1 letter a,
   2. a simplified prospectus being available,
   3.[183] the simplified prospectus making reference as per Article 5 Paragraph 2 letter c.

f.[184] fails to keep the share register in terms of Article 46 paragraph 3 correctly.

2 Where the offender acts through negligence, the penalty is a fine not exceeding CHF 150,000.

3 ...[185]

4 ...[186]

Art. 150[187] Prosecution of breaches of client confidentiality

Responsibility for the prosecution and judgment of breaches of client confidentiality (Article 148 paragraph 1 letter k) rests with the cantons.

Art. 151[188]

182 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
183 Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
184 Inserted by No I 6 of the Federal Act of 12 Dec. 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS **2015** 1389; BBl **2014** 605).
185 Repealed by Annex No 9 of the Financial Market Infrastructure Act of 19 June 2015, with effect from 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).
186 Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
187 Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
188 Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

Title 7 Final Provisions[189]

Chapter 1 Implementation; Repeal and Amendment of Existing Law[190]

Art. 152[191] Implementation

1 The Federal Council issues the implementing provisions.

2 When issuing subordinate legislation, the Federal Council and FINMA shall observe the key requirements of the law of the European Communities.

Art. 153 Repeal and amendment of existing law

The repeal and amendment of the existing law are set out in the Annex.

Chapter 2 Transitional Provisions[192]

Art. 154 Transitional provisions for Swiss investment funds

1 When this Act comes into force, pending proceedings concerning amendments to the investment regulations as well as a change in fund management company or custodian bank are assessed on the basis of existing procedural law.

2 Within one year of this Act coming into force, fund management companies must:

a. publish a simplified prospectus for each real estate fund and for all other funds for traditional investments;

b.[193] provide evidence to FINMA that the asset managers of Swiss collective investment schemes which they appoint are subject to government supervision.

3 Within one year of this Act coming into force, fund management companies must submit the amended fund regulations to FINMA for approval.

4 In special cases, FINMA may extend the time limits given in this Article.

Art. 155 Transitional provisions for foreign collective investment schemes

1 Within six months of this Act coming into force, foreign collective investment schemes which are newly subject to this Act must report to FINMA and file an

189 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
190 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
191 Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).
192 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
193 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

application for approval. They may continue their activities until a decision regarding approval is reached.

2 FINMA shall decide whether to grant approval within two years following the Act coming into force.

3 In special cases, FINMA may extend the time limits given in this Article.

Art. 156 Transitional provisions for representatives of foreign collective investment schemes

1 Within one year of this Act coming into force, representatives of foreign collective investment schemes must publish a simplified prospectus and submit it to FINMA in respect of each foreign collective investment scheme which they represent in Switzerland and which is comparable in Switzerland to a real estate fund or other fund for traditional investments.

2 Within one year of this Act coming into force, representatives of foreign collective investment schemes must provide FINMA with evidence that they have appointed an audit company (Article 126 et seq.).

Art. 157 Transitional provisions for licensees and Swiss collective investment schemes

1 Within six months of this Act coming into force, the following persons must register with FINMA:

a. SICAF;

b.[194] asset managers of collective investment schemes.

2 Within one year of this Act coming into force, they must satisfy the requirements of the Act and file an application for approval or authorisation. They may continue their activity until a decision regarding authorisation is reached.

3 FINMA decides whether to grant approval or authorisation within two years following the Act coming into force.

4 In special cases, FINMA may extend the time limits given in this Article.

Art. 158 Transitional provisions for legal entities which use a designation pursuant to Article 12

1 Within one year of this Act coming into force, legal entities whose designation breaches Article 12 must amend such designation.

2 If the necessary amendment of the designation is not completed within the given period, FINMA shall grant the legal entity a period of grace. If such period of grace expires with no action being taken, FINMA shall dissolve the legal entity for the purpose of liquidation and appoint the liquidators.

194 Amended by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

Chapter 3[195]
Transitional Provisions for the Amendment of 28 September 2012

Art. 158*a* Transitional provisions for Swiss collective investment schemes

1 Fund management companies, SICAVs and limited partnerships for collective investment must submit their amended fund contracts, fund regulations and partnership agreements to FINMA for approval within two years following the amendment of 28 September 2012 coming into force.

2 Fund management companies and SICAVs which have delegated the investment decisions of Swiss collective investment schemes abroad where no corresponding agreement exists between FINMA and the relevant foreign supervisory authorities, despite the fact that foreign law requires such an agreement, shall report said delegations to FINMA forthwith. One year after this amendment coming into force, they must submit a statement in which such authorities agree to cooperate and exchange information with FINMA.

3 In special cases, FINMA may extend the time limits given in this Article.

Art. 158*b* Transitional provisions for the delegation of investment decisions and safekeeping of the investment fund's assets

1 Asset managers of collective investment schemes, fund management companies and SICAVs which have delegated investment decisions to asset managers of collective investment schemes which are not subject to recognised supervision must notify FINMA of said delegation within six months following the amendment of 28 September 2012 coming into force. The delegation must fulfil the statutory requirements no later than two years after this amendment has come into force, unless the delegation has ensued to an asset manager of collective investment schemes as defined in Article 158*c* paragraph 2.

2 Custodian banks must confirm to FINMA that the safekeeping of fund assets of existing Swiss collective investment schemes has only been transferred to third-party custodians and collective securities depositories as defined in Article 73 no later than two years after this amendment has come into force, and that such transfer is in the interest of efficient safekeeping.

Art. 158*c* Transitional provisions for asset managers and fund management companies of foreign collective investment schemes

1 Asset managers of foreign collective investment schemes which now are also subject to this Act must report to FINMA no later than six months after the amendment of 28 September 2012 has come into force.

195 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

2 They must meet the statutory requirements no later than two years after this amendment has come into force and apply for authorisation. They may continue their activities until a decision regarding their application has been reached.

3 In special cases, FINMA may extend the time limits given in this Article.

Art. 158*d* Transitional provision for the distribution of collective investment schemes

1 Representatives of foreign collective investment schemes and distributors which are now subject to this Act must report to FINMA no later than six months after the amendment of 28 September 2012 has come into force.

2 They must meet the statutory requirements no later than two years after this amendment has entered into force and apply for authorisation. They may continue their activities until a decision regarding their application has been reached.

3 Representatives distributing foreign collective investment schemes under existing law, which previously did not require an agreement between FINMA and the relevant supervisory authority, must submit a statement to FINMA no later than one year after this amendment has come into force to confirm that such authorities agree to cooperate and exchange information with FINMA in order to continue to distribute funds.

4 Foreign collective investment schemes which are distributed exclusively to qualified investors in Switzerland must meet the conditions stipulated in Article 120 paragraph 4 and Article 123 no later than two years after this amendment has come into force.

5 Foreign collective investment schemes which are admitted for distribution to non-qualified investors in or from Switzerland must meet the newly introduced requirements pursuant to Article 120 paragraph 2 no later than one year after this amendment has come into force.

6 In special cases, FINMA may extend the time limits given in this Article.

Art. 158*e* Transitional provision for high-net-worth individuals pursuant to Article 10 paragraph 3[bis]

High net worth individuals are no longer permitted to invest in collective investments schemes reserved for qualified investors if they do not meet the requirements of Article 10 paragraph 3[bis] within two years after the amendment of 28 September 2012 has come into force.

Chapter 4 Referendum and Commencement[196]

Art. 159 …[197]

1 This Act is subject to an optional referendum.

2 The Federal Council determines its commencement date.

Commencement date: 1 January 2007[198]

196 Inserted by No I of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
197 Repealed by No I of the Federal Act of 28 Sept. 2012, with effect from 1 March 2013 (AS **2013** 585; BBl **2012** 3639).
198 Federal Council Decree of 22 Nov. 2006

Annex
(Art. 153)

Amendment of the existing law

I

The Investment Funds Act of 18 March 1994[199] is repealed.

II

The following federal acts are amended as follows:

…[200]

199 [AS **1994** 2523, **2000** 2355 Annex No 27, **2004** 1985 Annex No II 4]
200 The amendments may be consulted under AS **2006** 5379.

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Part B: Ordinance on Collective Investment Schemes (Collective Investment Schemes Ordinance, CISO)

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

Ordinance on Collective Investment Schemes

(Collective Investment Schemes Ordinance, CISO)

of 22 November 2006 (Status as of 1 January 2015)

The Swiss Federal Council,

based on the Federal Act of 23 June 2006[1] on Collective Investment Schemes (CISA; referred to below as: the Act),

decrees:

Title 1 General Provisions

Chapter 1 Object and Scope

Art. 1[2] Qualified investors under foreign law
(Art. 2 para. 1 let. e CISA)

The following are deemed qualified investors under foreign law pursuant to Article 2 paragraph 1 letter e of the Act:

a. institutional investors with professional treasury operations, specifically including regulated financial intermediaries and insurance institutions, public entities, retirement benefits institutions and companies with professional treasury operations;

b. high-net-worth individuals who at the time of purchase meet requirements that are comparable to those of Article 6;

c. private individuals who have concluded a discretionary management agreement with a regulated financial intermediary that purchases units of collective investment schemes for their account.

Art. 1*a*[3] Investment club
(Art. 2 para. 2 let. f CISA)

Irrespective of its legal status, an investment club must meet the following requirements:

AS **2006** 5787

1 SR **951.31**

2 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

3 Originally Art. 1

a. The membership rights are set out in the relevant constitutive document for its chosen legal status.

b. The members or a section of the members take the investment decisions.

c. The members are informed about the status of the investments on a regular basis.

d. The number of members does not exceed twenty.

Art. 1*b*[4] Non-subject asset managers of collective investment schemes
(Art. 2 para. 2 let. h CISA)

1 The following principles apply to calculation of the thresholds of the assets managed by the asset manager of collective investment schemes pursuant to Article 2 paragraph 2 letter h numbers 1 and 2 of the Act:

a. Assets managed include all Swiss and foreign collective investment schemes managed by the same asset manager of collective investment schemes irrespective of whether it manages them directly or via delegation or via a company with which it is connected:
   1. via a single management; via
   2. a relationship of common control; or
   3. via a significant direct or indirect interest.

b. The value is calculated on at least a quarterly basis, under due consideration of any leverage effect.

c. For collective investment schemes that were established more than 12 months previously, the threshold may be calculated on the basis of the average value of the assets over the last four quarters.

d. The value of the collective investment schemes pursuant to Article 2 paragraph 2 letter h number 2 of the Act is calculated on the basis of the capital commitments or nominal value of the collective investment vehicles concerned, provided the price of the investments underlying such vehicles is not obtained through trading on a regulated market.

2 FINMA regulates the details for calculating the assets and the leverage effect in accordance with paragraph 1.

3 Where an asset manager of collective investment schemes exceeds a threshold as defined in Article 2 paragraph 2 letter h numbers 1 and 2 of the Act, it shall notify FINMA to that effect within 10 days and submit to the latter an application for approval pursuant to Article 14 et seq. of the Act within 90 days.

4 Irrespective of their legal status, public or private companies that are connected to one another through an economic unit are deemed to be group companies of the group of companies pursuant to Article 2 paragraph 2 letter h number 3 of the Act.

4 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

[5] Companies constitute an economic unit when one company directly or indirectly holds more than half the voting rights or capital of the other, or controls it in any other way.

Art. 1*c*[5] Voluntary submission
(Art. 2 para. 2[bis] CISA)

[1] An asset manager of collective investment schemes as defined in Article 2 paragraph 2 letter h of the Act may submit an application for authorisation to FINMA in accordance with Article 14 et seq. of the Act if it:

a. has its registered office in Switzerland; and

b. Swiss or applicable foreign law provides that the asset management of collective investment schemes may only be delegated to a regulated asset manager of collective investment schemes.

[2] It must meet the same conditions of authorisation as the asset manager of collective investment schemes that is required to obtain authorisation.

Art. 2 Investment company
(Art. 2 para. 3 CISA)

Newly established investment companies whose issue prospectus provides for a listing on a Swiss exchange are treated as equivalent to listed companies provided listing is completed within one year.

Art. 3[6] Distribution
(Art. 3 CISA)

[1] The offering of collective investment schemes or advertising for collective investment schemes includes any type of activity whose object is the purchase of units of collective investment schemes by an investor.

[2] At the instigation of or on the own initiative of investors pursuant to Article 3 paragraph 2 letter a of the Act, information is provided or collective investment schemes subscribed when:

a. the information is issued in the context of advisory agreements as defined in paragraph 3 or the collective investment schemes are subscribed in the context of such agreements;

b. the investor requests information or purchases units of a specific collective investment scheme without prior action or contact, specifically of the asset manager of collective investment schemes, distributor or representative.

[3] Advisory agreements pursuant to Article 3 paragraph 2 letter a of the Act are agreements that:

5 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
6 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

a. are aimed at a long-term advisory relationship in return for a fee; and

b. are concluded in writing with a regulated financial intermediary as defined in Article 10 paragraph 3 letter a of the Act or with an independent asset manager in accordance with Article 3 paragraph 2 letter c of the Act.

[4] Offerings of collective investment schemes and advertising for collective investment schemes that are exclusively reserved for investors pursuant to Article 10 paragraph 3 let. a and b of the Act must not be accessible to the other qualified and non-qualified investors.

[5] The publication of prices, net asset values and tax data by regulated financial intermediaries is not deemed distribution unless such announcements contain contact information.

[6] Employee share participation schemes pursuant to Article 3 paragraph 2 letter e of the Act must:

a. constitute a direct or indirect investment in the employer's company or in another company that by way of a majority of the votes or in any other way brings the company together with the employer's company under a single management (group);

b. be directed at employees:

1. who are not serving a period of notice at the time of the offering,

2. for whom the employee participation plan is a component of the salary.

[7] In the case of structured products, paragraphs 4 and 5 apply mutatis mutandis.

Art. 4 Structured products
(Art. 5 CISA)

[1] A structured product may only be distributed to non-qualified investors in or from Switzerland if it:

a. is issued, guaranteed or secured in an equivalent manner by a financial intermediary pursuant to Article 5 paragraph 1 let. a numbers 1–3 of the Act;

b. is issued, guaranteed or secured in an equivalent manner by a regulated financial intermediary pursuant to Article 5 paragraph 1 let. a number 4 of the Act which has a branch in Switzerland, unless the structured product is listed on a Swiss stock exchange that ensures transparency as provided for in paragraph 2 and Article 5 paragraph 2 of the Act.[7]

[1bis] In particular, the following are deemed to be equivalent collateral pursuant to Article 5 paragraph 1 and paragraph 1[bis] of the Act:

a. any legally enforceable assurance from a regulated financial intermediary pursuant to Article 5 paragraph 1 letter a of the Act:

1. to guarantee the performance obligations of the issuer of a structured product,

7 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

2. to provide the issuer with financial resources such that it is able to satisfy the claims of the investors; or

b. the provision of legally enforceable physical security held in Switzerland in favour of the investors.[8]

[1ter] A special purpose entity is a legal person whose exclusive purpose is the issuing of structured products and whose assets may only be used in the interests of the investors.[9]

[2] Where a structured product is not issued, guaranteed or secured in an equivalent manner by a regulated financial intermediary pursuant to Article 5 paragraph 1 of the Act, attention must explicitly be drawn thereto in the simplified prospectus.[10]

[3] The financial intermediaries specified in Article 5 paragraph 1a of the Act shall formalize the requirements for the simplified prospectus through a system of self-regulation. This shall be approved by the Swiss Financial Market Supervisory Authority (FINMA).[11]

[4] The requirement to produce a simplified prospectus does not apply where the structured product:

a. is listed on a Swiss exchange, thereby ensuring transparency pursuant to paragraph 2 and Article 5 paragraph 2 of the Act or

b.[12] is not distributed in Switzerland but from Switzerland to non-qualified investors and transparency is assured by virtue of foreign regulations pursuant to Article 5 paragraph 2 of the Act.

[5] The provisional simplified prospectus must denote that the information is only indicative and refer investors to the issue date of the definitive simplified prospectus. The requirements for the provisional simplified prospectus are based on paragraph 3.[13]

8 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
9 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
10 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
11 Amended by Annex No 6 of the Financial Market Audit Act of 15 Oct. 2008, in force since 1 Jan. 2009 (AS **2008** 5363).
12 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
13 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Chapter 2 Collective Investment Schemes

Art. 5[14] Definition of collective investment scheme
(Art. 7 para. 3 and 4 CISA)

[1] Irrespective of legal status, collective investment schemes are assets provided by at least two mutually independent investors for the purpose of collective investment and which are managed externally.

[2] Investors are mutually independent when they provide assets that are mutually independent in legal and de facto terms.

[3] For group companies in the same group of companies pursuant to Article 1*b* paragraph 4, the requirement for the assets to be independent pursuant to paragraph 2 does not apply.

[4] The assets of a collective investment scheme may be provided by a single investor (single investor fund) where such investor is an investor pursuant to Article 10 paragraph 3 letter b or c of the Act.

[5] The restriction of investor eligibility to investors as defined in paragraph 4 must be disclosed in the relevant documents pursuant to Article 15 paragraph 1 of the Act.

Art. 6[15] Qualified investors
(Art. 10 para. 3[bis] and 3[ter] CISA)

[1] A high-net-worth individual pursuant to Article 10 paragraph 3[bis] of the Act is any natural person who at the time of subscribing to the collective investment scheme meets one of the following conditions:

a. Investors shall provide evidence that they:
   1. have the knowledge required to comprehend the risks of the investments based on their individual education and professional experience or based on comparable experience in the financial sector; and
   2. hold assets of at least five hundred thousand Swiss francs.

b. Investors shall confirm in writing that they hold assets of at least five million Swiss francs.

[2] The financial investments directly or indirectly owned by the investors are attributed to the assets pursuant to paragraph 1, specifically:

a. bank credit balances at sight or on demand;

b. trust funds;

c. securities including collective investment schemes and structured products;

d. derivatives;

14 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
15 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

e. precious metals;

f. life insurance policies with a surrender value.

3 Direct investments in real estate, social security entitlements and occupational pension assets are not financial investments pursuant to paragraph 2.

4 Assets pursuant to paragraph 1 letter b may comprise immovable assets of up to two million Swiss francs. Immovable assets are included at their net value. The net value is calculated on the basis of the market value less all debt associated with the immovable asset.

5 At the time of purchase, the investor must provide evidence of the assets pursuant to paragraph 1.

Art. 6*a*[16] Written declaration
(Art. 10 para. 3bis and 3ter CISA)

1 High-net-worth individuals wishing to be considered qualified investors pursuant to Article 10 paragraph 3bis of the Act shall confirm this in writing. If a private investment structure is set up for one or more high net-worth individuals, confirmation may be provided by a person responsible for managing the investment structure provided he or she is authorised to do so by the investment structure.[17]

2 The financial intermediary and the independent asset manager shall:

a. notify the investors pursuant to Article 10 paragraph 3ter of the Act that they are deemed a qualified investor;

b. explain the associated risks to them; and

c. refer them to the opportunity to be able to explain in writing that they do not wish to be deemed a qualified investor

Chapter 3 Authorisation and Approval

Section 1 General

Art. 7 Authorisation documentation
(Art. 13 and 14 CISA)

Any party applying for authorisation under Article 13 of the Act must submit the following documents to FINMA:

a. the articles of association and the organisational regulations in the case of a fund management company, a SICAV and a SICAF;

b. the company agreement in the case of a limited partnership for collective investment;

16 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
17 Amended by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).

c. the relevant organisational documents in the case of an asset manager, a representative of foreign collective investment schemes and a distributor.

Art. 8 Exemption from the authorisation requirement[18]
(Art. 13 para. 3 CISA)

1 Any party authorised as a bank pursuant to the Federal Act on Banks and Savings Institutions of November 8, 1934[19], as a securities trader pursuant to the Stock Exchange Act of March 24, 1995[20] or as an insurance institution pursuant to the Federal Act on the Supervision of Insurance Companies of December 17, 2004[21], is exempted from the duty to obtain authorisation for asset managers of collective investment schemes and distributors.[22]

1bis Any party authorised as a fund management company is exempted from the duty to obtain authorisation for asset managers of collective investment schemes, distributors and representatives of foreign collective investment schemes.[23]

2 Any party authorised as an asset manager of collective investment schemes is exempted from the duty to obtain authorisation for distributors.[24]

3 Representatives of foreign collective investment schemes are exempted from the duty to obtain authorisation for distributors.[25]

4 Agents of insurance institutions which are integrated legally and de facto into the organisation of the insurance institution on a legal or constructive basis by virtue of the agency agreement are not subject to the duty to obtain authorisation for distributors. FINMA regulates the details.

Art. 9[26]

Art. 10 Good reputation, guarantees and specialist qualifications
(Art. 14 para. 1 let. a CISA)

1 The persons responsible for the management and business operations shall be suitably qualified for the intended activity on the basis of their education and training, experience and career history.

18 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
19 SR **952.0**
20 SR **954.1**
21 SR **961.01**
22 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
23 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
24 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
25 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
26 Repealed by No I of the Ordinance of 13 Feb. 2013, with effect from 1 March 2013 (AS **2013** 607).

[2] FINMA determines the requirements for furnishing evidence of good reputation, the guaranteeing of proper management and the possession of the requisite specialist qualifications.

[3] In assessing these requirements, it also takes account of the intended activity on behalf of the licensee, together with the nature of the intended investments.

[4] In justified individual instances, it may grant derogations from these requirements.

Art. 11 Significant equity holders
(Art. 14 para. 1b and para. 3 CISA)

FINMA specifies the requirements for the furnishing of evidence of the good reputation of significant equity holders. Furthermore, it specifies the requirements for the furnishing of evidence that such significant equity holders cannot exert their influence to the detriment of prudent and sound business practice.

Art. 12 Organisational structure
(Art. 14 para. 1 let. c CISA)

[1] The executive board must comprise at least two persons. These persons must have their place of residence at a location which is suitable for the proper managing of the business operations.

[2] The authorised signatories of the licensee must sign jointly.

[3] The licensee must define its organisational structure in a set of organisational regulations.[27]

[4] It must employ personnel who are properly and suitably qualified for its activity.

[5] FINMA may require that an internal audit be performed if required by the scope and nature of the activity.

[6] In justified instances, it may grant derogations from these requirements.

Art. 12*a*[28] Risk management, internal control system and compliance
(Art. 14 para. 1ter CISA)

[1] The licensee must ensure it has proper and appropriate risk management, an internal control system (ICS) and compliance covering its entire business activities.

[2] Risk management must be organised so that all material risks can be adequately identified, assessed, controlled and monitored.

[3] The licensee shall separate the functions of risk management, the internal control system and compliance in functional and hierarchical terms from the operating units, in particular from the investment decisions function (portfolio management).

[4] FINMA may grant derogations from these requirements in justified instances.

27 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
28 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Art. 13 Financial guarantees
(Art. 14 para. 1 let. d. CISA)

The licensee has sufficient financial guarantees if it meets the relevant provisions regarding the minimum capital or minimum investment amount.

Art. 13*a*[29] Documents of foreign collective investment schemes
(Art. 15 para. 1 let. e CISA)

For foreign collective investment schemes, the following documents must be submitted to FINMA for approval:

a. the prospectus;
b. the simplified prospectus or key investor information document;
c. the collective investment agreement for the contractual collective investment schemes;
d. the articles of association and the investment regulations or the company agreement of collective investment schemes organised under company law;
e. other documents that would be necessary for approval under applicable foreign laws and those for Swiss collective investment schemes in accordance with Article 15 paragraph 1 of the Act.

Art. 14 Change of organisational structure and documents
(Art. 16 CISA)

[1] In the event of changes to the organisational structure, authorisation must be obtained from FINMA. The documents defined in Article 7 must be submitted to FINMA.

[2] Changes to documents in accordance with Article 15 of the Act must be submitted to FINMA, with the exception of:

a. the relevant documents of foreign collective investment schemes;
b. any change in the total limited partners' contributions in the company agreement of the limited partnership for collective investment.
c.[30] changes to documents requiring approval in the case of a domestic collective investment scheme where such documents relate exclusively to provisions on sales and distribution restrictions and are required in the context of foreign laws, international treaties, bilateral or supervisory arrangements, etc.

Art. 15 Duty to report
(Art. 16 CISA)

[1] The licensees, with the exception of the custodian bank, shall report:

29 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
30 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

a. any change in the persons responsible for the management and the business operations;

b. facts which might call into question the good reputation or the guaranteeing of proper management by the persons responsible for the management and the business operations, specifically the instigation of criminal proceedings against them;

c. any change in significant equity holders, except for company shareholders in a SICAV and limited partners in a limited partnership for collective investment;

d. facts which might call into question the good reputation of significant equity holders, specifically the instigation of criminal proceedings against them;

e. facts which call into question the prudent and sound business practice of the licensees owing to the influence of the significant equity holders;

f. any change with respect to the financial guarantees (Art. 13), in particular if the minimum requirements are no longer met.

2 The custodian bank shall report any change of executive persons entrusted with the performance of the custodian bank's duties (Art. 72 para. 2 CISA).

3 Furthermore, amendments to the prospectus, simplified prospectus or key investor information document of an investment fund, SICAV, limited partnership for collective investment and SICAF must also be reported[31]

4 The representatives of foreign collective investment schemes that are not exclusively distributed to qualified investors must report[32]

a.[33] measures taken by a foreign supervisory authority against the collective investment scheme, specifically its withdrawal of approval;

b.[34] changes to the documents for foreign collective investment schemes in accordance with Article 13*a*;

c.[35] …

5 The report must be made immediately to FINMA, which shall establish whether the reported facts comply with the Act.

31 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
32 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
33 Amended by Annex No 6 of the Financial Market Audit Act of 15 Oct. 2008, in force since 1 Jan. 2009 (AS **2008** 5363).
34 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
35 Repealed by No I of the Ordinance of 13 Feb. 2013, with effect from 1 March 2013 (AS **2013** 607).

Art. 16 Requirements for the simplified approval procedure
(Art. 17 CISA)

1 The simplified approval procedure may only be adopted where the fund regulations:

a. comply with a format which FINMA has recognised as being the minimum standard, such as model regulations and prospectuses of a specific industry body; or

b. comply with a set of standards which FINMA has recognised as binding in relation to the relevant licensee.

2 FINMA shall give the applicant confirmation of its receipt of the application.

3 Where additional information is required for the purpose of assessing the application, FINMA may instruct the applicant to submit such information at a subsequent time.

Art. 17 Time limits for the simplified approval procedure
(Art. 17 CISA)

1 Open-ended collective investment schemes for qualified investors are deemed to have been approved on expiry of the following time limits:

a. securities funds, real estate funds and other funds for traditional investments: following receipt of the application;

b. other funds for alternative investments: four weeks following receipt of the application.

2 FINMA shall approve open-ended collective investment schemes which are directed towards the public at the latest within the following time limits:

a. securities funds: four weeks following receipt of the application;

b. real estate funds and other funds for traditional investments: six weeks following receipt of the application;

c. other funds for alternative investments: eight weeks following receipt of the application.

3 The period begins one day following receipt of the application.

4 Where FINMA requires further information, the commencement of the period must be postponed from the time the request is made until such time as the information is received by FINMA.

Art. 18 Subsequent amendment of documents
(Art. 17 CISA)

1 FINMA may demand that a subsequent amendment be made to the documents for collective investment schemes for qualified investors for a period of up to three months following simplified approval.

2 The investors must:

a. be made aware of the possibility of an amendment in advance;

b. be informed of subsequent amendments in the media of publication.

Section 2
Conditions of Authorisation for Asset Managers of Collective Investment Schemes Organised under Swiss Law[36]

Art. 19[37] Minimum capital and furnishing of collateral
(Art. 14 para. 1 let. d CISA)

1 The minimum capital of asset managers of collective investment schemes that exclusively perform duties pursuant to Article 18*a* paragraphs 1, 2 and 3 letters b–d of the Act amounts to 200,000 Swiss francs and is paid up in cash.

2 The minimum capital of asset managers of collective investment schemes that conduct investment fund business for foreign collective investment schemes pursuant to Article 18*a* paragraph 3 letter a of the Act amounts to 500,000 Swiss francs and is paid up in cash.

3 In place of the minimum capital, FINMA may permit partnerships to provide collateral, specifically a bank guarantee or cash deposit on a blocked account held with a bank and which equates to the minimum capital pursuant to paragraphs 1 and 2.

4 In justified individual instances, it may stipulate an alternative minimum amount.

5 The minimum capital must be maintained at all times.

Art. 20 Components of capital
(Art. 14 para. 1d and 18 para. 3 CISA)[38]

1 In the case of a company limited by shares and a partnership limited by shares, the capital is the share and participation capital, and in the case of a limited liability company it is the issued capital.

2 In the case of partnerships, the capital is:[39]

a. the capital accounts;

b. the partnership contributions; and

c. the assets of the partners with unlimited liability.

36 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
37 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
38 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
39 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

3 The capital accounts and assets of the partners with unlimited liability may only be ascribed to the capital if an irrevocable written declaration deposited with a licensed audit company provides evidence that:[40]

a. in the event of liquidation, bankruptcy or administration proceedings such assets shall be subordinate to the claims of all other creditors; and

b. the asset manager of collective investment schemes is obliged:[41]

1. net such assets with its own claims nor secure them from its own assets,

2. reduce any of the components of the capital as defined in paragraph 2 letters a and c to the extent that the minimum capital is no longer maintained without the prior consent of the audit company.

Art. 21[42] Level of capital adequacy
(Art. 14 para. 1 let. d. CISA)

1 The required capital amounts to:

a. 0.02 percent of the total assets of the collective investment schemes managed by the asset manager exceeding 250 million Swiss francs;

b. at all times at least one quarter of the fixed costs in accordance with the most recent annual financial statement; and

c. no more than 20 million Swiss francs.

2 The following are fixed costs:

a. personnel expenses;

b. operating expenses (overheads);

c. depreciation of investment assets;

d. expense for allowances, provisions and losses.

3 Asset managers of collective investment schemes must also:

a. hold additional capital of 0.01 percent of the total assets of the collective investment schemes managed by the asset manager of the collective investment schemes; or

b. conclude professional indemnity insurance. FINMA regulates the details.

4 The portion of personnel expenses which are exclusively dependent on the business result or in relation to which no legal entitlement exists is deductible under paragraph 2 letter a.

5 The prescribed capital adequacy must be maintained at all times.

40 Amended by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).
41 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
42 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

6 Asset managers of collective investment schemes shall notify FINMA of capital inadequacy immediately.

7 In justified instances, FINMA may grant a relaxation.

Art. 22 Qualifying capital
(Art. 14 para. 1 let. d. CISA)

1 Legal entities may include the following in qualifying capital:

a. the paid-up share and participation capital in the case of a company limited by shares and partnership limited by shares, and the issued capital in the case of a limited liability company;

b. the general statutory reserve and other reserves;

c. retained earnings;

d. the net profit for the current financial year after deducting the estimated earnings distribution, provided an audited interim financial statement including full income statement is available;

e. hidden reserves, provided they are assigned to a separate account and designated as own funds. Their allowability must be confirmed in the audit report[43].

2 Partnerships may include the following in qualifying capital:[44]

a. the capital accounts;

b. the partnership contributions;

c. the collateral as defined in Article 19 paragraph 2;

d. the funds of the partners with unlimited liability, provided the conditions stated in Article 20 paragraph 3 are met.

3 For asset managers of collective investment schemes, any loans granted to them including bonds with a maturity of at least five years may be included in qualifying capital if an irrevocable written declaration deposited with a licensed audit company provides evidence that:[45]

a. in the event of liquidation, bankruptcy or administration proceedings such loans are subordinate to the claims of all other creditors; and

b. they have committed themselves not to net the loans with their claims nor secure them from their own assets.

4 The qualifying capital as defined in paragraphs 1 and 2 letters a–d must account for at least 50 percent of the total required.

43 Expression in accordance with Annex No 6 of the Financial Market Audit Act of 15 Oct. 2008, in force since 1 Jan. 2009 (AS **2008** 5363).
44 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
45 Amended by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).

Art. 23 Deductions in relation to the calculation of qualifying capital
(Art. 14 para. 1 let. d. CISA)

The following shall be deducted when calculating capital adequacy:

a. the loss carried forward and the loss for the current financial year;

b. any unsecured allowance and provision for the current financial year;

c. in the case of loans, repayment of the original nominal amount of 20 percent per year for the last five years in accordance with Article 22 paragraph 3;

d. intangible assets (including start-up and organisational costs as well as goodwill) with the exception of software;

e. in the case of a company limited by shares and partnership limited by shares, the shares which they hold in the company at their own risk;

f. in the case of a limited liability company, the capital contribution which it holds in the company at its own risk; g. the carrying amount of investments, unless a consolidation is performed in accordance with Article 29.

Art. 24 Description of the area of business
(Art. 14 para. 1 let. c CISA)[46]

1 Asset managers of collective investment schemes must describe their area of business in factually and geographically precise terms in the articles of association, company agreements or organisational regulations.[47]

2 Where they wish to operate a subsidiary, a branch or a representative office abroad, they shall provide FINMA with all the information it requires for the assessment of the duties, specifically:

a. name and address of the subsidiary, branch or representative office;

b. the names of the persons entrusted with the management and the business operations;

c. the audit company[48];

d. name and address of the supervisory authority in the foreign country of domicile.

3 They shall notify FINMA immediately of any material change in relation to their subsidiaries, branches or representative offices abroad.

46 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
47 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
48 Term in accordance with Annex No 6 of the Financial Market Audit Ordinance of 15 Oct. 2008, in force since 1 Jan. 2009 (AS **2008** 5363). This amendment has been made throughout the text.

Art. 24*a*[49] Duties
(Art. 18*a* CISA)

Asset managers of collective investment schemes may in addition to their duties pursuant to Article 18*a* of the Act specifically perform services and administrative activities such as the acceptance and transmission of orders involving financial instruments in the name of and for the account of clients.

Art. 25[50] Agreement
(Art. 14 para. 1 let. c CISA)

Asset managers of collective investment schemes must conclude a written agreement with their clients that governs the rights and obligations of the parties and other material matters.

Art. 26[51] Delegation of activities
(Art. 18*b* CISA)

Asset managers of collective investment schemes that conduct portfolio management and risk management for collective investment schemes may not delegate such duties to other companies whose interests may conflict with those of the investor or the asset manager of collective investment schemes.

Art. 27[52] Standards of industry bodies
(Art. 14 para. 2 CISA)

FINMA may make its granting of authorisation dependent on the asset manager of collective investment schemes complying with the code of conduct of a specific industry body.

Art. 28[53] Accounting
(Art. 14 para. 1ter CISA)

1 Asset managers of collective investment schemes are subject to the accounting regulations of the Code of Obligations (CO)[54].[55]

2 Where the asset managers of collective investment schemes are subject to specific, more stringent accounting standards, such regulations take precedence.

49 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
50 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
51 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
52 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
53 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
54 SR **220**. Now: Art. 957 ff. OR.
55 Amended by Annex 2 No 3 of the Banking Ordinance of 30 April 2014, in force since 1 Jan. 2015 (AS **2014** 1269).

Art. 29[56]

Section 2*a*[57]
Conditions of Authorisation for Asset Managers of Collective Investment Schemes Organised under Foreign Law

Art. 29*a* Foreign asset managers of collective investment schemes
(Art. 18 para. 1 let. c CISA)

1 Any company established under foreign law is deemed to be a foreign asset manager of collective investment schemes if it:

a. is authorised as an asset manager of collective investment schemes abroad;

b. uses the term «asset manager of collective investment schemes», or an expression that indicates that it conducts asset management of collective investment schemes, in its name, in the designation of its objects or in its business documents; or

c. conducts asset management in accordance with the legislation on collective investment schemes.

2 If the foreign asset manager of collective investment schemes is actually managed in Switzerland or conducts its business largely or exclusively in or from Switzerland, it shall be organised in accordance with Swiss law. In addition, it is subject to the provisions for domestic asset managers of collective investment schemes.

Art. 29*b* Duty to obtain authorisation and conditions of authorisation
(Art. 2 para. 1 let. c, 13 para. 2 let. f, 14 and 18 CISA)

1 A foreign asset manager of collective investment schemes requires FINMA authorisation if it employs persons in Switzerland that conduct asset management on its behalf on a permanent, commercial basis in or from Switzerland in accordance with the legislation on collective investment schemes (branch).

2 FINMA grants the foreign asset manager of collective investment schemes authorisation to establish a branch if:

a. it is sufficiently organised and has adequate financial resources and qualified personnel to operate a branch in Switzerland;

b. it is subject to an appropriate supervisory body that also covers the branch;

c. the foreign supervisory authorities responsible do not raise any objections to the establishment of a branch;

d. the foreign supervisory authorities responsible have concluded an agreement on cooperation and exchange of information with FINMA;

56 Repealed by No I of the Ordinance of 13 Feb. 2013, with effect from 1 March 2013 (AS **2013** 607).
57 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

e. the foreign supervisory authorities responsible undertake to notify FINMA immediately if circumstances occur that could seriously jeopardise the interests of the clients, their assets or the collective investment schemes it manages;

f. the branch meets the conditions of authorisation pursuant to Article 14 paragraph 1 let. a–c and 2 of the Act in addition to Article 10 et seq. of the present Ordinance and possesses a set of rules which provide a clear definition of the scope of business and establish an adequate organisational structure corresponding to the business activities; and

g. the foreign asset manager of collective investment schemes provides evidence that the name of the branch may be entered in the Commercial Register.

3 If the foreign asset manager of collective investment schemes constitutes an element of a group operating in the financial sector, FINMA may, subject to Article 18 paragraph 2 of the Act, make authorisation dependent on the condition that the former is subject to appropriate consolidated supervision by the foreign supervisory authorities responsible.

4 FINMA may require the branch to provide collateral if necessary for the protection of clients.

5 The foreign asset manager of collective investment schemes may only register the branch for entry in the Commercial Register if FINMA has granted it authorisation for the branch to be established.

Art. 29*c* Branches
(Art. 18 para. 1 let. c CISA)

1 Where a foreign asset manager of collective investment schemes establishes two or more branches in Switzerland, it shall:

a. obtain authorisation for each of them;

b. designate one of them as being responsible for relationships with FINMA.

2 Such branches shall meet the requirements of the Act and the present Ordinance on a combined basis. An audit report is sufficient.

Art. 29*d* Annual accounts and interim accounts of the branch

1 The branch may prepare its annual accounts and interim accounts in accordance with the provisions applicable to the foreign asset manager of collective investment schemes provided they satisfy international standards on financial reporting.

2 The following claims and obligations are presented separately:

a. those in relation to the foreign asset manager of collective investment schemes;

b. those in relation to the companies operating in the financial sector or real estate companies where:

1. the foreign asset manager of collective investment schemes forms an economic entity with them, or
2. it is assumed that the foreign asset manager of collective investment schemes is legally bound or de facto obligated to provide assistance to such company.

3 Paragraph 2 also applies to off-balance-sheet exposures.

4 The branch submits its annual accounts and interim accounts to FINMA. Publication is not required.

Art. 29*e*[58] Audit report

1 The audit company prepares its report in one of the official languages of Switzerland and sends it to FINMA. The manager of the branch receives a copy.

2 The branch forwards the copy of the audit report to the unit of the foreign asset manager of collective investment schemes that is responsible for the business activities of the branch.

Art. 29*f* Closure of a branch

The foreign asset manager of collective investment schemes obtains FINMA's authorisation prior to the closure of a branch.

Section 3 Conditions of Authorisation for Distributors

Art. 30 Authorisation conditions
(Art. 3 and 19 para. 2 CISA)

1 FINMA shall grant authorisation to a natural person who wishes to distribute units of a collective investment scheme where that person can provide evidence of:[59]

a. the conclusion of professional indemnity insurance appropriate to his or her business activities amounting to at least 250,000 Swiss francs, covering his or her activity as a distributor, or the depositing of an appropriate deposit of the same amount;

b. permitted procedural details in relation to distribution; and

c. a written distribution agreement with the fund management company, the SICAV, the limited partnership for collective investment or the SICAF, or the representative of a foreign collective investment scheme, under which agreement the person is expressly prohibited from receiving payments for the purchase of units.

58 Amended by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).
59 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

2 It shall grant authorisation to legal persons and competent partnerships if they or the persons holding executive powers meet the requirements stated in paragraph 1.

3 It may also make its granting of authorisation dependent on the distributor's compliance with the relevant standards of a specific industry body.

Art. 30*a*[60] Distribution by financial intermediaries
(Art. 19 para. 1bis CISA)

1 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 representative pursuant to Article 131*a* to which Swiss law is applicable.

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

Chapter 4 Code of Conduct

Art. 31 Duty of loyalty:
(Art. 20 para. 1 let. a CISA)

1 The licensees and their agents may only purchase investments from collective investment schemes for their own account at the market price and may only sell such investments from their own portfolios at the market price.

2 In relation to services delegated to third parties they shall waive the compensation owed to them in accordance with the fund regulations, company agreement, investment regulations or discretionary management agreement where such compensation is not used for payment of the services rendered by such third parties.

3 Where investments of a collective investment scheme are transferred to another scheme of the same licensee or a scheme belonging to a related licensee, no costs may be levied.

4 The licensees may not levy any issue or redemption fees if they purchase target funds which:

a. they manage themselves either directly or indirectly; or

b. are managed by a company to which they are related by virtue of:

1. common management,

2. control, or

3. a significant direct or indirect interest.[61]

60 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

61 Amended by No I of the Ordinance of 28. Jan. 2009, in force since 1 March 2009 (AS **2009** 719).

5 When a management fee is levied on investments in target funds pursuant to paragraph 4, Article 73 paragraph 4 applies accordingly.[62]

6 FINMA regulates the details. It may declare that paragraph 4 and 5 also applies to other products.[63]

Art. 32 Special duty of loyalty in relation to real estate investments
(Art. 20 para. 1 let. a, 21 para. 3 and 63 CISA)

1 The fees payable to closely related natural or legal persons which participate in the planning, construction, purchasing or sale of a building for the account of the collective investment scheme shall be calculated by the licensees exclusively on the basis of the normal prices prevailing in the sector.

2 The valuation expert shall check the fee invoice prior to settlement thereof and if necessary furnish the licensee and the audit company with a report.

3 Where real estate investments of a collective investment scheme are transferred to another scheme of the same licensee or a related licensee, no compensation may be levied for buying and selling work undertaken.

4 Payments by real estate companies to their directors, executives and personnel shall be included in the compensation to which the fund management company and the SICAV are entitled in accordance with the fund regulations.

Art. 32*a*[64] Exceptions to the ban on transactions with closely connected persons
(Art. 63 para. 3 and 4 CISA)

1 Pursuant to Article 63 paragraph 4 of the Act, FINMA may in justified individual cases grant an exemption from the ban on transactions with closely related persons pursuant to Article 63 paragraphs 2 and 3 of the Act if:

a. the relevant documents of the collective investment scheme provide for such a possibility;

b. the exemption is in the interests of the investors;

c. in addition to the valuation by the regular valuation experts for the real estate fund, a valuation expert who is independent of such experts or their employer and of the fund management company or SICAV as well as the custodian bank of the real estate fund pursuant to Article 64 paragraph 1 of the Act confirms the market conformity of the purchase and sale price for the property and of the transaction costs.

2 Following conclusion of the transaction, the fund management company or SICAV prepares a report containing the following:

62 Amended by No I of the Ordinance of 28. Jan. 2009, in force since 1 March 2009 (AS **2009** 719).

63 Inserted by No I of the Ordinance of 28. Jan. 2009, in force since 1 March 2009 (AS **2009** 719).

64 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

a. information on the individual properties acquired or transferred and their value on the date of acquisition or transfer;

b. the valuation reports by the regular valuation experts;

c. the report on the market conformity of the purchase or sales price by the valuation experts pursuant to paragraph 1 lit. c.

3 As part of its audit of the fund management company or SICAV, the audit company confirms adherence to the special duty of loyalty in relation to real estate investments;

4 The approved transactions with closely related persons are mentioned in the annual report of the collective investment scheme.

5 In the case of real estate investments where the fund management company, SICAV or persons closely related thereto commissioned construction projects, FINMA may not grant any exemptions from the prohibition of transactions with closely related persons.

Art. 32*b*[65] Conflicts of interest
(Art. 20 para. 1 let. a CISA)

The licensees must take effective organisational and administrative measures to identify, prevent, settle and monitor conflicts of interest in order to prevent the latter from harming the interests of the investors. Where conflicts of interest cannot be avoided, they shall be disclosed to the investors.

Art. 33 Due diligence
(Art. 20 para. 1 let. b CISA)

1 The licensees shall ensure the effective separation of the activities of decision-making (asset management), implementation (trading and settlement) and administration.

2 FINMA may in justified individual instances permit exemptions or order the separation of additional functions.

Art. 34 Duty of disclosure
(Art. 20 para. 1 let. c and 23 CISA)

1 The licensees shall draw investors' attention to the risks associated with a specific type of investing in particular.

2 They shall disclose all costs incurred on the issue and redemption of units and in the administration of the collective investment scheme. In addition, they shall disclose the manner in which the management fee is used and the levying of any performance fee.

65 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

2bis The duty of disclosure with regard to compensation for distribution encompasses the nature and scale of all fees and other pecuniary benefits through which the activities of the distributor are to be compensated.[66]

3 They shall ensure a degree of transparency in relation to the exercising of membership and creditors' rights such that investors are in a position to comprehend the manner in which such rights are exercised.

4 The fund management company and asset managers of collective investment schemes that purchase units of a collective investment scheme managed by them on behalf of clients shall inform the latter of the payments received.[67]

Art. 34*a*[68] Duty to keep records
(Art. 24 para. 3 CISA)

1 The duty to keep a record under Article 24 paragraph 3 of the Act applies to distribution activities as defined in Article 3 of the Act.

2 The form and content of the record is governed by the rules of conduct for a system of self-regulation that are recognised by as a minimum standard FINMA under Article 7 paragraph 3 of the Financial Market Supervision Act of 22 June 2007[69].

Title 2 Open-Ended Collective Investment Schemes

Chapter 1 Contractual Fund

Section 1 Minimum Assets
(Art. 25 para. 3 CISA)

Art. 35

1 The investment fund or the subfund of an umbrella fund must be issued for subscription (launch) within one year of approval by FINMA.

2 The investment fund or subfund of an umbrella fund must have net assets of at least 5 million Swiss francs at the latest one year following its launch.

3 FINMA may extend the time limits for a corresponding application.

4 Following expiry of the time period as defined in paragraphs 2 and 3, the fund management company shall notify FINMA of any shortfall forthwith.

66 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
67 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
68 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 Jan. 2014 (AS **2013** 607).
69 SR **956.1**

Section 2 Fund Contract

Art. 35*a*[70] Minimum content of the fund contract
(Art. 26 para. 3 CISA)

1 In particular, the fund contract contains the following information:

a. the name of the investment fund, together with the name and registered office of the fund management company, the custodian bank and the asset manager of collective investment schemes;

b. investor eligibility;

c. the investment policy, investment techniques, risk diversification and the risks associated with the investment;

d. the subdivision into subfunds;

e. the unit classes;

f. investors' right to cancel;

g. the accounting year;

h. the calculation of the net asset value and of the issue and redemption prices;

i. the appropriation of net income and capital gains from the sale of assets and rights;

j. the type, amount and calculation of all fees, the issue and redemption commission together with the incidental costs for the purchase and sale of the investments (brokerage fees, charges, duties) that may be charged to the fund's assets or to the investors;

k. the duration of the contract and the conditions of dissolution;

l. the media of publication;

m. the conditions for the deferment of redemption and compulsory redemption;

n. the locations at which the fund contract, prospectus, key investor information document and simplified prospectus, together with the annual and semi-annual reports, may be obtained free of charge;

o. the unit of account;

p. the restructuring.

2 When approving the fund contract, FINMA shall only verify the provisions pursuant to paragraph 1 lit. a–g and ensure their compliance with the Act.

3 When approving a contractual fund, FINMA, at the fund management company's request, shall verify all provisions of the fund contract and ensure their compliance with the Act where the fund is to be distributed abroad and such action is required under foreign law.

70 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

4 FINMA may formalise the content of the fund contract in accordance with international developments.

Art. 36 Investment policy guidelines
(Art. 26 para. 3 let. b CISA)

1 The fund contract sets out the permitted investments:

a. by type (equity securities, debt securities, derivative instruments, residential property, commercial properties; precious metals; commodities, etc.);

b. by country, geographical region, sector or currency.

2 For other funds as defined in Article 68 et seq. of the Act, it also sets out information on the special features and risks of the individual investments in terms of their characteristics and valuation.

3 The fund contract sets out the permitted investment techniques and instruments.

Art. 37[71] Fees and incidental costs
(Art. 26 para. 3 CISA)

1 The following may be charged to the assets of the fund or any subfunds:

a. a management fee for remunerating the activities of the fund management company;

b. custody fees and other costs for the remuneration of the custodian bank's activity, including the costs for the safekeeping of the fund's assets by third-party custodians or collective securities depositories;

c. a management fee and any performance fees for the remuneration of the asset manager of collective investment schemes;

d. any distribution fees for remuneration of the distributors' activity;

e. all the incidental costs listed in paragraph 2.

2 Where explicitly provided by the fund contract, the following incidental costs may be charged to the assets of the fund or the subfunds:

a. costs for the purchase and sale of the investments, specifically standard brokerage fees, commissions, taxes and duties, as well as costs for the verification and maintenance of quality standards in the case of physical investments;

b. costs for the purchase and sale of real estate investments, specifically standard brokerage fees, lawyers' fees and notary charges, the cost of amendments;

c. the supervisory authority's fees in relation to the establishment, amendment, liquidation or merger of the fund or any subfunds;

d. the supervisory authority's annual fees;

71 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

e. the audit company's fees for annual auditing as well as certification in the case of establishments, amendments, liquidation or merger of the fund or any subfunds;

f. fees for legal and tax advisors in connection with the establishment, modification, liquidation or merger of funds or any subfunds, as well as generally upholding the interests of the fund and its investors;

g. notary and commercial register expenses for registration in the Commercial Register of licensees under the collective investment schemes legislation;

h. the cost of publishing the net asset value of the fund or its subfunds, together with all the costs of providing notices to investors, including translation costs, provided such costs cannot be ascribed to any failure on the part of the fund management company;

i. the cost of printing legal documents as well as the fund's annual and semi-annual reports;

j. the cost of any registration of the fund with a foreign supervisory authority, and specifically the commission levied by the foreign supervisory authority, translation costs and remuneration for the representative or paying agent abroad;

k. costs relating to the exercising of voting rights or creditors' rights by the fund, including the cost of fees paid to external advisors;

l. costs and fees relating to intellectual property registered in the name of the fund or with rights of use for the fund;

m. fees paid to the members of the board of directors of the SICAV and the cost of liability insurance;

n. all costs incurred though any extraordinary steps taken to safeguard the interests of investors by the fund management company, asset manager of collective investment schemes or custodian bank.

3 The fund contract sets out the fees and incidental costs in a single, comprehensive overview, providing a breakdown by type, maximum amount and calculation.

4 Use of the term «all-in fee» is only permissible if it includes all fees with the exception of issue and redemption fees but including incidental costs. If the term «flat fee» is used, specific information must be provided indicating which fees and incidental costs it does not include.

5 The fund management company, asset manager of collective investment schemes and custodian bank may pay commissions only as reimbursement for the fund's distribution activities and only if this specifically provided for in the fund contract.

Art. 38[72] Issue and redemption price; supplementary charges and deductions
(Art. 26 para. 3 CISA)

1 The investors may be charged for the following:

a. all-in incidental costs incurred by the issue, redemption or conversion of units for the purchase and sale of investments;

b. a fee for subscriptions, conversions or redemptions to the distributor to cover the costs associated with distribution.

2 The fund contract describes in a comprehensible, transparent manner the fees that may be charged to the investors, as well as their scale and the method of calculation.

Art. 39 Media of publication
(Art. 26 para. 3 CISA)[73]

1 The prospectus for the investment fund must specify one or more media of publication in which the information required by the Act and the Ordinance shall be made available to investors. The media of publication may be print media or electronic platforms that are publicly accessible and recognized by FINMA.[74]

2 All facts which are subject to the disclosure requirement, and in relation to which investors are entitled to lodge objections with FINMA, in addition to the dissolution of an investment fund, must be published in the media of publication intended for such purpose.

Art. 40 Unit classes
(Art. 26 para. 3 let. k and 78 para. 3 CISA)

1 The fund management company may create, liquidate or merge unit classes subject to the consent of the custodian bank and the approval of FINMA. In doing so it shall address the following specific criteria: cost structure, reference currency, currency hedging, distribution or reinvestment of income, minimum investment or investor eligibility.

2 The procedural details are set out in the prospectus. The risk that a class may be liable for another class must be specifically disclosed in the prospectus.

3 The fund management company announces the creation, dissolution or merging of unit classes in the media of publication. Only a merger is deemed to be an amendment to the fund contract, and is governed by Article 27 of the Act.

4 Article 112 paragraph 3a-c applies accordingly.

72 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
73 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
74 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Art. 41 Amendments to the fund contract; duty to publish, time limit for lodging objections, entry into force and cash repayments
(Art. 27 paras. 2 and 3 CISA)

1 The fund management company shall publish any amendment to the fund contract in the media of publication of the relevant fund in the form specified by the Act. In this publication, the fund management company shall inform investors in a clear, comprehensible manner about which amendments to the fund contract are covered by FINMA's verification and ascertainment of compliance with the Act.[75]

1bis Amendments that are required by law, provided such amendments do not affect the rights of investors or are of an exclusively formal nature, may be exempted by FINMA from the duty to publish.[76]

2 The period in which objections to the amendment of the fund contract may be lodged commences on the day following announcement in the media of publication.

2bis When approving the amendment to the fund contract, FINMA shall only verify the amendments to the provisions pursuant to Article 35*a* paragraph 1 lit. a–g and ensure their compliance with the Act.[77]

2ter Where in relation to the approval of a fund contract pursuant to Article 35*a* paragraph 3 FINMA has verified all provisions and ensured their compliance with the Act, it shall also in relation to the amendment to such fund contract verify all provisions and ensure their adherence with the Act if the investment fund is to be distributed abroad and such action is required under foreign law.[78]

3 In its decision FINMA specifies the date on which the amendment to the fund contract enters into force.

Section 3 The Fund Management Company

Art. 42 Main administrative office in Switzerland
(Art. 28 para. 1 CISA)

The main administrative office of the fund management company is located in Switzerland if:

a. the inalienable and non-transferable tasks of the board of directors in accordance with Article 716a of the Swiss Code of Obligations are carried out in Switzerland.[79]

75 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
76 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
77 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
78 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
79 SR **220**

b. In relation to each of the investment funds it manages, at least the following tasks are carried out in Switzerland:
   1. deciding on the issue of units;
   2. deciding on the investment policy and valuation of the assets;
   3.[80] valuation of the assets;
   4. determining the issue and redemption prices;
   5. determining the profit distributions;
   6. determining the contents of the prospectus, the simplified prospectus, the annual and semi-annual report as well as other publications intended for investors; and
   7. fund accounting.

Art. 43 Minimum capital
(Art. 28 para. 2 CISA)

The fund management company shall have share capital of at least 1 million Swiss francs, to be paid up in cash.

Art. 44 Organisation
(Art. 28 para. 4 CISA)

1 The board of directors of the fund management company comprises at least three members.

2 The fund management company generally has at least three full-time employees with signatory powers.

Art. 45 Independence
(Art. 28 para. 5 CISA)

1 Simultaneous membership of the board of directors of the fund management company and board of directors of the custodian bank is permitted.

2 Simultaneous membership of the executive board of the fund management company and executive board of the custodian bank is not permitted.

3 A majority of the members of the board of directors of the fund management company must be independent of those persons entrusted by the custodian bank with tasks in accordance with Article 73 of the Act. The persons entrusted by the custodian bank at executive board level with tasks in accordance with Article 73 of the Act are not deemed to be independent.

4 None of the persons vested with signatory powers on behalf of the fund management company may at the same time be responsible for custodian bank duties as per Article 73 of the Act.

80 Amended by No I of the Ordinance of 13 Feb. 2008, in force since 1 March 2008 (AS **2008** 571).

Art. 46 Conduct of fund business
(Art. 29 CISA)

1 In addition to the tasks set out in Article 30 of the Act, the fund business specifically includes:

a. the representation of foreign collective investment schemes;

b. the acquisition of interests in companies whose primary object is the collective investment scheme business;

c. the management of unit accounts;

d. the distribution of collective investment schemes;

e. the rendering of administrative services for collective investment schemes and similar investment vehicles such as in-house funds, investment foundations and investment companies.

2 Such activities, in addition to the other services set out in Article 29 of the Act may only be performed by the fund management company where provided by the articles of association.

3 FINMA regulates the details.

Art. 47 Capital adequacy
(Art. 32 CISA)

In relation to the qualifying capital, Articles 22 and 23 shall apply accordingly.

Art. 48 Level of capital adequacy
(Art. 32 para. 1 CISA)

1 The required capital adequacy shall never exceed 20 million Swiss francs.

2 It is calculated as a percentage of the total assets of the collective investment scheme managed by the fund management company in the following manner:

a. 1 percent for that portion not exceeding 50 million Swiss francs;

b. ¾ percent for that portion exceeding 50 million but not exceeding 100 million Swiss francs;

c. ½ percent for that portion exceeding 100 million but not exceeding 150 million Swiss francs;

d. ¼ percent for that portion exceeding 150 million but not exceeding 250 million Swiss francs;

e. ⅛ for that portion exceeding 250 million Swiss francs.

3 Where the fund management company renders ancillary services under Article 29 paragraph 1 of the Act, the operational risks arising from such transactions are calculated using the basic indicator approach as defined in Article 92 of the Capital Adequacy Ordinance of 1 June 2012[81].[82]

81 SR **952.03**

4 If the fund management company is entrusted with the administration and portfolio management of the assets of a SICAV, its total assets must be included in the calculation of capital adequacy in accordance with paragraph 2.[83]

4bis If the fund management company is solely entrusted with the administration of a SICAV, it must hold additional capital of 0.01 percent of the total assets of the SICAV.[84]

5 The fund management company shall deduct the carrying amount of its participating interests from the capital adequacy.

6 The prescribed capital adequacy must be maintained at all times.

7 The fund management company shall notify FINMA of capital inadequacy immediately.

Art. 49 Annual report

1 The fund management company submits its own annual report to FINMA within ten days of its approval by the general meeting of shareholders.

2 It shall attach a breakdown of the prescribed and actual capital adequacy as per the balance sheet date to the annual report.

3 The preparation and format of the annual financial statements are governed by the relevant provisions of the Swiss Code of Obligations[85].

Art. 50 Change of fund management company; time limit for lodging objections, entry into force and cash repayments
(Art. 34 paras. 3, 4 and 6 CISA)

1 In relation to a change of fund management company, Article 41 applies accordingly.

2 The merging of fund management companies or developments which are tantamount to a merger are deemed to be a change pursuant to Article 34 of the Act.

82 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
83 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
84 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
85 SR **220**

Chapter 2 Investment Company with Variable Capital

Section 1 General Provisions

Art. 51[86] Self and externally managed SICAVs
(Art. 36 para. 3 CISA)

[1] The self-managed SICAV performs its own administration. It may only delegate portfolio management in accordance with Article 36 paragraph 3 of the Act to an asset manager of collective investment schemes that is subject to a recognised supervisory body.

[2] The externally managed SICAV delegates administration to an authorised fund management company. Administration also includes distribution of the SICAV. In addition, the externally managed SICAV delegates portfolio management to the same fund management company or to an asset manager of collective investment schemes that is subject to a recognised supervisory body.

[3] The provisions of Article 64 are reserved.

Art. 52 Object
(Art. 36 para. 1 let. d CISA)

A SICAV may only manage its own assets or those of its subfunds. It is specifically prohibited from rendering services pursuant to Article 29 of the Act on behalf of third parties.

Art. 53 Minimum assets
(Art. 36 para. 2 CISA)

In relation to the minimum assets of a SICAV, Article 35 applies accordingly.

Art. 54[87] Minimum investment amount

[1] In respect of a self-managed SICAV and an externally managed SICAV that delegates administration to an authorised fund management company and portfolio management to another asset manager of collective investment schemes, company shareholders must provide a minimum investment amount of 500,000 Swiss francs at the time of formation.

[2] Where the externally managed SICAV delegates administration and portfolio management to the same authorised fund management company, company shareholders must provide a minimum investment amount of 250,000 Swiss francs at the time of formation.

[3] The minimum investment amount must be maintained at all times.

[4] A SICAV shall notify FINMA of any shortfall immediately.

86 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
87 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Art. 55 Definition and level of capital adequacy
(Art. 39 CISA)

[1] The holdings provided by the company shareholders are included in the capital.

[2] The following must be deducted from the capital:

a. any balance sheet loss attributable to the company shareholders;

b. any allowances and provisions attributable to the company shareholders;

c. intangible assets (including start-up and organisational costs as well as goodwill) with the exception of software.

[3] The self-managed SICAV calculates the required level of capital adequacy in accordance with Article 48.

[3bis] An externally managed SICA that delegates administration to an authorised fund management company and portfolio management to an asset manager of collective investment schemes calculates the required level of capital adequacy pursuant to Article 48 accordingly. It may deduct 20 percent from this amount.[88]

[3ter] An externally managed SICAV that delegates portfolio management to a bank pursuant to the Federal Act on Banks and Savings Institutions of November 8, 1934[89] or to a securities trader pursuant to the Stock Exchange Act of March 24, 1995[90] with its registered office in Switzerland may be exempted by FINMA from the duty to include its own resources in the assets.[91]

[4] Where an externally managed SICAV delegates administration and portfolio management to the same authorised fund management company, it is not required to include its own resources in the assets (Art. 48 para. 4).[92]

[5] The prescribed ratio between the equity and total assets of a self-managed SICAV as well as an externally managed SICAV that delegates administration to an authorised fund management company and portfolio management to an asset manager of collective investment schemes shall be maintained at all times.[93]

[6] A SICAV notifies FINMA of capital inadequacy immediately.

[7] FINMA regulates the details.

88 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
89 SR **952.0**
90 SR **954.1**
91 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
92 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
93 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Art. 56 Net issue price at time of initial issue
(Art. 40 para. 4 CISA)

All shares have the same net issue price at the time of initial issue of their category, irrespective of whether they belong to different categories. This represents the issue price payable by the investors at the time of issue less any fees and incidental costs.

Art. 57[94]

Art. 58 Issue and redemption of shares
(Art. 42 paras. 1 and 3 CISA)

[1] Articles 37 and 38 apply accordingly.

[2] Company shareholders may redeem their shares if:

a. the appropriate ratio between holdings of the company shareholders and total assets of the SICAV is maintained even after redemption; and

b. the minimum investment amount is maintained.

Art. 59 Investment in treasury shares
(Art. 42 paras. 2 and 94 CISA)

Investments by a subfund in other subfunds of the same SICAV do not constitute an investment in treasury shares.

Art. 60 Media of publication
(Art. 43 para. 1 let. f CISA)

Article 39 applies accordingly.

Art. 61 SICAV with share classes
(Art. 40 para. 4 and 78 para. 3 CISA)

[1] Where provided by the articles of association, a SICAV may create, dissolve or merge share classes with the approval of FINMA.

[2] Article 40 applies accordingly. The merger requires the approval of the general meeting of shareholders.

[3] The risk that a class of shares may be liable for another class must be disclosed in the prospectus.

Art. 62 Voting rights
(Art. 40 paras. 4, 47 and 94 CISA)

[1] Shareholders have voting rights in respect of:

a. the subfund in which they are invested;

94 Repealed by No I of the Ordinance of 13 Feb. 2013, with effect from 1 March 2013 (AS **2013** 607).

b. the company if the decision affects the SICAV as a whole.

[2] If the share of voting rights assigned to a subfund differs significantly from the share of assets assigned to the subfund, the shareholders may at the general meeting resolve to split or merge the shares of a share category in accordance with paragraph 1 letter b. FINMA must give its consent for such decision to be valid.

[3] FINMA may order the splitting or merging of shares in a share class.

Art. 62*a*[95] Custodian bank
(Art. 44*a* CISA)

In relation to the custodian bank, Articles 15 paragraph 2 and 45 apply accordingly.

Art. 62*b*[96] Content of investment regulations
(Art. 43 and 44 CISA)

[1] The content and approval of the investment regulations are based on the provisions on the fund contract, unless the law or articles of association provide otherwise.

[2] When convening the general meeting, the SICAV informs shareholders in writing about:

a. which changes to the investment regulations FINMA has verified; and

b. which of these changes FINMA has established as being in compliance with the Act.

[3] Paragraphs 1 and 2 apply to the articles of association accordingly, provided the latter regulate the contents of the investment regulations.

Section 2 Organisation

Art. 63 General meeting
(Art. 50 and 94 CISA)

[1] The articles of association may provide for general meetings in respect of individual subfunds where decisions are involved which affect only such subfunds.

[2] Shareholders which together hold at least 10 percent of the votes of all or some subfunds may request that items be included on the agenda for discussion at the general meeting of the SICAV or subfund.

[3] The general meeting of the SICAV or subfunds is responsible for amending the investment regulations provided such amendment:

a. is not required by law;

b.[97] affects the rights of shareholders; or

95 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

96 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

c. is not of an exclusively formal nature.

4 In the media of publication, the SICAV publishes the material amendments to the fund regulations resolved by the general meeting and approved by FINMA, indicating the offices from which the amended wording may be obtained free of charge.

5 The provision regarding important resolutions passed by the general meeting of a company limited by shares (Art. 704 CO[98]) does not apply.[99]

Art. 64 Board of directors
(Art. 51 CISA)

1 The board of directors has the following tasks:

a. performing the duties required under Article 716a of the Swiss Code of Obligations[100];

b. determining the principles of the investment policy;

c.[101] appointing the custodian bank or an institution in accordance with Article 44*a* paragraph 2 of the Act;

d. creating new subfunds, where provided by the articles of association;

e. drawing up the prospectus and the simplified prospectus;

f. administration.

2 The tasks laid down in paragraph 1a-c may not be delegated.

3 In a self-managed SICAV, the tasks defined in paragraph 1 letters d and e, in addition to the administrative sub-tasks defined in paragraph 1 letter f, specifically risk management, the structuring of the internal control system (ICS) and compliance, may only be delegated to the executive board.

4 In relation to the organisational structure of a self-managed SICAV, Articles 44 and 45 apply accordingly.

Art. 65 Delegation of tasks[102]
(Art. 36 para. 3 and 51 para. 5 CISA)

1 If the board of directors delegates the administration, investment decisions or distribution to third parties, the rights and responsibilities of the contracting parties must be described in a written contract, to include specifically:[103]

97 Amended by No I of the Ordinance of 13 Feb. 2008, in force since 1 March 2008 (AS **2008** 571).
98 SR **220**
99 Inserted by Annex No 6 of the Financial Market Audit Act of 15 Oct. 2008, in force since 1 Jan. 2009 (AS **2008** 5363).
100 SR **220**
101 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
102 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
103 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

a. the tasks conferred;

b. any powers for further delegation;

c. the accountability of the fund management company;

d. the inspection rights of the board of directors.

1bis Articles 30 and 31 paragraphs 1–5 of the Act apply to the delegation of tasks accordingly.[104]

2 FINMA regulates the details.

Art. 66[105]

Chapter 3
Types of Open-Ended Collective Investment Schemes and Investment Regulations

Section 1 General Provisions

Art. 67 Compliance with investment regulations
(Art. 53 et seq. CISA)

1 Unless specified otherwise, the percentage restrictions given in this chapter relate to the fund assets at market values; they must be maintained at all times.

2 If the limits are exceeded as a result of market changes, the investments must be restored to the permitted level within a reasonable period, taking due account of the investors' interests.

3 Securities funds and other funds must comply with the investment restrictions within six months of launch.

4 Real estate funds must comply with the investment restrictions within two years of launch.

5 FINMA may extend the time limits specified in paragraphs 3 and 4 at the request of the fund management company and the SICAV.

Art. 68 Subsidiary companies and permitted investments
(Art. 53 et seq. CISA)

1 With regard to the administration of collective investment schemes, the fund management company and the SICAV may deploy subsidiaries whose sole object is the holding of assets for collective investment. FINMA regulates the details.

2 A SICAV may acquire movable and non-movable assets which are essential for the direct performance of its operations. FINMA regulates the details.

104 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
105 Repealed by No I of the Ordinance of 13 Feb. 2013, with effect from 1 March 2013 (AS **2013** 607).

Art. 69 Umbrella funds
(Art. 92 et seq. CISA)

1 Umbrella funds may only comprise subfunds of the same type.

2 The following types of fund qualify:

a. securities funds;

b. real estate funds;

c. other funds for traditional investments;

d. other funds for alternative investments.

3 In the case of collective investment schemes which include subfunds, the investment restrictions and techniques for each individual subfund apply.

Section 2 Securities Funds

Art. 70 Permitted investments
(Art. 54 paras. 1 and 2 CISA)

1 The following investments are permitted:

a. securities in accordance with Article 71;

b. derivative financial instruments in accordance with Article 72;

c. units in collective investment schemes which comply with the requirements specified in Article 73;

d. money market instruments as specified in Article 74;

e. sight or time deposits with a term to maturity not exceeding twelve months held with banks domiciled in Switzerland or in a member state of the European Union or in another country provided that the bank is subject to supervision in that country which is equivalent to the standard of supervision in Switzerland.

2 The following are not permitted:

a. investments in precious metals or precious metals certificates, commodities or commodity certificates;

b. short-selling of investments in accordance with paragraph 1letters a, b, c and d.

3 Investments in assets other than those named in paragraph 1 may not exceed 10 percent of the fund's total assets.

4 A fund management company which also offers personalised asset management in accordance with Article 29 letter a of the Act may not invest the investor's assets, whether in full or in part, in units of the collective investment scheme that it manages, unless the client has given his or her general consent beforehand.

Art. 71 Securities
(Art. 54 CISA)

1 Securities are deemed to be equity or debt securities pursuant to Article 54 paragraph 1 of the Act which embody a participation right or claim or the right to acquire such securities and rights by way of subscription or exchange, specifically warrants.

2 Investments in securities from new issues are permitted only if the terms of issue provide for their admission to an exchange or other regulated market which is open to the public. If one year following purchase they are not yet admitted on the exchange or other market open to the public, such securities must be sold within one month.

3 FINMA may formalise the permitted investments for a securities fund in accordance with the laws currently in force in the European Communities.[106]

Art. 72 Derivative financial instruments
(Art. 54 and 56 CISA)

1 Derivative financial instruments are permitted if:

a. their underlyings are instruments as defined in Article 70 paragraph 1letters a-d, financial indices, interest rates, exchange rates, loans or currencies;

b. the underlyings are instruments permitted by the fund regulations; and

c. they are traded on an exchange or other regulated market open to the public.

2 In the case of transactions involving OTC derivatives, the following conditions shall be complied with in addition:

a. The counterparty is a regulated financial intermediary specializing in such transactions.

b. The OTC derivatives are traded daily or may be returned to the issuer at any time. In addition, it is possible for them to be valued in a reliable and transparent manner.

3 A securities fund's overall exposure associated with derivative financial instruments may not exceed 100 percent of the net assets. The overall exposure may not exceed 200 percent of the fund's total net assets. When taking account of the possibility of temporary borrowing amounting to no more than 10 percent of the net assets (Art. 77 para 2), the overall exposure may not exceed 210 percent of the fund's total net assets.

4 Warrants must be treated in the same manner as financial instruments.

Art. 73 Investments in other collective investment schemes (target funds)
(Art. 54 and 57 para. 1 CISA)

1 The fund management company and the SICAV may only invest in target funds if:

106 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

a. their documents restrict investments in other target funds for their part to a total of 10 percent;

b. these funds are subject to provisions equivalent to those pertaining to securities funds in respect of the object, organisation, investment policy, investor protection, risk diversification, asset segregation, borrowing, lending, short-selling of securities and money market instruments, issue and redemption of units and content of the semi-annual and annual reports;

c. the target funds are admitted as collective investment schemes in the country of domicile, where they are subject to investor protection which is equivalent to that in Switzerland, and international legal assistance is ensured.

2 They may invest a maximum of:

a. 20 percent of the fund's assets in units of the same target fund; and

b.[107] 30 percent of the fund's assets in units of target funds that do not meet the relevant directives of the European Union (undertakings for collective investment in transferable securities, UCITS) but are equivalent to these or Swiss securities funds pursuant to Article 53 of the Act.

3 In relation to investments in target funds, Articles 78-84 do not apply.

4 If, in accordance with the fund regulations, a significant portion of the fund assets may be invested in target funds:

a.[108] the fund regulations and the prospectus must contain information about the maximum level of management fees to be borne by the investing collective investment scheme itself as well as by the target funds;

b. the annual report must specify the maximum portion of management fees that the investing collective investment scheme and the target funds may each bear.

Art. 73*a*[109] Master feeder- structures
(Art. 54 and 57 para. 1 CISA)

1 A feeder fund is a collective investment scheme that by way of derogation from Article 73 paragraph 2 letter a invests at least 85 percent of the fund's assets in units of the same target fund (master fund).

2 The master fund is a Swiss collective investment scheme of the same type as the feeder fund but is not itself a feeder fund and does not hold any units in such a fund.

3 A feeder fund may invest up to 15 percent of its fund assets in liquid assets (Art. 75) or derivative financial instruments (Art. 72). The derivative financial instruments may only be used for hedging purposes.

107 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
108 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
109 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

4 FINMA regulates the details.

Art. 74 Money market instruments
(Art. 54 para. 1 CISA)

1 The fund management company and the SICAV may acquire money market instruments if these are liquid and can be valued and are traded on an exchange or other regulated market that is open to the public.

2 Money market instruments that are not traded on an exchange or other regulated market that is open to the public may only be acquired if the issue or the issuer is subject to provisions regarding creditor or investor protection and if the money market instruments are issued or guaranteed by:

a. the Swiss National Bank;

b. the central bank of a member state of the European Union;

c. the European Central Bank;

d. the European Union;

e. the European Investment Bank;

f. the Organisation for Economic Cooperation and Development (OECD);

g. another state including its constituent parts;

h. a public international body of which Switzerland or at least one member state of the European Union is a member;

i. a public body;

j. a company whose securities are traded on an exchange or other regulated market open to the public;

k. a bank, securities trader or other institution that is subject to supervision equivalent to that in Switzerland.

Art. 75 Liquid assets
(Art. 54 para. 2 CISA)

Liquid assets comprise bank credit balances and claims arising from repurchase agreements at sight or on demand with maturities of up to twelve months.

Art. 76 Securities lending and repurchase agreements (repo, reverse repo)
(Art. 55 para. 1 let. a and b CISA)

1 Securities lending and repurchase agreements may only be used for the efficient management of the fund's assets. The custodian bank is liable for the proper, efficient settlement of securities lending and repurchase transactions.

2 Banks, brokers, insurance institutions and securities clearing organisations may be used as borrowers in the context of securities lending provided they specialise in securities lending and furnish collateral which corresponds to the scope and risk of

the proposed transactions. Repurchase transactions may be conducted under the same conditions with the institutions mentioned.

3 Securities lending and repurchase transactions are governed by a standardised framework agreement.

Art. 77 Raising and granting of loans; encumbrance of the fund's assets
(Art. 55 para. 1 let. c and d and para. 2 CISA)

1 At the expense of a securities fund:

a. no loans may be granted, nor may any guarantees be concluded;

b. no more than 25 percent of the fund's net assets may be pledged or ownership thereof be transferred as collateral.

2 Securities funds may borrow the equivalent of up to 10 percent of the net assets on a temporary basis.

3 Securities lending and repurchase agreements in the form of reverse repos are not deemed to be lending pursuant to paragraph 1a.

4 Repurchase agreements in the form of repos pursuant to paragraph 2 are deemed to be borrowing unless the funds obtained are used as part of an arbitrage transaction for the acquisition of securities of a similar type in connection with a reverse repo.

Art. 78 Risk diversification in relation to securities and money market instruments
(Art. 57 CISA)

1 Including the derivative financial instruments, the fund management company and the SICAV may invest up to 10 percent of the fund's assets in securities or money market instruments of the same issuer.

2 The total value of the securities and money market instruments of the issuers in which more than 5 percent of the fund's assets are invested may not exceed 40 percent of the fund's assets. This limit does not apply to sight or time deposits as defined in Article 79 or to transactions in OTC derivatives as defined in Article 80, to which the counterparty is a bank as defined in Article 70 paragraph 1e.

Art. 79 Risk diversification in relation to sight and time deposits
(Art. 57 CISA)

The fund management company and the SICAV may invest up to 20 percent of the fund's assets in sight and time deposits held with the same bank. Investments in bank deposits (Art. 70 para. 1 let. e) in addition to liquid assets (Art. 75) are both subject to this limit.

Art. 80 Risk diversification in relation to OTC transactions and derivatives
(Art. 57 CISA)

1 The fund management company and the SICAV may invest up to 5 percent of the fund's assets in OTC transactions with the same counterparty.

2 Where the counterparty is a bank as defined in Article 70 paragraph 1e, this limit is raised to 10 percent of the fund's assets.

3 The derivative financial instruments and claims against counterparties arising from OTC transactions are subject to the regulations on risk diversification as defined in Articles 73 and 78-84. This does not apply to derivatives on indices which comply with the conditions defined in Article 82 paragraph 1 letter b.

4 Where the claims arising from OTC transactions are hedged using collateral in the form of liquid assets such claims are not included in the calculation of counterparty risk. FINMA regulates the details of the collateral requirements. In doing so, it shall take account of international standards.[110]

Art. 81 Overall limits
(Art. 57 CISA)

1 Investments, deposits and claims in accordance with Articles 78–80 from the same issuer may not exceed 20 percent of the fund's overall assets.

2 Investments and money market instruments in accordance with Article 78 from the same group of companies may not exceed 20 percent of the fund's overall assets.

3 The limits defined in Articles 78–80 and 83 paragraph 1 may not be accumulated.

4 In the case of umbrella funds, these limits apply to each individual subfund.

5 Companies which form a group in accordance with international accounting regulations are deemed to be a single issuer.

Art. 82 Exceptions for index funds
(Art. 57 CISA)

1 The fund management company and the SICAV may invest a maximum of 20 percent of the fund's assets in securities or money market instruments from the same issuer if:

a. the fund regulations provide for the tracking of an index of equity or debt securities which is recognized by FINMA (index funds); and

b. the index is sufficiently diversified, representative of the market to which it relates, and is published in an appropriate manner.

2 The limit is increased to 35 percent for any securities or money market instruments from the same issuer where such instruments strongly dominate regulated markets. This exemption only applies in relation to a single issuer.

3 The investments defined in this article are not considered when observing the limit of 40 percent defined in Article 78 paragraph 2.

110 Inserted by No I of the Ordinance of 13 Feb. 2013 (AS **2013** 607). Amended by Anhang 4 Ziff. 1 der V vom 25. Juni 2014, in force since 1 Jan. 2015 (AS **2014** 2321).

Art. 83 Exemptions for publicly guaranteed or issued investments
(Art. 57 para. 1 CISA)

1 The fund management company and the SICAV may invest up to 35 percent of the fund's assets in securities or money market instruments of the same issuer provided such instruments are issued or guaranteed by:

a. an OECD member country;

b. a public body from the OECD;

c. a public international body of which Switzerland or a member state of the European Union is a member.

2 Subject to the approval of FINMA, they may invest up to 100 percent of the fund's assets in securities or money market instruments of the same issuer. In such event the following rules must be observed:

a. the investments are spread across securities or money market instruments from at least six different issues.

b. up to 30 percent of the fund's assets are invested in securities and money market instruments of the same issue.

c. reference is made in the prospectus and in the advertising material to the specific approval of FINMA; the issuers in which more than 35 percent of the fund's assets are invested are also listed therein.

d. the fund regulations include a listing of the issuers in which more than 35 percent of the fund's assets may be invested, together with the corresponding guarantors.

3 Provided the protection of investors is not endangered, FINMA grants authorisation.

4 The investments defined in this article are not considered when observing the limit of 40 percent defined in Article 78 paragraph 2.

Art. 84 Limit to the equity interest in a single issuer
(Art. 57 para. 2 CISA)

1 Neither the fund management company nor the SICAV may acquire equity securities representing more than 10 percent of the overall voting rights in a company or which would enable it to exert a material influence on the management of an issuing company.

2 FINMA may grant an exception provided the fund management company or the SICAV provides evidence that it does not exert a material influence.

3 The fund management company and the SICAV may acquire the following on behalf of the fund assets:

a. up to 10 percent of the non-voting equity paper, debt instruments or money market instruments of the same issuer;

b. up to 25 percent of the units in other collective investment schemes which meets the requirements specified in Article 73.

4 The limit defined in paragraph 3 does not apply if, at the time of acquisition, the gross amount of the debt instruments, the money market instruments or the units in other collective investment schemes cannot be calculated.

5 The limits defined in paragraphs 1 and 3 do not apply to securities and money market instruments which are issued or guaranteed by a country or public body belonging to the OECD or by international public bodies of which Switzerland or a member state of the European Union is a member.

Art. 85 Specific obligation to inform in the prospectus
(Art. 75 CISA)

1 The prospectus must provide information about the categories of investment instruments in which the fund is invested and whether transactions involving derivative financial instruments are conducted. Where transactions involving derivative financial instruments are conducted, an explanation must be given as to whether such transactions are conducted as part of the investment strategy or for the hedging of investment positions, and how the use of such instruments affects the risk profile of the securities fund.

2 Where the fund management company or the SICAV are permitted to invest the fund's assets primarily in investments other than those defined in Article 70 paragraph 1letters a and e, or where they constitute an index fund (Art. 82), specific reference must be made to this fact in the prospectus and in the advertising material.

3 Where the net assets of a securities fund exhibit high volatility or a high leverage effect owing to the composition of the investments or the investment techniques applied, specific reference must be made to this fact in the prospectus and in the advertising material.

Section 3 Real Estate Funds

Art. 86 Permitted investments
(Art. 59 para. 1 and 62 CISA)

1 The investments of real estate funds or real estate SICAVs must be specifically named in the fund regulations.[111]

2 The following real estate, which is entered on the basis of the registration of the fund management company, SICAV or fund management company appointed by the SICAV pursuant to paragraph 2[bis], is deemed to be real estate pursuant to Article 59 paragraph 1 letter a:[112]

a. residential buildings;

111 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
112 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

b. properties which are used exclusively or mainly for commercial purposes; mainly means where the income from the commercial element accounts for at least 60 percent of the total income from real estate (commercially used properties);

c. mixed-use buildings used for residential as well as commercial purposes; mixed means where the income from the commercial element accounts for more than 20 percent but less than 60 percent of the income from real estate;

d. condominiums;

e. building land (including properties for demolition) and buildings under construction;

f. leasehold land.

2bis The real estate must be entered in the Land Register under the name of the fund management company or SICAV with a remark to the effect that it belongs to the real estate fund. Where the real estate fund or SICAV under whose name the real estate is registered has subfunds, the subfund to which the real estate belongs must be specified.[113]

3 The following investments are also permitted:

a. mortgage notes or other contractual charges on property;

b. participations in and claims against real estate companies as defined in Article 59 paragraph 1 letter b of the Act;

c. units in other real estate funds (including real estate investment trusts or REITs) and real estate investment companies and certificates which are traded on an exchange or other regulated market which is open to the public, as defined in Article 59 paragraph 1 letter c of the Act;

d. foreign real estate securities as defined in Article 59 paragraph 1 letter d of the Act.

4 Undeveloped plots of land belonging to a real estate fund must be connected to the infrastructure network and suitable for immediate development and must also possess legally effective planning permission for their development. Construction work must commence prior to the expiry of the period for which the relevant planning permission is valid.[114]

Art. 87 Risk diversification and limits
(Art. 62 CISA)

1 Real estate funds must spread their investments over at least ten properties. Residential estates which have been built using the same principles of construction and neighbouring plots of land are deemed to be a single property.

113 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
114 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

2 The market value of a single property may not exceed 25 percent of the fund's assets.

3 The following limits expressed as a percentage of the fund's assets apply to the investments defined in a–d:

a. up to 30 percent of the fund's assets may be invested in building land, including properties for demolition, and buildings under construction;

b.[115] up to 30 percent of the fund's assets may be invested in leasehold land;

c. up to 10 percent of the fund's assets may be invested in mortgage notes and other rights of lien on real estate;

d. up to 25 percent of the fund's assets may be invested in other real estate funds and real estate investment companies as defined in Article 86 paragraph 3 letter c.

4 The investments defined in paragraph 3 letters a and b may together account for up to 40 percent of the fund's assets.[116]

5 FINMA may grant exemptions in justified individual instances.

Art. 88 Dominant influence of the fund management company and the SICAV in the case of ordinary co-ownership
(Art. 59 para. 2 CISA)

1 The fund management company and the SICAV are deemed to exert a dominant influence if they have a majority of the co-ownership shares and votes.

2 In a set of rules governing use and administration as defined in Article 647 paragraph 1 of the Swiss Civil Code of 10 December 1907 (CC)[117] they shall retain all rights, measures and actions provided for in Articles 647*a*–651 CC.

3 The right of pre-emption pursuant to Article 682 CC may not be suspended under contract.

4 Co-ownership of common facilities associated with properties held by the collective investment scheme which are part of a more extensive development must not grant a controlling influence. In such cases, the right of pre-emption pursuant to paragraph 3 may be suspended under contract.

Art. 89 Liabilities; short-term fixed interest securities and funds available at short notice
(Art. 60 CISA)

1 Liabilities are deemed to be borrowings, obligations from business activities, in addition to all claims arising from units on which notice has been given.

115 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
116 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
117 SR **210**

[2] Short-term fixed interest securities are deemed to be debt securities with a term or residual term to maturity of up to twelve months.

[3] Funds available at short notice are deemed to be cash on hand, postal check[118] and bank account deposits at sight and on demand with maturities of up to twelve months, as well as guaranteed credit facilities with a bank for up to 10 percent of the fund's net assets. The credit facilities must be included in the maximum level of pledging permitted pursuant to Article 96 paragraph 1.

Art. 90 Collateral for construction projects
(Art. 65 CISA)

Fixed-income securities with a term or residual term to maturity of up to 24 months may be held as collateral for impending construction projects.

Art. 91[119] Derivative financial instruments
(Art. 61 CISA)

Derivative financial instruments are permitted for the hedging of interest rate, currency, credit and market risk. The provisions applicable to securities funds (Art. 72) apply mutatis mutandis.

Art. 91*a*[120] Closely related persons
(Art. 63 para. 2 and 3 CISA)

[1] In particular, closely related persons include:

a. the fund management company, SICAV, custodian bank and their agents, specifically architects and building contractors commissioned by them;

b. the members of the board of directors and employees of the fund management company or SICAV;

c. the board of directors and members of the executive board as well as employees of the custodian bank appointed to monitor the real estate funds;

d. the audit company and the employees entrusted with the auditing of the real estate funds;

e. the valuation experts;

f. the real estate companies not belonging 100 percent to the real estate fund and members of the board of directors and employees of such real estate companies;

118 Following the Federal Council Decree of 7 June 201, which converted SwissPost into Swiss Post Ltd under special legislation and spun off Post Finance as a private company limited by shares, the reference to postal check deposits has been irrelevant since 26 June 2013.
119 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
120 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

f. the property management businesses entrusted with the management of the real estate and members of the board of directors and employees of such property management businesses;

h. the significant equity holders pursuant to Article 14 paragraph 3 of the Act of the companies mentioned in letters a–g above.

[2] Agents pursuant to paragraph 1 letter a are not deemed to be closely related persons if evidence can be provided that they neither exert nor have exerted direct or direct influence on the fund management company or the SICAV and the fund management company or SICAV are not biased in the matter in any other way

Art. 92 Valuation of real estate upon purchase or sale
(Art. 64 CISA)

[1] Real estate which the fund management company or SICAV wish to purchase must be valued in advance.[121]

[2] The valuation expert shall physically inspect the property when performing the valuation.

[3] On the sale of real estate, FINMA may grant an exemption from the duty to obtain a valuation pursuant to paragraph 1.

[4] The fund management company and the SICAV must explain to the audit company for the reason for any sale price which is below the estimated valuation or purchase price which is above such valuation.

Art. 93 Valuation of properties belonging to the collective investment scheme
(Art. 64 CISA)[122]

[1] The market value of the properties belonging to the real estate fund must be reappraised by the valuation experts at the end of each accounting year.

[2] The properties must be physically inspected by the valuation experts at least every three years.

[3] In the event of a sale, a new valuation may be waived if:

a. the existing valuation is no older than three months; and

b. there has not been any material change in the situation.[123]

[4] Where the fund management company and the SICAV do not adopt the revised valuation figure in their accounts, they must explain this to the audit company.

121 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
122 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
123 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Art. 94 Assessment and valuation in relation to construction projects
(Art. 64 and 65 CISA)[124]

[1] In relation to construction projects, the fund management company and the SICAV shall instruct at least one valuation expert to examine whether or not the probable costs are reasonable and in accordance with the prevailing market situation.

[2] Following the completion of the building, the fund management company and the SICAV shall instruct at least one valuation expert to assess the market value.

Art. 95 Duty to publish
(Art. 67 CISA)[125]

[1] The fund management company and the SICAV shall publish in the media of publication the market value of the fund's assets and resulting net asset value of the fund units simultaneously with the announcement to the bank or securities trader entrusted with the regular on and off-exchange trading of the units of the real estate fund.

[2] In relation to real estate funds which are traded on an exchange or other regulated market open to the public, the relevant regulations governing stock trading must also be observed.

Art. 96 Special powers
(Art. 65 CISA)

[1] In relation to pledging land and ceding the rights of lien as collateral pursuant to Article 65 paragraph 2 of the Act, the encumbrance may not exceed on average one third of the market value of all real estate assets.[126]

[1bis] To safeguard liquidity, the charge may be temporarily and exceptionally increased to half the market value where:

a. provision is made in the fund regulations; and

b. the interests of the investors are safeguarded.[127]

[1ter] As part of its audit of the real estate fund, the audit company expresses its opinion on the conditions pursuant to paragraph 1[bis].[128]

[2] Where the fund management company and the SICAV commission the construction of buildings or carry out the refurbishment of buildings, they may during the period of preparation, construction or refurbishment credit the income statement of the real estate fund for building land and buildings under construction at the prevailing market rate, provided the costs do not exceed the estimated market value as a result.

124 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
125 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
126 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
127 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
128 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Art. 97 Issuing of units in real estate funds
(Art. 66 CISA)

[1] Units may be issued at any time. This may only be effected in tranches.

[2] The fund management company and SICAV shall specify at least:

a. the planned number of new units to be issued;

b. the planned subscription ratio for the existing investors;

c. the issuing method for the subscription rights.

[3] The valuation experts shall review the market value of each property in order to calculate the net asset value and determine the issue price.

Art. 98 Early redemption of units in real estate funds
(Art. 66 CISA)

Units on which notice has been given in the course of an accounting year may be redeemed early by the fund management company and the SICAV at the close of said accounting year, providing:

a. the investor has stated this wish in writing at the time of serving notice;

b. the wishes of all investors who have requested early redemption can be met.

Section 4 Other Funds for Traditional and Alternative Investments

Art. 99 Permitted investments
(Art. 69 CISA)

[1] The following investments are specifically admitted for other funds:

a. securities;

b. units in collective investment schemes;

c. money market instruments;

d. sight and time deposits with a term of up to twelve months;

e. precious metals;

f. derivative financial instruments whose underlyings are securities, collective investment schemes, money market instruments, derivative financial instruments, indices, interest rates, exchange rates, loans, currencies, precious metals, commodities or similar instruments;

g. structured products relating to securities, collective investment schemes, money market instruments, derivative financial instruments, indices, interest rates, exchange rates, currencies, precious metals, commodities or similar instruments.

2 In the case of other funds for alternative investments, FINMA may admit other investments such as commodities and the corresponding commodity certificates.[129]

3 Investments as defined in Article 69 paragraph 2 of the Act must be explicitly named in the fund regulations.

4 In the case of investments in units of collective investment schemes, Article 73 paragraph 4 applies accordingly.

Art. 100 Investment techniques and restrictions
(Art. 70 para. 2 CISA and Art. 71 para. 2 CISA)

1 Other funds for traditional investments may:

a. raise loans for an amount not exceeding 25 percent of the fund's net assets;

b.[130] pledge or cede as collateral no more than 60 percent of the fund's net assets;

c. commit to an overall exposure of up to 225 percent of the fund's net assets;

d. engage in short-selling.

2 Other funds for alternative investments may:

a. raise loans for an amount not exceeding 50 percent of the fund's net assets;

b.[131] pledge or cede as collateral no more than 100 percent of the fund's net assets;

c. commit to an overall exposure of up to 600 percent of the fund's net assets;

d. engage in short-selling.

3 The investment restrictions shall be set out explicitly in the fund regulations. Such regulations shall also govern the nature and scale of short-selling permitted.

Art. 101 Derogations
(Art. 69–71 CISA)

FINMA may in individual cases grant a derogation from the regulations pertaining to:

a. the permitted investments;

b. the investment techniques;

c. the restrictions;

d. the risk diversification.

129 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
130 Amended by No I of the Ordinance of 13 Feb. 2008, in force since 1 March 2008 (AS **2008** 571).
131 Amended by No I of the Ordinance of 13 Feb. 2008, in force since 1 March 2008 (AS **2008** 571).

Art. 102 Risk notice
(Art. 71 para. 3 CISA)

1 The notice regarding special risks (warning clause) requires the approval of FINMA.

2 The warning clause must be placed on the first page of the fund regulations and the prospectus, and in all cases in the form in which it was approved by FINMA.

Chapter 4 General Provisions

Section 1 Custodian Bank

Art. 102*a*[132] Organisational structure
(Art. 72 CISA)

1 The custodian bank must have an organisational structure that is appropriate to its tasks and employ personnel who possess suitable, relevant qualifications for their activity.

2 For the fulfilment of its activities as custodian bank, it has at least three full-time employees with signatory powers.

Art. 103 Duty of disclosure
(Art. 72 para. 2 CISA)

The custodian bank shall notify the audit company of the executive persons entrusted with the tasks of custodian bank activity.

Art. 104 Duties
(Art. 73 CISA)

1 The custodian bank has the following tasks:

a. It is responsible for account and safekeeping account management on behalf of the collective investment schemes, but does not have independent access to their assets.

b. It ensures that in the case of transactions relating to the assets of the collective investment scheme the counter-value is transferred thereto within the usual time limit.

c. It notifies the fund management company or collective investment scheme if the counter-value is not refunded within the usual time limit and where possible requests reimbursement for the asset item concerned from the counterparty.

132 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

d. It keeps the required records and accounts in such manner that it is at all times able to distinguish between the assets held in safe custody of the individual collective investment schemes.

e. In relation to assets that cannot be placed in safe custody, it verifies ownership of the fund management company or collective investment scheme and keeps a record thereof.[133]

2 In the case of real estate funds, it shall be responsible for the safekeeping of mortgage notes against which no loans have been raised, in addition to the shares in real estate companies. It may hold accounts with third parties for the purpose of the ongoing management of real estate assets.

3 In the case of collective investment schemes comprising subfunds, all duties shall be performed by the same custodian bank.

Art. 105 Change of custodian bank, time limit for lodging objections, entry into force and cash payments
(Art. 74 CISA)

1 Article 41 applies mutatis mutandis to the change in custodian bank of a contractual fund.

2 The decision to change custodian bank shall be published immediately in the media of publication of the SICAV.

Art. 105*a*[134] Duties in relation to the delegation of safekeeping
(Art. 73 para. 2 and 2[bis] CISA)

Where the custodian bank transfers safekeeping of the fund's assets to a third-party custodian or collective securities depository in Switzerland or abroad, it shall verify and monitor whether the latter:

a. possesses an appropriate organisational structure, financial guarantees and the specialist qualifications required given the nature and complexity of the assets entrusted to it;

b. is subject to regular external audits, thereby ensuring that it possesses the financial instruments;

c. the assets received from the custodian bank are kept in safe custody in such a manner that by means of regular portfolio comparisons they can at all times be clearly identified as belonging to the fund's assets;

d. complies with the provisions applicable to the custodian bank with respect to the performance of the tasks delegated to it and the avoidance of conflicts of interest.

133 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
134 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Section 2 Prospectus and Simplified Prospectus

Art. 106 Prospectus
(Art. 75 and 77 CISA)

1 The fund management company and the SICAV shall set out in the prospectus (Annex I) all material information required for the evaluation of the collective investment scheme by prospective investors. The prospectus shall in addition contain the fund regulations where interested parties are not notified as to where such regulations may be separately obtained prior to subscription of the units.

2 The fund management company and the SICAV shall date the prospectus and submit it and any amendment thereto to FINMA at the latest by the time of publication.

3 They shall amend the prospectus in the event of material changes, but at least once per year.

Art. 107 Simplified prospectus for real estate funds[135]
(Art. 76 and 77 CISA)

1 The simplified prospectus for real estate funds contains the information required pursuant to Annex 2. FINMA specifically sets out these requirements.[136]

2 The fund management company and the SICAV shall date the simplified prospectus and submit it and any amendment thereto to FINMA at the latest by the time of publication.

3 They shall amend such prospectus in the event of material changes, but at least once per year.

Section 3 Key Investor Information Document for Securities Funds and Other Funds for Traditional Investments[137]
(Art. 76 and 77 CISA)

Art. 107*a*[138] Basic requirements

1 The key investor information document for securities funds and other funds for traditional investments contains the information required pursuant to Annex 3.

2 The fund management company and the SICAV date the key investor information document and submit it and any amendment thereto to FINMA immediately.

135 Amended by No I of the Ordinance of 29 June 2011, in force since 15 July 2011 (AS **2011** 3177).
136 Amended by No I of the Ordinance of 29 June 2011, in force since 15 July 2011 (AS **2011** 3177).
137 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
138 Inserted by No I of the Ordinance of 29 June 2011 (AS **2011** 3177). Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Art. 107*b*[139] In the case of multiple subfunds

Collective investment schemes that comprise several subfunds must publish a key investor information document for each subfund.

Art. 107*c*[140] In the case of multiple unit classes

[1] Collective investment schemes that comprise several unit classes must publish a key investor information document for each of these unit classes. Several unit classes may be summarised provided the requirements pursuant to Annex 3, in particular the requirements relating to the length of the document, are met.

[2] In relation to one unit class or several other unit classes, the fund management company and the SICAV may select a representative unit class provided such choice is not misleading to investors in the other unit classes. In such cases, the «risk and earnings profile» section of the key investor information document must contain the explanation of the significant risk that applies to each of the unit classes being represented.

[3] Different unit classes may not be summarized in a representative unit class pursuant to paragraph 2. The fund management company and the SICAV keep a record of the unit classes represented by the representative unit class pursuant to paragraph 2, as well as the reasons for such choice.

Art. 107*d*[141] Reviews

[1] The fund management company and the SICAV shall review the key investor information document in the event of any material change to the information, but at least once per year.

[2] If a review finds that the key investor information document requires amendment, the fund management company and the SICAV must make a revised version available immediately.

Art. 107*e*[142] Publication

The key investor information document, including the appropriately revised presentation of the collective investment scheme's past performance in the period to December 31, must be published by the fund management company and the SICAV within the first 35 working days of the following year.

139 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
140 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
141 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
142 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Section 3 Position of Investors

Art. 108 Payment; certification of units
(Art. 78 para. 1 and 2 CISA)

[1] The paying agent shall be a bank under the Federal Act on Banks and Savings Banks of 8 November 1934[143][144]

[2] Where the fund regulations provide for the delivery of unit certificates, the custodian bank, at the investor's request, certifies his or her rights in securities (Art. 965 CO[145]) without par value, in registered form and structured as order instruments (Art. 967 and 1145 CO).[146]

[3] Unit certificates may only be issued after payment of the issue price.

[4] The issuing of fractions of units shall only be permitted in the case of investment funds.

Art. 109 Exceptions from the right to redeem at any time
(Art. 79 CISA)

[1] The regulations of a collective investment scheme whose value is difficult to ascertain, or which has limited marketability, may provide for notice to be served only on specific dates, subject to a minimum of four times per year.

[2] FINMA may in the event of a justified request restrict the right to redeem at any time depending on the investments and investment policy. This shall apply specifically in the case of: a. investments which are not listed and not traded on another regulated market open to the public; b. mortgages; c. private equity investments.

[3] Where the right to redeem at any time is restricted, such fact must be stated explicitly in the fund regulations, in the prospectus and in the simplified prospectus.

[4] The right to redeem at any time may be suspended for a maximum of five years.

Art. 110 Deferred repayment
(Art. 81 CISA)

[1] The fund regulations may provide for repayment to be deferred temporarily in the following exceptional cases:

a. where a market which serves as the basis for the valuation of a significant proportion of the fund's assets is closed, or if trading on such market is restricted or suspended;

b. in the event of political, economic, military, monetary or other emergencies;

143 SR **952.0**
144 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
145 SR **220**
146 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

c. if, owing to exchange controls or restrictions on other asset transfers, the collective investment scheme can no longer transact its business;

d. in the event of large-scale withdrawals of units which may significantly endanger the interests of the other investors.

2 The audit company and FINMA must be informed immediately of any decision to defer redemptions. The decision must also be communicated to the investors in a suitable manner.

Art. 111 Enforced redemption
(Art. 82 CISA)

1 Enforced redemption pursuant to Article 82 of the Act is permitted only in exceptional circumstances.

2 The reasons for enforced redemption must be set out in the fund regulations.

Section 4
Open-Ended Collective Investment Schemes with Subfunds

Art. 112 Subfunds
(Art. 92-94 CISA)

1 The fund management company and the SICAV shall prepare a single set of fund regulations for a collective investment scheme. Such regulations shall include the designation of the scheme and the additional designations of the individual subfunds.

2 Where the fund management company or the SICAV has the right to create additional subfunds, or dissolve or merge existing subfunds, specific reference must be made thereto in the fund regulations.

3 The fund management company and the SICAV shall also set out in the fund regulations that:

a. fees may be debited only to that subfund for which a specific service is rendered;

b. costs which cannot be clearly assigned to a particular subfund are charged to the individual subfunds in proportion to their assets;

c. investors are only entitled to the assets and income of the particular subfund in which they are invested or whose shares they hold;

d. only the subfund concerned is liable for the liabilities of that individual subfund.

4 The fees charged when investors convert from one subfund to another are cited explicitly in the fund regulations.

5 In relation to the merging of subfunds, Article 115 applies accordingly.

Art. 113 SICAV with subfunds
(Art. 94 CISA)

The risk that a subfund is in certain circumstances liable for another subfund must be disclosed in the prospectus.

Section 5 Restructuring and Dissolution

Art. 114 Conditions relating to restructurings
(Art. 92 and 95 para. 1 CISA)

1 Investment funds or subfunds may be merged by the fund management company if:

a. provision therefore is made in the relevant fund contracts;

b. they are managed by the same fund management company;

c. the relevant fund contracts are basically identical in terms of the provisions pursuant to Article 26 paragraph 3 letters b, d, e and i of the Act;

d. the assets of the funds concerned are valued, the exchange ratio is calculated, and the assets and liabilities are acquired on the same day;

e. no costs arise as a result for either the investment fund or subfunds, or the investors.

2 In the case of a transfer of the assets of a SICAV, paragraph 1 shall apply accordingly.

3 FINMA may make the merging of investment funds and the transfer of assets of a SICAV dependent on additional conditions, especially in the case of real estate funds.

Art. 115 Procedure for the merging of collective investment schemes
(Art. 95 para. 1 let. a and b CISA)

1 In the case of the merging of two investment funds, the investors of the fund being transferred receive an equivalent number of units in the acquiring fund. The fund being transferred is terminated without liquidation.

2 The fund contract governs the merging procedure. In particular, it contains provisions regarding:

a. the information to be given to the investors;

b. the audit company's duty to inspect the accounts at the time of the merger.

3 FINMA may grant limited deferment of repayment if the merger is likely to take more than one day.

4 The fund management company shall notify FINMA that the merger has been completed.

5 In the case of the transfer of assets of a SICAV, paragraphs 2-4 apply accordingly.

Art. 116 Dissolution of a collective investment scheme
(Art. 96 and 97 CISA)

1 The collective investment scheme shall be dissolved and may be liquidated immediately provided:

a. the fund management company or the custodian bank has served notice;

b. the shareholders of a SICAV have resolved the dissolution.

2 Where FINMA orders the dissolution of the collective investment scheme, such scheme shall be liquidated immediately.

3 Prior to the final payment, the fund management company or the SICAV shall obtain authorisation from FINMA.

4 The trading of units on the exchange ceases at the time of dissolution.

5 The termination of the custodian bank agreement between the SICAV and the custodian bank shall be notified to FINMA and the audit company immediately.

Title 3 Closed-Ended Collective Investment Schemes

Chapter 1 Limited Partnership for Collective Investment

Art. 117[147] Object
(Art. 98 para. 1 CISA)

1 The limited partnership for collective investment may only manage its own investments. It is specifically prohibited from rendering services pursuant to Article 29 of the Act on behalf of third parties or taking up entrepreneurial activities for the pursuit of commercial purposes.

2 It invests in risk capital of companies and projects and can determine their strategic direction. It can also invest in instruments pursuant to Article 121.

3 To achieve this object, it may:

a. take control of voting rights in companies;

b. sit on the governing body responsible for ultimate management, supervision and control of its participations, in order to safeguard the interests of the limited partners.

Art. 118 General partners
(Art. 98 para. 2 CISA)

1 ...[148]

147 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
148 Repealed by No I of the Ordinance of 13 Feb. 2013, with effect from 1 March 2013 (AS **2013** 607).

2 Where the company has a general partner, the general partner must have a minimum paid-up share capital of 100,000 Swiss francs. Where it has several general partners, they must together have a minimum paid-up share capital of 100,000 Swiss francs.

3 In relation to the general partners, the authorisation and reporting duties defined in Articles 14 paragraph 1 and 15 paragraph 1 apply accordingly.

Art. 119 Company agreement
(Art. 9 para. 3 and 102 CISA)[149]

1 The general partners may delegate investment decisions and other activities, provided this is in the interests of efficient management.

2 They shall exclusively commission persons who are properly qualified to execute such activities, and shall ensure the instruction, monitoring and control necessary with respect to implementation of the tasks assigned.

3 The persons holding executive powers with the general partners may participate in the company as limited partners if:

a. this is provided for in the company agreement;

b. the participating interest stems from their private assets; and

c. the participating interest is subscribed at the time of launch.

3bis High-net-worth individuals pursuant to Article 6 who have submitted a written declaration pursuant to Article 6*a* paragraph 1 may participate in the company as limited partners, where specified by the company agreement.[150]

4 The company agreement regulates the details and must be published in an official language. FINMA may authorise a different language in individual cases.[151]

Art. 120 Risk capital
(Art. 103 para. 1 CISA)

1 Risk capital is generally used for the direct or indirect financing of companies and projects in the basic expectation of generating above-average added value, coupled with the above-average probability of making a loss.

2 Financing may take the following specific forms:

a. equity capital;

b. borrowed capital;

c. mixed forms of equity and borrowed capital such as mezzanine financing.

149 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
150 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
151 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Art. 121 Other investments
(Art. 103 para. 2 CISA)

1 The following are specifically permitted:

a.[152] construction, real estate and infrastructure projects;

b. alternative investments.

2 The company agreement regulates the details.

3 Only construction, real estate and infrastructure projects by persons which are neither directly nor indirectly related with the following are permitted:

a. the general partner;

b. the persons responsible for the management and the business operations; or

c. the investors.[153]

4 The general partner, the persons responsible for the management and the business operations and closely related natural and legal persons, as well as the investors of a limited partnership for collective investment, may not acquire real estate and infrastructure assets from the latter nor assign any such assets to it.[154]

Chapter 2 Investment Company with Fixed Capital

Art. 122 Objects
(Art. 110 CISA)

1 The investment company with fixed capital may only manage its own assets. Its primary object is to generate income and/or capital gains, whereby it does not pursue any entrepreneurial activities in the true sense. It is specifically prohibited from rendering services pursuant to Article 29 of the Act on behalf of third parties.

2 It may delegate investment decisions as well as specific tasks, provided this is in the interests of efficient management.

Art. 122*a*[155] Minimum investment amount
(Art. 110 para. 2 CISA)

1 Shares amounting to at least 500,000 Swiss francs must be fully paid up in cash at the time of formation.

2 The minimum investment amount must be maintained at all times.

152 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
153 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
154 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
155 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

3 The SICAF shall notify FINMA of any shortfall in the minimum investment amount immediately.

Art. 122*b*[156] Treasury shares of the governing bodies
(Art. 110 para. 2 CISA)

The governing bodies must at all times hold treasury shares as a percentage of the total assets of the SICAF as follows, subject to a maximum of 20 million Swiss francs:

a. 1 percent for that portion not exceeding 50 million Swiss francs;

b. ¾ percent for that portion exceeding 50 million but not exceeding 100 million Swiss francs;

c. ½ percent for that portion exceeding 100 million but not exceeding 150 million Swiss francs;

d. ¼ percent for that portion exceeding 150 million but not exceeding 250 million Swiss francs;

e. ⅛ for that portion exceeding 250 million Swiss francs.

Art. 123 Permitted investments
(Art. 110 CISA)

1 The provisions concerning permitted investments for other funds apply accordingly.

2 FINMA may authorise other investments.

Art. 124 Media of publication
(Art. 112 CISA)

Article 39 applies accordingly.

Art. 125 Enforced redemption
(Art. 113 para. 3 CISA)

Article 111 applies accordingly.

Art. 126 Amendments to the articles of association and investment regulations
(Art. 115 para. 3 CISA)

In the media of publication, the SICAF shall publish the significant amendments to the articles of association and the fund regulations resolved by the general meeting and approved by FINMA, indicating the locations where the full wording of the amendments may be obtained free of charge.

156 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Title 4 Foreign Collective Investment Schemes

Chapter 1 Approval

Art. 127 Designation of the foreign collective investment scheme
(Art. 120 para. 2c and 122 CISA)[157]

If the designation of a foreign collective investment scheme provides grounds or might provide grounds for confusion or deception, FINMA may require a supplementary explanation.

Art. 128[158] Representative agreement and paying agent agreement
(Art. 120 para. 2 let. d CISA)

[1] A fund management company of a foreign collective investment scheme or a foreign fund management company that is admitted for distribution in Switzerland shall provide evidence that it has concluded a written representative agreement.

[2] A fund management company of a foreign collective investment scheme or a fund management company that is admitted for distribution in Switzerland and the custodian bank shall provide evidence that they have concluded a written paying agent agreement.

[3] In relation to the distribution of foreign collective investment schemes in Switzerland, the representative agreement specifically regulates:

a. the rights and duties of the foreign collective investment scheme and the representative pursuant to Article 124 paragraph 2 of the Act, in particular with regard to its duty to report, publish and inform, as well as the code of conduct;

b. the manner in which the collective investment schemes are distributed in Switzerland; and

c. the duty of a foreign collective investment scheme to report to the representative, specifically with regard to changes to the prospectus and the organisational structure of the foreign collective investment scheme.

[4] FINMA shall publish a list of countries with which it has concluded an agreement on cooperation and the exchange of information pursuant to Article 120 paragraph 2 letter e of the Act.

157 Amended by No I of the Ordinance of 13 Feb. 2008, in force since 1 March 2008 (AS **2008** 571).
158 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Art. 128*a*[159] Duties of the representative
(Art. 124 para. 2 CISA)

The representative of a foreign collective investment shall have an appropriate organisational structure for the fulfilment of its duties pursuant to Article 124 of the Act.

Art. 129[160] Simplified, fast-track approval procedure
(Art. 120 para. 3 CISA)

FINMA may in individual cases specify a simplified, fast-track approval procedure for foreign collective investment schemes provided such investments have already been approved by a foreign supervisory authority, such arrangement being reciprocal.

Art. 130 Lapse of approval
(Art. 15 and 120 CISA)

The approval for foreign collective investment schemes pursuant to Articles 15 and 120 of the Act lapses if the supervisory authority in the country of domicile of the collective investment scheme withdraws its approval.

Chapter 2 Representatives of Foreign Collective Investment Schemes

Art. 131 Minimum capital and furnishing of collateral
(Art. 14 para. 1 let. d CISA)

[1] The representative of foreign collective investment schemes must have a minimum capital of 100 000 Swiss francs. This must be paid up in cash.

[2] In all other respects, Articles 19 and 20 apply mutatis mutandis.

Art. 131*a*[161] Duties of the representative in relation to distribution to qualified investors
(Art. 120 para. 4 CISA)

[1] The representative of a foreign collective investment scheme that in Switzerland is distributed solely to qualified investors must conclude a written distribution agreement pursuant to Article 30*a* with the financial intermediary pursuant to Article 19 paragraph 1[bis] of the Act.

[2] It shall ensure that it is able to provide investors with the binding documents for the foreign collective investment scheme.

159 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
160 Amended by Annex No 6 of the Financial Market Audit Act of 15 Oct. 2008, in force since 1 Jan. 2009 (AS **2008** 5363).
161 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Art. 132 Professional indemnity insurance
(Art. 14 para. 1 let. d CISA)

The representative shall conclude professional indemnity insurance appropriate to its business activities of at least 1 million Swiss francs, less the minimum capital or effective collateral furnished in accordance with Article 131.

Art. 133 Publication and reporting regulations
(Art. 75–77, 83 para. 4 and 124 para. 2 CISA)[162]

[1] The representative of a foreign collective investment scheme shall publish the documents pursuant to Articles 13*a* and 15 paragraph 3, together with the annual and semi-annual report, in an official language. FINMA may authorise publication in another language, provided publication is directed only towards a specific investor eligibility.[163]

[2] The following must be indicated in the publications and marketing material:

a. the country of domicile of the collective investment scheme;

b. the representative;

c. the paying agent;

d.[164] the location where the documents pursuant to Articles 13*a* and 15 paragraph 3, together with the annual and semi-annual report, may be obtained.

[3] The representative of a foreign collective investment scheme shall submit the annual and semi-annual reports to FINMA immediately, notify it of amendments to such documents pursuant to Article 13*a* immediately and publish such amendments in the media of publication. Articles 39 paragraph 1 and 41 paragraph 1, second sentence, apply mutatis mutandis.[165]

[4] It shall publish the net asset values of units at regular intervals.

[5] The publication and reporting regulations do not apply to foreign collective investment schemes that are exclusively distributed to qualified investors.[166]

162 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
163 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
164 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
165 Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).
166 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

Title 5 Audit and Supervision[167]

Chapter 1 Audit[168]

Art. 134[169] Audit of the custodian bank
(Art. 126 para. 1 and 6 CISA)

[1] The audit company for the custodian bank shall verify whether the custodian bank is complying with the supervision and contractual provisions.

[2] If the audit company for the custodian bank identifies an infringement of supervision or contractual provisions or other irregularities, it shall inform FINMA and the audit company for the fund management company or for the investment company with variable capital (SICAV).

Art. 135[170] Audit report
(Art. 126 para. 1 and 6 CISA)

[1] The audit company for the custodian bank shall specify in a separate audit report whether the custodian bank is complying with the supervision and the contractual provisions.

[2] It must also include any reservation in the audit report under Article 27 paragraph 1 of the Financial Market Supervision Act of 22 June 2007[171] on the custodian bank.

[3] It shall submit the audit report under paragraph 1 to the following recipients:

a. the fund management company or the SICAV;

b. FINMA;

c. the audit company for the fund management company or the SICAV.

[4] The audit company for the fund management company or the SICAV shall take account of the results of the report on the audit of the custodian bank in their own audits.

[5] It may request additional information from the audit company for the custodian bank that it requires to carry out its tasks.

167 Amended by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).
168 Inserted by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).
169 Amended by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).
170 Amended by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).
171 SR **956.1**

Art. 136[172] Cooperation between audit companies
(Art. 126 para. 1 and 6 CISA)

Audit companies for supervised bodies that work together in accordance with Article 31 of the Act must for their part also work closely together.

Art. 137[173] Audit of accounts
(Art. 126 para. 5 and 6 CISA)

1 When auditing the accounts of collective investment schemes, the information under Articles 89 paragraph 1 letters a–h and 90 of the Act shall be audited.

2 In relation to the auditing of accounts of persons named in Article 126 paragraph 1 of the Act, of the investment funds managed and of any real estate company belonging to the real estate funds or to the real estate investment companies, FINMA may regulate the details relating to form, content, periodicity, time limits and recipients of reports as well as the conduct of the audit.

Art. 138–140[174]

Chapter 2 Supervision[175]

Art. 141 Continuation of the collective investment scheme
(Art. 96 CISA)

1 Where the continuation of the investment fund is in the interests of the investors and a suitable new fund management company or custodian bank can be found, FINMA may order the transfer of the fund contract thereto including rights and obligations.

2 Where the new fund management company enters into the fund contract, the liabilities and ownership of the assets and rights belonging to the investment fund must by law be passed to the new fund management company.

3 Where the continuation of the SICAV is in the interests of the investors and a suitable new SICAV can be found, FINMA may order the transfer of the assets thereto.

Art. 142 Form of documents to be submitted
(Art. 1 and 144 CISA)

1 FINMA may determine the form for submission, specifically:

172 Amended by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).
173 Amended by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).
174 Repealed by Annex No 6 of the Financial Market Audit Ordinance of 15 Oct. 2008, with effect from 1 Jan. 2009 (AS **2008** 5363).
175 Inserted by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).

a. of the prospectuses and simplified prospectuses;
b. of the documents specified in Article 15 paragraph 1a-e of the Act;
c. of the annual and semi-annual reports.

2 It may designate a third party as the recipient of the submission.

Title 6 Final and Transitional Provisions

Art. 143[176]

Art. 144 Transitional provisions

1 With the exception of the following provisions, this Ordinance applies to the following from its commencement date:

a. new collective investment schemes and existing investment funds;
b. all persons subject to the duty to obtain authorisation in accordance with Article 13 of the Act;
c. audit companies pursuant to Article 126 et seq. of the Act.

2 Within one year of this Ordinance coming into force, investment clubs must comply with the provisions set out in Article 1.

3 Within six months of this Ordinance coming into force, regulated financial intermediaries as defined in Article 5 paragraph 1 letter a of the Act must issue simplified prospectuses which satisfy the requirements of Article 4 paragraph 3.

4 Within one year of this Ordinance coming into force, existing investment funds and subfunds of an umbrella fund must comply with the provision concerning minimum assets (Art. 35 para. 2).

5 One year after this Ordinance comes into force, joint and several guarantees in accordance Article 15 paragraph 1e of the Investment Fund Ordinance of 19 October 1994[177] are no longer be recognised as qualifying capital.

6 Within one year of this Ordinance coming into force, existing representatives of foreign collective investment schemes shall comply with the provisions concerning minimum capital (Art. 131) and professional indemnity insurance (Art. 132).

7 Exceptions which FINMA has granted on a case-by-case basis to fund management companies of investment funds for institutional investors with professional treasury operations in accordance with Article 2 paragraph 2 of the Investment Fund Ordinance (Art. 10 para. 5 CISA) continue to apply.

176 Repealed by No I of the Ordinance of 29 June 2011, with effect from 15 July 2011 (AS **2011** 3177).
177 [AS **1994** 2547, **1997** 85 Art. 57 No 2 2255 2779 II 64, **2000** 2713, **2004** 2073 3535]

[8] Within one year of this Ordinance coming into force, the audit companies of asset managers and of representatives of foreign collective investment schemes must at the least comply with the recognition requirements specified in Article 136.

[9] In special cases, FINMA may extend the time limits cited in this Article.

Art. 144*a*[178] Transitional provisions to the Amendment of 29 June 2011 for Swiss collective investment schemes

[1] Within three years of the Amendment of 29 June 2011 coming into force, the fund management company and the SICAV must publish simplified prospectuses for existing securities funds and other funds for traditional investments pursuant to Annex 3 and submit these prospectuses to FINMA.

[2] For securities funds and other funds for traditional investments which are approved within one year of the Amendment coming into force, the fund management company and the SICAV may publish simplified prospectuses pursuant to Annex 2. Paragraph 1 applies.

Art. 144*b*[179] Transitional provisions to the Amendment of 29 June 2011 for foreign collective investment schemes

[1] Within three years of the Amendment of 29 June 2011 coming into force, representatives of foreign collective investment schemes must for each foreign collective investment scheme which they represent in Switzerland or which is comparable to another fund for traditional investments publish a simplified prospectus pursuant to Annex 3 and submit it to the FINMA.

[2] For foreign collective investment schemes which are comparable to a Swiss securities fund or another fund for traditional investments and which within one year of the Amendment coming into force are approved for public distribution in and from Switzerland, their representatives may publish simplified prospectuses pursuant to Annex 2. Paragraph 1 applies.

Art. 144*c*[180] Transitional provisions to the Amendment of 13 February 2013

[1] Banks, securities traders, insurance institutions and asset managers of collective investment schemes that operate as representatives of foreign collective investment schemes must within one year of the Amendment of 13 February 2013 coming into force meet the statutory requirements and submit an application for approval as a representative of foreign collective investment schemes. They may continue their activities until a decision regarding approval has been reached.

178 Inserted by No I of the Ordinance of 29 June 2011, in force since 15 July 2011 (AS **2011** 3177).
179 Inserted by No I of the Ordinance of 29 June 2011, in force since 15 July 2011 (AS **2011** 3177).
180 Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

[2] Asset managers of collective investment schemes that are organised in accordance with Swiss law, existing fund management companies and SICAFs must meet the relevant applicable capital regulations pursuant to Articles 19–22, 48 and 122*b* within one year of the Amendment coming into force.

[3] Within one year of the Amendment coming into force, licensees pursuant to Article 13 paragraph 2 letters a–d and f–h of the Act must comply with the provisions concerning the organisational structure pursuant to Article 12 as well as the risk management, internal control system and compliance pursuant to Article 12*a*.

[4] Within one year of the Amendment coming into force custodian banks must comply with the provisions concerning the organisational structure pursuant to Articles 12*a* and 102*a*.

[5] Within two years of the Amendment coming into force, financial intermediaries that distribute foreign collective investment schemes to qualified investors must comply with the provisions of Article 30*a*.

[6] Existing encumbrance arrangements pursuant to Article 96 paragraph 1 which exceed the threshold must be rectified within five years.

[7] Unit certificates which are structured as securities in accordance with Article 108 paragraph 2 and which are in bearer form must be converted into registered securities by 31 December 2016.

[8] Limited partnerships for collective investment which admit high-net-worth individuals pursuant to Article 119 paragraph 3bis as limited partners must amend their company agreement within two years. After the amendment comes into force, qualified investors pursuant to Article 10 paragraph 3ter of the Act may no longer acquire any investments as limited partners.

Art. 145 Commencement

This Ordinance comes into force on 1 January 2007.

Annex 1[181]
*(*Art. 106)

Minimum content of the prospectus

In addition to the content prescribed in the Act and in the Ordinance, the prospectus shall contain the following:

1 Information concerning the collective investment scheme

1.1 Date of formation and indication of the country in which the collective investment scheme was established;

1.2 In the case of collective investment schemes with a definitive term: the duration (Art. 43 CISA);

1.3 Information concerning the relevant tax provisions (including deductions of withholding tax) for the collective investment scheme;

1.4 Accounting year;

1.5 Name of the audit company;

1.6 Information concerning the units (e. g. nature of the rights represented by the unit and description of the voting rights of the investors where applicable; available documents or certificates; qualification and denomination of any securities; conditions and effects of the dissolution of the collective investment scheme);

1.7 Where applicable, information about exchanges and markets on which the units are listed or traded;

1.8 Procedural details and conditions for the subscription, conversion and redemption of units, including the possibility of subscription or repayment of tangible assets (e.g. method, frequency of price calculation and publication, information about the medium of publication) and conditions under which such actions may be suspended;

1.9 Information concerning the calculation and appropriation of net income as well as the frequency of payments in accordance with the distribution policy;

1.10 Description of the investment objectives, investment policy, permitted investments, investment techniques applied, investment restrictions and other rules applicable to risk management;

1.11 Information concerning the rules applicable to calculation of the net asset value;

1.12 Information concerning the calculation and amount of the fees payable at the expense of the collective investment scheme to the fund management company, custodian bank, asset managers of collective investment schemes, distributors pursuant to Article 37; information about incidental costs, any performance fee and the coefficient of the total expense ratio (TER); finally, information concerning commissions and other financial benefits where applicable; information concerning the calculation and amount of fees charged to the investors pursuant to Article 38;

1.13 Information concerning the location where the fund contract, if not attached to the prospectus, and annual and semi-annual reports may be obtained;

1.14 Information concerning the legal status (contractual investment fund or SICAV) and nature of the collective investment scheme (securities fund, real estate fund, other fund for traditional or alternative investments);

1.15 Information concerning the specific risks and high volatility, where applicable;

1.16 In the case of funds for alternative investments, a glossary explaining the most important specialist terms.

2 Information concerning the licensee (fund management company, SICAV)

2.1 Date of formation, legal status, domicile and main administrative office;

2.2 Information concerning other collective investment schemes managed by the fund management company and, where applicable, about its rendering of other services;

2.3 Names and functions of members of the governing and executive bodies in addition to any relevant activities not performed on behalf of the licensee (fund management company, SICAV);

2.4 Amount of subscribed and paid-up capital;

2.5 Persons to whom investment decisions and other specific tasks have been delegated;

2.6 Information concerning the exercising of membership and creditors' rights.

3 Information concerning the custodian bank

3.1 Legal status, registered office and main administrative office;

3.2 Primary activity.

4 Information concerning third parties whose fees are charged to the collective investment scheme

4.1 Name/company;

[181] Revised by No II of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

4.2 Elements of the contract between the licensee (fund management company, SICAV) and third parties which are significant for the investors, except for fee arrangements;

4.3 Other significant activities of the third parties;

4.4 Specialist knowledge of third parties entrusted with management and decision- making powers.

5 Further information

Information concerning payments to the investors, the redemption of units and information and notices published about the collective investment scheme both in relation to the country of domicile and any third countries in which the units are distributed.

6 Further investment information

6.1 Where applicable, the historical results of the collective investment scheme; such information may be contained either in the prospectus or attached thereto;

6.2 Profile of the typical investor for whom the collective investment scheme has been conceived.

7 Financial information

Any costs or fees, with the exception of the costs cited in numbers 1.8 and 1.12, by way of a breakdown showing those charged to the investor and those deducted from the assets of the collective investment scheme.

Annex 2[182]
*(*Art. 107)

Simplified prospectus for real estate funds

The simplified prospectus for real estate funds contains the following information:

1 Brief profile of the collective investment scheme

1.1 Date of formation and indication of the country in which the collective investment scheme was established;

1.2 Information concerning different subfunds where applicable;

1.3 Name of fund management company where applicable;

1.4 The duration in the case of collective investment schemes with a fixed term;

1.5 Name of the custodian bank;

1.6 Name of the audit company;

1.7 Names of the persons to whom investment decisions and other specific tasks are delegated;

1.8 Name of the financial group offering the collective investment scheme (e.g. a bank).

2 Investment information

2.1 Brief definition of the investment objective;

2.2 Investment strategy and brief assessment of the risk profile of the collective investment scheme (including the information required pursuant to Art. 53 et seq., 58 et seq. and 68 et seq. CISA where applicable);

2.3 The past performance of the collective investment scheme, where applicable, and a warning notice that past performance provides no indication as to future performance;

2.4 Profile of the typical investor for whom the collective investment scheme has been conceived.

3 Financial information

3.1 Information concerning the relevant tax provisions (including deductions of withholding tax) for the collective investment scheme;

182 Revised by No II para. 1 of the Ordinance of 29 June 2011 (AS **2011** 3177) and by No II of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

3.2 Information concerning the fees charged in relation to the issuing and redeeming of units;

3.3 Information concerning the fees and costs charged to the investors and to the fund's assets; furthermore, information about the intended appropriation of the management fee, any performance fee and the coefficient of the total expense ratio (TER).

4 Information concerning trading

4.1 The manner in which units may be purchased;

4.2 The manner in which units may be redeemed;

4.3 Where applicable in the case of collective investment schemes with different subfunds, information concerning the manner in which investors may convert from one subfund to another and information concerning the attendant costs;

4.4 The date and manner in which income is distributed where applicable;

4.5 Frequency and location/manner of publication or disclosure of the net asset values.

5 Further information

5.1 Information concerning the location where the prospectus and the annual and semi-annual reports may be obtained free of charge on request;

5.2 The relevant supervisory authority;

5.3 Information concerning a contact point where further information may be obtained, where applicable;

5.4 Date of publication of the simplified prospectus.

Annex 3[183]
(Art. 107*a*)

Simplified prospectus for securities funds and other funds for traditional investments (hereinafter «Key investor information document»)

The key investor information document must be fair, clear and not misleading, and contain the following information:

1 Title and content of document

1.1 The title «Key investor information» shall appear prominently at the top of the first page.

1.2 An explanatory statement must appear directly underneath the title. It shall read:

«This document provides you with key investor information about this fund. It is not marketing material. The information is required by law to help you understand the nature and the risks of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest».

1.3 The name of the collective investment scheme/subfund, if applicable/unit class, if applicable.

In the case of a subfund or unit class, the name of the collective investment scheme must follow the subfund or unit class name.

1.4 The name of the fund management company shall be stated, if applicable.

1.5 In addition, in cases where the fund management company forms part of a group of companies for legal, administrative or marketing purposes, the name of the group may be stated. Corporate branding may be included provided it does not hinder an investor in understanding the key elements of the investment or diminish his ability to compare investment products.

1.6 The document must include the following statement:

«This fund is authorised and regulated by [identity of competent authority].»

1.7 Information on publication shall consist of the following statement:

«This key investor information is accurate as at [the date of publication].»

183 Amended by No II para. 2 of the Ordinance of 29 June 2011, in force since 15 July 2011 (AS **2011** 3177).

2 Objectives and investment policy

2.1 A description of the objectives and investment policy.

2.2 The main categories of eligible financial instruments that are the object of investment.

2.3 Reference to the possibility that the investor may redeem units of collective investment schemes on demand, qualifying that statement with an indication as to the frequency of dealing in units.

2.4 Whether the collective investment scheme has a particular target in relation to any industrial, geographic or other market sectors of specific classes of assets.

2.5 Whether the collective investment scheme allows for discretionary choices with regard to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one. Where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark must be indicated, and where the collective investment scheme has an index-tracking objective, this must be stated.

2.6 Whether dividend income is distributed or reinvested.

2.7 Where specific asset management techniques are used, which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the collective investment scheme.

2.8 Where the collective investment scheme invests in debt securities, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements.

2.9 Where the choice of assets is guided by specific criteria, an explanation of those criteria, such as «growth», «value» or «high dividends».

2.10 Where on predefined dates the collective investment scheme pays distributions whose level is derived using an algorithm and which are linked to the performance, changes in price or other conditions of assets, indices or benchmark portfolios or to the performance of other collective investment schemes with a similar investment strategy (hereinafter «structured collective investment scheme»), an explanation in simple terms of the factors that are expected to determine the pay-off as well as the performance of the collective investment scheme must be provided. If applicable, this includes references to the detailed information in the fund regulations or prospectus. This information includes the formula of the algorithm and an illustration of how the collective investment scheme's distributions are computed.

The explanation must be accompanied by an illustration, showing at least three scenarios of the fund's potential performance. Appropriate scenarios must be chosen to show the circumstances in which the formula may generate a low, a medium or a high return, including, where applicable, a negative return for the investor.

The scenarios shall be based on reasonable and conservative assumptions about future market conditions and price movements. In particular, they shall not artificially magnify the importance of the final performance of the collective investment scheme. However, whenever the formula exposes investors to the possibility of substantial losses, such as a capital guarantee that functions only under certain circumstances, these losses must be appropriately illustrated, even if the probability of the corresponding market conditions is low.

The scenarios must be accompanied by a statement that they are examples that are included to illustrate the formula, and do not represent a forecast of what might happen. It must be made clear that the scenarios presented may not have an equal probability of occurrence.

2.11 Where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the collective investment scheme, a statement that this is the case, making it also clear that portfolio transaction costs are paid from the assets of the collective investment scheme in addition to the charges set out in section 4.

2.12 Where a minimum recommended term for holding units in the collective investment scheme is stated either in the prospectus or in any marketing documents, or where it is stated that a minimum holding period is an essential element of the investment strategy, a statement with the following wording:

«Recommendation: this fund may not be appropriate for investors who plan to withdraw their money within [period of time].»

2.13 The «Objectives and investment policy» section shall distinguish between the broad categories of investments as specified under paragraphs 2.2, 2.4 and 2.8 and the approach to these investments to be adopted by a fund management company or SICAV as specified under paragraphs 2.5, 2.7, 2.9 and 2.10.

2.14 Where a collective investment scheme invests a material portion of its assets in other collective investment schemes, the description of the objectives and investment policy of such collective investment scheme shall contain a brief explanation of the manner in which the other collective investment schemes must be chosen in the context of day-to-day administration.

2.15 The «Objectives and investment policy» section may contain elements other than those listed in paragraphs 2.7-2.12, including a description of the collective investment scheme's investments strategy, where these elements are necessary to adequately describe the objectives and investment policy of the collective investment scheme.

3 Risk and reward profile

3.1 The «Risk and reward profile» section shall contain a synthetic indicator, supplemented by:

a. a narrative explanation of the synthetic indicator and its main limitations, including the following information:
- a statement that historical data, such as is used in calculating the synthetic indicator, may not be a reliable indication of the future risk profile of the collective investment scheme;
- a statement that the risk and reward category shown is not guaranteed to remain unchanged and that the categorization of the collective investment scheme may shift over time;
- a statement that the lowest category does not mean a risk-free investment;
- a brief explanation as to why the collective investment scheme is in a specific category;
- details of the nature, timing and extent of any capital guarantee or protection offered by the collective investment scheme, including the potential effects of redeeming units outside of the guaranteed or protected period.

b. a narrative explanation of risks which are materially relevant to the collective investment scheme and which are not adequately captured by the synthetic indicator, including the following categories of risks, where these are material:
- credit risk, where a significant level of investment is made in debt securities;
- liquidity risk, where a significant level of investment is made in financial instruments, which are by their nature sufficiently liquid, yet which may under certain circumstances have a relatively low level of liquidity, so as to have an impact on the level of liquidity risk of the collective investment scheme as a whole;
- counterparty risk, where a collective investment scheme is backed by a guarantee from a third party, or where its investment exposure is obtained to a material degree through contracts with a counterparty;
- operational risks and risks related to safekeeping of assets;
- impact of financial techniques such as derivative contracts on the collective investment scheme's risk profile where such techniques are used to obtain, increase or reduce exposure to underlying assets.

3.2 Where a collective investment scheme invests a material portion of its assets in other collective investment schemes, the narrative explanations referred to in paragraph 3.1 b must take account of the risks of each of the target funds where they are likely to be materially relevant to the collective investment scheme in overall terms.

3.3 The synthetic indicator shall rank the collective investment scheme on a scale from 1 to 7 on the basis of its volatility record. The scale shall be shown as a sequence of categories denoted by whole numbers in ascending order from 1 to 7 running from left to right, representing levels of risk and reward, from lowest to highest. It should be made clear on the scale that lower risk entails potentially lower reward and that higher risk entails potentially higher rewards.

The category into which the collective investment scheme falls must be prominently indicated.

No colours may be used for distinguishing between items on the scale.

3.4 The computation of the synthetic indicator, as well as any of its subsequent revisions, must be adequately documented. The fund management company or SICAV shall keep records of these computations for a period of not less than five years. This period shall be extended to five years after maturity for the case of structured collective investment schemes.

3.5 The identification and explanation of risks referred to in paragraph 3.1 b must be consistent with the internal process of the fund management company or SICAV. Where a fund management company manages more than one collective investment scheme, the risks shall be identified and explained in a consistent fashion.

4 Charges

4.1 The charges must be presented in a table structured in the following way:

One-off charges taken before or after you invest:	
Issue fee	[] %
Redemption fee	[] %
This is the maximum that may be deducted from your investment.	
Charges taken from the fund over a year:	
Ongoing charges	[] %
Charges taken from the fund under certain specific conditions:	
Performance fee	[] %*
* a year of any returns the fund achieves above the benchmark for these fees, the [insert name of benchmark]	

A percentage amount must be indicated for each of these charges.

In the case of a performance fee, the amount charged in the collective investment scheme's last financial year shall be included as a percentage figure.

4.2 The table referred to in paragraph 4.1 shall be completed in accordance with the following requirements:

a. issue and redemption fees shall each be the maximum percentage which might be deducted from the investor's capital commitment to the collective investment scheme;

b. a single figure must be shown for charges taken from the collective investment scheme over a year, to be known as the «ongoing charges», representing all annual charges and other payments taken from the assets of the collective investment scheme over the defined period, and based on the figures for the preceding year.

c. the table shall list and explain any charges taken from the collective investment scheme under certain specific conditions, the basis on which the charge is calculated, and when the charge applies.

4.3 The «Charges» section shall contain a narrative explanation of each of the charges specified in the table including the following information:

a. with regard to issue and redemption fees:
- it shall be made clear that the charges are always maximum figures, as in some cases the investor may pay less;
- a statement shall be included stating that the investor can find out the actual issue and redemption fees from their financial advisor or distributor;

b. with regard to «ongoing charges», there shall be a statement that the ongoing charges figure is based on the previous year's expenses, for the year ending [month/year], and that this figure may vary from year to year where this is the case.

4.4 The «Charges» section shall contain a statement about the importance of charges which makes clear that the charges an investor pays are used to pay the costs of running the collective investment scheme, including the costs of marketing and distributing the fund units, and that these charges reduce the potential growth of the investment.

4.5 Where a new collective investment scheme cannot comply with the requirements contained in paragraph 4.2 b and paragraph 4.3 b, the ongoing charges shall be estimated, based on the expected total of charges.

4.6 Paragraph 4.5 does not apply to funds which charge an all-in fee, where instead that figure shall be displayed.

4.7 Where a collective investment scheme invests a material portion of its assets in other collective investment schemes, the explanation of the charges shall take account of all costs to be borne by the collective investment scheme itself as investor in target funds. Specifically, all issue and redemption fees as well as all ongoing charges levied by the target funds must be included in the computation of the collective investment scheme's own ongoing charges.

4.8 The «Charges» section shall include, where relevant, a cross-reference to those parts of the fund regulations where more detailed information on charges can be found, including information on performance fees and how they are calculated.

5 Past performance

5.1 The information about the past performance of the collective investment scheme must be presented in a bar chart covering the performance of the collective investment scheme for the past 10 years. Collective investment schemes with performance of less than five complete calendar years must use a presentation covering the last five years only.

5.2 The size of the bar chart referred to in paragraph 5.1 must allow for legibility, but may under no circumstances exceed half a page in the key investor information document.

5.3 The calculation of past performance figures shall be based on the net asset value of the collective investment scheme, and shall be calculated on the basis that any distributable income of the collective investment scheme has been reinvested.

5.4 For any years for which data is not available, the year shall be shown as blank with no annotation other than the date.

5.5 A simulated performance record for the period before data was available is only permitted for a new unit class of an existing fund or subfund by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the fund. The simulated performance record must be fair, clear and not misleading.

In all cases where performance has been simulated, there must be prominent disclosure that the performance has been simulated.

5.6 For a collective investment scheme which does not yet have performance data for one complete calendar year, a statement must be included explaining that there is insufficient data to provide a useful indication of past performance to investors.

5.7 Where the «Objectives and investment policy» section makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart alongside each bar showing the collective investment scheme's past performance.

5.8 For collective investment schemes which do not have past performance data over the required five or 10 years, the benchmark pursuant to paragraph 5.7 must not be shown for years in which the collective investment scheme did not exist.

5.9 In the case of a structured collective investment scheme, the key investor information document shall not contain any information on past performance.

5.10 The bar chart layout must be supplemented by statements which appear prominently and which:

a. warn about its limited value as a guide to future performance;

b. indicate briefly which charges and fees have been included or excluded from the calculation of past performance, except in the case of collective investment schemes which do not have issue and redemption fees;

c. indicate the year in which the collective investment scheme came into existence;

d. indicate the currency in which past performance has been calculated.

5.11 The bar chart presenting past performance must comply with the following criteria:

– the scale of the Y-axis of the bar chart shall be linear, not logarithmic;

– the scale must be adapted to the span of the bars shown and shall not compress the bars so as to make fluctuations in returns harder to distinguish;

– the X-axis shall be set at the level of 0% performance;

– a label shall be added to each bar indicating the return in percentage that was achieved;

– past performance figures shall be rounded to one decimal place.

5.12 A key investor information document shall not contain any record of past performance for any part of the current calendar year.

5.13 Where a material change occurs to a collective investment scheme's objectives and investment policy during the period displayed in the bar chart, the collective investment scheme's past performance prior to that material change must continue to be shown.

5.14 The period prior to the material change referred to in paragraph 5.13 must be indicated on the bar chart and labelled with a clear warning that the performance was achieved under circumstances that no longer apply.

6 Practical information

6.1 The name of the custodian bank;

6.2 Where and how to obtain further information about the collective investment scheme, copies of its fund regulations, prospectus and latest annual and half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge;

6.3 Where and how to obtain other practical information, including where to find the latest prices of units;

6.4 The following statement:

«[Insert name of SICAV or fund management company] may be held liable solely on the basis of any statement contained in this document that is misleading, inaccurate or inconsistent with the relevant parts of the fund regulations and prospectus.»

6.5 Where applicable:

– that the key investor information document describes a subfund,

– that the assets and liabilities of each subfund of an umbrella fund are segregated by law and not mutually liable, as well as a statement on how this might affect the investor;

– whether or not the investor has the right to exchange his investment in units of one subfund for units in another subfund, and if so, where to obtain information about how to exercise that right;

6.6 Where applicable, information about the unit classes available.

7 Length and presentation

7.1 The key investor information may not exceed two pages of A4-sized paper when printed and for structured collective investment schemes may not exceed three pages of A4-sized paper when printed.

7.2 A key investor information document shall be:

– presented and laid out in a way that is easy to read, using characters of readable size;

– clearly expressed and written in language that communicates in a way that facilitates the investor's understanding of the information being communicated, in particular where:

i. the language used is clear, succinct and comprehensible;

ii. the use of jargon is avoided;

iii. technical terms are avoided when everyday words can be used instead;

– focused on the key information that investors need.

7.3 Where colours are used, they should not diminish the comprehensibility of the information in the event that the key investor information document is printed or photocopied in black and white.

7.4 Where the design of the corporate branding of the fund management company or the group to which it belongs is used, it may not distract the investor or obscure the text.

Part C: Ordinance of the Swiss Financial Market Supervisory Authority on Collective Investment Schemes (FINMA Collective Investment Schemes Ordinance, CISO-FINMA)

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

Ordinance of the Swiss Financial Market Supervisory Authority on Collective Investment Schemes

(FINMA Collective Investment Schemes Ordinance, CISO-FINMA)

of 27 August 2014 (Status as of 1 January 2015)

The Swiss Financial Market Supervisory Authority (FINMA),

based on Articles 55 paragraph 3, 56 paragraph 3, 71 paragraph 2, 91 and 128 paragraph 2 of the Collective Investment Schemes Act of 23 June 2006[1] (CISA),

decrees:

Title 1: Collective Investment Schemes

Chapter 1: Securities Funds

Section 1: Securities Lending

(Art. 55 para. 1 let. a CISA and Art. 76 CISO[2])

Art. 1 Definition

Securities lending means: a legally binding transaction in which the fund management company or investment company with variable capital (SICAV), acting as lender, undertakes to temporarily transfer to the borrower ownership of specific securities, and where:

a. the borrower is obliged to return to the lender securities of the same type, quantity and quality at the end of the securities lending period and to transfer any income earned during that period to the lender; and

b. the lender bears the price risk of the securities for the duration of the securities lending.

Art. 2 Principles

1 The fund management company or SICAV may lend securities in its own name and for its own account to a borrower ("principal").

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1 SR **951.31**

2 Collective Investment Schemes Ordinance of 22 Nov. 2006, SR **951.311**.

2 The fund management company or SICAV may also appoint an intermediary to put the securities at the disposal of the borrower either on a fiduciary basis ("agent") or directly ("finder"), in accordance with the provisions of this section.

3 The fund management company or SICAV shall conclude a standardised framework agreement governing securities lending with each borrower or intermediary in accordance with Article 7.

Art. 3 Authorised borrowers and intermediaries

1 The fund management company or SICAV shall conduct securities lending transactions exclusively with first-class supervised borrowers and intermediaries which are specialised in transactions of this type, such as banks, brokers and insurance companies, as well as licensed and recognised central counterparty clearing houses and central securities depositories that guarantee the proper execution of such transactions.

2 The fund management company or SICAV must obtain the custodian bank's written consent should the latter not be participating in the securities lending transaction as either borrower or intermediary.

3 The custodian bank may only withhold its consent if there is no guarantee that it can meet its statutory and contractual duties with regard to settlement, safekeeping, provision of information, and control.

Art. 4 Securities eligible for lending

1 The fund management company or SICAV may lend all types of securities that are traded on an exchange or other regulated market open to the public.

2 It may not lend securities acquired under a reverse repo transaction.

Art. 5 Termination dates and notice periods

1 It must be possible to terminate individual transactions and the standardised framework agreement for the securities lending transaction at any time.

2 Where the observation of a notice period has been agreed, that period may not exceed seven banking days.

Art. 6 Scope and duration

1 If the fund management company or SICAV is required to observe a notice period before it may again have legal control of the loaned securities, it may not lend more than 50 percent of the eligible holding of a particular security.

2 If, however, the borrower or intermediary provides a contractual guarantee to the fund management company or SICAV that the latter may again legally dispose of the loaned securities on the same or following banking day, the fund management company or SICAV may lend the entire eligible holding of a particular security.

Art. 7 Minimum contents of the standardised framework agreement

[1] The standardised framework agreement must meet the relevant international standards.

[2] The standardised framework agreement must indicate those securities funds whose securities are in principle eligible for securities lending, in addition to the securities which are excluded from securities lending.

[3] The fund management company or SICAV shall stipulate in the standardised framework agreement with the borrower or intermediary that they:

a. pledge or transfer collateral to the fund management company or SICAV for the purposes of guaranteeing restitution in accordance with Article 51;

b. are liable vis-à-vis the fund management company or SICAV for:

1. the prompt, unconditional payment of any income accruing during the securities lending period,
2. the assertion of other proprietary rights such as conversion and subscription rights, and
3. the contractually agreed return of securities of the same type, quantity and quality;

c. assign all securities available for the securities lending transaction to the individual lenders on the basis of objective and transparent criteria.

[4] The framework agreement should also set out:

a agreement of an appropriate collateral value that at all times should amount to at least 100 percent of the market value of the loaned securities;

b. the loaned securities are excluded from the claims of the borrower or intermediary.

Art. 8 Special duties of the custodian bank

The custodian bank has the following special duties in connection with the settlement of the securities lending transaction:

a. It shall inform the fund management company or SICAV on a regular basis of the lending transactions conducted.

b. It shall, at least once a month, account for any income earned on the securities lending.

c. It shall ensure that the securities lending transactions are settled in a secure manner, in line with the agreements and, in particular, it shall monitor compliance with the requirements relating to collateral.

d. In addition, it shall carry out the administrative duties assigned to it under the safe-custody regulations during the term of the lending transaction and assert all rights associated with the loaned securities, unless such duties have been ceded under the terms of the standardised framework agreement.

Art. 9 Inventory and statement of net assets, or balance sheet, inclusion in investment limits

[1] Loaned securities must be denoted as being "lent" in the securities fund's inventory and must continue to be included in the statement of net assets, or the balance sheet.

[2] Loaned securities must continue to be taken into account when ensuring compliance with the statutory and regulatory investment restrictions.

Section 2: Securities Repurchase Agreements (Repo, Reverse Repo)

(Art. 55 para. 1 let. b CISA and Art. 76 CISO[3])

Art. 10 Definitions

The terms below are defined as follows:

a. "securities repurchase agreement" means a repo (or sale and repurchase agreement) and reverse repo (or reverse sale and repurchase agreement);

b. "repo" means a legally binding transaction in which one party (the borrower or repo seller) temporarily transfers ownership of securities to another party (the repo buyer), and where

1. the repo buyer undertakes to return to the repo seller securities of the same type, quantity and quality at the end of the repo term together with any income earned during such term;
2. during the term of the repurchase agreement, the price risk associated with the securities shall be borne by the repo seller;

c. "reverse repo" means a repo from the perspective of the lender;

d. "repo interest" means the difference between the selling price and purchase price of the securities.

Art. 11 Principles

[1] The fund management company or SICAV may conclude repurchase agreements in its own name and for its own account with a counterparty ("principal").

[2] It may appoint an intermediary to conclude repurchase agreements with a counterparty either indirectly on a fiduciary basis ("agent") or directly ("finder"), in accordance with the provisions of this section.

[3] The fund management company or SICAV shall conclude a standardised framework agreement governing repurchase agreements with each counterparty or intermediary in accordance with Article 17.

3 SR **951.311**

Art. 12 Authorised counterparties and intermediaries

1 The fund management company or SICAV shall conduct repurchase agreements exclusively with first-class supervised counterparties and intermediaries that specialise in these types of transactions, such as banks, brokers and insurance companies, as well as licensed and recognised central counterparty clearing houses and central securities depositories that can guarantee the execution of transactions in a due and proper manner.

2 The fund management company or SICAV must obtain the written consent of the custodian bank if the latter is not to be involved in the repurchase agreement as either counterparty or intermediary.

3 The custodian bank may only deny its consent if there is no guarantee that it can meet its statutory and contractual duties with regard to settlement, safekeeping, provision of information, and control.

Art. 13 Securities eligible for repurchase agreements

1 For repo transactions, the fund management company or SICAV may use all types of securities that are traded on a stock exchange or other regulated market open to the public.

2 For repo purposes, it may not use securities acquired under a reverse repo.

Art. 14 Termination dates and notice periods

1 It must be possible to terminate individual transactions and the standardised framework agreement for the repurchase transaction at any time.

2 Where the observation of a notice period has been agreed, such period may not exceed seven banking days.

Art. 15 Scope and duration of the repo

1 If the fund management company or SICAV must observe a notice period before it can again have legal control of the securities under the repurchase agreement, it may not use more than 50 percent of its holdings of a particular security eligible for repo transactions.

2 If, however, the counterparty or intermediary provides the fund management company or SICAV with a contractual guarantee that the latter may again have legal control of the securities under the repurchase agreement on the same or following banking day, its entire holding of a particular security eligible for repo transactions may be used.

Art. 16 Securing claims for money and securities

1 In order to secure claims for money and securities arising from repurchase agreements, the claims and obligations must be valued daily at the current market price, taking account of accrued interest and the income due to the borrower, and the difference must be marked to market daily.

2 Compensation must be in cash or in securities. The latter must be comparable in type and quality to the securities used for the repurchase agreement.

Art. 17 Minimum contents of the standardised framework agreement

1 The standardised framework agreement must meet the relevant international standards.

2 The standardised framework agreement must indicate both the securities funds for which repurchase agreements may in principle be conducted and the securities which are excluded from the repurchase agreement.

3 The fund management company or SICAV shall stipulate in the standardised framework agreement with the counterparty or intermediary that:

a. the lender is liable vis-à-vis the borrower for:
   1. the prompt, unconditional payment of any income accruing during the repurchase agreement and the compensating payments to be made pursuant to Article 16,
   2. the assertion of other proprietary rights such as conversion and subscription rights, and
   3. the contractually agreed return of securities of the same type, quantity and quality;

b. the borrower is liable vis-à-vis the lender for:
   1. the prompt, unconditional payment of any compensating payments to be made during the term of the repurchase agreement pursuant to Article 16, and
   2. the repurchase of the securities under the repo transaction in compliance with the terms of the agreement;

c. claims for money and securities arising from repurchase agreements may not be netted with claims of the counterparty or intermediary.

Art. 18 Special duties of the custodian bank

The custodian bank has the following special duties in relation to the settlement of the repurchase transaction:

a. It ensures that the repurchase transaction is settled in a secure and contractually agreed manner.

b. It ensures that fluctuations in the value of the securities used in repo transactions are compensated for in cash or securities (marked to market).

c. For the duration of the repurchase transaction it shall, in addition, carry out the administrative duties assigned to it under the safe-custody regulations and assert all rights associated with the securities used in the repo transaction, unless such duties have been ceded under the standardised framework agreement.

Art. 19 Raising loans via repo agreements

1 Pursuant to Article 77 paragraph 2 CISO[4], a repurchase agreement represents the raising of a loan by the securities fund.

2 The money obligations arising from repos, together with all other loans taken, must comply with the statutory and regulatory limits on borrowing.

3 If, when conducting a repo transaction, the fund management company or SICAV uses the money received to acquire securities of the same type, quality, credit rating and maturity in conjunction with the conclusion of a reverse repo, this is not deemed to be taking a loan.

Art. 20 Distinction between reverse repos and the granting of loans

1 Pursuant to Article 77 paragraph 1 letter a CISO[5], reverse repos do not represent the granting of a loan.

2 Pursuant to Article 75 CISO, money claims in connection with the conclusion of reverse repos are deemed liquid assets.

Art. 21 Inclusion in investment limits

1 Securities sold through repos must continue to be taken into account when ensuring compliance with the statutory and regulatory investment restrictions.

2 Money claims acquired through reverse repos must continue to be taken into account when ensuring compliance with the statutory and regulatory investment restrictions.

Art. 22 Inventory, statement of net assets, or balance sheet and profit and loss account

1 Securities sold through repos must be denoted as being "used in repo" in the inventory of the securities fund's assets and must continue to be included in the statement of net assets, or the balance sheet.

2 Money obligations arising from repos must be disclosed in the statement of net assets, or the balance sheet, under "Liabilities from repurchase agreements" at the value assigned on the calculation date based on the assumption of a linear development in value.

3 In the case of repos, repo interest must be disclosed in the profit and loss account under "Interest payable".

4 Securities purchased through reverse repos are not included in the inventory of the securities fund's assets, nor in the statement of net assets, or the balance sheet.

5 Money claims arising from reverse repos must be disclosed in the statement of net assets, or the balance sheet, under "Claims from repurchase agreements" at the value

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assigned on the calculation date based on the assumption of a linear development in value.

6 In the case of reverse repos, repo interest must be disclosed in the profit and loss account under "Income from reverse repos".

Section 3: Derivative Financial Instruments

(Art. 56 para. 3 CISA and Art. 72 CISO[6])

Art. 23 Definitions

1 The terms below are defined as follows:

a. "basic type of derivative":
   1. a call or put option, the expiration value of which is linearly dependent on the positive or negative difference between the market value of the underlying and the strike price and is zero if the difference is preceded by the opposite algebraic sign,
   2. a credit default swap (CDS),
   3. a swap, the payments of which are dependent on the value of the underlying or on an absolute amount in both a linear and a path-independent manner,
   4. a future or forward transaction the value of which is linearly dependent on the value of the underlying;

b. "exposure-increasing": derivative exposure, the financial effect of which is similar to the purchase of an underlying (e.g. the purchase of a call option, purchase of a future, sale of a put option, exchanging of variable for fixed interest payments or the conclusion of a credit default swap as protection seller);

c. "exposure-reducing": a derivative exposure the financial effect of which is similar to the sale of an underlying (in particular, the sale of a call option, sale of a future, purchase of a put option, exchanging of fixed for variable interest payments or the conclusion of a credit default swap as secured party);

d. "exotic derivative" means a derivative with a mode of operation that cannot be described as a basic form of derivative or a combination of basic forms of derivatives (for instance, a path-dependent option, an option with several factors or an option with contract modifications);

e. “contract size”: number of underlying securities or nominal value of a derivative contract;

f. "contract value":
   1. in the case of a swap, the product of the nominal value of the underlying and the contract size,

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2. in the case of all other derivatives, the product of the underlying's market value and the contract size;

g. "OTC (over the counter)": the conclusion of transactions off an exchange or any other regulated market which is open to the public;

h. "synthetic liquidity": underlyings whose market risk and potential credit risk are hedged with derivatives that have a symmetric payment profile;

i. “overall exposure”: exposure to the fund’s net assets, the net overall exposure to derivatives and investment techniques under Article 55 CISA, including short-selling;

j “gross overall exposure to derivatives”: total amount of capital requirements eligible from derivatives, including derivative components;

k. “net overall exposure to derivatives”: total amount of capital requirements eligible from derivatives, including derivative components, taking account of permissible netting, hedging transactions and other rules set out in Articles 35 and 36.

l. “leverage”: effect of derivatives, derivative components investment techniques, including short-selling on the fund’s net assets, by building up over-proportionally high positions in an underlying when compared to the capital invested.

Art. 24 Principles

Derivatives may be used only where, even in exceptional market conditions, the effect of using derivatives does not result in a deviation from the investment objectives set out in the fund regulations, prospectus and important information for investors, or in a change in the investment character of the securities fund.

Art. 25 Umbrella funds

The provisions in this section apply to the individual securities funds or, in the case of an umbrella fund, to each individual sub-fund.

Art. 26 Structured products, derivative components and warrants

1 In order to comply with the statutory and regulatory provisions for risk diversification, the underlying and the issue of a structured product must be taken into account.

2 If a structured product has one or more derivative components, these must be treated in accordance with the provisions in this section.

3 To establish the amount eligible for the overall exposure and the risk diversification requirements, the structured product is to be broken down into its components, if it has leverage. The components are to be considered individually. The breakdown is to be documented.

4 If structured products that cannot be broken down are used as a not negligible part of the fund’s assets, the model approach as a risk measurement procedure is to be applied.

5 Derivative components of a financial instrument must be taken into account in compliance with statutory and regulatory risk diversification provisions, and are eligible for the overall exposure to derivatives.

6 Warrants must be treated as derivatives in accordance with the provisions of this section. An option belonging to a warrant bond is deemed a warrant.

Art. 27 Credit derivatives

1 As defined in Article 77 paragraph 1 letter a CISO[7], an exposure-increasing credit derivative is not deemed a guarantee.

2 The debtor of reference of a credit derivative must have outstanding equity or debt securities or rights to equity or debts that are traded on an exchange or another regulated market open to the public.

Art. 28 Exotic derivatives

1 The fund management company or SICAV may only use an exotic derivative if:

a. it can calculate the minimum and the maximum delta across the entire price spectrum of the underlyings; and

b. it understands the derivative's mode of operation, as well as the factors that influence its pricing.

2 In the case of securities funds, where the commitment approach II is applied, the exotic derivative must be weighted according to its maximum possible delta (absolute value) when converted to its underlying equivalent pursuant to Article 35 paragraph 2.

3 The risk assessment model used risk must be capable of reflecting the exotic derivative in accordance with its risk.

4 If the maximum delta of the exotic derivative is positive, it must be weighted by such maximum delta in order to comply with the statutory and regulatory maximum limits. If the minimum delta is negative, it must be weighted by this minimum delta in order to comply with the regulatory minimum limits.

Art. 29 Conclusion of the contract

1 The fund management company or SICAV shall conclude derivative transactions on an exchange or other regulated market which is open to the public.

2 Transactions with OTC derivatives (OTC transactions) are permitted, provided the conditions stipulated in Articles 30 and 31 are met.

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Art. 30 OTC transactions

1 OTC transactions may only be concluded on the basis of a standardised framework agreement which complies with the pertinent international standards.

2 The counterparty must:

a. be a regulated financial intermediary specialised in such types of transactions;

b. ensure proper execution of the contract; and

c. meet the credit rating requirements stipulated in Article 31 paragraph 1.

3 It must be possible to reliably and verifiably value an OTC derivative on a daily basis and to sell or close out the derivative at market value at any time.

4 If the market price for an OTC derivative is not available, it must be possible at all times to determine the price at any time using appropriate valuation models that are recognised in practice, based on the market value of the underlyings from which the derivative was derived;

5 Before concluding a contract for a derivative under paragraph 4, specific offers must be obtained from at least two potential counterparties. The contract is to be concluded with the counterparty providing the most favourable offer in terms of price. A deviation from this principle is possible for reasons relating to risk diversification, or where other parts of the contract such as credit rating or the range of services offered by the counterparties in another offer seem are more advantageous overall for the investors.

6 If it is in the investors' best interests, obtaining offers from at least two potential counterparties may be dispensed with. The reasons for doing so must be clearly documented.

7 The conclusion of the transaction and pricing must be clearly documented.

Art. 31 Credit rating

1 In the case of OTC transactions, the counterparty or its guarantor shall have a high credit rating.

2 This requirement does not apply to the custodian bank of the securities fund.

Art. 32 Valuation

1 Derivatives for which market prices are available shall be valued at the current prices paid on the main market. Prices are to be obtained from an external source specialising in this type of transaction and which operates independently of the fund management company or SICAV and its agents.

2 If no current market price is available for derivatives, it must be possible to determine the price at any time using appropriate valuation models that are recognised in practice, based on the market value of the underlyings. Valuations are to be documented clearly.

Art. 33 Risk measurement procedure

1 The fund management company or SICAV shall apply commitment approach I or II, or the model approach.

2 The model approach requires the approval of FINMA.

3 The fund management company or SICAV shall align the risk assessment process selected with the investment objectives.

4 The model approach must be used where

a. the overall exposure of the securities fund using commitment approach I or II cannot be appropriately recorded and measured;

b. a not negligible amount is being invested in exotic derivatives; or

c. complex investment strategies of a not negligible amount are being used.

Art. 34 Commitment approach I

1 For a securities fund applying commitment approach I, only basic derivative types are permitted. They may only be used where account is taken of the necessary coverage set out in this article and their use does not result in a leverage effect on the fund's assets nor does it involve short-selling.

2 Exposure-reducing derivatives must at all times be covered by the relevant underlyings. If the delta has been calculated, it may be taken into account when calculating the necessary underlyings. Article 44 paragraph 3 also applies *mutatis mutandis*.

3 Covering with other investments is permitted if the exposure-reducing derivative is indexed by an independent external office. The index must be representative of the underlyings and there must be an adequate correlation between the index and such investments.

4 The underlying equivalents (Art. 35 para. 2) of exposure-increasing derivatives must at all times be covered by highly liquid assets.

5 The following assets are considered highly liquid:

a. liquid assets as defined in Article 75 CISO[8];

b. money market instruments as defined in Article 74 CISO;

c. collective investment schemes which invest exclusively in liquid assets or money market instruments;

d. debt securities and rights with a time remaining till maturity of maximum twelve months and the issuer or guarantor have a high credit rating;

e. synthetic liquidity;

f. credit limits accorded to, but not used by, the securities fund, in line with the statutory and regulatory maximum investment limits;

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g. withholding tax credits as confirmed by the Swiss Federal Tax Administration.

6 Account can be taken of permitted netting rules and hedging transactions under Article 36 paragraphs 1, 2 and 4. Covered hedging transactions by interest derivatives are permitted. Convertible bonds do not have to be taken into account when calculating the overall exposure to derivatives.

Art. 35 Commitment approach II: determination of the overall exposure

1 To establish the overall exposure of a securities fund using commitment approach II, the fund management company shall determine the individual conversion amounts of the respective derivatives and derivative components as well as the conversion amounts arising from investment techniques.

2 In the case of basic types of derivatives, the conversion amount for the overall exposure arising from derivatives is normally the underlying equivalent, based on the market value of the underlying assets of the derivatives. The underlying equivalents are calculated in accordance with Annex 1. The nominal value or the forward price of futures contracts calculated on each trading day may be taken as the basis, if the result is a more conservative calculation.

3 The conversion amount for the overall exposure is the basic commitment from the net fund assets and the sum of the following absolute values:

a. conversion amounts of the individual derivatives and derivative components pursuant to Annex 1 that are not included in netting pursuant to Article 36;

b. conversion amounts after permitted netting pursuant to Article 36; and

c. conversion amounts from permitted investment techniques.

4 The following transactions may be disregarded when determining the conversion amount for the overall exposure arising from derivatives pursuant to paragraph 3:

a. swaps by means of which the performance of the underlyings directly held by the securities fund is swapped with the performance of other underlyings (total return swaps), provided that:

1. the market risk of the swapped underlyings is completely eliminated from the securities fund so that these assets have no impact on the change in the value of the securities fund, and

2. the swap does not grant option rights or contain leverage or other additional market risks that exceed those of a direct investment in the relevant underlyings;

b. derivatives to which corresponding highly liquid assets are assigned so that the combination of derivative and highly liquid assets is equivalent to a direct investment in the underlying asset and neither an additional market risk nor leverage is generated. The highly liquid assets used to cover the derivative position may not be used for more than one combination simultaneously.

5 Securities lending and repurchase transactions must be taken into account when calculating the overall exposure if these generate leverage on the fund assets through the reinvestment of collateral. Where collateral is reinvested in financial assets that provide a return in excess of the risk-free interest rate, the amount received must be included when determining the overall exposure if cash collateral is held.

Art. 36 Commitment approach II: rules on netting and hedging transactions

1 Counter positions in derivatives based on the same underlying as well as counter positions in derivatives and in investments in the same underlying may be netted, irrespective of the maturity date of the derivatives, provided that:

a. the derivative transaction was concluded with the sole purpose of eliminating the risks associated with the derivatives or investments acquired;

b. no material risks are disregarded in the process, and

c. the conversion amount of the derivatives is determined pursuant to Article 35.

2 If the derivatives in hedging transactions do not relate to the same underlying as the asset that is to be hedged, the following additional conditions must be met for netting:

a. The derivative transaction is not based on an investment strategy that serves to generate a profit.

b. The derivative results in a demonstrable reduction in the risk of the securities fund.

c. The general and special risks of the derivative are balanced out.

d. The derivatives, underlyings or assets that are to be netted relate to the same class of financial instruments.

e. The hedging strategy remains effective even under exceptional market conditions.

3 Where interest rate derivatives are predominantly used, the amount to be included in the overall exposure arising from derivatives can be determined using internationally recognised duration-netting rules provided that:

a. the rules result in a correct determination of the risk profile of the securities fund;

b. the material risks are taken into account;

c. the use of these rules does not generate an unjustified level of leverage;

d. no interest rate arbitrage strategies are pursued; and

e. the leverage of the securities fund is not increased either by applying these rules or through investments in short-term positions.

4 Notwithstanding paragraph 2, derivatives that are used solely for currency hedging purposes and do not result in leverage or contain additional market risks may be netted when calculating the overall exposure arising from derivatives.

Art. 37 Commitment approach II: documentation requirements

All calculations under Articles 35 and 36 must be clearly documented.

Art. 38 Model approach: principles of value-at-risk (VaR)

[1] Applying the model approach, the fund management company or SICAV shall estimate the risks for a securities fund as value-at-risk (VaR).

[2] The model must be fully documented. The documentation must in particular provide information about the specification of the risk assessment model, back-testing and stress tests.

[3] The fund management company or SICAV shall verify the suitability of the model on a periodic basis, but at least once a year. The results must be clearly documented.

[4] The VaR of a securities fund may at no time exceed twice the VaR of the benchmark portfolio of such securities fund (relative VaR limits)

[5] When using the model approach, the fund management or the SICAV must ensure a periodical calculation of the gross overall exposure to derivatives of the securities fund in question.

Art. 39 Model approach: calculation of VaR

[1] The VaR may be determined using variance/covariance models, historical simulations and Monte-Carlo simulations. When selecting the model, the investment strategy is to be taken into account.

[2] The VaR must be calculated daily on the basis of the previous day's positions using the following parameters:

a. a 99th percentile, one-tailed confidence interval;

b. a holding period of 20 trading days;

c. an effective historical observation period of at least one year (250 bank working days).

[3] The VaR factors in interest rate risk, currency risk, share price risk and commodity risks. The following must also be taken into account:

a. gamma and vega risks in the case of option positions;

b. specific risks in the form of residual risks;

c. event, default and liquidity risks as part of stress tests.

[4] The calculations must be clearly documented.

[5] Variance from the confidence interval, the holding period or the observation period is possible owing to exceptional market circumstances, and must have the prior approval of FINMA.

Art. 40 Model approach: benchmark portfolio

[1] The benchmark portfolio of a securities fund is assets without any leverage and generally without any derivatives.

[2] The composition of the benchmark portfolio corresponds to the information in the fund regulations, prospectus and information necessary for the securities fund's investors, specifically concerning its investment objectives, investment policy and limits.

[3] It must be reviewed periodically, but at least once a quarter. The respective composition and any changes thereto must be documented clearly.

[4] Where a benchmark, such as an equity index for benchmark portfolios, is defined in the fund regulations or in the prospectus and information necessary for the securities fund's investors, it may be used for calculating the VaR of the benchmark portfolios. The benchmark must be:

a. derivative-free and not have any leverage;

b. calculated by an independent, external office; and

c. representative of the investment objectives, investment policy and limits of the securities fund.

[5] The benchmark portfolio may include derivatives, where:

a. according to the fund regulations or prospectus, the securities fund is implementing a long/short strategy, and in the benchmark portfolio the short exposure is shown as derivatives;

b. according to the fund regulations or prospectus, the securities fund is implementing a currency hedge investment policy and a currency hedge benchmark portfolio is used as a benchmark.

[6] If it is not possible to construct a representative benchmark portfolio on the basis of the specific investment objectives and investment policy of a securities fund, a VaR limit may be agreed upon with FINMA (absolute VaR limit). This must be stated in the prospectus.

Art. 41 Model approach: reviewing the risk assessment model

[1] In the case of a securities fund, the forecast quality of the risk assessment model must be examined by comparing the actual changes in the value of its net assets during the course of a trading day with the relevant one-day VaR (back-testing).

[2] The comparison must be documented clearly.

[3] The sample to be used must be compiled from the previous 250 observations.

[4] If back-testing shows the risk assessment model to be impracticable, the audit company and FINMA must be notified forthwith.

[5] If back-testing produces more than six anomalies, the practicability of the risk assessment model must be examined in depth and the audit company and FINMA notified forthwith.

6 If the model is impracticable, FINMA may demand a swift rectification of any shortcomings of the model and order tighter restrictions on the risk.

Art. 42 Model approach: stress tests

1 In the case of securities funds, extreme market circumstances must be simulated periodically, but at least monthly (stress tests).

2 Stress tests must also be conducted where significant changes to the results of the stress test owing to changes in the value or the composition of the securities fund's assets, or to changes in the market circumstances cannot be excluded.

3 Stress tests include all risk factors which may have a material influence on the market value of the securities fund. Special attention must be paid to risk factors which are not or only insufficiently taken into account by the risk assessment model.

4 The results of the conducted stress tests and any necessary resulting measures must be clearly documented

Art. 43 Model approach: changes under the model approach

1 FINMA may allow variances from the requirements stipulated in Articles 39- 43.

2 It may permit the use of other risk assessment models, provided they afford an appropriate degree of protection.

3 If changes are made to the risk assessment model, back-testing or stress tests, these changes must be submitted to FINMA for approval in advance.

Art. 44 Cover for a physical delivery obligation of an underlying

1 If the fund management company or SICAV enters into a physical delivery obligation in respect of a derivative, this derivative must be covered by the corresponding underlyings.

2 Cover of such an obligation with other investments is permitted if the investments and the underlyings are highly liquid and, if delivery is requested, they may be purchased or sold at any time.

3 The fund management company or SICAV must have unrestricted access to these underlyings or investments at all times.

Art. 45 Covering a payment obligation

1 If the fund management company or SICAV enters into a payment obligation in respect of a derivative, this payment obligation must at all times be covered by highly liquid assets as defined in Article 34 paragraph 5.

2 In the case of securities funds applying commitment approach II or the model approach, the following shall additionally be recognised as cover:

a. debt securities and rights the remaining time to maturity of which is more than twelve months and whose issuer or guarantor has a high credit rating;

b. shares traded on an exchange or another regulated market open to the public.

3 It must be possible at all times to turn collateral as defined in paragraph 2 into liquid assets within seven banking days.

4 Shares may only be included as cover at market value less a security margin. This security margin must take account of the volatility of the corresponding share and must amount to at least 15 percent.

5 If an investment may require an additional payment, it is deemed an obligation to pay.

Art. 46 General provisions for inclusion of investment restrictions

1 In complying with the statutory and regulatory investment restrictions on determining maximum and minimum limits, the following must be taken into account:

a. investments, including derivatives, in accordance with Article 70 CISO[9];

b. liquid assets as defined in Article 75 CISO;

c. claims against counterparties arising from OTC transactions.

2 Pursuant to Article 82 CISO, exceptions may be made for index funds.

3 Any overrun of an investment limit due to a change in the delta must be rectified within three banking days; the rectification must ensure that the investors' interests remain safeguarded.

Art. 47 Inclusion of derivatives

1 In complying with the statutory and regulatory maximum and minimum limits, and in particular the regulations on risk diversification, underlying equivalents as set out in Annex 1 are decisive.

2 A minimum limit may be temporarily undercut with exposure-reducing derivatives purchased as part of a hedging strategy if the interests of investors remain safeguarded.

3 Derivative components are to be taken into account with the capital requirement under Article 35.

Art. 48 Inclusion of claims against counterparties at the maximum limits

1 Claims against counterparties arising from derivative transactions must be calculated on the basis of the current positive replacement values.

2 Positive and negative replacement values arising from transactions in derivatives with the same counterparty may be netted if a netting agreement exists that meets the current legal requirements and is legally enforceable.

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3 Claims arising from derivative transactions against a central counterparty of an exchange or another regulated market open to the public must not be taken into account if:

a. such a unit is subject to an appropriate supervisory body; and

b. the derivatives and collateral are subject to daily marking to market and daily margining.

Art. 49 Disclosure

1 If the use of derivatives is permitted for the management of a securities fund, such derivatives must be described in the fund regulations and the prospectus.

2 The prospectus must indicate whether the derivatives are used as part of the investment strategy or solely to hedge investment positions. In addition, the prospectus must explain how the use of derivatives affects the risk profile of the securities fund.

3 The fund regulations and prospectus must state which risk assessment process is applied to the securities fund. The risk assessment process must also be described in the prospectus. If the model approach is used, the gross overall exposure to derivatives must be shown. If the relative VaR approach is used, the benchmark portfolio must be disclosed in the prospectus.

4 If a securities fund exhibits increased volatility or leverage due to the use of derivatives, special reference must be made to this in the prospectus and advertising material.

5 Reference must be made to the counterparty risks of derivatives in the prospectus.

Section 4: Management of Collateral

(Art. 76 para. 2 and Art. 80 para. 4 CISO[10])

Art. 50 Scope of application

Assets received as collateral as part of investment techniques or OTC transactions must satisfy the requirements of this section.

Art. 51 Requirements for collateral

Only collateral that meets the following requirements may be accepted:

a. It is highly liquid and is traded at a transparent price on an exchange or other regulated market open to the public. It can be disposed of at short notice at a price close to the valuation undertaken prior to sale.

b. It is valued at least on each trading day. Where price volatility is high, suitable conservative security margins must be applied.

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c. It is not issued by the counterparty or by a company that belongs to or is dependent on the counterparty's group.

d. The credit quality of the issuer is high.

Art. 52 Management of collateral

The fund management company, SICAV or their agents must comply with the following duties and requirements when managing the collateral:

a. They must diversify the collateral appropriately in terms of countries, markets and issuers. Appropriate diversification of issuers is deemed to have been achieved if the collateral of a single issuer held does not correspond to more than 20 percent of the net asset value. Deviation from this rule is permitted if the collateral meets the requirements of Article 83 paragraph 1 CISO[11] or the approval conditions set out in Article 83 paragraph 2 CISO are met. If collateral is provided by more than one counterparty, an aggregate perspective must be ensured.

b. They must be able to obtain power of disposal over, and authority to dispose of, the collateral received at any time in the event of default by the counterparty, without involving the counterparty or obtaining its consent.

c. They may not re-lend, re-pledge, sell or reinvest collateral pledged or transferred to them or use it as part of a repurchase transaction or to hedge obligations arising from derivative financial instruments. They may only use cash collateral received in the corresponding currency as liquid assets or invest it in high-quality government bonds and directly or indirectly in short-term money market instruments or use it as a reverse repo.

d. If they accept collateral representing more than 30 percent of the fund assets, they must ensure that the liquidity risks can be captured and monitored appropriately. Regular stress tests must be carried out that take account of both normal and exceptional liquidity conditions. The controls carried out must be documented.

e. They must take account of the risks associated with the management of collateral in their risk management process.

f. They must be in a position to attribute any uncovered claims remaining after the realisation of collateral to the securities funds whose assets were the subject of the underlying transactions.

Art. 53 Collateral strategy

1 The fund management company, SICAV and their agents must have in place a collateral strategy that:

a. provides for appropriate security margins;

b. is geared to all types of assets received as collateral; and

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c. takes account of characteristics of the collateral such as volatility and the default risk of the issuer.

2 They must document the collateral strategy.

Art. 54 Safekeeping of collateral

1 The collateral received must be kept at the custodian bank.

2 Safekeeping by a supervised third-party custodian on behalf of the fund management company is permitted provided that:

a. ownership of the collateral is not transferred; and

b. the third-party custodian is independent of the counterparty.

3 In the case of collateral delivered to a counterparty, a custodian appointed by the latter, or a central counterparty, the custodian bank must ensure that transactions are settled in a secure manner and in line with the agreements.

Art. 55 Prospectus

The prospectus of the securities fund must contain appropriate information on the collateral strategy, in particular details of:

a. the permitted types of collateral;

b. the required level of collateralisation;

c. the determination of security margins;

d. the investment strategy and the risks in the event that cash collateral is reinvested.

Section 5: Master-Feeder Structures

(Art. 73*a* CISO[12])

Art. 56 Principle

In principle, the investors in a master fund are its feeder funds. Other investors may be accepted provided the fund management company or SICAV informs them in advance of the fact that they are investing in a master fund and ensures that the other investors receive equal treatment with the feeder funds.

Art. 57 Requirements for the documents of a feeder fund

1 In addition to the information set out in Articles 35*a* and 62*b* CISO[13], the fund contract or investment regulations of a feeder fund or feeder sub-fund shall in particular contain the following:

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a. a statement that the fund is a feeder fund which invests at least 85 percent of its assets in a specific master fund;

b. the name of the master fund;

c. the investment objective and the investment policy of the master fund;

d. the nature, amount and method of calculation of all remuneration as well as incidental costs that result from the investment in the master fund and that are permitted to be charged to the fund assets or the investors;

e. a statement that the fund contract or investment regulations, the prospectus, the key investor information document, as well as the annual and semi-annual reports of the master fund may be obtained free of charge;

f. a statement that the feeder fund may continue to exist after the dissolution of the master fund or after merger, conversion or transfer of the assets of the master fund up until the application is approved pursuant to Article 63 or 64.

2 In addition to the information set out in Article 106 CISO, the prospectus of a feeder fund shall in particular contain the following:

a. a statement that the fund is a feeder fund which invests at least 85 percent of its assets in a specific master fund;

b. a description of the master fund including the investment strategy and risk profile;

c. a summary of the most important content of the agreements on cooperation and duties of disclosure concluded in accordance with Articles 58, 61 and 62;

d. the location from which further information about the master fund and the agreements on cooperation and duties of disclosure concluded may be obtained free of charge.

3 The annual report of the feeder fund shall indicate the location from which the annual and semi-annual reports of the master fund may be obtained free of charge.

4 The marketing documents and the key investor information document on the feeder fund shall include a statement that it is a feeder fund which invests at least 85 percent of its assets in a specific master fund.

Art. 58 Joint duties of the master and feeder fund / their fund management companies

1 The master fund shall provide the feeder fund with all the documents and information it needs to fulfil its duties. To this end, they shall conclude an agreement on cooperation and duties of disclosure.

2 The agreement on cooperation and duties of disclosure shall, as a minimum, govern the following points:

a. the principles regarding the transfer of the relevant documents and further information by the master fund to the feeder fund;

b. the master fund's duty of disclosure to the feeder fund regarding the delegation of tasks to third parties;

c. the violations of statutory and contractual provisions which the master fund is required to report to the feeder fund and the form and timing of such reports;

d. the duty of the master fund to inform the feeder fund of the overall exposure arising from derivative financial instruments;

e. the master fund's duty of disclosure to the feeder fund if it concludes additional agreements regarding the exchange of information with third parties;

f. the ways in which the feeder fund may invest in the master fund as well as details of the costs and expenses to be borne by the feeder fund;

g. the principles and arrangements for implementing the measures set out in paragraph 4;

h. the arrangements for reporting the deferral of issues and redemptions and for reporting errors in the setting of prices by the master fund;

i. the principles for reconciling the audit reports of the master fund and feeder fund.

3 If the master fund and feeder fund are managed by the same fund management company or SICAV, the agreement on cooperation and duties of disclosure may be replaced by internal regulations. These must contain measures to prevent conflicts of interest. In all other respects, the internal regulations must meet the requirements set out in paragraph 2 letters f–i.

4 The master fund and feeder fund shall take measures to coordinate the schedules for calculating and publishing the net asset value in order to prevent market timing and possibilities for arbitrage.

Art. 59 Duties of the master fund / its fund management company

1 The master fund shall inform FINMA without delay of the identity of every feeder fund that invests in its units.

2 It shall not charge the feeder fund an issue or redemption commission for investments in its units.

3 It shall ensure that all information required by law or contract is made available in a timely manner to the feeder fund, its custodian bank and the audit company as well as FINMA. In so doing, it shall comply with its statutory and contractual obligations regarding the disclosure of data and data protection.

Art. 60 Duties of the feeder fund / its fund management company

1 The feeder fund shall provide its custodian bank with all the information regarding the master fund that it needs in order to fulfil its task.

2 It shall take effective measures to monitor the activities of the master fund.

3 When calculating its overall exposure in accordance with Article 72 paragraph 3 CISO[14], it shall take account of the overall exposure of the master fund in proportion to the feeder fund's investments in the master fund.

4 If the feeder fund, its fund management company or another person acting on behalf of the feeder fund or its fund management company receives a pecuniary benefit in connection with the investment in units of the master fund, this shall be credited to the assets of the feeder fund.

Art. 61 Duties of the custodian bank

1 If the master fund's custodian bank identifies irregularities in the master fund that may have a negative impact on the feeder fund, it shall notify its audit company and the feeder fund / the feeder fund's fund management company and custodian bank. This includes, inter alia, the following events:

a. errors in the calculation of the net asset value of the master fund;

b. errors in transactions, in the settlement of purchases and sales or of orders to issue or redeem units of the master fund by the feeder fund;

c. errors in the distribution or reinvestment of income from the master fund;

d. violations of statutory provisions or of the investment objectives, limits, policy or strategy of the master fund described in the fund contracts or investment regulations, the prospectus or the key investor information document.

2 If the master fund and feeder fund have different custodian banks, the latter shall, with the approval of the master fund and feeder fund, conclude an agreement on cooperation and duties of disclosure to ensure the fulfilment of their duties. This agreement shall, as a minimum, contain the following points:

a. a description of the documents and categories of information that the two custodian banks exchange on a regular basis, including the arrangements for and timing of such exchanges;

b. the principles regarding the handling of operational issues, including the calculation of the net asset value, protection against market timing, and the processing of orders of the feeder fund;

c. the arrangements for the reporting of violations of statutory and contractual provisions by the master fund;

d. other points that are necessary for the cooperation between the custodian banks.

3 When exchanging data, the custodian banks shall comply with their statutory and contractual obligations regarding the disclosure of data and data protection.

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Art. 62 Duties of the audit company

[1] In its short-form report for the feeder fund, the audit company shall take account of the short-form report for the master fund. If the master fund and feeder fund have different accounting years, the master fund shall compile an interim financial statement as of the reporting date of the feeder fund. Based on this, the audit company shall compile an ad-hoc short-form report for the master fund as of the reporting date of the feeder fund.

[2] In its short-form report for the feeder fund, the audit company shall mention any deviations from the standard wording contained in the short-form report for the master fund as well as any other material information, together with any influence on the feeder fund.

[3] If the master fund and feeder fund have different audit companies, the latter shall conclude an agreement on cooperation and duties of disclosure to ensure the fulfilment of their duties. This shall contain, as a minimum:

a. a description of the documents and categories of information that the two audit companies exchange on a regular basis, including the arrangements for and timing of such exchanges;

b. the coordination of the role of the audit companies in the process of compiling the annual financial statements for the master fund and feeder fund;

c. a statement of the information that must be included in the audit report for the master fund in accordance with paragraph 2;

d. other arrangements governing the cooperation between the audit companies as well as the compilation and transfer of the short-form and ad-hoc reports.

Art. 63 Dissolution of the master fund

[1] Following the announcement of the dissolution of the master fund, the feeder fund shall without delay defer repayments. Within one month following the announcement of the dissolution of the master fund, it shall submit to FINMA a report / an application regarding:

a. the dissolution of the master fund;

b. an amendment to the fund contract or investment regulations due to the change of master fund; or

c. an amendment to the fund contract or investment regulations due to the conversion into a non-feeder fund.

[2] The liquidation proceeds of the master fund may not be paid out before the applications set out in paragraph 1 letters b and c have been approved unless they are reinvested solely for the purpose of efficient liquidity management until the time of approval.

Art. 64 Merger, conversion and transfer of assets

[1] If the master fund decides on a merger, conversion or transfer of assets, the feeder fund must, within a month of the announcement being made by the master fund, notify FINMA whether it:

a. is dissolving itself;

b. intends to retain the same master fund;

c. is switching to another master fund; or

d. is converting itself into a non-feeder fund.

[2] Simultaneously with the notification, the feeder fund shall submit to FINMA any necessary application for approval of amendments to the fund contract or investment regulations.

[3] If the merger, conversion or transfer of assets of the master fund takes place before the application pursuant to paragraph 1 letters c and d has been approved, the feeder fund may only return the units of the master fund if the proceeds received are reinvested for the sole purpose of efficient liquidity management until the amendments enter into force.

Chapter 2: Other Funds

Art. 65

[1] The provisions for securities funds relating to securities lending (Arts. 1–9), securities repurchase agreements (Arts. 10–22), derivatives (Arts. 23–49), collateral management (Arts. 50–55) and master-feeder structures (Arts. 56–64) apply to other funds, *mutatis mutandis*.

[2] The above must be read subject to Articles 100 and 101 CISO[15].

[3] FINMA may permit deviations from these provisions (Art. 101 CISO).

Title 2: Institutions

Chapter 1: Organisational Requirements relating to the Delegation of Tasks

(Arts. 14, 28 para. 4, 18 et seq.,31, 36 para. 3 CISA and Arts. 12, 26, 42, 65 and 131 et seq. CISO[16])

Art. 66

[1] For the purposes of this Article, tasks are deemed to have been delegated if a licensee pursuant to paragraph 2 transfers material tasks to a third party and this results in a change to the circumstances under which the authorisation was granted.

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2 The fund management company, SICAV, asset manager of collective investment schemes and representative of foreign collective investment schemes shall set out the tasks delegated to third parties in written agreements. These shall include a precise description of the delegated tasks as well as the powers and responsibilities, any authorities in respect of further delegation, the agent's duty to give an account of its activities, and the control rights of the licensee.

3 The organisational structure shall not be deemed appropriate within the meaning of Article 14 CISA if a licensee pursuant to paragraph 2:

a. does not possess the decision-making authority with respect to central tasks that is accorded to the board of directors or executive board;

b. does not have the necessary personnel and expertise to select, instruct and monitor agents and manage their risks; or

c. does not have the requisite rights of instruction and control in respect of the agents, or does so only to a limited extent.

4 The delegation of tasks may not hinder the audit by the audit company or supervision by FINMA.

5 Where tasks are delegated abroad, the licensee must be able to demonstrate that it, the regulatory audit company and FINMA are able to exercise their respective rights and enforce them under the law. The regulatory audit company must review the confirmatory documentation before outsourcing takes place.

6 Licensees pursuant to paragraph 1 shall set out the delegated tasks as well as information on the scope for further delegation in their organisational regulations.

Chapter 2: Risk Management and Risk Control

(Art. 14 CISA and Art. 12a CISO[17])

Art. 67 Principles of risk management

1 The board of directors of the fund management company, SICAV or asset manager of collective investment schemes shall put in place an internal control system based on systematic risk analysis and monitor it in such a way as to ensure that all material risks of the licensee are appropriately and effectively captured, assessed, managed and monitored.

2 The executive board of the fund management company, SICAV or asset manager of collective investment schemes shall implement the requirements of the board of directors with regard to the setting up, maintenance and regular review of the internal control system. It shall develop suitable processes to implement the control activities that are to be integrated into working processes and to control risks.

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Art. 68 Internal guidelines

1 The fund management company, SICAV and asset manager of collective investment schemes shall set down appropriate risk management and risk control principles as well as the organisation of risk management and risk control in internal guidelines.

2 They shall include the risks that:

a. they are or could be exposed to as a result of the entirety of their business activities;

b. the collective investment schemes managed by them as well as other assets managed by them under the terms of mandates are or could be exposed to.

3 The internal guidelines shall set out:

a. the organisation of risk management and risk control, including the responsibilities within the licensee;

b. the types of risk at the level of the activities of the licensee, the collective investment schemes managed, and the assets managed under the terms of mandates;

c. the processes and systems for assessing and managing all material risks of the licensee and the collective investment schemes, and in particular their market, liquidity and counterparty risk;

d. the tasks, responsibilities and the frequency of reporting to the board of directors and executive board.

4 When drafting the internal guidelines and structuring the organisation of risk management, account must be taken of the nature, scope and complexity of the transactions carried out, the collective investment schemes managed, and the assets managed under the terms of mandates.

5 The use of investment techniques and derivatives must be governed by internal guidelines and reviewed periodically. With respect to the use of derivatives, the internal guidelines shall also govern the following areas, in accordance with the structure and risks of the licensee:

a. Risk policy:
   1. Permitted derivatives,
   2. Requirements to be met by counterparties,
   3. Market liquidity requirements,
   4. In relation to the use of index products: requirements in terms of representativeness and correlation;

b. Risk control:
   1. Identification, assessment and monitoring (controlling) of risks,
   2. Authorities and limits,
   3. Risk assessment procedures,
   4. Escalation procedures in the event of limit overruns,

5. Additionally, for the model approach:
   – Method of verifying the risk assessment models, in particular VaR
   – Escalation procedures and measures in the event of unsatisfactory results of verification tests
   – Composition of the benchmark portfolios and changes to them, monitoring of the process used to determine the benchmark portfolio
   – Stress tests;

c. Processing and valuation:
   1. Documentation of transactions,
   2. Valuation models to be used,
   3. Data and data suppliers to be used.

Art. 69 Further duties relating to risk management

[1] The fund management company, SICAV and asset manager of collective investment schemes shall regularly review the appropriateness and effectiveness of the risk management principles as well as the defined processes and systems.

[2] Compliance with the risk management principles and defined processes as well as the appropriateness and effectiveness of the measures to remedy any shortcomings in the risk management process are part of the reporting to the board of directors and executive board.

[3] The use of investment techniques and derivatives, the management of collateral and the resulting risks must be appropriately incorporated into the risk management of the collective investment schemes managed.

Art. 70 Risk control

[1] The fund management company, SICAV and asset manager of collective investment schemes shall have sufficiently qualified specialist personnel to carry out risk control.

[2] Risk control shall identify, assess and monitor:

a. the risks entered into by the licensee;

b. the risks of each individual position of the collective investment schemes managed and their overall risk; and

c. the risks of any other management mandates.

[3] Risk control shall be kept functionally and hierarchically separate from operational business units, in particular the function concerned with investment decisions (portfolio management). It must be able to act independently.

Art. 71 Conditions for the use of derivatives

[1] When using derivatives, calculation of the current overall exposure limits and ongoing compliance with them must be ensured at all times.

[2] Risk control shall review the valuation models and processes.

[3] In the case of physical delivery obligations arising from derivatives, risk control shall regularly review and ensure that cover in accordance with Articles 44 and 45 is available in the necessary amount.

[4] In the case of collective investment schemes to which the model approach is applied, the executive board shall, in accordance with their risk profile, approve a documented system of upper limits for potential risk amounts (VaR limits).

[5] In the case of collective investment schemes to which the model approach is applied, the risk control function of the fund management company or SICAV shall be accountable and responsible for the following tasks in respect of risk assessment processes:

a. reviewing, maintaining and refining the risk assessment model;

b. ensuring that the risk assessment model is suitable for the collective investment scheme concerned;

c. validating and implementing the system of VaR limits for each collective investment scheme in accordance with its risk profile;

d. determining and analysing the potential risk amounts on an ongoing basis and monitoring the upper limits;

e. regularly monitoring the gross overall exposure of the collective investment scheme, in particular its leverage;

f. reporting regularly to the internal body responsible regarding the current potential risk amounts, back-testing and the results of stress tests.

Chapter 3: Fund Management Company and SICAV

(Art. 33 para. 1 CISO[18])

Art. 72

[1] The fund management company and self-managed SICAV shall ensure that the valuation of investments is separated from the function concerned with investment decisions (portfolio management), both functionally and in terms of personnel.

[2] They shall have sufficient qualified specialist staff to carry out the valuation.

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Chapter 4: Asset Managers of Collective Investment Schemes

Section 1: De Minimis Approach

(Art. 2 para. 2 let. h CISA and Art. 1b para. 2 CISO[19])

Art. 73 Assets to be taken into consideration

[1] When calculating the thresholds for assets managed by the asset manager of collective investment schemes, assets whose management has been delegated by the asset manager to third parties must also be taken into account.

[2] Where an asset manager of collective investment schemes manages a collective investment scheme that holds units of another collective investment scheme managed by that asset manager, the assets concerned need only be taken into account once when calculating the thresholds.

Art. 74 Valuation of assets under management

[1] The value of the assets under management must be determined for each collective investment scheme managed on the basis of the legal provisions applying in the state of domicile of the collective investment scheme as well as any valuation rules set down in the relevant documents of the collective investment scheme.

[2] The conversion amount for the overall exposure arising from leverage financing is calculated in accordance with commitment approach II.

[3] The capital commitments in accordance with Article 1*b* paragraph 1 letter d CISO[20] are calculated as the sum of all amounts that the collective investment scheme / its fund management company can call from investors on the basis of binding commitments.

[4] The nominal value of a collective investment scheme in accordance with Article 1*b* paragraph 1 letter d CISO is the sum of the capital commitments less the repayments already made to investors.

Section 2: Professional Indemnity Insurance

(Art. 21 para. 3 let. b CISO[21])

Art. 75 Requirements

[1] Professional indemnity insurance for asset managers of collective investment schemes in accordance with Article 21 paragraph 3 letter b CISO[22] must meet the following requirements:

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a. It must be taken out with an insurance company within the meaning of the Insurance Supervision Act of 17 December 2004[23].

b. The term must be at least one year.

c. The notice period must be at least 90 days.

d. As a minimum, the professional indemnity risks set out in Article 76 must be covered.

[2] Insurance coverage for an individual claim must correspond to at least 0.7 percent of the total assets of the collective investment schemes managed by the asset manager of collective investment schemes.

[3] Insurance coverage for all claims in a year must correspond to at least 0.9 percent of the total assets of the collective investment schemes managed by the asset manager of collective investment schemes.

[4] The requirements with regard to professional indemnity insurance must be complied with at all times.

Art. 76 Professional indemnity risks

[1] The professional indemnity insurance pursuant to Article 21 paragraph 3 letter b CISO[24] must cover the risk of loss or damage caused by the negligent performance of activities for which the asset manager of collective investment schemes is legally responsible.

[2] The professional indemnity risks pursuant to paragraph 1 include, inter alia:

a. the risk of the loss of documentary evidence proving the collective investment scheme's ownership of assets under management;

b. the risk of misrepresentations or misleading statements to the collective investment scheme managed or its investors;

c. the risk of conduct that violates:
   1. statutory and contractual obligations,
   2. duties of loyalty, due diligence and disclosure to the collective investment scheme managed and its investors,
   3. provisions of the asset management agreement relating to the collective investment scheme, the fund contract or the articles of association of the collective investment scheme;

d. the risk that appropriate processes for preventing dishonest, fraudulent or malicious actions are not established, implemented or maintained;

e. the risk of assets not being valued in accordance with the rules;

f. the risk of losses due to an interruption of business, system outages or a failure of transaction processing or process management.

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Chapter 5: Custodian Bank

(Art. 14, 72 f. CISA and Art. 102*a* et seq. CISO[25])

Art. 77 Organisation

1 The custodian bank shall ensure that its premises, staff and functions are independent of the fund management company or SICAV.

2 Where tasks are delegated to the custodian bank by the fund management company or the SICAV, measures must be put in place to ensure that no conflicts of interest arise. Managerial independence between the delegating fund management company or SICAV and/or its agents, on the one hand, and those entrusted with the tasks of the custodian bank in accordance with Article 73 CISA must be ensured. Where conflicts of interest are unavoidable, they must be disclosed to the investors.

3 Those entrusted with the tasks of the custodian bank in accordance with Article 73 CISA may not simultaneously perform tasks delegated by the fund management company or SICAV.

Art. 78 Control function

1 In order to carry out its control tasks in accordance with Article 73 paragraph 3 letters a and b CISA, the custodian bank shall assess the risks in connection with the nature, scope and complexity of the strategy of the collective investment scheme in order to develop control processes that are appropriate to the collective investment scheme and the assets in which it invests.

2 The custodian bank shall issue appropriate internal guidelines to this effect setting out, as a minimum:

a. how it organises its control function, in particular what roles there are and who is responsible for what;

b. the control processes in accordance with which the controls, including those carried out when transferring safekeeping to a third-party custodian or collective securities depository within the meaning of Article 105*a* CISO[26], are to be carried out;

c. the control plan and the control processes, in particular the methods, data basis and frequency of controls;

d. the escalation processes that are triggered when irregularities are identified, in particular the process steps, deadlines, contacts with the fund management company or SICAV and other relevant parties, procedures for defining measures and duties of disclosure;

e. the custodian bank's reporting on its control activities to the governing bodies, in particular the frequency, form and content thereof as well as any further addressees.

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3 In respect of the fund management company, the custodian bank has the right and duty to intervene to prevent investments that are not permitted. If, in the exercise of its control function, it becomes aware of such investments, it shall restore compliance with the law by, for example, arranging for the investments to be reversed.

Title 3: Accounting, Valuation, Financial Statements and Duty to Publish

Chapter 1: Accounting

Section 1: General Provisions

Art. 79 Principles

(Arts. 87 and 91 CISA)

1 Unless the CISA and this Ordinance provide otherwise, the provisions set out in the Code of Obligations[27] (CO) in accordance with Article 87 CISA apply in respect of accounting.

2 Accounting must comply with the statutory requirements for the annual and semi-annual reports (Art. 89 et seq. CISA) and be conducted in such a way that the accounts provide a true and fair view of the financial situation and income.

3 Transactions, including off-balance-sheet transactions, must be recognised immediately after conclusion of the contract. Concluded transactions that have not yet been executed must be accounted for by using the closing date principle.

4 The accounting must take account of the tax law requirements.

Art. 80 Unit of account

(Arts. 26 para. 1 and 108 CISA; Art. 35a para. 1 let. o CISO[28])

1 A foreign currency may be designated as the unit of account for:

a. an investment fund or its sub-funds in the fund regulations;

b. the sub-funds of a SICAV in the investment regulations;

c. a limited partnership for collective investment in the partnership agreement.

2 In its investment regulations, a SICAV must also specify the currency which will serve as the unit of account for the overall accounts (Art. 98), as well as the conversion process.

3 If a foreign currency is used in accounting, the values must not also be given in the local currency.

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Section 2: Open-Ended Collective Investment Schemes

Art. 81 Sub-funds and unit classes
(Arts. 92–94 CISA, Arts. 112 and 113 CISO[29])

1 In the case of collective investment schemes which include sub-funds, the provisions of this title apply to each individual sub-fund.

2 The sub-funds must be presented separately in the annual and semi-annual reports.

3 The accounting year ends on the same date for all sub-funds.

4 In the case of unit classes, the net asset value must be disclosed for each class.

Art. 82 Control of units and unit certificates
(Arts. 11 and 73 para. 1 CISA)

1 The custodian bank shall record the issue and redemption of units, including fractions thereof, on a continuous basis. It shall record the following details:

a. the date of issue or redemption;
b. the number of units issued or redeemed;
c. the gross amount paid by the investor or net payment made to the investor;
d. the fees and incidental costs in relation to the issue or redemption;
e. the amount credited or debited to the collective investment scheme;
f. the net asset value of the unit.

2 In the case of registered units, the identity of the investor must also be recorded.

3 The custodian bank shall record the issue and redemption of unit certificates separately.

Art. 83 Real estate funds
(Arts. 59 para. 1 let. b and 83 CISA, Arts. 86 para. 3 let. b and 93 CISO[30])

1 The real estate fund and real estate companies owned by it must close their accounts on the same day. FINMA may grant exemptions provided consolidated financial statements are produced.

2 The calculation of the net asset value must take account of taxes (income and real estate gains tax and, if applicable, real estate transfer tax) incurred in connection with any liquidation of the real estate fund.

3 Depreciation of buildings, including fixtures, may be charged to the profit and loss account provided it is economically reasonable.

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Chapter 2: Valuation

Section 1: General Provisions

Art. 84 Investments
(Arts. 88 and 89 para. 2 CISA)

1 Investments are valued at market value (Art. 88 CISA).

2 In the notes to the statement of net assets, or balance sheet and profit and loss account (Arts. 94 and 95), the investments are to be summarised in a table according to the following three valuation categories:

a. trading of investments listed in a stock exchange or in another regulated market open to the public and valued according to the prices in the primary market (Art. 88 para 1 CISA);
b. investments that are not priced according to let. a whose value is based on market-observed parameters;
c. investments whose value cannot be based on market-observed parameters and are valued with suitable valuation models taking account of the current market circumstances.

Art. 85 Private equity
(Arts. 88 para. 2 and 108 CISA)

1 Private equity investments are valued in accordance with recognised international standards, provided the valuation is not governed by this Ordinance.

2 The standards applied must be described in detail in the prospectus or regulations.

Art. 86 Real estate fund
(Art. 59 para. 1 let. b and 83 CISA, Art. 86 para. 3 lets. b snd 93 CISO

Buildings under construction must be recognised at market price in the statement of net assets. The fund management or SICAV provides an estimation of buildings under construction recognised at market price at the closing of the financial year.

Section 2: Open-Ended Collective Investment Schemes

(Art. 88 para. 2 CISA)

Art. 87

1 The tangible and intangible assets of the company shareholders of a SICAV must be valued at acquisition or production cost less any economically necessary depreciation.

[2] The valuation principles for the tangible and intangible assets must be disclosed under additional information. If they are amended, the restated data for the previous year must also be disclosed for information purposes.

[3] The other assets of a SICAV shall be valued in accordance with Articles 84 to 86.

Section 3: Closed-Ended Collective Investment Schemes

Art. 88 Limited partnership for collective investment
(Arts. 88 para. 2 and 108 CISA)

Articles 84-87 apply *mutatis mutandis* to the valuation process.

Art. 89 Investment company with fixed capital (SICAF)
(Art. 117 CISA)

[1] The valuation methods applied to prepare the single entity financial statements (Art. 109 para. 1) shall be in accordance with the provisions of accounting. In addition, the market values of the investments must be indicated for information purposes.

[2] The valuation methods applied to prepare the consolidated financial statements (Art. 109 para. 2) are as stipulated in the ordinance in accordance with internationally recognised accounting standards of 21 November 2012[31] (VASR).

Chapter 3: General Provisions on Accountability

Art. 90 Private equity
(Arts. 88 and 108 CISA)

[1] The valuation methods applied (Art. 85) must be disclosed in the annual and semi-annual reports.

[2] If an investment is recognised below cost, this fact must be disclosed.

[3] In the case of collective investment schemes which can invest more than 10 percent of their assets in private equity, the following minimum information on the individual private equity investments, classified by type and phase of development, must be provided if they account for more than 2 percent of the assets of the collective investment scheme:

a. description of the investment (name, registered office, purpose, capital stock and equity stake);

b. description of the business activity and any significant developments;

c. information on the board of directors and executive board;

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d. categorisation by development phase (such as seed, early stage or buyout);

e. scope of commitments entered into.

Art. 91 Subsidiary companies
(Art. 90 para. 1 CISA and Art. 68 CISO[32])

[1] If subsidiary companies are used to implement the investment policy, a transparent substance-over-form approach must be applied to the accounts (such as in the statement of net assets, or the balance sheet and profit and loss account, inventory, buy and sell transactions).

[2] The companies must be consolidated in accordance with a VASR[33] standard. Therefore, the accounting principles applied to them must be for consolidation purposes.

Chapter 4: Accounting for Open-Ended Collective Investment Schemes

Section 1: Annual Accounts

Art. 92 SICAVs
(Art. 36 para. 1b CISA, Arts. 68, 70, 86 and 99 CISO[34])

[1] The annual accounts of a SICAV comprise the annual accounts relating to the individual pools of investor assets (sub-funds) and the annual accounts relating to the shareholders' assets, and the overall accounts of the SICAV.

[2] The annual accounts disclose the permitted investments pursuant to Articles 70, 86 and 99 CISO[35] in respect of the investors' assets.

[3] In respect of the shareholders' assets, the annual accounts disclose the following:

a. permitted investments within the meaning of paragraph 2 and the movable, immovable and intangible assets essential for immediate business operations of the SICAV;

b. the permitted liabilities.

[4] Short-term liabilities and liabilities secured by mortgage, entered into in connection with the SICAV's immediate business operations, are permitted.

[5] The annual accounts relating to one or more selected pools of investor assets may only be published together with the overall accounts of the SICAV.

[6] The annual accounts form part of the annual report, which replace the business report under the Code of Obligations. A management report and a cash flow statement are not required.

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Art. 93 Minimum breakdown of statement of net assets, or the balance sheet and profit and loss account for investment funds and SICAVs
(Art. 91 CISA)

The statement of net assets, or the balance sheet and profit and loss account for investment funds and sub-funds must be published in the annual and semi-annual reports, whereby a minimum breakdown under Articles 67-71 must be ensured.

Art. 94 Securities funds
(Arts. 53–57 and 89 CISA and Arts. 70–85 CISO[36])

For securities funds, the statement of net assets, or the balance sheet and profit and loss account, have the minimum structure set out in Annex 2.

Art. 95 Real estate funds
(Arts. 58–57 and 67 CISA and Arts. 86-98 CISO[37])

For real estate funds, the statement of net assets, or the balance sheet and profit and loss account, have the minimum structure set out in Annex 3.

Art. 96 Other funds
(Arts. 68–71 and 89 CISA and Arts. 99–102 CISO[38])

The provisions on the minimum breakdown for securities funds (Art. 67) apply *mutatis mutandis* to other funds. They also include the investments permitted for other funds.

Art. 97 Minimum breakdown of balance sheet and profit and loss account relating to the shareholders' assets
(Art. 53 et seq. CISA and Art. 68 CISO[39])

1 The shareholders' assets must be broken down into:

a. investments;

b. business assets.

2 For the breakdown of investments, Articles 94–96 apply.

3 For the breakdown of the business assets, Articles 959 and 959*a* CO[40] apply *mutatis mutandis*.

4 For the notes, Article 959*c* CO apply *mutatis mutandis*. In addition, the valuation principles for the tangible and intangible assets of the company shareholders must be disclosed. The notes must also provide information on the risk assessment process.

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37 SR **951.311**
38 SR **951.311**
39 SR **951.311**
40 SR **220**

5 Company shareholders and shareholder associations with aligned voting rights holding 5 percent or more of the shares must be listed in the annual report as follows:

a. name or company;

b. place of residence or domicile;

c. percentage of shares held.

Art. 98 Overall accounts of a SICAV
(Art. 91 CISA)

1 The overall accounts of a SICAV consist of the balance sheet, profit and loss account and the notes pursuant to the CO[41] and include the investors' assets and the shareholders' assets.

2 For the purpose of preparing the balance sheet and profit and loss account, the positions constituting the investors' assets must be aggregated. Classification is in accordance with Articles 94-96.

3 The shareholders' assets must be disclosed separately in the balance sheet and profit and loss account. Items are broken down *mutatis mutandis* in accordance with Articles 94-96 in the case of investments, and Article 959, 959*a* and 959*b* CO in the case of business assets.

4 The overall accounts of a SICAV must be structured into investors' assets, the shareholders' assets and the overall assets of the SICAV.

5 The information stated in Article 97 paragraph 5 must also be disclosed in the overall financial statement.

Section 2: Further Information

Art. 99 Inventory of the collective investment scheme
(Art. 89 para. 1 let. c CISA)

1 As a minimum, the inventory must be broken down by type of investment such as securities, bank credit balances, money market instruments, derivative financial instruments, precious metals and commodities and, within such types of investment, in accordance with the investment policy by industry, geographical location, type of security (Annex 2 let. 1.4) and currencies.

2 The total amount and the percentage of the overall assets of the collective investment scheme must be indicated for each group or subgroup.

3 The share in the overall assets of the collective investment scheme must be indicated for each individual value disclosed in the inventory.

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4 Securities must also be broken down as follows:

a. traded on an official stock exchange;

b. traded on another regulated market open to the public;

c. as defined in Article 70 paragraph 3 CISO[42];

d. as defined in Article 71 paragraph 2 CISO;

e. securities that do not correspond to categories a–d above.

5 The valuation category must be indicated for each value recognised in the inventory in accordance with Article 84 paragraph 2.

6 In relation to the securities listed in paragraph 3, only the subtotal per category need be indicated and each item denoted accordingly.

Art. 100 Inventory of real estate funds
(Art. 89 para. 1 let. c and 90 CISA)

1 As a minimum, the inventory must be broken down into:

a. residential buildings;

b. commercially used properties;

c. mixed-use properties;

d. building land, including properties for demolition, and buildings under construction;

e. units in other real estate funds and real estate investment companies;

f. mortgages and other advances secured by mortgage.

2 For property in buildings with development rights and condominiums, the circumstances for each property and the total for each item in paragraph 1 letters a-d are to be indicated in the inventory.

3 The inventory must include information on each item of land and buildings:

a. address;

b. purchase price;

c. estimated market value;

d. gross income generated.

4 Any investments in short-term fixed-interest securities, real estate certificates or derivatives must also be disclosed.

5 Any mortgages and other liabilities secured by mortgage outstanding at the end of the year, as well as loans and advances must be listed stating their interest terms and maturity periods.

6 A list of the real estate companies owned must be published for each real estate fund, including an indication of the equity stake (voting rights/capital).

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7 The items in the inventory must be indicated in accordance with the three valuation categories under Article 84 paragraph 2. If all the investment property have the same valuation category, they can be put together and summarised under the total property portfolio.

Art. 101 Itemisation of buy, sell and other transactions
(Art. 89 para. 1 let. e CISA)

1 All changes in the composition of the collective investment scheme, in particular buy, sell, off-balance-sheet exposures, bonus shares, subscription rights and splits, must be disclosed in the annual report. The individual assets must be described in precise terms.

2 In the case of real estate funds, each property acquired or sold must be listed individually.

The agreed price must be disclosed at the request of any investor.

3 In the case of real estate funds, transactions between collective investment schemes which are managed by the same or an associated fund management company or SICAV must be disclosed separately.

4 Mortgages and advances secured by mortgage which have been granted over the course of the financial year and redeemed prior to the end of that financial year must be listed, including interest terms and maturity periods.

5 Mortgages and other liabilities secured by mortgage, as well as loans and advances which have been taken up and repaid within the financial year, must be listed, including interest terms and maturity periods, or summarised per category with an average maturity period and an average interest rate.

Art. 102 Changes in the fund's net assets
(Art. 89 CISA)

1 For each collective investment scheme, any changes in the fund's net assets must be itemised and contain at least:

a. the fund's net assets at the beginning of the reporting year;

b. distributions;

c. balance from unit transactions;

d. overall net income;

e. the fund's net assets at the end of the reporting year.

2 The unit statistics for the reporting year must also be disclosed (Art. 89 para. 1 let. b CISA).

Art. 103 Figures from previous years
(Art. 91 CISA)

[1] In the annual and semi-annual reports, the previous year's figures must also be disclosed in the statement of net assets, or the balance sheet and profit and loss account.

[2] The fund's net assets and the net asset value per unit for the past three reporting years must also be itemised in the annual report. The key date shall be the last day of the reporting year.

Section 3: Appropriation of Net Income and Distributions

Art. 104 Appropriation of net income
(Art. 89 para. 1 let. a CISA)

[1] The appropriation of net income has the following minimum structure:

a. net income for the accounting year;
b. capital gains generated during the accounting year intended for distribution;
c. capital gains from previous accounting years earmarked for distribution;
d. balance brought forward from the previous year;
e. net income available for distribution;
f. net income earmarked for distribution to investors;
g. net income retained for reinvestment;
h. balance brought forward to new account.

[2] No reserves may be created.

Art. 105 Distributions
(Art. 91 CISA)

[1] Interim distributions of net income are only permitted if specified in the fund regulations.

[2] Capital gains may only be distributed if the following conditions are met:

a. The fund regulations must provide for the distribution.
b. The capital gains must be realised.
c. They do not constitute interim distributions.

[3] The distribution of capital gains is also permitted if there are capital losses from previous years.

[4] No share in profit may be disbursed.

Section 4: Duty to Publish

Art. 106 Publication of issue and redemption prices, or of net asset value
(Arts. 26 para. 3, 79, 80, 83 para. 4 CISA; Art. 35*a* para. 1 let. 1 and Art. 39 CISO[43])

[1] The issue and redemption price, or net asset value, must be published in the print media or electronic platforms cited in the prospectus each time units are issued and redeemed.

[2] Prices for securities funds and other funds must also be published at least twice a month.

[3] Prices of the following collective investment schemes must be published at least once a month:

a. real estate funds;
b. collective investment schemes for which the right to redeem at any time is restricted pursuant to Article 109 paragraph 3 CISO.

[4] The weeks and weekdays on which publication takes place pursuant to paragraphs 2 and 3 must be stated in the prospectus.

[5] If the net asset value is published, it must be flagged "exclusive of commission".

Art. 107 Simplified prospectus for real estate funds
(Art. 76 CISA and Art. 107 CISO[44])

[1] Collective investment schemes, or sub-funds thereof, which comprise several unit classes, must disclose the information pursuant to Annex 2 point 3.3 CISO for each unit class.

[2] Collective investment schemes which comprise several sub-funds may publish a separate simplified prospectus for each sub-fund. If all sub-funds are listed in one simplified prospectus, the information pursuant to Annex 2 point 3.3 of the Collective Investment Schemes Ordinance must be disclosed individually for each sub-fund.

[3] Collective investment schemes or sub-funds comprising several unit classes shall publish the information for all unit classes in the same simplified prospectus.

Chapter 5: Accounting for Closed-Ended Collective Investment Schemes

Art. 108 Limited partnership for collective investment
(Art. 108 CISA)

[1] Accounting shall be based on the provisions relating to open-ended collective investment schemes *mutatis mutandis*.

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2 Participations which are held purely for investment purposes may not be consolidated, irrespective of the percentage of votes and capital held in the company concerned.

Art. 109 SICAFs
(Art. 117 CISA)

1 The accounting methods applied to individual financial statements shall in principle be based on the provisions of the open-ended collective investment schemes.

2 The duty to consolidate under the CO[45] is not applied. Consolidation may be effected in accordance with a recognised VASR[46] standard.

Title 4: Audits and Audit Reports

Chapter 1: Audits

Art. 110 Separation of financial and regulatory audits and scope of audits
(Art. 126 para. 2 CISA, Art. 24 FINMASA[47])

1 Annual audits are separated into a financial audit and a regulatory audit.

2 The audit company shall conduct at least one interim audit of licensees, excepting representatives, every year.

Art. 111 Financial audit
(Art. 126 paras. 5 and 6 CISA, Art. 137 CISO[48])

1 For a financial audit of collective investment schemes, the information is audited in accordance with Articles 89 paragraph 1 letters a-h and 90 CISA.

2 The financial audit of fund management companies, asset managers of collective investment schemes, general partners of a limited partnership for collective investment schemes and representatives of foreign collective investment schemes is conducted in accordance with Article 728 et seq. CO[49].

3 FINMA may allow exceptions for representatives of foreign collective investment schemes.

45 SR **220**
46 SR **221.432**
47 Financial Market Supervision Act of 22 June 2007; SR **956.1**
48 SR **951.311**
49 SR **220**

Art. 112 Regulatory audit
(Art. 126 paras. 1–4 CISA; Art. 24 FINMASA[50];Arts. 2–8 FMAO[51])

1 The regulatory audit comprises examine the licensee's compliance with the regulatory provisions applied under Article 13 paragraph 2 letters a-d, f and h CI,SA including collective investment schemes.

2 For audit scope is to include the general partner of a limited partnership for collective investment schemes.

3 The regulatory audit also examines the prospectus, the information it provides for investors and the simplified prospectus.

4 The regulatory audit may also include other information specified by FINMA.

Chapter 2: Audit Reports

Art. 113 Type of reports
(Art. 126 CISA, Art. 24 FINMASA[52], Art. 137 CISO[53] and Arts. 9-12 FMAO[54])

1 The audit company shall produce:

a. reports on the regulatory audit of the licensees and the collective investment schemes, as well as the representatives of foreign collective investment schemes not requiring authorisation (regulatory audit);

b. audit reports on the annual accounts audit under Article 126 paragraph 5 CISA (financial audit);

c. brief reports on the audits of collective investment schemes (financial audit).

Art. 114 Financial audit report
(Art. 126 para. 4 CISA, Art. 24 FINMASA[55] and Arts. 9-12 FMAO[56])

1 The audit company shall produce the audit reports within six months of the close of the accounting year. In individual cases, FINMA may make exceptions for this deadline.

2 The audit reports on the fund management company also include the investment funds which it manages. If the fund management company's accounting year does not run concurrently with that of the investment funds, the funds' audit reports must be produced on a quarterly basis in accordance with the deadlines pursuant to paragraph 1 in addition to the audit report on the fund management company.

3 The audit reports for a limited partnership for collective investment schemes also include the general partner.

50 SR **956.1**
51 Financial Market Auditing Ordinance of 15 Oct. 2008, SR **956.161**
52 SR **956.1**
53 SR **951.311**
54 SR **956.161**
55 SR **956.1**
56 SR **956.161**

4 The audit reports for licensees and investment funds are to be shown to the ultimate management and those responsible for supervision and control. The audit reports must be discussed at a meeting of such a governing body, and minutes thereof shall be taken.

Art. 115 Financial audit
(Art. 126 paras. 5 and 6 CISA, Art. 137 CISO[57])

1 The provisions set out for regular audits under the Code of Obligations[58] apply *mutatis mutandis* to financial reports on a financial report.

2 The audit company produces short-form reports on a timely basis prior to the publication of the annual reports. They must be signed by the responsible lead auditor and an authorised signatory of the audit company.

3 Reports must be provided for each of the collective investment schemes with a sub-fund.

Art. 116 Short-form report
(Art. 126 paras. 5-6 CISA, Art. 24 FINMASA[59], Art. 137 CISO[60], Arts 9-12 FMAO[61])

1 The brief report expresses an opinion on the adherence to the statutory, contractual and regulatory provisions for the annual accounts, as well as the provisions laid down in the articles of association, and on the audits of the information required by Article 89 paragraph 1 letters a-h CISA, and additionally in the case of real estate funds on those audits pursuant to Article 90 CISA.

2 In relation to a SICAV or SICAF, the short-form report may also include the reports of the statutory audit company pursuant to Article 728 CO.[62]

3 FINMA may declare a standard confirmation of the audit industry organisation to be generally binding.

Title 5: Final and Transitional Provisions

Art. 117 Repeal of another decree

The FINMA Collective Investment Schemes Ordinance of 21 December 2006[63] is repealed.

57 SR **951.311**
58 SR **220**
59 SR **956.1**
60 SR **951.311**
61 SR **956.161**
62 SR **220**
63 AS **2007** 301, **2008** 5613

Art. 118 Transitional provisions

1 Licensees must submit fund contracts and investment regulations amended to comply with this Ordinance to FINMA for approval by 1 January 2017.

2 From 1 January 2016 the fund management company and SICAV must:

a. comply with the provisions on collateral management pursuant to Articles 50–55. This also applies to their agents, *mutatis mutandis*.

b. comply with the requirements regarding measuring the risks of derivative financial instruments;

c. disclose in their prospectuses the gross overall exposure arising from derivatives and, when applying the relative VaR approach, the benchmark portfolio in accordance with Article 49 paragraph 3.

3 Licensees in accordance with Article 13 paragraph 2 letters a, b and f CISA must, from 1 January 2016, comply with the rules on risk management and risk control pursuant to Articles 67–71 as well as the conditions for the use of derivatives set out in Article 71.

4 Licensees in accordance with Article 13 paragraph 2 letters a, b, f and h CISA must, from 1 January 2017:

a. list the delegated tasks as well as the principles governing the possibility of further delegation in their corresponding organisational documents;

b. comply with the requirements of Article 66 paragraph 5 concerning delegation abroad.

5 Custodian banks must, by 1 January 2016, have implemented internal guidelines in accordance with Article 78.

6 The provisions on consolidated financial statements and on the information on valuation categories of investments (Art. 84 para. 2) are to be complied with for the first time in the financial year commencing on 1 January 2016 or within a year after this date.

7 Buildings under construction must be valued at market value pursuant to Article 86 for the first time one year after this Ordinance enters into force.

8 The duties of disclosure in the annual financial statements in accordance with the changes to the rules set out in Annexes 2 and 3 must be complied with for the first time in the financial year beginning after 1 January 2016.

Art. 119 Commencement

This Ordinance comes into force on 1 January 2015.

Annex 1:
(Art. 35 para. 2)

Inclusion of derivatives / underlying equivalents

1. In principle, underlying equivalents are determined in accordance with the following, non-exhaustive list of derivatives. The following points apply in general:

1.1 The reference currency of the securities fund must be used on the basis of the current exchange rates.

1.2 In the case of a currency derivative consisting of two contract legs where both are not required to be fulfilled in the reference currency of the securities fund, both contract legs must be included.

1.3 If delta is not calculated, a delta of one must be employed.

2. Basic types of derivatives are, specifically:

2.1 *Futures*:

2.1.1 Bond future: number of contracts x contract size x market value of the cheapest deliverable reference bond

2.1.2 Interest rate future: number of contracts x contract size

2.1.3 Currency future: number of contracts x contract size

2.1.4 Equity future: number of contracts x contract size x market price of the underlying share

2.1.5 Index future: number of contracts x contract size x index level

2.2 *Options* (buy/sell position; call/put options):

2.2.1 Bond option: number of contracts x contract size x market price of the underlying bond x delta

2.2.2 Equity option: number of contracts x contract size x market price of the underlying share x delta

2.2.3 Interest rate option: contract value x delta

2.2.4 Currency option: contract value of the currency leg(s) x delta

2.2.5 Index option: number of contracts x contract size x index level x delta

2.2.6 Options on futures: number of contracts x contract size x market value of the underlying x delta

2.2.7 Warrants and subscription rights: number of shares/bonds x market value of the underlying x delta

2.3 *Swaps*:

2.3.1 Interest rate swaps: contract value

2.3.2 Currency swaps: nominal value of currency leg(s)

2.3.3 Cross-currency interest rate swaps: nominal value of currency leg(s)

2.3.4 Total return swap: market value of the underlying asset

2.3.5 Complex total return swap: cumulative market value of both legs of the total return swap

2.3.6 Single name credit default swaps:

a. Protection seller: the higher of the market value of the underlying asset or the nominal value of the credit default swap

b. Protection buyer: market value of the underlying asset

2.3.7 Contracts for differences: number of shares/bonds x market value of the underlying asset

2.4 *Forwards*:

2.4.1 FX forwards: nominal value of currency leg(s)

2.4.2 Forward rate agreements: nominal value

2.5 Leveraged exposure to indices or indices with embedded leverage:

In the case of derivatives providing leveraged exposure to an underlying index, or indices that embed leveraged exposure, the conversion amounts of the corresponding assets must also be determined and included in the calculation.

3. Financial instruments with a derivative component are, specifically:

3.1 Convertible bonds: number of underlying assets x market value of the underlying assets x delta

3.2 Credit linked notes: market value of the underlying asset

3.3 Partially paid securities: number of shares/bonds x market value of the underlying assets

3.4 Warrants and subscription rights: number of shares/bonds x market value of the underlying x delta

4. Barrier options

Number of contracts x contract size x market price of the underlying asset x delta

Annex 2:
(Art. 94)

Minimum structure of the statement of net assets / balance sheet and profit and loss account of securities funds

1. Statement of net assets and balance sheet

1.1 Due from banks, including fiduciary deposits with third-party banks, broken down into:
1.1.1 Sight deposits
1.1.2 Time deposits
1.2 Money market instruments
1.3 Claims from repurchase agreements
1.4 Securities, including those on loan and under repurchase agreements, broken down into:
1.4.1 Bonds, convertible bonds, warrant bonds and other debt securities and rights
1.4.2 Structured products
1.4.3 Shares and other equity securities and rights
1.4.4 Units in other collective investment schemes
1.5 Other investments
1.6 Derivative financial instruments
1.7 Other assets
1.8 Total fund assets, less
1.9 Liabilities from repurchase agreements
1.10 Loans
1.11 Other liabilities
1.12 Net fund assets
1.13 Number of units outstanding
1.14 Net asset value per unit

2. Profit and loss account

2.1 Income from bank assets
2.2 Income from money market instruments
2.3 Income from reverse repos
2.4 Income from securities lending
2.5 Income from securities, broken down by:

2.5.1 Bonds, convertible bonds, warrant bonds and other debt securities and rights
2.5.2 Structured products
2.5.3 Shares and other equity securities and rights, including income from bonus shares
2.5.4 Units of other collective investment schemes
2.6 Income from other investments
2.7 Other income
2.8 Current net income paid in on issued units
2.9 Total income less:
2.10 Interest paid
2.11 Auditing expenses
2.12 Remunerations to the following in accordance with the fund regulations:
2.12.1 The fund management company
2.12.2 The company shareholders
2.12.3 The custodian bank
2.12.4 The asset manager
2.12.5 Other third parties
2.13 Other expenses
2.14 Current net income paid out on redeemed units
2.15 Net income
2.16 Realised capital gains and losses
2.17 Realised net income
2.18 Unrealised capital gains and losses
2.19 Total net income

3. Notes

3.1 Derivatives:
3.1.1 If applying commitment approach I:
as amount and as a percentage of net fund assets
a. Total exposure-increasing positions (underlying equivalent)
b. Total exposure-reducing positions (underlying equivalent)
3.1.2 If applying commitment approach II:
as amount and as a percentage of net fund assets
a. Gross overall exposure arising from derivatives
b. Net overall exposure arising from derivatives

c. Commitment arising from securities lending and repurchase agreements

3.1.3 If applying the model approach:

a. Value-at-risk limit on closing date as a percentage of the fund's net assets

b. Value-at-risk on closing date as a percentage of the fund's net assets

c. Value-at-risk (average as a percentage of the fund's net assets)

d. Back-testing: number of outliers

e. Gross overall exposure arising from derivatives

3.1.4 Identity of contracting partners for OTC transactions

3.2 Security, issuer, number / nominal value of the securities lent as at the balance sheet date

3.3 Security, issuer, number / nominal value of the securities under repurchase agreement as at the balance sheet date

3.4 Balance of account for income retained for reinvestment

3.5 Information on expenses:

3.5.1 Information on actual rates of remuneration if maximum rates are indicated in the fund regulations

3.5.2 Indication and explanation of performance in accordance with industry standards

3.5.3 Total expense ratio (TER) in accordance with industry standards

3.6 Information concerning soft commission agreements

3.7 Principles applied to value and calculate the net asset value

3.8 Direct and indirect operating expenses arising from securities lending and repurchase agreements as well as the borrowers, counterparties and intermediaries involved

3.9 For index-replicating collective investment schemes: information on the level of the tracking error

3.10 Nature and amount of collateral received

Annex 3:
(Art. 95)

Minimum structure of the statement of net assets / balance sheet and profit and loss account of real estate funds

1. Statement of net assets and balance sheet

1.1 Cash on hand, postal check and bank sight deposits, including fiduciary deposits with third-party banks

1.2 Bank time deposits, including fiduciary investments with third-party banks

1.3 Short-term fixed-income securities, broken down into:

1.3.1 Collateral for construction projects (Art. 90 CISO[64])

1.3.2 Other (Art. 89 CISO)

1.4 Real estate, broken down into:

1.4.1 Residential property

1.4.2 Commercial property

1.4.3 Mixed-use property

1.4.4 Building land, including properties for demolition, and buildings under construction

1.4.5 Mortgages and other advances secured by mortgage

1.4.6 Units in other real estate funds and real estate investment companies

1.5 Derivative financial instruments

1.6 Other assets

1.7 Total fund assets, less:

1.8 Short-term liabilities, broken down into:

1.8.1 Short-term interest-bearing mortgages and other liabilities secured by mortgage

1.8.2 Short-term loans and advances subject to interest

1.8.3 Short-term other liabilities

1.9 Long-term liabilities, broken down into:

1.9.1 Long-term mortgages subject to interest and other liabilities secured by mortgage

1.9.2 Long-term loans and advances subject to interest

1.9.3 Long-term other liabilities

1.10 Units of minority shareholders in real estate companies

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1.11 Net fund assets before estimated liquidation taxes
1.12 Estimated liquidation taxes
1.13 Net fund assets
1.14 Number of units outstanding
1.15 Net asset value per unit

2. Profit and loss account

2.1 Income from bank and postal accounts
2.2 Income from short-term, fixed-interest securities
2.3 Rental income (gross income received)
2.4 Capitalised interest on building loans
2.5 Other income
2.6 Current net income paid in on issued units
2.7 Total income less:
2.8 Mortgage interest and interest from liabilities secured by mortgage
2.9 Other interest paid
2.10 Repairs and maintenance
2.11 Property management, broken down into:
2.11.1 Property expenses
2.11.2 General and administrative expenses
2.12 Appraisals and auditing expenses
2.13 Depreciation of land and buildings
2.14 Provisions for future repairs
2.15 Remunerations to the following in accordance with the fund regulations:
2.15.1 The fund management company
2.15.2 The company shareholders
2.15.3 The custodian bank
2.15.4 The real estate manager
2.15.5 Other third parties
2.16 Other expenses
2.17 Current net income paid out on redeemed units
2.18 Interests of minority shareholders in real estate companies
2.19 Net income
2.20 Realised capital gains and losses
2.21 Realised net income
2.22 Unrealised capital gains and losses including liquidation taxes
2.23 Total net income

3. Notes

3.1 Balance of depreciation account for land and buildings
3.2 Balance of provisions account for future repairs
3.3 Balance of account for income retained for reinvestment

3.4 Number of units scheduled for redemption at the end of the next accounting year
3.5 Ratios in accordance with industry standards:
3.6.1 Rent default rate
3.6.2 Borrowing ratio
3.6.3 Dividend yield
3.6.4 Pay-out ratio
3.6.5 Operating profit margin
3.6.6 Fund operating expense ratio
3.6.7 Return on equity
3.6.8 Premium or discount
3.6.9 Performance
3.6.10 Investment return
3.7 Information on derivatives (Annex 2 is applicable, *mutatis mutandis*)
3.8 Principles for the valuation of fund assets (method of estimation and quantitative information on the assumptions in the estimation model) and calculation of the net asset value
3.9 Information on actual rates of remuneration if maximum rates are indicated in the fund regulations
3.10 Total amount of contractual payment obligations after the balance sheet date for property purchases, construction orders and investments in property.
3.11 Long-term liabilities, broken down into maturing within one to five years, and after five years.

Part E: FINMA-Circulars

finma
Eidgenössische Finanzmarktaufsicht FINMA
Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
Swiss Financial Market Supervisory Authority FINMA

Rundschreiben 2013/9
Vertrieb kollektiver Kapitalanlagen

Vertrieb im Sinne der Gesetzgebung über die kollektiven Kapitalanlagen

Referenz:	FINMA-RS 13/9 „Vertrieb kollektiver Kapitalanlagen“
Erlass:	28. August 2013
Inkraftsetzung:	1. Oktober 2013
Letzte Änderung:	28. August 2013
Konkordanz:	vormals FINMA-RS 08/8 „Öffentliche Werbung kollektive Kapitalanlagen“ vom 20. November 2008
Rechtliche Grundlagen:	FINMAG Art. 7 Abs. 1 Bst. b KAG Art. 1, 3, 4, 5, 10, 13, 19, 120, 123, 124, 148, 149, 158d, 158e KKV Art. 3, 4, 6, 6a, 30, 30a, 128, 128a, 131a, 133, 144c

Adressaten																						
BankG			VAG			BEHG		KAG									GwG			Andere	
Banken	Finanzgruppen und -kongl.	Andere Intermediäre	Versicherer	Vers.-Gruppen und -Kongl.	Vermittler	Börsen und Teilnehmer	Effektenhändler	Fondsleitungen	SICAV	KG für KKA	SICAF	Depotbanken	Vermögensverwalter KKA	Vertriebsträger	Vertreter ausl. KKA	Andere Intermediäre	SRO	DUFI	SRO-Beaufsichtigte	Prüfgesellschaften	Ratingagenturen
x			x				x	x	x	x	x		x	x	x	x					

Inhaltsverzeichnis

I. Zweck und Geltungsbereich

Zweck dieses Rundschreibens ist es, den Begriff des „Vertriebs von kollektiven Kapitalanlagen“ zu konkretisieren und auszuführen, welche Tätigkeiten als Vertrieb zu qualifizieren sind. Zudem werden die Rechtsfolgen der Qualifikation einer bestimmten Tätigkeit als Vertrieb aufgezeigt. 1

Dieses Rundschreiben richtet sich an Banken, Versicherungsunternehmen, Effektenhändler, Fondsleitungen, SICAV, Kommanditgesellschaften für kollektive Kapitalanlagen, SICAF, Vermögensverwalter kollektiver Kapitalanlagen, Vertreter ausländischer kollektiver Kapitalanlagen, Vertriebsträger sowie an alle anderen Personen, welche kollektive Kapitalanlagen vertreiben. 2

Kapitel II gilt sinngemäss für interne Sondervermögen (Art. 4 KAG) sowie für strukturierte Produkte (Art. 5 KAG). 3

II. Grundbegriffe

A. Vertrieb

a) „Anbieten“ und „Werben“ als Vertrieb (Art. 3 Abs. 1 KAG und Art. 3 Abs. 1 KKV)

Als Vertrieb von kollektiven Kapitalanlagen gilt jedes Anbieten von kollektiven Kapitalanlagen und jedes Werben für kollektive Kapitalanlagen, (i) das sich nicht ausschliesslich an Anleger gemäss Art. 10 Abs. 3 Bst. a und b KAG richtet bzw. (ii) das nicht von einem Ausnahmetatbestand gemäss Art. 3 Abs. 2 KAG erfasst wird. 4

Als Vertrieb gilt dabei sowohl jedes Anbieten, d.h. das effektive Angebot zum Vertragsabschluss, als auch jedes Werben, d.h. die Verwendung von Werbemitteln jeder Art, deren Inhalt dazu dient, bestimmte kollektive Kapitalanlagen anzubieten. Das „Anbieten“ oder „Werben“ umfasst jegliche Art von Tätigkeit, die den Erwerb von Anteilen kollektiver Kapitalanlagen durch einen Anleger bezweckt. 5

Art und Form der Mittel sind grundsätzlich nicht von Bedeutung. Als solche fallen namentlich in Betracht: Print- und elektronische Medien jeder Art, wie Zeitungen und Zeitschriften, Streusendungen (*Direct Mail*), Prospekte, *Fact Sheets*, Empfehlungslisten und Informationsschreiben an die Kunden einer Bank oder eines anderen Finanzintermediärs, Offerten an Finanzintermediäre (die nicht als Anleger im Sinne von Art. 10 Abs. 3 Bst. a und b KAG gelten) zur Weiterleitung an ihre Kundschaft, Angaben über die Zeichnungsmöglichkeiten von kollektiven Kapitalanlagen (z.B. Valorennummer, Zeichnungsstelle), Pressekonferenzen, Telefonmarketing, ungebetene Telefonanrufe (*Cold Calling*), Präsentationen (*Road Shows*), Finanzmessen, gesponserte Reportagen über kollektive Kapitalanlagen, Hausbesuche von Finanzintermediären jeder Art, Internet-Websites und andere Formen des E-Commerce, Zeichnungsscheine und online-Zeichnungsmöglichkeiten sowie E-Mails. 6

Der Vertrieb erfasst auch den indirekten Vertrieb. Daher gilt namentlich das Anbieten von oder Werben für „verwaltete Fondskonti“ als Vertrieb kollektiver Kapitalanlagen. „Verwaltete Fondskonti“ sind dadurch gekennzeichnet, dass im Rahmen eines definierten Konzeptes kollektive Kapitalanlagen eingesetzt werden und diese in ihrer ökonomischen Wirkung mit einem *Fund of Funds* oder einem Anlagestrategiefonds vergleichbar sind. 7

b) Ausnahmetatbestände

aa) Angebote und Werbung für beaufsichtigte Finanzintermediäre und Versicherungsunternehmen (Art. 3 Abs. 1 KAG; Art. 3 Abs. 4 KKV)

(Keine Ausführungen.) 8

bb) Zurverfügungstellung von Informationen sowie Erwerb von kollektiven Kapitalanlagen im Rahmen von bloss ausführenden Transaktionen (Art. 3 Abs. 2 Bst. a KAG; Art. 3 Abs. 2 Bst. b KKV)

(Keine Ausführungen.) 9

cc) Zurverfügungstellung von Informationen sowie Erwerb von kollektiven Kapitalanlagen im Rahmen von Beratungsverträgen (Art. 3 Abs. 2 Bst. a KAG; Art. 3 Abs. 2 Bst. a und Abs. 3 KKV)

Diese Ausnahme ist nicht anwendbar auf Handlungen eines Dritten, der, ohne Vertragspartei des Beratungsvertrags zu sein, gegenüber dem Anleger oder dem unabhängigen Vermögensverwalter im Sinne von Art. 3 Abs. 2 Bst. c KAG kollektive Kapitalanlagen anbietet oder bewirbt. 10

dd) Zurverfügungstellung von Informationen sowie Erwerb von kollektiven Kapitalanlagen im Rahmen von Vermögensverwaltungsverträgen (Art. 3 Abs. 2 Bst. b und c KAG)

Diese Ausnahme ist nicht anwendbar auf Handlungen eines Dritten, der, ohne Vertragspartei des Vermögensverwaltungsvertrags zu sein, gegenüber dem Anleger oder dem unabhängigen Vermögensverwalter im Sinne von Art. 3 Abs. 2 Bst. c KAG kollektive Kapitalanlagen anbietet oder bewirbt. 11

Stellt ein unabhängiger Vermögensverwalter, welcher keinen von der FINMA anerkannten Verhaltensregeln im Sinne von Art. 3 Abs. 2 Bst. c KAG unterstellt ist, Informationen zu kollektiven Kapitalanlagen zur Verfügung oder erwirbt er im Rahmen eines Vermögensverwaltungsvertrages kollektive Kapitalanlagen, darf er nur schweizerische kollektive Kapitalanlagen und diese ausschliesslich im Rahmen eines mit qualifizierten Anlegern im Sinne von Art. 10 Abs. 3 oder 3^{bis} KAG abgeschlossenen Vermögensverwaltungsvertrages erwerben (Art. 3, 13 und 19 Abs. 1^{bis} KAG sowie Art. 30a KKV). 12

ee) Publikation von Preisen, Kursen, Inventarwerten und Steuerdaten durch beaufsichtigte Finanzintermediäre (Art. 3 Abs. 2 Bst. d KAG; Art. 3 Abs. 5 KKV)

(Keine Ausführungen.) 13

ff) Anbieten von Mitarbeiterbeteiligungsplänen an Mitarbeitende (Art. 3 Abs. 2 Bst. e KAG; Art. 3 Abs. 6 KKV)

(Keine Ausführungen.) 14

B. Qualifizierte Anleger

a) Qualifizierte Anleger im Sinne von Art. 10 Abs. 3 KAG

(Keine Ausführungen.) 15

b) Vermögende Privatpersonen im Sinne von Art. 10 Abs. 3bis KAG (Art. 6 und 6a Abs. 1 KKV)

Eine „vergleichbare Erfahrung" im Sinne von Art. 6 Abs. 1 Bst. a Ziff. 1 KKV liegt vor, wenn der Anleger am relevanten Markt während der vier vorhergehenden Quartale durchschnittlich pro Quartal 10 Geschäfte von erheblichem Umfang getätigt hat. 16

c) Anleger im Sinne von Art. 10 Abs. 3ter KAG (Art. 6a Abs. 2 KKV)

(Keine Ausführungen.) 17

C. Vertrieb an qualifizierte und nicht-qualifizierte Anleger

Sofern eine Tätigkeit die Definition des Vertriebs nach Art. 3 KAG erfüllt und sich die Tätigkeit nur an qualifizierte Anleger im Sinne von Art. 10 Abs. 3 Bst. c und d oder 3bis KAG richtet, liegt ein Vertrieb an qualifizierte Anleger vor. 18

Vertriebshandlungen gegenüber unabhängigen Vermögensverwaltern im Sinne von Art. 3 Abs. 2 Bst. c KAG gelten als Vertrieb an qualifizierte Anleger, sofern diese sich schriftlich verpflichten, die Informationen nur für Kunden zu verwenden, die als qualifizierte Anleger im Sinne von Art. 10 KAG gelten. 19

Vertriebshandlungen gegenüber qualifizierten Anlegern im Sinne von Art. 10 Abs. 3ter KAG ohne Einbezug des betroffenen beaufsichtigten Finanzintermediärs im Sinne von Art. 3 Abs. 2 Bst. b KAG bzw. des betroffenen unabhängigen Vermögensverwalters im Sinne von Art. 3 Abs. 2 Bst. c KAG gelten als Vertrieb an nicht-qualifizierte Anleger (Art. 6a Abs. 2 KKV). 20

Die Kotierung einer ausländischen kollektiven Kapitalanlage an einer schweizerischen Börse gilt als Vertrieb an nicht-qualifizierte Anleger. 21

III. Rechtsfolgen des Vertriebs

A. Vertrieb an nicht-qualifizierte Anleger

a) Genehmigungspflicht der massgebenden Dokumente

Gemäss Art. 120 Abs. 1 KAG bedarf der Vertrieb ausländischer kollektiver Kapitalanlagen 22

in der Schweiz oder von der Schweiz aus an nicht qualifizierte Anleger vor dessen Aufnahme einer Genehmigung der FINMA. Der Vertreter legt der FINMA die massgebenden Dokumente wie Verkaufsprospekt, Statuten oder Fondsvertrag vor.

Die FINMA erteilt die Genehmigung, wenn die Bedingungen nach Art. 120 Abs. 2 KAG erfüllt sind, d.h. namentlich wenn für die in der Schweiz vertriebenen Anteile ein Vertreter der ausländischen kollektiven Kapitalanlage bezeichnet worden ist (Art. 123 Abs. 1 KAG). 23

b) Pflichten des Vertreters

aa) Grundsatz und Pflichten im Allgemeinen

Der Vertreter vertritt die ausländische kollektive Kapitalanlage gegenüber Anlegern und der FINMA. Seine Vertretungsbefugnis darf nicht beschränkt werden (Art. 124 Abs. 1 KAG). Ausserdem muss er die Treue-, Sorgfalts- und Informationspflichten gemäss Art. 20 Abs. 1 KAG erfüllen. 24

Er hält die gesetzlichen Melde-, Publikations- und Informationspflichten sowie die Verhaltensregeln von Branchenorganisationen ein, die von der FINMA zum Mindeststandard erklärt worden sind (Art. 124 Abs. 2 KAG). 25

bb) Gesetzliche Publikation- und Meldevorschriften

aaa) Massgebende Dokumente

Der Vertreter veröffentlicht die massgebenden Dokumente nach den Art. 13a und 15 Abs. 3 KKV, d.h. den Prospekt, den vereinfachten Prospekt bzw. das KIID, den Fondsvertrag, die Statuten und das Anlagereglement sowie jedes andere für die Erteilung der Genehmigung nach ausländischem Recht notwendige Dokument, welche den Dokumenten gemäss Art. 15 Abs. 1 KAG entsprechen. Grundsätzlich sind die massgebenden Dokumente in einer Amtssprache zu veröffentlichen. 26

In den Publikationen (inkl. solchen betreffend Änderungen in den massgebenden Dokumenten gemäss Art. 133 Abs. 3 KKV) und in der Werbung (Art. 133 Abs. 2 KKV) sind anzugeben: 27

- der Herkunftsstaat der kollektiven Kapitalanlage; 28
- der Vertreter; 29
- die Zahlstelle; 30
- der Ort, wo die Dokumente nach Art. 13a und 15 Abs. 3 KKV sowie der Jahres- und Halbjahresbericht bezogen werden können. 31

bbb) Jahres- und Halbjahresberichte

Der Vertreter veröffentlicht die Jahres- und Halbjahresberichte in einer Amtssprache. 32

ccc) Veröffentlichung von Nettoinventarwert bzw. Ausgabe- und Rücknahmepreisen

Der Vertreter veröffentlicht Ausgabe- und Rücknahmepreise bzw. den Inventarwert mit dem Hinweis „exklusive Kommissionen" gemeinsam bei jeder Ausgabe und Rücknahme von Anteilen, mindestens aber zweimal im Monat, in den im Prospekt genannten Publikationsorganen. Für kollektive Kapitalanlagen (inklusive Immobilienfonds), bei denen das Recht auf jederzeitige Rückgabe im Sinne von Art. 109 Abs. 3 KKV eingeschränkt worden ist, müssen die vorgenannten Publikationen mindestens einmal pro Monat vorgenommen werden. Die Wochen und Wochentage, an denen die Veröffentlichungen stattfinden, müssen im Prospekt angegeben werden (Art. 133 Abs. 4 KKV sowie Art. 79 KKV-FINMA). 33

ddd) Änderungen

Der Vertreter reicht die Jahres- und Halbjahresberichte der FINMA unverzüglich[1] ein, meldet ihr Änderungen der massgebenden Dokumente unverzüglich und veröffentlicht diese in den Publikationsorganen.[2] Art. 39 Abs. 1 und Art. 41 Abs. 1 zweiter Satz KKV gelten sinngemäss (Art. 133 Abs. 3 KKV). 34

Um die Jahres- und Halbjahresberichte auf die Vollständigkeit bezüglich der vorgeschriebenen Angaben hin zu prüfen, füllt der Vertreter die Checklisten[3] aus und stellt diese zusammen mit den entsprechenden Berichten der FINMA zu. 35

Bei Änderungen der massgebenden Dokumente nach Art. 13a KKV ist der FINMA ein Änderungsgesuch gemäss der entsprechenden Gesuchsvorlage[4] einzureichen. 36

Der Vertreter reicht der FINMA in den Fällen von Art. 15 Abs. 1 und 4 KKV ein Änderungsgesuch gemäss der entsprechenden Gesuchsvorlage[5] ein. 37

Der Vertreter hat die FINMA sodann u.a. in folgenden Fällen unverzüglich (sofern nachstehend nichts anderes erwähnt wird) zu informieren: 38

- bei der Zusammenlegung oder Liquidation einer kollektiven Kapitalanlage bzw. eines Teilvermögens sowie der Änderung der Rechtsform;[6] 39
- bei der Nichtlancierung einer kollektiven Kapitalanlage bzw. eines Teilvermögens oder der Nichtaufnahme des diesbezüglichen Vertriebes in der Schweiz; 40
- wenn bei einer von ihm vertretenen ausländischen kollektiven Kapitalanlage mit besonderen Risiken Mutationen betreffend die besonders qualifizierten geschäftsführenden Personen (Art. 14 Abs. 1 Bst. a KAG i.V.m. Art. 10 und Art. 15 Abs. 1 Bst. a KKV), bei der Fondsleitung bzw. Gesellschaft und/oder bei allfällig Beauftragten erfolgen; 41
- wenn bei einer von ihm vertretenen ausländischen kollektiven Kapitalanlage die Rückzahlung der Anteile aufgeschoben wird (Art. 81 Abs. 1 KAG i.V.m. Art. 110 KKV);[7] 42
- bei einer den Vertreter selbst betreffenden Fusion, Spaltung, Vermögensübertragung oder Änderung der Rechtsform (resultiert daraus ein Vertreterwechsel, so bedarf dieser der vorgängigen Genehmigung der FINMA; Art. 120 Abs. 2bis KAG); 43
- bei einem den Vertreter betreffenden Wechsel der Prüfgesellschaft (vorgängig); 44
- bei der Änderung bzw. Kündigung des Versicherungsvertrages oder Auflösung desselben aus anderen Gründen (sofern möglich vorgängig, ansonsten unverzüglich); 45
- wenn Schadenersatzansprüche gegen den Vertreter geltend gemacht werden; 46
- bei den Vertreter selbst betreffenden Firma- oder Adressänderungen; 47
- bei einem Zahlstellenwechsel (vorgängig); 48
- bei Massnahmen einer ausländischen Aufsichtsbehörde gegen die kollektive Kapitalanlage, namentlich den Entzug der Genehmigung; 49
- bei der Auflösung von Vertretungsverträgen (vorgängige Genehmigungspflicht gemäss Art. 120 Abs. 2bis KAG). 50

eee) Publikationsvorschriften im Besonderen

Der Vertreter veröffentlicht eine Zusammenfassung der wesentlichen Änderungen mit dem Hinweis auf die Stellen, wo die Änderungen im Wortlaut kostenlos bezogen werden können (mindestens bei ihm selbst; Art. 133 Abs. 3 KKV i.V.m. Art. 27 Abs. 2 KAG und Art. 39 Abs. 1 und 41 Abs. 1 zweiter Satz KKV). 51

Änderungen von Gesetzes wegen, welche die Rechte der Anleger nicht berühren oder die ausschliesslich formeller Natur sind, müssen der FINMA gemeldet werden. Sie kann diese 52

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1 Innert max. zwei Wochen nach Publikation des Berichtes, spätestens aber innerhalb von zwei Monaten nach Ablauf der ersten Hälfte bzw. innerhalb von vier Monaten nach Abschluss des Geschäftsjahres (Art. 89 Abs. 1 und 3 KAG).

2 Spätestens innert eines Monates nach Inkrafttreten der Änderungen sind der FINMA die angepassten, in einer schweizerischen Amtssprache abgefassten Dokumente (inkl. der änderungsmarkierten Versionen) einzureichen und die Änderungen in den Publikationsorganen zu veröffentlichen. Die Publikationen haben unabhängig von der Genehmigung der Änderungen durch die FINMA innert dieser Frist zu erfolgen.

3 Abrufbar unter www.finma.ch > Beaufsichtigte.

4 Abrufbar unter www.finma.ch > Beaufsichtigte.

5 Abrufbar unter www.finma.ch > Beaufsichtigte.

6 Nach durchgeführter Zusammenlegung sind zudem deren Vollzug sowie das Umtauschverhältnis, nach abgeschlossener Liquidation die Schlusszahlungen ohne Verzug in den schweizerischen Publikationsorganen zu veröffentlichen. Wird eine in der Schweiz zum Vertrieb zugelassene kollektive Kapitalanlage mit einer nicht zum Vertrieb zugelassenen zusammengelegt, darf letztere in der entsprechenden Publikation einzig mit dem Namen erwähnt werden; darüber hinausgehende Angaben sind nicht zulässig.

7 Sofern der Aufschub länger als einen Tag dauert, hat der Vertreter die FINMA unter Darlegung der massgebenden Gründe sofort zu informieren. Darüber hinaus muss er die betroffenen Anleger umgehend über den Aufschub der Rückzahlung in Kenntnis setzen.

für nicht publikationspflichtig erklären (Art. 133 Abs. 3 i.V.m. Art. 41 Abs. 1bis KKV).

c) Vertriebsträgerbewilligung

Der Vertrieb von kollektiven Kapitalanlagen an nicht-qualifizierte Anleger ist gemäss Art. 13 Abs. 1 KAG bewilligungspflichtig. Vorbehalten bleibt Art. 8 KKV. 53

Keine Bewilligungspflicht als Vertriebsträger entsteht beim Vertrieb von fondsgebundenen Lebensversicherungen. Das Versicherungsunternehmen hat den Versicherungsnehmer vor Vertragsabschluss nach den Vorgaben zu informieren, die gemäss Art. 75–77 KAG gelten für die Information von Anlegern in offenen kollektiven Kapitalanlagen durch die Fondsleitung oder die SICAV. Die entsprechenden Ausführungsbestimmungen, namentlich Art. 106–107e sowie die Anhänge 1–3 der KKV, sind zu berücksichtigen (vgl. Rz 56 FINMA-RS 08/39 „Anteilgebundene Lebensversicherung“ und Rz 57 FINMA-RS 08/40 „Lebensversicherung“). 54

Die vertreibende Person hat namentlich die Protokollierungspflicht gemäss Art. 24 Abs. 3 KAG und Art. 34a KKV sowie die Pflicht zur Information über Gebühren, Kosten und Vertriebsentschädigungen nach Art. 20 Abs. 1 Bst. c KAG einzuhalten. 55

B. Vertrieb an qualifizierte Anleger

a) Bestellung des Vertreters und der Zahlstelle

Der Vertrieb von ausländischen kollektiven Kapitalanlagen einzig an qualifizierte Anleger setzt die Bestellung eines Vertreters und einer Zahlstelle voraus (Art. 120 Abs. 4 und Art. 123 Abs. 1 KAG). 56

Art. 120 Abs. 2bis KAG gilt nicht für den Vertrieb von ausländischen kollektiven Kapitalanlagen an qualifizierte Anleger. Der Vertreter braucht in solchen Fällen keine vorgängige Genehmigung der FINMA, um sein Mandat zu beenden. 57

Der Vertreter vertritt die ausländische kollektive Kapitalanlage gegenüber Anlegern und der FINMA. Seine Vertretungsbefugnis darf nicht beschränkt werden (Art. 124 Abs. 1 KAG). Ausserdem muss er die Treue-, Sorgfalts- und Informationspflichten gemäss Art. 20 Abs. 1 KAG erfüllen. 58

Der Vertreter einer ausländischen kollektiven Kapitalanlage, die in der Schweiz ausschliesslich an qualifizierte Anleger vertrieben wird, hat mit dem Finanzintermediär gemäss Art. 19 Abs. 1bis KAG einen schriftlichen Vertriebsvertrag gemäss Art. 30a KKV abzuschliessen. 59

Der Vertreter stellt sicher, dass die Anleger die massgebenden Dokumente der ausländischen kollektiven Kapitalanlage nach Art. 13a KKV bei ihm beziehen können und dass in diesen die Informationen gemäss Art. 133 Abs. 2 KKV enthalten sind. Er hat sicherzustellen, dass die Bezeichnungen der von ihm vertretenen kollektiven Kapitalanlagen nicht zu Täuschung oder Verwechslung Anlass geben (Art. 120 Abs. 4 KAG). 60

Der Vertreter hat keine gesetzlichen Melde- und Publikationspflichten (Art. 133 Abs. 5 KKV). Er muss insofern seine Mandate der FINMA nicht anzeigen. 61

b) Vertriebsträgerbewilligung

Der Vertrieb von schweizerischen kollektiven Kapitalanlagen an qualifizierte Anleger ist weder bewilligungspflichtig noch bewilligungsfähig (Art. 13 Abs. 1 KAG e contrario). 62

Allerdings darf der Vertrieb in der Schweiz von ausländischen kollektiven Kapitalanlagen an qualifizierte Anleger nur durch in der Schweiz oder im Ausland angemessen beaufsichtigte Finanzintermediäre erfolgen (Art. 19 Abs. 1bis KAG). Um in der Schweiz als angemessen beaufsichtigt im Sinne von Art. 19 Abs. 1bis KAG zu gelten, muss ein Finanzintermediär eine Vertriebsträgerbewilligung der FINMA haben oder gemäss Art. 8 KKV davon befreit sein (Art. 30a KKV analog). 63

Keine Bewilligungspflicht als Vertriebsträger entsteht beim Vertrieb von fondsgebundenen Lebensversicherungen. Das Versicherungsunternehmen hat den Versicherungsnehmer vor Vertragsabschluss nach den Vorgaben zu informieren, die gemäss Art. 75–77 KAG gelten für die Information von Anlegern in offenen kollektiven Kapitalanlagen durch die Fondsleitung oder die SICAV. Die entsprechenden Ausführungsbestimmungen, namentlich Art. 106–107e sowie die Anhänge 1–3 der KKV, sind zu berücksichtigen (vgl. Rz 56 FINMA-RS 08/39 „Anteilgebundene Lebensversicherung“ und Rz 57 FINMA-RS 08/40 „Lebensversicherung“). 64

Die vertreibende Person hat namentlich die Protokollierungspflicht gemäss Art. 24 Abs. 3 KAG und Art. 34a KKV sowie die Pflicht zur Information über Gebühren, Kosten und Vertriebsentschädigungen nach Art. 20 Abs. 1 Bst. c KAG einzuhalten. 65

IV. Vertrieb via Internet

A. Allgemeines

Der Inhalt einer Website, der den Erwerb von Anteilen kollektiver Kapitalanlagen durch Anleger bezweckt, stellt Vertrieb dar. 66

Angesichts der grenzüberschreitenden Wirkung des Internets sind darüber hinaus auch allfällige einschlägige ausländische Vorschriften zu berücksichtigen. 67

a) Vertrieb in der Schweiz

Es wird vermutet, dass sich eine Website an Anleger in der Schweiz richtet, wenn Indizien in ihrer Gesamtwirkung einen Bezug zur Schweiz herstellen. Bei der Würdigung der Gesamtwirkung kommen namentlich die folgenden Indizien in Frage: 68

- Die Website richtet sich ausdrücklich an Anleger mit Sitz oder Wohnsitz in der Schweiz; 69

- Hinweis auf eine Schweizer Kontaktadresse oder auf Vertreter, Vertriebsträger, Zahlstellen oder andere Finanzintermediäre mit Sitz oder Wohnsitz in der Schweiz; 70

- Publikation von Inventarwerten oder Ausgabe- und Rücknahmepreisen, die auf Schweizer Franken lauten (vorbehältlich Art. 3 Abs. 5 KKV); 71

- Verwendung einer Schweizer Landessprache (nur kumulativ in Verbindung mit einem oder mehreren anderen Indizien); 72

- Hinweis auf schweizerische oder ausländische Gesetzesbestimmungen, welche für Personen mit Sitz bzw. Wohnsitz in der Schweiz von Interesse sind (z.B. Darstellung der Steuervorteile des Domizils der kollektiven Kapitalanlage); 73

- Verweise (Hyperlinks) auf andere Websites oder auf sonstige Medien (Zeitungen, Radio, Fernsehen usw.) mit Bezug zur Schweiz. 74

Richtet sich eine Website an Anleger in der Schweiz und sind die Angebote nicht nur für Anleger im Sinne von Art. 10 Abs. 3 Bst. a und b KAG einsehbar, stellt die Website Vertrieb in der Schweiz dar (Art. 3 Abs. 4 KKV). Der Verantwortliche der Website muss die Anforderungen gemäss den Abschnitten B. und C. erfüllen. 75

Eine solche Website stellt keinen Vertrieb in der Schweiz dar, wenn sie ihr Angebot an Anleger in der Schweiz ausdrücklich ausschliesst (*Disclaimer*) oder eine Zugangsbeschränkung gegenüber Anlegern in der Schweiz enthält: 76

aa) Disclaimer

Der *Disclaimer* darf durch den Besucher einer Website nicht umgangen werden können. Dies kann namentlich dadurch sichergestellt werden, dass er automatisch auf dem Bildschirm erscheint und der Anleger bestätigen muss, davon Kenntnis genommen zu haben. Er muss erscheinen, bevor der Besucher überhaupt Zugang zum Inhalt der Website erhält. Sobald es möglich ist, Anteile von kollektiven Kapitalanlagen online zu zeichnen, muss der *Disclaimer* auch in dem Augenblick erscheinen und dessen Kenntnisnahme bestätigt werden, in dem der Anleger den Anbieter der kollektiven Kapitalanlage online kontaktiert, um eine Zeichnung vorzunehmen. 77

Ein allgemeiner *Disclaimer*, wonach die Website in denjenigen Ländern, in denen keine Vertriebsgenehmigung vorliegt, nicht als Vertrieb gelte, genügt nicht. 78

bb) Zugangsbeschränkungen der Website

Die Zugangsbeschränkung muss die Feststellung des Sitzes bzw. Wohnsitzes der interessierten Anleger gestatten. Die Anbieter von kollektiven Kapitalanlagen sind im Prinzip frei bei der Wahl der ihnen geeignet erscheinenden Zugangsbeschränkungen (Fragebögen, Passwörter usw.), sofern die Kriterien für die Zugangsbeschränkung dem Besucher klar ersichtlich sind. Ein Online-Fragebogen stellt aber nur dann eine ausreichende Zugangsbeschränkung dar, wenn der Besucher der Website seinen Sitz bzw. Wohnsitz angeben muss. Die Anbieter von kollektiven Kapitalanlagen dürfen sich auf 79

die Angaben der Besucher verlassen.

b) Discussion Sites

Die Anmeldung bei einer sog. *Discussion Site* (wie *Newsgroups*, *Bulletin Boards*, *Chat Rooms* usw.) gilt grundsätzlich nicht als Vertrieb. Dennoch können solche Sites bei uneingeschränktem Zugang und bei Benutzung durch Anbieter oder Werbende von kollektiven Kapitalanlagen Vertrieb darstellen, sobald Indizien in ihrer Gesamtwirkung einen Bezug zur Schweiz herstellen. 80

B. Vertrieb an qualifizierte Anleger in der Schweiz via Internet

Richtet sich die Website nur an qualifizierte Anleger im Sinne von Art. 10 Abs. 3 Bst. c, d, und 3^{bis} KAG in der Schweiz oder gemäss Rz 19 an unabhängige Vermögensverwalter im Sinne von Art. 3 Abs. 2 Bst. c KAG, liegt Vertrieb an qualifizierte Anleger in der Schweiz vor. 81

a) Vertriebsträgerbewilligung

Der in der Schweiz ansässige Verantwortliche der Website bedarf einer Vertriebsträgerbewilligung im Sinne von Art. 13 Abs. 1 KAG, soweit es sich nicht um schweizerische kollektive Kapitalanlagen handelt (vgl. Rz 62). 82

Der im Ausland ansässige Verantwortliche der Website muss ein in seinem Sitzstaat zum Vertrieb kollektiver Kapitalanlagen zugelassener Finanzintermediär sein und schriftliche Vertriebsverträge mit dem betroffenen Vertreter in der Schweiz gemäss Art. 30a KKV abschliessen. 83

b) Anforderungen an die Website

Richtet sich eine Website an qualifizierte Anleger in der Schweiz, muss sie einen *Disclaimer* oder eine Zugangsbeschränkung enthalten, welche die nachfolgenden Anforderungen erfüllen: 84

aa) Disclaimer

Ein allgemeiner Disclaimer muss Schweizer Anleger ausdrücklich darauf hinweisen, dass die Website sich nur an qualifizierte Anleger richtet. Der Disclaimer gilt nicht als Überprüfung der Anlegerkategorie (qualifizierte Anleger im Sinne von Art. 10 KAG) im Zeitpunkt des Erwerbs der kollektiven Kapitalanlage. Er gilt insbesondere weder als Nachweis im Sinne von Art. 6 Abs. 1 und 5 KKV noch als schriftliche Erklärung im Sinne von Art. 6a KKV. 85

Bietet die Website auch kollektive Kapitalanlagen an, für die kein Vertreter bzw. keine Zahlstelle in der Schweiz bezeichnet worden ist, so muss die Website ausserdem einen Disclaimer enthalten, der ausdrücklich darauf hinweist, dass die betroffenen kollektiven Kapitalanlagen in der Schweiz nicht vertrieben werden dürfen. Wurde nur für einzelne kollektive Kapitalanlagen ein Vertreter bzw. Zahlstelle in der Schweiz bezeichnet, so sind diese zu spezifizieren. 86

bb) Zugangsbeschränkungen der Website

Die Zugangsbeschränkung muss die Feststellung der Anlegerkategorie (qualifizierte Anleger im Sinne von Art. 10 KAG) gestatten. Das Kontrollverfahren muss sicherstellen, dass die interessierten Anleger alle Kontrollfragen beantwortet haben, bevor ihnen der Zugang zur Website gewährt wird. 87

Die Anbieter von kollektiven Kapitalanlagen dürfen sich auf die Angaben der Besucher im Zeitpunkt des Zugangs zur Website verlassen. Diese Angaben gelten in diesem Fall nicht als Überprüfung der Anlegerkategorie (qualifizierte Anleger im Sinne von Art. 10 KAG) im Zeitpunkt des Erwerbs der kollektiven Kapitalanlage. Sie gelten insbesondere weder als Nachweis im Sinne von Art. 6 Abs. 1 und 5 KKV noch als schriftliche Erklärung im Sinne von Art. 6a KKV. 88

Bietet die Website auch kollektive Kapitalanlagen ohne Vertreter bzw. Zahlstelle in der Schweiz an, ist den qualifizierten Anlegern nur der Zugriff auf Websites zu gestatten, welche Hinweise auf kollektive Kapitalanlagen und/oder Anbieter kollektiver Kapitalanlagen enthalten, für die ein von der FINMA bewilligter Vertreter bzw. eine Zahlstelle in der Schweiz bezeichnet worden ist. 89

C. Vertrieb an nicht-qualifizierte Anleger in der Schweiz via Internet

Richtet sich die Website nicht nur an qualifizierte Anleger, sondern auch an nicht-qualifizierte Anleger in der Schweiz, stellt dies Vertrieb an nicht-qualifizierte Anleger in der Schweiz dar. 90

a) Vertriebsträgerbewilligung

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b) Anforderungen an die Website

Bietet die Website nicht nur von der FINMA zum Vertrieb genehmigte kollektive Kapitalanlagen an, muss sie einen *Disclaimer* oder eine Zugangsbeschränkung enthalten, welche die nachfolgenden Anforderungen erfüllen: 92

aa) Disclaimer

Liegt keine Genehmigung zum Vertrieb durch die FINMA vor, so muss der Disclaimer ausdrücklich darauf hinweisen, dass die betroffenen kollektiven Kapitalanlagen in der Schweiz nicht an nicht-qualifizierten Anleger vertrieben werden dürfen. Sind nur einzelne kollektive Kapitalanlagen in der Schweiz genehmigt, so sind diese zu spezifizieren. Der Disclaimer gilt nicht als Überprüfung der Anlegerkategorie (qualifizierte Anleger im Sinne von Art. 10 KAG) im Zeitpunkt des Erwerbs der kollektiven Kapitalanlage. Er gilt insbesondere weder als Nachweis im Sinne von Art. 6 Abs. 1 und Abs. 5 KKV noch als schriftliche Erklärung im Sinne von Art. 6a KKV. 93

bb) Zugangsbeschränkungen der Website

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Es ist den nicht-qualifizierten Anlegern nur der Zugriff auf Websites zu gestatten, welche ausschliesslich Hinweise auf in der Schweiz genehmigte kollektive Kapitalanlagen enthalten. 96

V. Übergangsbestimmungen

Betreffend Vertrieb kollektiver Kapitalanlagen und vermögende Privatpersonen gemäss Art. 10 Abs. 3^{bis} KAG gelten die Übergangsbestimmungen des Gesetzes (Art. 158d und 158e KAG) und der Verordnung (Art. 144c KKV). Zudem treten Art. 24 KAG und Art. 34a KKV erst am 1. Januar 2014 in Kraft. 97

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Eidgenössische Finanzmarktaufsicht FINMA
Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
Swiss Financial Market Supervisory Authority FINMA

Circular 2013/8
Market conduct rules

Supervisory rules for market conduct in securities trading

Reference:	FINMA-Circ. 13/8 “Market conduct rules”
Date:	29 August 2013
Entry into force:	1 October 2013
Last amendment:	29 August 2013
Concordance:	former FINMA-Circ. 08/38 “Market conduct rules” of 20 November 2008
Legal framework:	FINMASA Articles 7 para. 1 let. b, 27, 29 BA Articles 3, 3f BO Article 12 SESTA Articles 1, 2, 3, 4, 10, 33e, 33f, 34 SESTO Articles 19, 20, 55a-55f CISA Articles 13, 14, 20, 28, 72 CISO Articles 10, 12, 33 ISA Articles 14, 22, 30, 67, 75 ISO Articles 78, 96, 97, 105, 106 AMLA Article 14 para. 2 let. c

	Addressees																								
	BA			ISA			SESTA			CISA										AMLA			Other	
	Banks	Financial groups and congl.	Other intermediaries	Insurers	Insurance groups and congl.	Insurance intermediaries	Exchanges and participants	securities dealers	All other market participants	Fund management companies	SICAVs	Limited partnerships for CISs	SICAFs	Custodian banks	Asset managers CISs	Distributors	Representatives of foreign CISs	Other intermediaries	SROs	DSFIs	SRO-supervised institutions	Audit firms	Rating agencies
	X	X		X	X		X	X	X	X	X	X	X	X	X					X			

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I. Purpose

The Federal Act on Stock Exchanges and Securities Trading (Stock Exchange Act, SESTA) ensures transparency and the proper functioning of securities markets and equality in the treatment of investors. To this end, Section 5a SESTA sets out market conduct that is not permissible under supervisory law by prohibiting the misuse of insider information as well as market manipulation. 1

This Circular sets out details regarding the market conduct prohibited under SESTA (Arts. 33*e* and 33*f* SESTA; SR 954.1) as well as the implementing provisions of the Stock Exchange Ordinance (Art. 55*a* ff SESTO; SR 954.11). It also specifies the requirement for assurance of proper business conduct in the specific context of market conduct and establishes organisational requirements for supervised institutions. Compliance with these rules should ensure that prohibited market conduct is prevented and identified. 2

II. Scope of application

Sections III-V of this Circular apply to all individuals and legal entities acting as market participants in connection with securities admitted to trading on Swiss exchanges or exchange-like trading venues. 3

Sections VI (Market abuse on the primary market, with foreign securities or on other markets) and VII (Organisational requirements) of this Circular apply to the following institutions supervised by FINMA: banks, insurance companies, exchanges and exchange-like trading venues, securities dealers, fund management companies, SICAVs, limited partnerships for collective investment, SICAFs, custodian banks and asset managers of collective investment schemes. 4

With regard to financial groups and conglomerates as well as insurance groups and conglomerates, sections VI (Market abuse on the primary market, with foreign securities or on other markets) and VII (Organisational requirements) of this Circular apply to parent institutions domiciled in Switzerland as well as to other domiciled institutions of a group or conglomerate in Switzerland where FINMA has declared itself responsible for supervising the group or conglomerate. 5

Section VI (Market abuse on the primary market, with foreign securities or on other markets) of this Circular also applies to directly subordinated financial intermediaries in addition to the supervised institutions listed in margin nos. 4 and 5. 6

The terms in brackets used in this Circular only serve to facilitate understanding of the market abuse described; the description set out in the margin numbers concerned is authoritiative. 7

III. Insider information (Art. 2 let. f SESTA)

IInformation refers to facts including firm intentions, as yet unrealised plans and prospects. Facts external to the company, such as knowledge of a financial analysis awaiting publication, a large customer order, a licence or authorisation that is to be granted or refused or a planned terror attack, are also deemed to constitute information. Rumours and speculation, on the other hand, do not constitute information. Information must be sufficiently clear and certain that it may provide a basis for anticipating the future trend in the price of a security. 8

Information is deemed to be confidential if it is not generally available and is instead only available to a restricted group of people. Information is deemed to be in the public domain if unconnected third parties are able to obtain it from generally accessible sources. A rumour does not in principle set aside the confidentiality of specific information. 9

The question of whether or not information is price-sensitive, i.e. capable of substantially influencing the market price of securities, is to be decided on a case-by-case basis with reference to whether or not the information is capable of influencing the investment behaviour of a reasonable investor who is familiar with the market. In principle, substantiality is assessed according to the market situation prior to the information being known. 10

A recommendation within the meaning of Article 33*e* para. 1 let. c SESTA is deemed to constitute insider information in accordance with Article 2 let. f SESTA if the recipient knows or, given the circumstances (e.g. the special knowledge or position of the person making the recommendation) can be expected to know that the recommendation derives from insider information. 11

IV. Misuse of insider information (Art. 33*e* SESTA)

Derivative financial instruments under Article 33*e* para. 1 SESTA also include non-standardised over-the-counter (OTC) products. The question of whether a transaction in financial instruments is made on or off an exchange or an exchange-like trading venue is immaterial for the purpose of determining misuse of information. It is equally immaterial whether the financial instruments are traded in Switzerland or abroad if they are derived from securities admitted to trading on an exchange or exchange-like trading venue in Switzerland. 12

Securities trades that were demonstrably not executed on the basis of confidential and price-sensitive information, despite such information being known, and would indeed have been executed even without such knowledge do not constitute misuse of insider information. 13

Altering or cancelling an order relating to a security or financial instruments derived from it on the basis of insider information does constitute misuse of insider information if the original order was issued before the insider information was known. 14

Taking advantage of the expected market reaction of market participants and of securities prices in the knowledge of an impending announcement of investment recommendations ("scalping") also constitutes a violation of Article 33*e* para. 1 let. a SESTA if the recommendations in question are capable of significantly influencing the market price of securities in accordance with Article 2 let. f SESTA. 15

V. Market manipulation (Art. 33*f* SESTA)

Public dissemination of information includes in particular announcements made via the financial sector's usual information channels, the media and the internet. 16

A signal falls within the meaning of Article 33*f* SESTA if it is capable of influencing the market behaviour of a reasonable investor who is familiar with the market. 17

Market manipulation in accordance with Article 33*f* SESTA may also involve the use of algorithmic trading programs, particularly in the context of algorithmic high-frequency trading. Anyone engaging in algorithmic trading may not use it to give out false or misleading signals regarding the supply of, demand for or market price of securities. 18

The following are examples of conduct that particularly violate Article 33*f* SESTA: 19

- Disseminating false or misleading information on circumstances of substantial importance for the valuation of a security (e.g. a company's earnings, orders or product pipeline or a general supply shortage). 20
- Disseminating false or misleading information, rumours or messages that are capable of influencing securities prices in order to exploit the resulting price movement. 21
- Entering low-volume purchase orders with successively higher prices in order to simulate increased demand amid rising prices (painting the tape). 22
- Simultaneously buying and selling the same securities for the account of one and the same beneficial owner in order to give out false or misleading signals regarding the supply of, demand for or market price of securities (wash trades). 23
- Entering equal but opposite buy and sell orders in the same security by prior mutual agreement in order to distort liquidity or prices (matched orders or daisy chains coordinated among a number of parties). 24
- Constricting the market by building up large positions (cornering) or depositing securities with third parties (parking) in order to distort securities prices (creating a squeeze). 25

- Buying or selling securities shortly before the exchange closes in order to influence closing prices (marking the close). 26

- Buying or selling securities in order to move prices (ramping) or keep them at a specific level (e.g. capping, pegging), unless this is done to stabilise prices following a public placement of securities in accordance with Article 55*e* SESTO. 27

- Influencing commodity prices in order to give out false or misleading signals regarding the supply of or demand for securities. 28

- Creating an overhang of buy or sell orders by entering large orders in the order book that are capable of influencing prices in order to influence the valuation of a security. 29

- Placing orders in the trading system in order to create an illusion of supply or demand and then deleting them prior to execution (spoofing, layering). 30

The following are specifically permissible securities trades and conduct: 31

- Market making for the purpose of ensuring liquidity in a security on both buy and sell sides and, where appropriate, reducing the bid/ask spread. 32

- Issuing parallel buy and sell orders in the same financial instrument or different financial instruments (e.g. on different trading venues) for the purpose of arbitrage. 33

- Offering liquidity (liquidity providers, e.g. algorithmic trading), provided the order book entries and trades do not give out misleading signals for other market participants. 34

- Nostro-nostro in-house crosses where equal and opposite trades are matched in the stock exchange system independently of one another and without any previous agreement. 35

- Not deleting prices that have already been provided when trading is suspended in connection with buybacks under Article 55*b* para. 2 let. e SESTO and price stabilisations under Article 55*e* let. d SESTO. 36

No violation of Article 33*f* SESTA is assumed in the following cases: 37

- Securities trades with a demonstrable economic background that correspond to genuine bid and ask behaviour. 38

- Use of a volume-weighted average price (VWAP) algorithm to repurchase securities during a buyback. 39

It is assumed that the parties involved in price stabilisation in connection with a public placement of securities do not violate Article 33*f* SESTA if the issuer of the securities, which is itself not involved in the public placement, fails to meet its reporting obligations under Article 55*e* lets. e and f SESTO, provided the parties that are involved comply with all other "safe harbour" rules. 40

VI. Market abuse on the primary market, with foreign securities or on other markets

For the purpose of assessing the assurance of proper business conduct on the part of the supervised institutions listed in margin nos. 4, 5 and 6 and with a view to applying measures in accordance with Articles 29-37 of the Financial Market Supervision Act (FINMASA; SR 956.1) and Article 35*a* SESTA, the provisions on insider information and market manipulation (sections III-V) of this Circular) apply not only in respect of securities admitted to trading on Swiss exchanges, but also *mutatis mutandis* in respect of the following in particular: 41

- Securities trading on the primary market 42

- Securities that are only admitted to trading on an exchange or exchange-like trading venue outside Switzerland as well as financial instruments derived from such securities 43

- Trading on markets other than the securities market (e.g. commodity, foreign exchange and interest rate markets), particularly in connection with benchmarks. 44

VII. Organisational requirements

A. Scope

The supervised institutions listed in margin no. 4 and 5 must meet the organisational requirements set out in this section in line with their risk situation. Risk is assessed in terms of specific business activity, size and structure. The organisational requirements expand on the licensing requirements stipulated in the financial market laws regarding assurance of proper business conduct and organisation as well as the duty to provide information stipulated in Article 29 para. 2 FINMASA. 45

Supervised institutions must assess the risks arising within the scope of this Circular once a year and additionally on an ad-hoc basis as required. The organisational measures required to comply with this Circular are then defined on the basis of the risk assessment. The risk assessment and the measures must be signed off by the supervised institution's executive governing bodies. 46

B. Dealing with market abuse

Where there are clear indications that securities trades for clients may not comply with the requirements set out in Articles 33*e* and 33*f* SESTA or sections III–VI, supervised institutions must clarify the background to such trades and, if necessary, refuse to be 47

involved in them, although systematic monitoring and investigation of clients' securities trades is not required. In the case of securities trades in accordance with Article 40 para. 2 or Article 40*a* para. 2 SESTA, their status as predicate offences to money laundering means that Article 19 of FINMA's Anti-Money Laundering Ordinance (AMLO-FINMA; SR 955.033.0) applies.

Trades that are contrary to Article 33*e* or Article 33*f* SESTA and are capable of having a substantial impact on the risks of a supervised institution or the financial sector as a whole must be reported to FINMA (Art. 29 para. 2 FINMASA). 48

C. Information barriers / areas of confidentiality

The handling of insider information is to be organised and monitored such that market conduct prohibited under supervisory law can be prevented and identified. To this end, supervised institutions must have adequate and appropriate organisation, training and controls in place. 49

By putting in place appropriate and effective internal precautions and processes, supervised institutions ensure that the individuals with the power of decision over trading in securities and other financial instruments about which the supervised institution possesses insider information have no knowledge of this insider information. They also ensure that individuals who do have knowledge of insider information are not able to influence decisions concerning trading in the securities or other financial instruments to which the insider information pertains. 50

Appropriate and effective precautions in accordance with margin no. 50 include in particular measures regarding premises, staff, functions, organisation and information technology that are intended to create areas of confidentiality within which information can be isolated and controlled. Such precautions must be set out in internal directives or, if necessary, taken on an ad-hoc basis. A suitable function (e.g. Compliance) must be assigned responsibility for monitoring adherence to these precautions. 51

Where insider information is isolated within areas of confidentiality, securities trades may still be carried out in other organisational units. 52

D. Surveillance of employee transactions

Supervised institutions must take measures for the surveillance of employee transactions. These measures must in particular be capable of preventing employees from misusing insider information in transactions for their own account and of identifying such misuse. Due attention must be paid to all custody accounts and related cash accounts held by employees with the supervised institution or a third-party institution as well as those for which employees have beneficial ownership or power of attorney. 53

For the purpose of these rules, employees are defined as all members of the supervised institution's staff, together with the members of governing bodies responsible for directing, supervising and controlling, the executive management, partners with unlimited liability and anyone with a comparable function. 54

Supervised institutions must set out their appropriate and suitable surveillance measures in an internal directive. Different levels of surveillance may be applied to different categories of employees or functions in line with the risk of misuse of insider information. Regardless of such risk categories, supervised institutions must ensure that they can access information on all relevant cash and custody accounts whenever necessary. 55

E. Watch list and restricted list

Supervised institutions must keep a *watch list* and a *restricted list*. 56

The *watch list* contains details of the insider information the supervised institution possesses about issuers and in particular the individuals in possession of such information and the period of time for which it must remain confidential. It must be kept by an appropriate function specifically designated as responsible for it (e.g. Compliance). 57

The *restricted list* provides information on bans or restrictions on specific trading activities, such as in particular bans on transactions in specific securities, blocked transactions, or publishing restrictions pertaining to financial analysis. The function responsible for the *watch list* is also responsible for the *restricted list*. 58

F. Documentation and recording requirements

Where there are clear indications that trades may not meet the requirements of Article 33*e* and 33*f* SESTA or sections III-VI above, such trades must be documented. 59

The external and internal telephone calls of all employees working in securities trading, including those made on mobile telephones, must be recorded. The use of means of communication that cannot be recorded must not be allowed. Recordings must be kept for at least two years and made available to FINMA without alterations as required. 60

Electronic correspondence (e-mail, communication via Bloomberg or Reuters etc.) and itemised lists of business calls by all employees working in securities trading as well as by employees deemed by the risk assessment to be especially likely to receive information of relevance for market supervision must be kept for at least two years and made available to FINMA without alterations as required. 61

G. High-frequency / algorithmic trading

Supervised institutions that engage in algorithmic trading (see margin no. 18) must employ effective systems and risk controls to ensure that this cannot result in any false or misleading signals regarding the supply of, demand for or market price of securities. 62

Supervised institutions must document the key features of their algorithmic trading strategies in a way that third parties can understand. 63

H. Audit

The organisational requirements for supervised institutions are audited in accordance with FINMA-Circ. 13/3 “Auditing”, those for exchanges by the audit firms engaged under Article 17 SESTA. Where violations of market conduct rules are detected during the audit, these must be reported to FINMA in accordance with Article 27 FINMASA or Article 30 ISA (SR 961.01) and mentioned in the audit report. 64

VIII. Entry into force and transitional provisions

This Circular enters into force on 1 October 2013. 65

Once it is in force, this Circular replaces FINMA-Circ. 08/38 “Market conduct rules”. 66

The organisational requirements must be met by 1 January 2015. Until then, the organisational requirements set out in FINMA-Circ. 08/38 “Market conduct rules” continue to apply. The first risk assessment in accordance with margin no. 46 must be completed by 1 April 2014 at the latest. 67

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Circular 2010/1
Remuneration schemes

Minimum standards for remuneration schemes of financial institutions

Reference:	FINMA Circ. 10/1 "Remuneration schemes"
Date:	21 October 2009
Entry into force:	1 January 2010
Last amendment:	3 December 2015 [Modifications are indicated by an asterisk (*) and are listed at the end of the document.]
Legal framework:	FINMASA art. 7 sect. 1 lett. b BA art. 3 sect. 2 lett. a, 3b–3g ISA art. 22, 27 sect. 1, 47, 67, 68, 75, 76 SESTA art. 10 sect. 2 lett. a CISA art. 13, 14 sect. 1 lett. c and corresponding ordinance provisions

Adressees																						
BA			ISA			SESTA		CISA										AMLA			Other	
Banks	Financial groups and -congl.	Other intermediaries	Insurers	Insurance groups and -congl.	Insurance intermediaries	Stock exch. and participants	Securities dealers	Fund management companies	SICAVs	Limitied partnerships for CISs	SICAFs	Custodian banks	Asset managers CISs	Distributors	Representatives of foreign CISs	Other intermediaries	SROs	DSFIs	SRO-supervised institutions	Audit firms	Rating agencies
x	x		x	x			x	x	x	x	x	x	x	x	x						

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I. Introduction

The remuneration scheme is an integral part of the organization of a financial institution and can exert considerable influence on its capital, liquidity and risk situation. In addition, remuneration creates incentives. Such incentives must not serve to incite the taking of inappropriate risks, the infringing of applicable law or regulations, internal rules or the violation of agreements. Instead, remuneration schemes at financial institutions should motivate employees to contribute to the long-term success and stability of the company. The risks taken should be considered in the remuneration. 1

This Circular defines minimum standards for the design, implementation and disclosure of remuneration schemes in financial institutions. The application of these minimum standards is subject to the principle of proportionality. In this connection, the following factors shall be taken into account: the complexity, size and risk profile of the financial institution and of its constituent units; the function, job activities and level of compensation of the persons in question. 2

For financial institutions, this Circular serves to supplement the rules contained in the Swiss Code of Obligations as well as the disclosure provisions concerning remuneration applicable under stock exchange regulations, albeit without replacing them. This Circular applies regardless of the legal form of the financial institution and whether or not said institution is publicly listed. 3

II. Scope

This Circular applies to banks, securities traders, financial groups and conglomerates, insurance companies, and insurance groups and conglomerates that are subject to Swiss financial market supervision. It also applies to persons and firms authorized under art. 13 sect. 2 and 4 of the Collective Investment Schemes Act (CISA; SR 951.31). All of the above are referred to hereinafter as “firms”. 4

This Circular is applicable to the firms’ domestic and foreign subsidiaries and branches which are mandatorily included in consolidations. If mandatory foreign regulations conflict with the application of this Circular or if a firm is seriously disadvantaged by this Circular in a foreign labour market, it shall inform FINMA. FINMA shall assess the situation and may consult foreign supervisory authorities. FINMA may exempt a firm, in part or in full, from implementing the present provisions in the foreign labour market in question. 5

For the following firms implementation of this Circular shall be mandatory:

- Banks, securities traders, financial groups and conglomerates, who in their capacity as individual firm or at the financial group or conglomerate level, are required to maintain equity capital (minimum requirements pursuant to Articles 7 ss. and Article 42 of the Capital Adequacy Ordinance [CAO; SR 952.03]) in the amount of at least CHF 2 billion; 6

- Insurance companies, insurance groups and conglomerates, which, in their capacity as an insurance company, or at the insurance group or conglomerate level, are required to hold equity capital amounting to at least CHF 15 billion in line with the risks to which they are exposed (target capital in accordance with Article 22, para. 2, 198 and 204 of the Insurance Supervision Ordinance [ISO; SR 961.011]). 7*

For the firms which do not meet the threshold values set out in margin nos. 6 and 7, implementation of the present Circular shall not be mandatory. It is, however, recommended that they take the principles of this circular into account for their remuneration schemes as best practice guidelines. 8

In justified cases, FINMA may require a firm which does not meet the threshold values set out in margin nos. 6 and 7 to implement some or all of the provisions hereof. This may be appropriate, for example, in light of the firm’s risk profile, its business activities or its business relationships, or where its remuneration scheme entails inappropriate risks. 9

This Circular applies to all persons who are employed by a firm or by an affiliate of such firm and who are remunerated for work performed in respect of the firm. The circular also applies to persons entrusted with the executive management ("senior management") and to persons responsible for the overall direction, oversight and control ("Board of Directors"). It does not apply, however, to the remuneration of associates of the firm who are wholly liable in their personal capacity, nor to persons who directly or indirectly hold at least 10 percent of the firm’s capital. 10

III. Definitions

Total remuneration:

The totality of any monetary value which the firm distributes to a person directly or indirectly for the work performed for the firm, e.g. in the form of cash payments, non-cash benefits, disbursements which create or increase rights to social security benefits, pensions, shares or other allocation of shareholding rights as well as the forgiving, extinguishing or renunciation of any claims or debts. 11

Variable remuneration:

Any part of the total remuneration the granting or the amount of which is at the discretion of the firm or which is contingent on fulfilment of predefined conditions. This includes remuneration contingent on performance or meeting certain targets such as brokerage fees or commissions. Sign-on payments or severance payments also fall within the scope of the definition of variable remuneration. 12

Sign-on payment:

Remuneration which is agreed on the conclusion of an employment agreement to be paid or be due once. Also deemed to constitute a sign-on payment shall be compensation for benefits foregone vis-à-vis a previous employer. 13

Severance payment:

Remuneration which is agreed in connection with the termination of an employment relationship. 14

Total pool:

The sum of all variable remuneration which a firm allocates for a given financial year, regardless of its form, the time of allocation and payment, or any conditions or restrictions to which it may be subject. It includes any such amount allocated whether or not is contractually binding, vested or non-vested. Any sign-on or severance payments provided during the financial year concerned are to be attributed to the total pool. 15

IV. Principles

Principle 1: The Board of Directors is responsible for the design and implementation of a remuneration policy and issues the rules relating thereto

16

The Board of Directors shall design the remuneration policy of the firm and, in its capacity as the organ responsible for the overall direction, supervision and control of the firm, shall be responsible for its implementation. 17

Towards this end, the Board of Directors shall issue remuneration rules that cover all persons employed by the firm and that comply with the principles and provisions set out herein. It shall review these rules regularly. 18

The Board of Directors can in principle adopt an existing group-wide remuneration scheme provided such scheme conforms to the provisions of this Circular. 19

The Board of Directors shall approve the remuneration of senior management as well as the total pool of the firm. 20

Depending on the size and structure of the firm or the complexity of its remuneration scheme, the Board of Directors shall establish a remuneration committee. Said committee shall ensure the Board of Directors has impartial and competent advice at its disposal. 21

The Board of Directors shall take all necessary steps to be kept regularly informed of the operational implementation of the remuneration rules and of how remuneration is developing at the firm. 22

Principle 2: The remuneration scheme is simple, transparent, implementable, and oriented towards the long term

23

The remuneration scheme should be understandable and justifiable. The elements of the remuneration scheme shall be clearly communicated to the persons concerned. 24

The remuneration scheme shall ensure a sufficient degree of continuity. It is to be designed in such a manner that it is acceptable irrespective of the firm's actual business performance. 25

The firm shall ensure that contractual agreements are in conformity with the requirements of this Circular and of the firm's own remuneration rules. To the extent necessary, existing agreements should be amended accordingly. 26

Principle 3: The firm's independent control functions and experts are involved in designing and applying the remuneration policy and rules

27

The design and implementation of the remuneration scheme should be carried out in an impartial and objective manner. Human resources experts and control functions (e.g. risk management or compliance) should be involved to ensure a consistent design and implementation of the remuneration scheme across all business lines of a firm. 28

The Board of Directors shall ensure, at reasonable intervals, that an impartial body, (e.g. internal audit) review whether the design and implementation of the remuneration scheme is in compliance with the Board of Director's remuneration policy and the requirements of this Circular. 29

Principle 4: The structure and level of total remuneration is aligned with the firm's risk policies and designed so as to enhance risk awareness

30

In the context of this Circular, risk is defined as any risk that the firm bears in the course of its business activities. These risks include, in particular, market, credit and liquidity risk, underwriting risk, operational risk (including legal and compliance risk) as well as reputational risk. 31

The more strategic or operational responsibility a person has, the more her/his remuneration needs to take into account the risks such persons takes or is responsible for. 32

All significant risks attributable to a person's sphere of influence must be considered in this context. This also covers risks which arise in the organizational units under her/his responsibility. 33

Risks, the size and probability of occurrence of which are difficult to assess in advance, must also be considered to the extent reasonable. 34

The relevant risk assessment should be undertaken and monitored by the units responsible for the firm's risk control. 35

Neither the nature of the remuneration nor the criteria applicable for its allocation must create any incentive for taking inappropriate risks or for violating applicable law, regulations, internal rules or agreements. 36

Risks are inappropriate, in particular, if they: 37

- are not consistent with the strategic or operational objectives and risk capacity of the firm;
- cannot be properly managed or controlled with the existing organization, procedures and employees;
- may unfairly disadvantage the firm's stakeholders, including its customers.

The remuneration instruments, the proportion of variable remuneration to total remuneration 38

and the relationship between immediate and deferred remuneration are to be designed in line with the requirements of this principle.

Principle 5: Variable remuneration is funded through the long-term economic performance of the firm

39

Variable remuneration is to be incorporated into capital and liquidity planning. It must not be allowed to jeopardize the attainment of capital targets.

40

The size of the total pool shall depend on the long-term performance of the firm. For this purpose, the profit sustainability as well as the risks borne are to be taken into account. The entirety of any capital costs, including the costs of equity capital, is to be considered in a comprehensive manner. The capital costs shall reflect the risk profile of the firm.

41

If results are poor, the total pool is to be reduced or omitted completely.

42

The models and processes which a firm uses to determine variable remuneration at the level of the firm as a whole or at the level of its units shall be in accordance with the business strategy and risk policies of the firm.

43

Principle 6: Variable remuneration shall be granted according to sustainable criteria

44

The allocation of variable remuneration to individual units and persons shall depend on sustainable and justifiable criteria that reflect the firm's business and risk policies.

45

A serious violation of internal rules or external provisions shall result in a reduction or forfeiture of variable remuneration.

46

Sign-on and severance payments are only to be granted in justified cases. They must be governed by the remuneration rules of the firm. Those payments above an amount set in the remuneration rules are to be approved by the Board of Directors.

47

Principle 7: Deferrals link remuneration with the future development of performance and risk

48

To the extent required in light of its risk profile, a firm shall defer payment of part of the remuneration.

49

Deferred remuneration is remuneration that the beneficiary is entitled to freely dispose of only after expiry of a certain time period and the value of which is subject to change during this time period.

50

Deferred remuneration is to be designed in such a way that it takes into account the business strategy and risk policies of the firm. It shall be structured in such a way so as promote optimally the risk awareness of the beneficiaries and encourage them to operate the business in a sustainable manner.

51

The time period should be based on the time horizon of the risks the beneficiary is responsible for. For members of senior management and persons with relatively high total remuneration, as well as persons whose activities have a significant influence on the risk profile of the firm, the time period should last at least three years. Any definitive vesting of the remuneration within the time period in question shall take place, at most, on a pro-rata basis.

52

The greater the responsibility of a beneficiary and the greater her/his total remuneration, the greater the percentage of her/his remuneration that shall be deferred. For members of senior management, for persons with relatively high total remuneration and for persons whose activities have a significant influence on the risk profile of the firm, a significant percentage of remuneration is to be subject to deferred payment. A person may receive remuneration without deferral to the extent a deferral is not appropriate or reasonable in light of such person's function or amount of total remuneration.

53

Any changes in value of deferred compensation during the time period in question shall be symmetrical to the development of clearly defined and objective assessment criteria, which shall take ample account of earnings, expenditures and capital costs or shall depend on the value of the company. Negative developments of such assessment criteria must lead to a considerable reduction in value of the deferred compensation up to a total forfeiture. If positive developments of the assessment criteria lead to an increase in value of the deferred compensation, such increase must not be disproportional to the potential reduction in value or the assessment criteria themselves.

52

Where this promotes risk awareness and sustainability and is appropriate, the company should structure its compensation policy and rules so as to make it possible to cancel deferred remuneration in whole or in part where losses have been generated in the area of responsibility of the person concerned.

55

In the event of poor business performance, in particular in the case of losses recorded in the annual financial reporting, the allocation of variable remuneration which is not subject to deferral shall be reduced to a minimum.

56

Principle 8: Control functions are remunerated in a way so as to avoid conflicts of interest

57

Control functions within the meaning of this principle include all persons responsible for quantitative or qualitative risk management or risk control, legal, compliance, actuarial, internal audit or internal control systems.

58

Remuneration schemes for control functions may not create incentives that lead to conflicts of interest with the tasks of these functions. The calculation of variable remuneration of these persons must not be directly dependent on the performance of the business units, specific products, or transactions these persons monitor.

59

Total remuneration of the control functions must be sufficient in order to attract qualified and experienced persons.

60

Principle 9: The Board of Directors shall report annually on the implementation of the remuneration policy

61

As part of the annual reporting, the Board of Directors shall prepare a remuneration report. In said report it shall explain the implementation of the remuneration policy and rules.

62

The remuneration report shall address the following matters:

- the most important design characteristics and functioning of the remuneration scheme as well as responsibilities of those involved in managing and implementing the scheme and the applicable procedures; 63
- the design, assessment criteria, valuation principles and valuation of the remuneration instruments used; 64
- the following information on compensation for the financial year (excluding charges and credits that derive from remuneration for previous financial years), broken down by instrument (cash payment, shares, options, etc.):
  - the total amount of total remuneration; 65
  - the amount of the total pool and number of beneficiaries; 66
- the sum of outstanding deferred remuneration broken down by instrument (cash payment, shares, options, etc.); 67
- any charges and credits affecting net income that derive from remuneration for previous financial years; 68
- with regard to senior management as well as persons whose activities have a significant influence on the risk profile of the firm:
  - the sum of all sign-on payments made during the financial year and the number of beneficiaries; 69
  - the sum of all severance payments made during the financial year and the number of beneficiaries. 70

Disclosure of the remuneration report shall take place in accordance with the provisions governing publication of the annual report. Such disclosure shall in any event be made to FINMA. 71

Principle 10: Any deviation from these principles is permissible only in justified exceptional circumstances and must be disclosed 72

The firm must justify the facts of any deviation from these principles and disclose these in addition to those disclosures required under Principle 9. In addition to such justification, the firm must disclose, in particular, the structure, form and amount of the remuneration which is subject to deviation from these principles, as well as the business units or functions of the firm benefitting from this deviation. 73

The provisions governing reporting and disclosure (margin nos. 61 to 71) must be observed in any case. 74

V. Implementation

Each firm shall assess its implementation of this Circular and compliance therewith and shall report to FINMA by 30 April 2011 at the latest according to such instructions as FINMA shall promulgate. Such report shall be certified by the firm's external auditors. 75

FINMA reserves the right to inspect a firm in respect of compliance with the requirements of this Circular. It may do it either itself or with the assistance of third parties. Such measures shall be in lieu of a regular audit on the subject by the firm's external auditor. 76

FINMA may, in justified cases, place additional requirements on the remuneration scheme of a firm beyond those set out in this Circular. 77

FINMA may take measures against firms that derogate from the provisions of this Circular, including requiring them to maintain additional capital. 78

FINMA reserves the right to limit the variable remuneration that a firm can grant where this would clearly jeopardize the meeting of capital targets decreed or expected. 79

FINMA shall evaluate the effectiveness of this Circular, such as on the basis of the self-assessments by the firms or through additional investigations or benchmark analyses. Such evaluations shall serve for the further development of this Circular, which will also consider any policy developments on international level. 80

VI. Transitional provisions

The provisions of this Circular must be fully complied with as of 1 January 2011. 81

The disclosure requirements contained in margin nos. 65 to 71 first apply to the financial reporting for the 2010 financial year. 82

Should any existing mandatory obligations hinder a firm from complying fully with the provisions contained herein as of 1 January 2011, it shall prepare a binding time plan for implementation. 83

This Circular has been modified as follows:

These modifications were adopted on 1 June 2012 and will enter into force on 1 January 2013.

References to the Capital Adequacy Ordinance (CAO; SR 952.03) have been adapted according to the version which will enter into force on 1 January 2013.

This modification was adopted on 3 December 2015 and will enter into force on 1 January 2016.

modified	margin no. 7

finma
Eidgenössische Finanzmarktaufsicht FINMA
Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
Swiss Financial Market Supervisory Authority FINMA

Circular 2009/1
Guidelines on asset management

Guidelines for the recognition of self-regulation in asset management as minimum standard

Reference:	FINMA Circ. 09/1 “Guidelines on asset management”
Date:	18 December 2008
Entry into force:	1 January 2009
Last amendment:	10 June 2016 [Modifications are indicated by an asterisk (*) and are listed at the end of the document.]
Legal framework:	FINMASA Art. 7 para. 1 let. b SESTA Art. 11 CISA Art. 3, 14, 20 CISO Art. 27

Adressees																							
BA			ISA			SESTA		CISA									AMLA			Other			
Banks	Financial groups and -congl.	Other intermediaries	Insurers	Insurance groups and -congl.	Insurance intermediaries	Stock exch. and participants	Securities dealers	Fund management companies	SICAVs	Limitied partnerships for CISs	SICAFs	Custodian banks	Asset managers CISs	Distributors	Representatives of foreign CISs	Other intermediaries	SROs	DSFIs	SRO-supervised institutions	Audit firms	Rating agencies		
x							x	x				x	x	x	x	x							

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I. Purpose and framework

This circular sets out the guidelines applied by the Swiss Financial Market Supervisory Authority FINMA as a yardstick when an asset management organisation seeks to have its code of conduct recognised as a minimum standard. 1

There are many professional organisations who represent the interests of firms operating in the asset management sector (sole proprietorships, partnerships or corporations). FINMA does not wish to grant an exclusive right to any one of them by virtue of only recognising its code of conduct as a minimum standard for the industry. On the contrary, it is open to recognising various regulations as a minimum standard. However, in order to guarantee a minimum equivalence of these regulations, FINMA establishes in this circular the guidelines that the respective code of conduct must embody at minimum. As such, these guidelines constitute a type of "minimum standard for minimum standards". 2

Under the Banking Act (BA; SR 952.0) and the Stock Exchange Act (SESTA; SR 954.1), licence holders must comply with rules of conduct. This also applies to licence holders under the Collective Investment Schemes Act (CISA; SR 951.31) and their mandataries. In the collective investment schemes sector, FINMA may establish the rules of conduct of a professional organisation as a minimum standard (Art. 20 para. 2 CISA). Moreover, it can make the issuing of a licence dependent on adherence to rules of conduct of a professional organisation (Art. 14 para. 2 CISA; Art. 27 of the Collective Investment Schemes Ordinance [CISO; SR 951.311]). FINMA can also recognise a professional organisation's rules of conduct for independent asset managers as a minimum standard (Art. 3 para. 2 let. c CISA). 3*

Several self-regulatory provisions are currently recognised by FINMA as a minimum standard (cf. FINMA Circ. 08/10 "Self-regulation as a minimum standard"). 4*

II. Scope of application

FINMA views these guidelines as a yardstick for all self-regulatory measures submitted to it by professional organisations of the asset management sector (including banks and securities dealers) for the purpose of recognition as a minimum standard. To the extent that the SESTA and CISA and the associated implementing regulations specify any further-reaching duties encumbent upon supervised securities dealers and licence holders, they shall take precedence. FINMA reserves the right not to recognise rules of conduct when the proper implementation by the respective professional organisation appears questionable. 5

Monitoring the compliance of asset managers with regard to their obligations in terms of combating money laundering takes place in the context of oversight by the regulatory authorities or self-regulatory organisations designated for asset managers as provided for by the AMLA. This circular does not deal with self-regulatory measures pursuant to the AMLA. 6

III. Recognition of rules of conduct

In order to gain recognition, the rules of conduct of professional organisations whose members operate in the asset management sector must cover the following items and take account of the following principles: 7

A. Asset management contracts

a) General principles

Taking the clients' experience and knowledge into consideration (margin no. 23), a risk profile should be drawn up, outlining the clients' risk tolerance and risk capacity. 7.1*

The investment strategy is to be defined with clients based on their risk profile, financial situation and investment restrictions. 7.2*

b) Form of contract

An asset management contract must be concluded in writing or in any other form demonstrable via text. 8*

c) Content of contract

An asset management contract or its annexes must contain in particular details on the following: 9

a) Scope of an asset manager's powers;

b) Investment goals and restrictions;

c) Reference currency;

d) Method and frequency of reporting to the client;

e) Remuneration of an asset manager;

f) Possibility of delegating tasks to third parties.

B. Obligations of asset managers

Asset managers must guarantee proper business conduct. 10

a) Duty of loyalty

Asset managers must safeguard the interests of their clients. 11

Asset managers must take appropriate organisational measures in order to prevent conflicts of interest and preclude any disadvantage for their clients by virtue of such conflicts of interest. In the event that disadvantages cannot be precluded despite these measures being taken, asset managers must inform their clients accordingly. 12

The remuneration terms of individuals charged with asset management must avoid inducements that might lead to conflicts with their duty of loyalty. 13

All investments and transactions must be in the clients' interest. In particular, asset managers must not engage in the following: 14

a) reshuffling of portfolios without the clients' economic interest in mind (generation of fees and commissions; portfolio churning);

b) taking advantage of the knowledge of client orders for the purpose of engaging in transactions of one's own prior to, in parallel to or directly subsequent to the client's transaction (self-dealing; front running, parallel running and after running).

b) Exercise of due diligence

Asset managers must adapt their organisation in keeping with the number of their clients, the volume of assets under management by them, the investment strategies applied and products selected. 15

Asset managers must ensure that investments are always in line with the risk profile and the designated investment objectives and restrictions. 16*

Asset managers must review the investment strategies employed on a periodical basis and assess whether the clients' risk profile is in line with their current financial circumstances. If this is not the case, clients are to be made aware of this and it must be made in writing or in another form demonstrable via text. 17*

Asset managers must ensure adequate risk diversification, the investment strategies permitting. 18

If not licenced by FINMA as a bank or securities dealer, asset managers may not accept any assets of clients or maintain any settlement accounts. The assets entrusted to them must be deposited with a bank or securities dealer and administered on the basis of a written power of attorney or in another form demonstrable via text whose scope is defined in clear-cut terms. 19*

Asset managers may delegate asset management tasks to mandataries provided that this is in the interest of their clients. Asset managers must carefully select, instruct and monitor mandataries. Delegated tasks must be defined in writing in a clear-cut manner. Mandataries must possess the requisite professional qualifications so as to ensure the proper execution of the tasks entrusted to them. They must comply with rules of conduct that are comparable to those applicable to the asset manager. 20*

Asset managers must take the requisite measures for the event that they are not available or meet their demise. 21

c) Disclosure obligations

Asset managers must advise their clients of the rules of conduct of the professional organisation of which they are a member. 22

Asset managers must inform their clients, in an appropriate manner commensurate with the clients' experience and level of knowledge, of the risks associated with the investment objectives, restrictions and strategies agreed with them. This information may be provided in a standardised form. 23*

If not already public knowledge, asset managers must inform clients of any key changes in staff, their organisation or ownership structure insofar as clients are directly affected. 24

Asset managers must report to clients on their conduct of business as mandataries, this to be done on a regular basis and if specifically requested. 25

In complying with their reporting obligation, asset managers must adhere to the standards customary in the industry, i.e. with regard to the calculation method applied, the period selected and, as applicable, any benchmark indexes applied. 26

C. Remuneration of asset managers

Asset managers must establish in written contracts (or annexes) or in another form demonstrable via text with their clients, , the type, terms and elements of their remuneration. 27*

Asset management contracts must govern who is entitled to any inducements received by asset managers from third parties in the internal context of the asset management mandate issued to them or at the opportunity of executing the mandate. 28*

Asset managers must advise their customers of any conflicts of interest that might arise as the result of accepting third-party inducements. 29

Asset managers must inform their clients of the calculation parameters and spread of inducements they receive or might receive from third parties. In so doing, they must differentiate various product classes, insofar as this is possible. 30*

At the request of clients, asset managers must also disclose the amount of any third-party inducements already received. 31*

D. Monitoring and sanctions

The professional organisations provide for monitoring of compliance with rules of conduct for members not subject to FINMA supervision and for disciplining them in the event of violations. 32

IV. Final provisions

Abrogated 33*

Self-regulatory organisations can formally include the changes to margin nos. 8, 17, 19, 20 and 27 in their regulations without having them approved by FINMA. A copy of the adjusted regulations must be sent to FINMA. Regulations which diverge from or go beyond this circular require FINMA's approval. 34*

This circular has been modified as follows:

These modifications were adopted on 30 May 2013 and will enter into force on 1 July 2013.

newly inserted margin nos. 7.1, 7.2

modified margin nos. 3, 4, 16, 17, 23, 28, 30, 31, 33

These modifications were adopted on 29 June 2016 and will enter into force on 1 August 2016.

newly inserted margin no. 34

modified margin nos. 8, 17, 19, 20, 27

abrogated margin no. 33

finma
Eidgenössische Finanzmarktaufsicht FINMA
Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
Swiss Financial Market Supervisory Authority FINMA

Circular 2008/10
Self-regulation as a minimum standard

Self-regulation recognised as a minimum standard by the Swiss Financial Market Supervisory Authority (FINMA)

Reference:	FINMA Circ. 08/10 "Self-regulation as a minimum standard"
Date:	20 November 2008
Entry into force:	1 January 2009
Last amendment:	1 January 2016 [Modifications are indicated by an asterisk (*) and are listed at the end of the document.]
Concordance:	previously SFBC Circ. 04/2 "Self-regulation as a minimum standard" of 21 April 2004
Legal framework:	FINMASA art. 7 sect. 1 let. a and sect. 3
Appendix:	Self-regulation recognised by FINMA

Addressees																						
BA			ISA			SESTA		CISA										AMLA			Other	
Banks	Financial groups and congl.	Other intermediaries	Insurers	Insurance groups and congl.	Insurance intermediaries	Stock exch. and participants	Securities dealers	Fund management companies	SICAVs	Limited partnerships for CISs	SICAFs	Custodian banks	Asset managers CISs	Distributors	Representatives of foreign CISs	Other intermediaries	SROs	DSFIs	SRO-supervised institutions	Audit firms	Rating agencies
x			x	x			x	x	x	x	x		x	x	x						

Index

I. Recognition of self-regulation

FINMA recognises the self-regulation listed in the Appendix to this Circular as the minimum standard applicable to the addressees named below. 1

II. Addressees of the Circular

The addressees of this Circular are the following, depending on their business operations: banks,[1] securities dealers[2], insurance companies[3], insurance groups and conglomeratesi[4] and fund management companies,[5] investment companies with variable capital,[6] limited partnerships for collective investments,[7] investment companies with fixed capital,[8] distributors of collective investment schemes,[9] asset managers of collective investment schemes[10] and representatives of foreign collective investment schemes[11] in terms of the Collective Investment Schemes Act (CISA; SR 951.31). 2*

III. Audit

Audit firms are to examine compliance with the self-regulation recognised as a minimum standard in accordance with FINMA Circ. 13/3 “Auditing” and document the results of any audit activities in their audit report. 3*

[1] As set out in art. 1 and 2 of the Banking Act (BA; SR 952.0).
[2] As set out in art. 2 lett. d of the Stock Exchange Act (SESTA; SR 954.1).
[3] As set out in art. 2 sect. 1 of the Insurance Supervision Act (ISA ; SR 961.01).
[4] As set out in art. 2 sect. 1 ISA.
[5] As set out in art. 28 of the Collective Investment Schemes Act (CISA; SR 951.31).
[6] As set out in art. 36 CISA.
[7] As set out in art. 98 CISA.
[8] As set out in art. 110 CISA.
[9] As set out in art. 19 CISA.
[10] As set out in art. 18 and art. 13 sect. 4 CISA.
[11] As set out in art. 123–124 CISA.

I. Self-regulation of the Swiss Bankers' Association

Guidelines for the Management of Country Risk of 28 November 1997 1

Guidelines on the treatment of contactless and dormant accounts at Swiss banks of December 2014 (in German: Richtlinien der Schweizerischen Bankiervereinigung über die Behandlung kontakt- und nachrichtenloser Vermögenswerte bei Schweizer Banken [Narilo-Richtlinien]) 2

Guidelines on Notes of Foreign Issuers of 16 July 2001 (in German: Richtlinie zu Notes ausländischer Schuldner) 3

Allocation Directives for the New Issues Market of 2 June 2004 4

Guidelines on the Treatment of Counterfeit Money and Precious Metal Coins and Bullion of 13 March 2007 (in German: Richtlinien betreffend die Behandlung von Falschgeld und falschen Edelmetall-Münzen und Barren) 5

Guidelines on informing investors about structured products of September 2014 (in German: Richtlinien über die Information der Anlegerinnen und Anleger zu strukturierten Produkten) 6

Recommendations for Business Continuity Management (BCM) of August 2013: limited to subsections 4.4 "Business Continuity Management Strategie", 4.5.1 “Business Impact Analysis” and 4.5.2 “Business Recovery Options 7

Directives on the Independence of Financial Research of 22 January 2008 8

Swiss Banks’ Code of Conduct with regard to the Exercise of Due Diligence (CDB 16) of 2016 (in German: Vereinbarung über die Standesregeln zur Sorgfaltspflicht der Banken (VSB 16) vom 2016) 9

Code of Conduct for Securities Dealers Governing Securities Transactions of 22 October 2008 10

Directives on Fiduciary Investments of 2011 (in German: Richtlinien betreffend Treuhandanlagen) 11

Portfolio Management Guidelines of 6 November 2013 12

Guidelines on the Auditing, Valuation and Treatment of Mortgage-backed Loans of July 2014 (in German: Richtlinien für die Prüfung, Bewertung und Abwicklung grundpfandgesicherter Kredite) 13

Agreement of Swiss Banks and Securities Dealers on Depositor Protection of 6 December 2011 (in German: Vereinbarung der Schweizer Banken und Effektenhändler über die Einlagenversicherung) 14

Guidelines on the Minimum Requirements for Mortgage Financing of July 2014 (in German: Richtlinien betreffend Mindestanforderungen bei Hypothekarfinanzierungen) 15

Guidelines on protocol requirements under Article 24 para. 3 of the Federal Act on Collective Investment Schemes of 12 November 2013 (in German: Richtlinien über die Protokollierungspflicht nach Art. 24 Abs. 3 des Bundesgesetzes über die kollektiven Kapitalanlagen) 16

II. Self-regulation of the Swiss Funds & Asset Management Association SFAMA[12]

III. Self-regulation of other professional organisations

[12] Available for download from http://www.sfama.ch/

List of modifications

This Circular has been modified as follows:

This modification was adopted on 6 December 2012 and will enter into force on 1 January 2013.

Modified margin no. 3

On 2 June 2014 the name "Swiss Funds Association" was replaced by "Swiss Funds & Asset Management Association SFAMA" throughout the entire circular.

This modification was adopted on 23 September 2015 and will enter into force on 1 January 2015.

Modified margin no. 2

The Appendix to the „Self-regulation of the Swiss Bankers' Association" has been modified as follows:

On 19 March 2009, the "Agreement of Swiss Banks and Securities Dealers on Depositor Protection of 5 March 2005" was replaced by the "Agreement of Swiss Banks and Securities Dealers on Depositor Protection of 5 September 2009".

On 29 June 2009, the "Directives on Fiduciary Investments of 22 June 1993" were replaced by the "Directives on Fiduciary Investments of 22 June 2009".

On 10 May 2010, the "Portfolio Management Guidelines of 21 December 2005" were replaced by the "Guidelines for Portfolio Management of 16 April 2010".

On 28 October 2011, the "Guidelines on the Auditing, Valuation and Treatment of Mortgage-backed Loans of 16 December 2003" were replaced by the "Guidelines on the Auditing, Valuation and Treatment of Mortgage-backed Loans of 28 October 2011".

On 6 December 2011, the "Agreement of Swiss Banks and Securities Dealers on Depositor Protection of 5 March 2009" was replaced by the "Agreement of Swiss Banks and Securities Dealers on Depositor Protection of 6 December 2011".

On 1 June 2012, the "Guidelines on the Minimum Requirements for Mortgage Financing of 1 June 2012" were added to the Appendix.

On 3 September 2013, the "Recommendations for Business Continuity Management (BCM) of 14 November 2007 (limited to subsection 5.4.1 "Business Impact Analysis" and sect. 5.4.2 "Business Continuity Strategy)" were replaced by the "Recommendations for Business Continuity Management (BCM) of August 2013 (limited to subsections 4.4 Business Continuity Management Strategie, 4.5.1 "Business Impact Analysis" and 4.5.2 "Business Recovery Options)".

On 13 November 2013, the "Guidelines of the Swiss Bankers Association on protocol requirements under Article 24 para. 3 of the Federal Act on Collective Investment Schemes of 12 November 2013" were added to the Appendix.

On 5 December 2013 Title III "Self-regulation of other professional organisations" was added (replaces FN 11).

On 1 January 2014 the "Portfolio Management Guidelines of 16 April 2010" were replaced by the "Portfolio Management Guidelines of 6 November 2013".

On 1 September 2014, the "Guidelines on the Auditing, Valuation and Treatment of Mortgage-backed Loans of 28 October 2011 (in German: Richtlinien für die Prüfung, Bewertung und Abwicklung grundpfandgesicherter Kredite)" were replaced by the "Guidelines on the Auditing, Valuation and Treatment of Mortgage-backed Loans of July 2014 (in German: Richtlinien für die Prüfung, Bewertung und Abwicklung grundpfandgesicherter Kredite)".

On 1 September 2014, the "Guidelines on the Minimum Requirements for Mortgage Financing of 1 June 2012 (in German: Richtlinien betreffend Mindestanforderungen bei Hypothekarfinanzierungen)" were replaced by the "Guidelines on the Auditing, Valuation and Treatment of Mortgage-backed Loans of July 2014 (in German: Richtlinien für die Prüfung, Bewertung und Abwicklung grundpfandgesicherter Kredite)".

On 1 March 2015, the "Guidelines on informing Investors about Structured Products of July 2007" were replaced by the "Guidelines on informing Investors about Structured Products of September 2014 of the ASB and the SSPA".

On 1 January 2015, the "Guidelines on the Treatment of Dormant Accounts, Custody Accounts and Safe-Deposit Boxes held in Swiss Banks of 3 February 2000" were replaced by the "Guidelines on the treatment of contactless and dormant accounts at Swiss banks of December 2014 (in German: Richtlinien der Schweizerischen Bankiervereinigung über die Behandlung kontakt- und nachrichtenloser Vermögenswerte bei Schweizer Banken [Narilo-Richtlinien])".

On 1 January 2015, the "Agreement on the Swiss Banks' Code of Conduct with regard to the Exercise of Due Diligence (CDB 08) of 10 April 2008 and Special Provisions on the Identification of Clients in the Credit Card Business of 10 August 2004" were replaced by the "Agreement on the Swiss Banks' Code of Conduct with regard to the Exercise of Due Diligence (CDB 16) of 2016".

The Appendix to the „Self-regulation of the Swiss Funds & Asset Management Association SFAMA" has been modified as follows:

On 22 April 2009, the "Code of Conduct for the Swiss Fund Industry of 30 August 2000" was replaced by the "Code of Conduct for the Swiss Fund Industry of 30 March 2009".

On 22 April 2009, the "Code of Conduct for Asset Managers of Collective Investment Schemes of 31 March 2009" was added to the Appendix.

On 1 February 2012, the "Guidelines on ‚key investor information' concerning securities funds and other funds for traditional investments in the form of public funds of 20 January 2012" were added to the Appendix.

On 1 July 2012, the "Guidelines for Money Market Funds of 6 June 2012" were added to the Appendix.

On 16 may 2013, the "Guidelines on Transparency with regard to Management Fees of 7 June 2005" were cancelled.

On 2 June 2014, the "Guidelines on the Distribution of Collective Investment Schemes of 29 May 2008" were replaced by the "Guidelines on the Distribution of Collective Investment Schemes of 22 May 2014".

On 2 June 2014, the “Guidelines on the requirements for charging fees and costs incurred and the purpose for which they are used (Transparency guidelines) of 22 May 2014“ were added to the Appendix.

On 1 January 2015, the “Code of Conduct for the Swiss Fund Industry of 30 March 2009“ and the “Code of Conduct for Asset Managers of Collective Investment Schemes of 31 March 2009“ were replaced by the “Code of Conduct of 7 October 2014“.

On 1 January 2016, the “Guidelines on the Calculation and Disclosure of the Total Expense Ratio (TER) and Portfolio Turnover Rate (PTR) of Collective Investment Schemes of 16 May 2008“ were replaced by the “Guidelines on the Calculation and Disclosure of the Total Expense Ratio (TER) of Collective Investment Schemes of 20 April 2015“.

On 1 June 2016, the “Guidelines on the Valuation of the Assets of Collective Investment Schemes and the Handling of Valuation Errors in the case of Open-End Collective Investment Schemes of 20 June 2008“ were replaced by the “Guidelines on the Valuation of the Assets of Collective Investment Schemes and the Handling of Valuation Errors in the case of Open-End Collective Investment Schemes of 25 August 2015“.

The Appendix to the „Self-regulation of other professional organisations“ has been modified as follows:

On 1 January 2014, the “Code de déontologie relatif à l’exercice de la profession de gérant de fortune indépendant (Directive 14) of 23 February 2009 (ARIF)” was replaced by the “Code de déontologie relatif à l’exercice de la profession de gérant de fortune indépendant (Directive 14) of 18 November 2013 (ARIF)”.

On 1 January 2014, the “Norme di comportemento nell’ambito della gestione patrimoniale (NCGP) of 23 April 2009 (OAD-FCT)” were replaced by the “Norme di comportemento nell’ambito della gestione patrimoniale (NCGP) of 1 November 2013 (OAD-FCT)”.

On 1 January 2014, the “Règlement de l’OAR-G relatif aux règles-cadres pour la gestion de fortune of 18 May 2009” was replaced by the “Règlement de l’OAR-G relatif aux règles-cadres pour la gestion de fortune of 17 November 2013”.

On 1 January 2014, the “Règles d’Ethique Professionnelle du GSCGI of 25 June 2009” were replaced by the “Règles d’Ethique Professionnelle du GSCGI of 15 November 2013”.

On 1 January 2014, the „Schweizerische Standesregeln für die Ausübung der unabhängigen Vermögensverwaltung of 30 March 2009 (VSV)“ were replaced by the „Schweizerische Standesregeln für die Ausübung der unabhängigen Vermögensverwaltung vom 22 November 2013 (VSV)“.

On 1 January 2014, the “Standesregeln des PolyReg allgemeiner Selbstregulierungs-Verein of 24 March 2009” were replaced by the “Standesregeln des PolyReg allgemeiner Selbstregulierungs-Verein of 6 December 2013”.

On 1 January 2014, the “Verhaltensregeln der Branchenorganisation für die Vermögensverwaltung des VQF Verein zur Qualitätssicherung von Finanzdienstleistungen in Sachen Ausübung der Vermögensverwaltung of 25 February 2009” were replaced by the “Verhaltensregeln der Branchenorganisation für die Vermögensverwaltung des VQF Verein zur Qualitätssicherung von Finanzdienstleistungen in Sachen Ausübung der Vermögensverwaltung of 18 November 2013”.

On 1 October 2015, the “Business Continuity Management (BCM) für Versicherungsunternehmen in der Schweiz – Mindeststandards und Empfehlungen of June 2015 issued by the Swiss Insurance Association (SIA)" were added to the Appendix.

Part F: Publications by the Swiss Funds & Asset Management Association (SFAMA) and guidelines from the Swiss Bankers Association (SBVg)

SFAMA Swiss Funds & Asset Management Association

Code of Conduct

Code of Conduct of the Swiss Funds & Asset Management Association SFAMA (Code of Conduct SFAMA)

7 October 2014

I Legal basis and objectives

The present Code of Conduct has been issued by the SFAMA Board of Directors as minimum standards recognized by the supervisory authority pursuant to Art. 3 para. 2 let. c no. 2, Art. 14 para. 2, Art. 20 para. 2, and Art. 124 para. 2 CISA in conjunction with Art. 27 and Art. 128 para. 3 let. a CISO, the objectives being: 1

- to maintain and promote the quality and standing of Swiss asset management in Switzerland and abroad; 2
- to ensure the transparency, functionality, and high standard of the market for collective investment schemes. 3

II Validity and binding force

The present Code of Conduct applies to: 4

- fund management companies and investment companies with variable capital (SICAVs) pursuant to Art. 28 et seqq. and Art. 36 et seqq. CISA; 5
- limited partnerships for collective investment pursuant to Art. 98 et seqq. CISA; 6
- investment companies with fixed capital (SICAFs) pursuant to Art. 110 et seqq. CISA; 7
- asset managers of collective investment schemes with their registered office or branch in Switzerland pursuant to Art. 18 et seqq. CISA (referred to below as "CISA Asset Managers"); 8
- representatives of foreign collective investment schemes pursuant to Art. 123 et seqq. CISA; 9

referred to below as "CISA Institutions". 10

Those institutions that may engage in the individual management of certain portfolios must also abide by FINMA Circular 2009/1 "Guidelines on asset management". Compliance with FINMA Circular 2009/1 and any other provisions applicable to institutions that engage in the individual management of certain portfolios must be audited by the audit firm. 11

SFAMA may issue supplementary guidelines covering CISA Institutions, collective investment schemes, and in particular specific themes (e.g. calculating NAVs, TERs). It may also grant collective investment schemes, subfunds and/or unit classes aimed exclusively at qualified investors full or partial exemption from individual guidelines. 12

Representatives of foreign collective investment schemes in Switzerland represent the foreign collective investment scheme with regard to investors (non-qualified and/or qualified) and the supervisory authority. Their powers of representation may not be restricted (Art. 124 para. 1 CISA). Furthermore, with regard to distribution to investors (non-qualified and/or qualified), representatives must comply with the requirements in respect of loyalty, due diligence, and disclosure set out in Art. 20 para. 1 CISA mutatis mutandis in accordance with their specific activities. In so doing, representatives of foreign collective investment schemes for non-qualified investors must observe the rules set out under Section III B, C, and D mutatis mutandis. Representatives of foreign collective investment schemes exclusively for qualified investors must observe the rules set out under Section III B and D mutatis mutandis. 13

Any stricter legal, regulatory, self-regulatory and/or contractual provisions applicable to CISA Institutions apply notwithstanding, in particular FINMA's supervisory rules governing market conduct in securities dealing, as set down in FINMA Circular 08/38 "Market Conduct Rules". 14

This Code of Conduct is a code of professional ethics. It is based exclusively on the relevant legal requirements and FINMA Circular 09/1 "Guidelines on Asset Management". Individual private-law agreements between the parties concerned are not affected. 15

Compliance with the present Code of Conduct must be ensured in the case of delegation or re-delegation of investment decisions or other specific tasks by CISA Institutions. Accordingly, the conduct rules specified under Section III below apply not only to CISA Institutions, but also to their agents[1] (e.g. banks, securities dealers). 16

III Code of Conduct for CISA Institutions

For all of their business operations[2], CISA Institutions must implement all measures necessary to comply with the duties set out in Art. 20 para. 1 CISA. 17

They fulfill these duties in line with their specific business activity, size, and structure, as well as in line with the specific characteristics of the open-end and/or closed-end collective investment schemes they manage, represent or distribute. 18

Art. 20 CISA Principles
[1] Licensees (authorised parties) and their agents shall fulfil the following requirements in particular:
a. Duty of loyalty: they act independently and exclusively in the interests of the investors;
b. Due diligence: they implement the organisational measures that are necessary for proper management;
c. Duty to provide information: They ensure the provision of transparent financial statements and provide appropriate information about the collective investment schemes which they manage and distribute and the assets which they hold in safekeeping; they disclose all charges and fees incurred directly or indirectly by the investors and their appropriation; they notify investors of compensation for the distribution of collective investment schemes in the form of commissions, brokerage fees and other soft commissions in a full, truthful and comprehensible manner.
[2] FINMA may specify minimum standards in the form of the codes of conduct of industry bodies.
[3] Licensees shall take all necessary precautions to ensure that all duties in relation to all their business activities are performed properly. 19

[1] Regulatory basis for delegation: Art. 31 CISA (fund management companies), Art. 36 para. 3 and Art. 51 para. 5 CISA (externally managed and self-managed SICAVs), Art. 119 para. 1 and 2 CISO (limited partnerships for collective investment), Art. 18b CISA and Art. 26 CISO (CISA Asset Managers) and FINMA-Circ. 2008/37 "Delegation by fund management companies / SICAVs".
[2] In the case of branch offices, this is limited to their activity in Switzerland.

A Duties of loyalty

CISA Institutions must observe the duties in respect of loyalty set down in Art. 20 para. 1 let. a CISA and Art. 31 CISO. **20**

Art. 31 CISO Duty of loyalty
[1] The licensees and their agents may only purchase investments from collective investment schemes for their own account at the market price and may only sell such investments from their own portfolios at the market price.
[2] In relation to services delegated to third parties they shall waive the compensation owed to them in accordance with the fund regulations, company agreement, investment regulations or discretionary management agreement where such compensation is not used for payment of the services rendered by such third parties.
[3] Where investments of a collective investment scheme are transferred to another scheme of the same licensee or a scheme belonging to a related licensee, no costs may be levied.
[4] The licensees may not levy any issue or redemption fees if they purchase target funds which:
a. they manage themselves either directly or indirectly; or
b. are managed by a company to which they are related by virtue of:
1. common management,
2. control, or
3. a significant direct or indirect interest.
[5] When a management fee is levied on investments in target funds pursuant to paragraph 4, Article 73 paragraph 4 applies accordingly.
[6] FINMA regulates the details. It may declare that paragraph 4 and 5 also applies to other products. **21**

1. CISA Asset Managers prohibited from holding assets in their own name

While acting in such function, CISA Asset Managers are not permitted to hold in their own name assets that have been entrusted to them. At all times, they must manage all assets deposited with a bank solely on the basis of a written power of attorney restricted to management and liquidation transactions. **22**

2. Investments and financial incentives

CISA Institutions must comply with the principles on investments set down in Art. 21 CISA. **23**

Art. 21 CISA Investments
[1] The licensees and their agents pursue an investment policy that at all times corresponds with the investment characteristics of the collective investment scheme as set out in the relevant documents.
[2] In respect of the purchase and sale of assets and rights on their own behalf as well as that of third parties, they are only entitled to receive the fees specified in the relevant documents. Commissions and other financial benefits must be credited to the collective investment scheme.
[3] Assets acquired for their own account may only be purchased at market price, while any sale of own-account assets must also be at market price. **24**

The duty set down in Art. 21 para. 1 CISA does not preclude CISA Institutions from redefining the investment policy of a collective investment scheme at any time (within the framework of the existing fund contract or investment regulations). **25**

CISA Institutions manage the collective investment schemes they establish in accordance with the principle of equal treatment. They must refrain from favoring certain collective investment schemes and/or groups of investors at the expense of others. The principle set out above does not prevent the different treatment of collective investment schemes depending on investor groups, subfunds and/or unit classes. **26**

3. Preserving and promoting the integrity of the market

CISA Institutions must refrain from any action that might impair transparent and fair price formation on the investment markets. **27**

CISA Institutions must not engage in any investment transactions and activities that might result in a manipulation of prices. **28**

CISA Institutions must implement the organizational measures necessary to prevent the preferential treatment of certain investors and/or groups of investors at the expense of others, and must set the relevant internal policies down in writing. **29**

Such organizational measures are particularly necessary, and are to be governed by an internal policy on allocations: **30**

- in the case of allocations in respect of securities trades and similar transactions, if the asset manager has issued collective orders prior to allocation to the individual investment schemes; **31**
- in the charging of costs and expenses incurred in addition to the fee. **32**

4. Execution of securities trades and other transactions

In executing securities trades and other transactions, CISA Institutions must comply with Art. 22 CISA. **33**

Art. 22 CISA Securities transactions
[1] Counterparties for securities trades and other transactions must be carefully selected. They must offer a guarantee of best execution in terms of price, time and quantity.
[2] The choice of counterparties must be reviewed at regular intervals.
[3] Agreements which curtail the freedom of decision of the licensees or their agents are not permitted. **34**

In selecting the counterparties via which they settle the transactions, CISA Institutions must base their decisions on objective criteria, acting in the interests of the investors. **35**

CISA Institutions settle transactions on the securities, foreign exchange and other markets at terms in line with the market, while also ensuring best execution. The specific details are to be governed by an internal policy. **36**

CISA Institutions must ensure that commission-sharing agreements, as well as soft commissions and the services remunerated in this fashion, accrue directly or indirectly to the collective investment scheme (e.g. financial analysis, market and price information systems). They must therefore **37**

- define a clear policy on the use of commission-sharing agreements or soft commissions on exchange transactions conducted for the collective investment scheme's account, and set this policy down in writing; **38**
- draw up appropriate written regulations with the CISA Asset Managers entrusted with the management of the collective investment scheme's assets and monitor compliance with these regulations; **39**
- transparently disclose to investors the existence of commission-sharing agreements or soft commissions, and provide regular reports to the controlling unit of the CISA Institution. **40**

5. Avoidance / disclosure of conflicts of interest

Art. 32b CISO Conflicts of interest
The licensees must take effective organisational and administrative measures to identify, prevent, settle and monitor conflicts of interest in order to prevent the latter from harming the interests of the investors. Where conflicts of interest cannot be avoided, they shall be disclosed to the investors. **41**

CISA Institutions must implement effective organizational and administrative measures, in accordance with their size and structure, to identify, prevent, eliminate and monitor conflicts of interest, e.g. by regulating the flow of information between the CISA Institutions and their agents, as well as between the CISA Institutions and investors, and between different investors. Measures must be taken to prevent specific collective investment schemes and/or individual investment schemes being placed at a disadvantage as a result of such conflicts of interest. If such disadvantages cannot be avoided despite reasonable measures being taken, they must be disclosed to the investors in an appropriate manner. The specific details are to be governed by an internal policy. **42**

CISA Institutions must apply a salary and remuneration policy that is appropriate in accordance with the principle of proportionality, their size, and their risk profile, and that motivates their employees to promote the long-term success of the collective investment schemes (in keeping with the minimum standards set out in FINMA Circular 2010/1 “Remuneration schemes”). They must, in particular, refrain from providing any financial incentive for conduct that might damage the investors’ interests (e.g. bonus payments based on the volume of exchange transactions carried out). **43**

In respect of personal account dealing by their employees with knowledge of planned or executed transactions, CISA Institutions must issue suitable policies to prevent **44**

- conflicts of interest arising between the investors; **45**
- employees from being able to use their professional knowledge or capacity improperly to achieve a pecuniary gain, for example through: **46**
  - front running, parallel running or after running,
  - the improper use of insider information,
  - the manipulation of allocations in the case of new issues or IPOs;
- the standing of CISA Institutions from being impaired by employees trading on their own personal accounts. **47**

CISA Institutions must issue written regulations on the receipt and granting of discounts and other benefits (such as invitations, etc.) by employees, so that any influence of the said on their decisions can be ruled out. They must prohibit churning, i.e. shifts in clients’ portfolios without any economic reason in the clients’ interests. **48**

6. Exercise of membership and creditors’ rights

In the exercise of membership and creditors’ rights, CISA Institutions must comply with Art. 23 CISA in conjunction with Art. 34 para. 3 CISO. **49**

Art. 23 CISA Exercising membership and creditors' rights **50**
[1] The membership and creditors' rights associated with the investments must be exercised independently and exclusively in the interests of the investors.
[2] Article 685*d* paragraph 2 of the Code of Obligations[1] does not apply to investment funds.
[3] If a fund management company manages several investment funds, the level of the participation with respect to the percentage limit set out in Article 685*d* paragraph 1 of the Code of Obligations is calculated individually for each investment fund.
[4] Paragraph 3 also applies to each subfund of an open-ended collective investment scheme as defined in Article 92 et seq.

They must issue internal policies governing not only the exercise of membership and creditors’ rights but also cases in which such rights may be waived, and must ensure transparency that will enable investors to obtain a clear record of such exercise of membership and creditors’ rights. **51**

In the case of scheduled routine transactions, they are free to waive the exercise of membership and creditors’ rights, or to delegate their exercise to the custodian bank or third parties. **52**

In the case of all other events that might have a lasting impact on the interests of the investors, such as, in particular, the exercise of membership and creditors’ rights that the CISA Institution holds as a shareholder or creditor of the custodian bank or another related legal entity, the CISA Institution must exercise the voting rights itself, or issue explicit instructions. In such cases, it may base its actions on information it receives from the custodian bank, the asset manager, the company concerned or from third parties, or that it ascertains from the media. **53**

7. Participation in class actions

CISA Institutions may, in the interests of investors, participate in class actions relating to the investments in the collective investment schemes they manage. In such cases, they are free to participate themselves, appoint a proxy, or assign the claims. **54**

If a CISA Institution participates in class actions, it must issue an internal policy governing the process. **55**

B Duties in respect of due diligence

CISA Institutions must comply with the authorization requirements set out in Art. 14 para. 1 CISA at all times. **56**

Art. 14 let. 1 CISA Authorisation requirements **57**
[1] Authorisation is granted if:
a. the persons responsible for management and the business operations have a good reputation, guarantee proper management, and possess the requisite specialist qualifications;
b. the significant equity holders have a good reputation and do not exert their influence to the detriment of prudent and sound business practice;
c. compliance with the duties stemming from this Act is assured by internal regulations and an appropriate organisational structure;
d. sufficient financial guarantees are available;
e. the additional authorisation conditions listed in the relevant provisions of the Act are met.

CISA Institutions must observe the duties in respect of due diligence set down in Art. 20 para. 1 let. b CISA and Art. 33 CISO. **58**

Art. 33 CISO Due diligence **59**
[1] The licensees shall ensure the effective separation of the activities of decision-making (asset management), implementation (trading and settlement) and administration.
[2] FINMA may in justified individual instances permit exemptions or order the separation of additional functions.

8. Organizational measures, in particular risk management, internal controlling system, and compliance

CISA Institutions must have internal regulations and an appropriate organization to ensure compliance with their statutory and other duties, as set out in an internal policy. Within the confines of the statutory and regulatory requirements pertaining to organization and personnel, they are, in principle, free to choose the organization in keeping with the structure and size of their business. **60**

When delegating tasks, CISA Institutions must select only those agents that are adequately qualified to execute the tasks in question properly. **61**

CISA Institutions must implement the measures necessary to ensure the correct instruction of their agents, as well as the proper supervision and monitoring of the execution of the task. They must set down the delegated activities in written contracts and must include appropriate and specific provisions on contact persons, responsibility, areas of competence, and liability issues. CISA Institutions must also ensure that the necessary rights in respect of access to books and records, issuing directives and inspections are contractually defined. **62**

Art. 12 CISO Organisational structure
[1] The executive board must comprise at least two persons. These persons must have their place of residence at a location which is suitable for the proper managing of the business operations.
[2] The authorised signatories of the licensee must sign jointly.
[3] The licensee must define its organisational structure in a set of organisational regulations.[1]
[4] It must employ personnel who are properly and suitably qualified for its activity.
[5] FINMA may require that an internal audit be performed if required by the scope and nature of the activity.
[6] In justified instances, it may grant derogations from these requirements. **63**

Art. 12a CISO Risk management, internal control system and compliance
[1] The licensee must ensure it has proper and appropriate risk management, an internal control system (ICS) and compliance covering its entire business activities.
[2] Risk management must be organised so that all material risks can be adequately identified, assessed, controlled and monitored.
[3] The licensee shall separate the functions of risk management, the internal control system and compliance in functional and hierarchical terms from the operating units, in particular from the investment decisions function (portfolio management).
[4] FINMA may grant derogations from these requirements in justified instances. **64**

CISA Institutions must define the organization of structures and processes, internal control systems, and allocations of competences in writing in a suitable form. **65**

Particular attention is to be paid to the following: **66**

- rules of conduct and competences for extraordinary circumstances (e.g. large issues and redemptions of units, suspension of trading on investment markets, situations in which the valuation of investments is impossible, valuation discrepancies); **67**
- regulations governing access to the software used for valuation, recording deals, and controlling; **68**
- adequate risk management in accordance with the applicable provisions and regular information to the body responsible at the CISA Institution; **69**
- appropriate business continuity management (BCM) to ensure that critical business processes can be maintained if a severe, large-scale event should occur, be it internal or external; **70**
- the valuation of the collective investment scheme's assets (e.g. permitted valuation prices, the recording of interventions, plausibility checks on valuation prices), which must be made independently (as regards the issuing of directives) of the persons responsible for the investment decisions; **71**
- constant monitoring of compliance with the investment restrictions laid down in the law and the regulations, as well as all other applicable provisions and regulatory requirements; **72**
- rules of conduct and competences for cases in which, in addition to engaging in the fund business, the CISA Institution is at the same time active in asset management, investment advice and/or the safekeeping and technical administration of collective investment schemes. **73**

CISA Institutions must work only with a custodian bank which is sufficiently qualified to perform the relevant tasks properly. They must conclude a contract with the custodian bank which specifically defines interfaces and responsibilities. **74**

The execution of securities trading orders by the custodian bank, and any other services to be provided by the custodian bank for the CISA Institution, must also be contractually defined. **75**

C Duties of disclosure

CISA Institutions must observe the duties in respect of disclosure set down in Art. 20 para. 1 let. c CISA and Art. 34 paras. 1, 2, and 3 CISO. **76**

Art. 34 CISO Duty of disclosure
[1] The licensees shall draw investors' attention to the risks associated with a specific type of investing in particular.
[2] They shall disclose all costs incurred on the issue and redemption of units and in the administration of the collective investment scheme. In addition, they shall disclose the manner in which the management fee is used and the levying of any performance fee.
.....
[3] They shall ensure a degree of transparency in relation to the exercising of membership and creditors' rights such that investors are in a position to comprehend the manner in which such rights are exercised.
[4] The fund management company and asset managers of collective investment schemes that purchase units of a collective investment scheme managed by them on behalf of clients shall inform the latter of the payments received.
..... **77**

9. Communication with investors

CISA Institutions must explain the investment character and suitability of the collective investment schemes they manage in a client-friendly (i.e. reader-friendly) form and language, making particular reference to the risks connected with a certain asset class. **78**

However, CISA Institutions may assume that every investor is familiar with the basic risks of investing in money market instruments, bonds, equities, and foreign currencies. **79**

CISA Institutions must ensure a consistent information policy that takes appropriate account of risk potential and risk complexity, and enables the investor to gain an objective picture of the performance of the collective investment scheme and its units. Subject to the relevant statutory and self-regulatory provisions, CISA Institutions are free to choose the scope of the information they provide and the form in which it is delivered. **80**

Fund management companies and SICAVs must ensure that requests for information concerning the basis of the calculation of the net asset value, and the exercising of membership and creditors' rights, as well as risk management and complaints, are dealt with quickly and professionally. **81**

With regard to the specific details of the duty of disclosure, CISA Institutions must comply with the relevant statutory and self-regulatory provisions. **82**

Art. 75 CISA Prospectus
[1] The fund management company and the SICAV shall publish a prospectus for each open-ended collective investment scheme.
[2] The prospectus shall include the fund regulations in cases where interested persons are not notified as to where such regulations may be separately obtained prior to an agreement being concluded or prior to subscription. The Federal Council determines which other information must be contained in the prospectus.
[3] If requested, the prospectus must be provided free of charge to interested persons prior to an agreement being concluded or prior to subscription. **83**

Art. 76 CISA Key Investors Information Document and simplified prospectus
[1] A document containing key information for investors must be published for securities funds and other funds for traditional investments, while a simplified prospectus must be published for real estate funds.
[2] The Key Investor Information Document contains factual information on the key features of the collective investment scheme concerned. It shall be presented in such a way that investors understand the nature and risks of the collective investment scheme and can make informed investment decisions on that basis.
[3] The simplified prospectus contains a summary of the key information provided in the prospectus. It must be easy to understand.
[4] The Federal Council determines the key characteristics and information. The FINMA may formalize the key information in accordance with international developments.
[5] The Key Investor Information Document and simplified prospectus must be made available free of charge to any interested person prior to subscription of the product and prior to concluding an agreement for subscription of the product. **84**

Art. 77 CISA Common provisions
[1] Reference must be made to the prospectus and the Key Investor Information Document or the simplified prospectus in all advertising material, citing where such documents may be obtained.
[2] The prospectus, the Key Investor Information Document or the simplified prospectus and any amendment to such documents must be submitted to the FINMA forthwith. **85**

Art. 84 CISA Right to information
[1] The fund management company and the SICAV shall on request supply investors with information concerning the basis for the calculation of the net asset value per unit.
[2] If investors express an interest in more detailed information on specific business transactions effected by the fund management company or the SICAV, such as the exercising of membership and creditors' rights, or on risk management, they must be given such information at any time.[1]
[3] The investors may request at the courts of the registered office of the fund management company or the SICAV that the audit company or another expert investigate the matter which requires clarification and furnish the investors with a report. **86**

Art. 107a CISO Basic requirements
[1] The key investor information document for securities funds and other funds for traditional investments contains the information required pursuant to Annex 3.
[2] The fund management company and the SICAV date the key investor information document and submit it and any amendment thereto to FINMA immediately. **87**

In publishing performance data for the collective investment schemes they manage, CISA Institutions must comply with the SFAMA Guidelines on the Calculation and Publication of Performance Data of Collective Investment Schemes. **88**

CISA Institutions must disclose all fees and incidental costs incurred on the issue and redemption of units of collective investment schemes, and in the management of the collective investment schemes. They must ensure appropriate transparency with regard to costs, and must comply with the SFAMA Guidelines on the Calculation and Disclosure of the TER of Collective Investment Schemes. **89**

10. Reporting and disclosure duties of CISA Asset Managers

Art. 25 CISO Agreement
Asset managers of collective investment schemes must conclude a written agreement with their clients that governs the rights and obligations of the parties and other material matters. **90**

CISA Asset Managers must observe the duties of disclosure specified in Art. 20 para. 1 let. c CISA and Art. 34 CISO in respect of their Principal and any third parties. **91**

If the CISA Asset Manager is involved in calculating (and publishing) the performance data for the collective investment schemes they manage, it must comply with internationally recognized standards in respect of: **92**

- the calculation method; **93**
- an appropriate period (e.g. 1, 3, and 5 years as well as since launch); **94**
- the selection of suitable benchmarks. **95**

It must disclose any deviations from the standard automatically as part of its financial reporting. **96**

CISA Asset Managers must inform their Principal in an appropriate manner about: **97**

- potential conflicts of interest; **98**
- investment processes, investment strategies, risk factors (e.g. any liquidity problems), use of derivatives, structured products etc.; **99**
- significant changes in personnel or in the organization. **100**

CISA Asset Managers must conclude a written agreement with the Principal on their specific rights and obligations and the other terms of the service to be performed. **101**

Specifically, the written agreement must contain information on the following points: **102**

- scope of the CISA Asset Manager's powers; **103**
- investment objectives and restrictions, in accordance with the pertinent provisions set down in the documents of the collective investment scheme; **104**
- reference currency, in accordance with the pertinent provisions set down in the documents of the collective investment scheme; **105**
- permitted investments, investment techniques, and the use of derivatives and structured products; **106**
- method and frequency of provision of financial statements to the Principal; **107**
- type, structure and components of the remuneration of the CISA Asset Manager, taking into account Art. 21 para. 2 CISA; **108**
- possibility of delegating tasks to third parties, subject to Art. 18b para. 3 CISA and Art. 26 CISO; **109**
- duties to report (if necessary and not already governed elsewhere). **110**

D Duties of due diligence and loyalty in the distribution of collective investment schemes

With regard to distribution, CISA Institutions must comply with the provisions of Art. 24 CISA in conjunction with Art. 34 para. 2[bis] and 4, as well as Art. 34a CISO. **111**

Art. 24 CISA Further rules of conduct
[1] The licensees shall take the measures required to ensure the legitimate acquisition of clients and the objective provision of advice to the latter.
[2] If they engage the services of third parties in the distribution of units in collective investment schemes, they shall conclude distribution agreements with these third parties.
[3] The licensees and third parties engaged to distribute units shall record in writing the client's requirements that they have ascertained and the reasons for each recommendation for investment in a specific collective investment scheme. This written record is handed over to the client. **112**

Art. 34 let. 2[bis] and 4 CISO Duty of disclosure
.....
[2bis] The duty of disclosure with regard to compensation for distribution encompasses the nature and scale of all fees and other pecuniary benefits through which the activities of the distributor are to be compensated.
.....
[4] The fund management company and asset managers of collective investment schemes that purchase units of a collective investment scheme managed by them on behalf of clients shall inform the latter of the payments received. **113**

Art. 34a CISO Duty to keep records
[1] The duty to keep a record under Article 24 paragraph 3 of the Act applies to distribution activities as defined in Article 3 of the Act.
[2] The form and content of the record is governed by the rules of conduct for a system of self-regulation that are recognised by as a minimum standard FINMA under Article 7 paragraph 3 of the Financial Market Supervision Act of 22 June 2007.

114

The SBA's guidelines on the duty to keep documentary records must be complied with. **115**

CISA Institutions and all other financial intermediaries must distribute their collective investment schemes exclusively via distributors which can ensure the proper conduct of business. **116**

If they pay distributor fees, they must operate remuneration systems for their distributors that promote proper client advice and the fostering of long-term relationships. **117**

CISA Institutions and all other financial intermediaries must conclude distribution agreements exclusively on the basis of the SFAMA Guidelines on the Distribution of Collective Investment Schemes (including the "Provisions for Distributors" appendix), and the model distribution agreement, as amended from time to time. They must issue an internal policy governing the specific details. **118**

IV Entry into force

The present Code of Conduct was approved by the Board of Directors of the Swiss Funds & Asset Management Association SFAMA on 7 October 2014. It enters into force on 1 January 2015, replacing the Code of Conduct for the Swiss Fund Industry issued on 30 March 2009 and the Code of Conduct for Asset Managers of Collective Investment Schemes issued on 31 March 2009. There will be a transitional period to 31 December 2015, during which fund management companies, SICAVs, limited partnerships for collective investment, SICAFs, CISA Asset Managers, and representatives of foreign collective investment schemes, as well as their agents, must carry out the necessary implementation work to amend existing contracts. **119**

CONTENTS

SFAMA Swiss Funds & Asset Management Association

Guidelines

Guidelines on the Distribution of Collective Investment Schemes

22 May 2014

I Basic principles, objectives, and binding force

The present Guidelines are aimed at ensuring high quality standards on the Swiss market for collective investment schemes with regard to the information and advice provided to investors. They are part of the self-regulation regime of the Swiss fund industry, supplementing and defining in more detail the provisions on the distribution of collective investment schemes set down in the Code of Conduct for the Swiss Fund Industry issued by the SFAMA. **1**

The Guidelines apply in respect of collective investment schemes which are distributed in Switzerland, including their subfunds and classes. The following are subject to these Guidelines: **2**

- fund management companies pursuant to Art. 28 et seqq. CISA, **3**
- investment companies with variable capital (SICAVs) pursuant to Art. 36 et seqq. CISA, **4**
- investment companies with fixed capital (SICAFs) pursuant to Art. 110 et seqq. CISA, and **5**
- representatives of foreign collective investment schemes pursuant to Art. 123 et seqq. CISA, **6**

referred to below as “Providers”. **7**

The *Provisions for Distributors* contained in the Appendix to these Guidelines form an integral part of the distribution agreements between Providers and Distributors in Switzerland. In the distribution agreements, the Distributors must be obliged to comply with the *Provisions for Distributors* at all times. **8**

For the purposes of the present Guidelines, the term “Distributor” refers to all third parties engaged by a Provider to distribute collective investment schemes in accordance with Art. 24 para. 2 CISA. All “Distributors” within the meaning of the present Guidelines must conclude written distribution agreements with the Providers (in accordance with point 4 of the Guidelines). **9**

Accordingly, for the purposes of these Guidelines the term “Distributor” includes the following: **10**

a) all persons domiciled in Switzerland who distribute (i) units of a Swiss or foreign collective investment scheme to non-qualified investors, **or** (ii) units of a foreign collective investment scheme to qualified investors and therefore require authorization as a Distributor (distributors requiring authorization in accordance with Art. 13 para. 1 and Art. 19 para. 1bis CISA) (referred to below as “*Distributors Requiring Authorization*”); **11**

b) institutions exempt from the requirement to obtain authorization, in accordance with Art. 13 para. 3 CISA in conjunction with Art. 8 CISO (referred to below as "*Exempt Distributors*"); **12**

c) all persons who distribute exclusively units of a Swiss collective investment scheme and only to qualified investors and do not require authorization as a Distributor (since, in accordance with margin note 62 of FINMA Circular 2013/9 "Distribution of Collective Investment Schemes", this distribution does not require authorization, neither is such authorization available) (referred to below as "*Distributors Not Requiring Authorization*"); **13**

d) financial intermediaries domiciled outside Switzerland in accordance with Art. 19 para. 1bis CISA in conjunction with Art. 30a para. 1 CISO that distribute foreign collective investment schemes exclusively to qualified investors in Switzerland (referred to below as "*Foreign Distributors*"). **14**

Providers must also comply with the *Provisions for Distributors* if they themselves distribute collective investment schemes directly. **15**

The *Provisions for Distributors* apply to agents of an insurance company who are not de jure and de facto integrated in the organization of the insurance company on the basis of a commercial agency contract. **16**

II Guidelines

A Selection of and collaboration with Distributors

Basic principle

1. With regard to the distribution of the collective investment schemes they manage or represent, Providers must work exclusively with Distributors that can guarantee the proper conduct of business activities. **17**

   Within the bounds set by the applicable statutory and regulatory provisions, Providers may delegate tasks set down in the present Guidelines to third parties. **18**

Selection of Distributors

2. Providers must select Distributors carefully in accordance with the principle set down under point 1. **19**

3. Providers must ensure that Distributors supply the evidence specified in the Appendix under IV. A. **20**

Conclusion of distribution agreements

4. Providers must conclude distribution agreements on the basis of the currently valid versions of the model distribution agreements issued by the SFAMA. The Provisions for Distributors contained in the Appendix to these Guidelines form an integral part of these distribution agreements. **21**

5. Providers must oblige Distributors to comply at all times with the Provisions for Distributors contained in the Appendix to these Guidelines. **22**

Cooperation with Distributors

6. Providers must check whether the Distributors have the personal and professional resources to perform their task. Where necessary, Providers must ensure appropriate support, instruction, and training to Distributors to enable them to comply with the Provisions for Distributors at all times. **23**

Monitoring obligations

7. Providers must have appropriate measures and controls in place to allow them to determine any significant changes in the Distributor's legal form, structure (especially where other agents are used), staffing, business activity and/or business conduct, and also with regard to the means and methods used by the Distributor to distribute the collective investment schemes. **24**

8. Providers must oblige Distributors Requiring Authorization to have an audit firm as defined in the Appendix and in Enclosure 1 "Audit" conduct an annual audit of their compliance with the Provisions for Distributors and with the duty to report as specified in Art. 16 CISA. Providers must monitor the timely submission of the corresponding audit reports, and must evaluate these systematically. **25**

   Providers must oblige Exempt Distributors to instruct an audit firm as defined in the Appendix and in Enclosure 1 "Audit". The said audit firm must inform the Provider concerned in writing if it discovers violations of the Provisions for Distributors that would lead to a reservation in the report on the regulatory audit. **26**

   Providers must oblige Distributors Not Requiring Authorization and Foreign Distributors to submit each year written confirmation pursuant to Enclosure 2 "Confirmation" to the Appendix. If there are indications that the confirmation does not correspond to the facts, the Provider must take appropriate measures. **27**

9. Where violations of the *Provisions for Distributors* or the duty to report pursuant to Art. 16 CISA become known in the ordinary course of cooperation or from reports by the audit firm, the Provider must require the Distributor to take appropriate corrective action immediately and to report to the Provider on its completion. In the case of repeated or gross violations, the distribution agreement must be terminated and the supervisory authority informed. **28**

10. In the case of delegation to a Sub-Distributor, the Provider must oblige the Distributor to oblige the Sub-Distributor to comply with the duties specified in Section IV D of the Appendix. **29**

B Internal directive

Providers must issue an internal directive setting down their policy and guiding principles with regard to the selection and ongoing support for/monitoring of Distributors. This directive must cover aspects including: **30**

- the selection criteria and process; **31**
- responsibilities for concluding distribution agreements and for the ongoing support **32**

for/monitoring of Distributors (measures to identify significant changes and unusual business conduct);

- procedure to be adopted if changes (pursuant to point 9) or unusual business conduct on the part of the Distributor are identified, or if the *Provisions for Distributors* are violated; **33**

III Other provisions

A Minimum standard

The Swiss Financial Market Supervisory Authority FINMA has recognized the present Guidelines as a minimum standard (FINMA Circular 08/10 "Self-Regulation Recognized as a Minimum Standard"). **34**

B Entry into force

The present Guidelines were approved by the Board of Directors of the Swiss Funds & Asset Management Association SFAMA on 22 May 2014. They enter into force on 1 July 2014 subject to the transitional provisions in Art. 158d para. 4 CISA and Art. 144c para. 5 CISO. **35**

Existing distribution agreements must be amended by no later than 30 June 2015. Compliance with the requirement in the Appendix is only required once the corresponding amendments have been made to the respective distribution agreements. **36**

C Appendix

Provisions for Distributors **37**

Appendix: Provisions for Distributors (referred to below as "the Provisions")

I Objectives

The following provisions are aimed at ensuring that investors receive sufficient information and advice in the distribution of collective investment schemes in Switzerland. Persons at whom distribution activities in Switzerland are aimed should be able to rely on the collective investment schemes being distributed in a professional and transparent manner. **1**

II Validity and binding force

These provisions form an integral part of the distribution agreements between Providers and Distributors in Switzerland. In the absence of any explicit restrictions or specifications below, these Provisions apply to both distribution to non-qualified investors and distribution to qualified investors by the following Distributors: **2**

a) all persons domiciled in Switzerland who distribute (i) units of a Swiss or foreign collective investment scheme to non-qualified investors or (ii) units of a foreign collective investment scheme to qualified investors and therefore require authorization as a Distributor (distributors requiring authorization in accordance with Art. 13 para. 1 and Art. 19 para. 1bis CISA) (referred to below as "Distributors Requiring Authorization"); **3**

b) institutions exempt from the requirement to obtain authorization, in accordance with Art. 13 para. 3 CISA in conjunction with Art. 8 CISO (referred to below as "Exempt Distributors"); **4**

c) all persons who distribute units of a Swiss collective investment scheme to qualified investors and do not require authorization as a Distributor (since, in accordance with margin note 62 of FINMA Circular 2013/9 "Distribution of Collective Investment Schemes", this distribution does not require authorization, neither is such authorization available) (referred to below as "Distributors Not Requiring Authorization"); **5**

d) financial intermediaries domiciled outside Switzerland in accordance with Art. 19 para. 1bis CISA in conjunction with Art. 30a para. 1 CISO that distribute foreign collective investment schemes exclusively to qualified investors in Switzerland (referred to below as "Foreign Distributors"). **6**

These provisions relate solely to activities in the distribution of collective investment schemes. They do not affect the Distributor's other activities, neither do they contain any provisions on other functions, such as the administrative settlement of transactions, or requirements in connection with the Anti-Money Laundering Act, or obligations under tax law. **7**

III Provisions

A Organization of the Distributor

1. The Distributor must take the necessary organizational steps to ensure that it complies with these Provisions at all times. The Distributor must supply the Provider with all such information as the latter requires to perform its monitoring duties. **8**

2. In providing advice on collective investment schemes, the Distributor must employ only persons who have the necessary professional training and experience to satisfy the principles of the Provisions. **9**

3. The Distributor must also comply with the duty to report specified under Art. 16 CISA. **10**

B Duties to provide information

4. The Distributor acts exclusively in the interests of the investors. **11**

5. The following principles must be observed if the Distributor distributes collective investment schemes in direct contact with investors, where individual advice is given: **12**

   5.1 In the case of distribution to non-qualified investors, and to qualified investors as defined in Art. 10 para. 3bis CISA (high-net-worth individuals) who do not waive advice, the Distributor must take the investor's individual needs into account, in particular their risk tolerance and risk capacity. **13**

   5.2 In the case of distribution to non-qualified investors, the Distributor must give investors objective information on the investment character, opportunities, and risks of the collective investment schemes being offered. In fulfilling this duty, the experience and specialist knowledge of the investor and the complexity of the collective investment scheme in question must be taken into account. The Distributor may assume that investors are familiar with the basic risks of investing in money market instruments, bonds, equities, and foreign currencies. **14**

   5.3 With regard to the duties in respect of disclosure and providing information, Distributors must comply with the Transparency Guidelines as amended from time to time. **15**

   5.4 The Distributor must also comply with the contractual, statutory and self-regulatory duties to which it is subject, including the duty to keep documentary records set down in Art. 24 para. 3 CISA, and the Swiss Bankers Association's guidelines on the duty to keep documentary records pursuant to Art. 24 para. 3 CISA. **16**

6. The following principles must be observed if the Distributor distributes collective investment schemes via electronic channels or by other means, without direct client contact as defined in point 5: **17**

   6.1 The Distributor must make explicit reference to the fact that it does not provide advice. **18**

   6.2 The Distributor must observe its duty to provide information pursuant to point 5.2 and point 5.3 mutatis mutandis. In doing so, it may supply information in standardized formats. **19**

   6.3 The Distributor is not subject to any duty to provide information pursuant to points 5.2 and 5.3 above in respect of investors who issue a written declaration stating that they waive their right to receive additional information. **20**

   If an investor issues a subscription order for units in collective investment schemes on their own initiative or if they themselves request information on certain collective investment schemes, the provisions of the present Section B do not apply. The contact initiated by the investor is to be documented. **21**

7. With regard to distribution via the Internet, the Distributor must comply with FINMA Circular 2013/9 "Distribution of Collective Investment Schemes". **22**

8. The Distributor must make the documents supplied to it by the Provider available to interested investors free of charge. This applies specifically to prospectuses, simplified prospectuses / Key Investor Information Documents, collective investment agreements, articles of association, and investment regulations, as well as the annual reports and semi-annual reports of the collective investment schemes offered. **23**

9. The information and documentation provided by the Distributor must be complete, and must be structured – in both written and spoken form – in such a way that they are clear and comprehensible for investors at all times. In particular, it is not permitted to give misleading information or promises with regard to returns. (This does not apply in the case of information on the indicative minimum price for collective investment schemes with limited downside risks.) When using historical performance data, it must be pointed out that this performance cannot be guaranteed in the future. Where the Distributor makes material statements on individual collective investment schemes, it must adhere to the information contained in the documentation supplied to it by the Provider. **24**

10. The Distributor must refrain from all forms of aggressive sales techniques, such as, for example, unsolicited and intrusive contacting of potential clients by telephone (cold calling) or via electronic media (spamming). **25**

11. Recommendations made primarily in the Distributor's own interests, and at the expense of investors, are not permitted. This applies in particular to any practice that causes investors to make a disproportionately high number of switches in their portfolio (portfolio churning). **26**

12. The Distributor must refrain from any form of front running. Front running refers to proprietary transactions concluded by the Distributor or its employees in anticipation of securities transactions on the part of a collective investment scheme, e.g. as a result of significant subscriptions or redemptions of units by investors. **27**

C Distributor documentation

13. The Distributor must issue written regulations or documentation governing the following: **28**

    - organizational measures implemented pursuant to point 1; **29**

- requirements for professional training and experience, and instruction and training pursuant to point 2; **30**
- advice and, in the case of distribution to non-qualified investors, explanation of risks pursuant to point 5 (e.g. in minutes taken of discussions); **31**
- waiver of additional information pursuant to point 6.3 (e.g. in a memorandum). **32**

IV Other provisions

A Evidence

Distributors must supply the Provider with the following evidence: **33**

- proof from the supervisory authority of authorization as a Distributor, or, in the case of a Foreign Distributor, proof that it is admitted for the distribution of collective investment schemes in its country of domicile (Art. 30a para.1 CISO). This does not apply to *Exempt Distributors* or *Distributors Not Requiring Authorization*; **34**
- information on its organization in respect of the distribution of collective investment schemes. This does not apply to *Exempt Distributors*. **35**

B Audit

Irrespective of their legal form, *Distributors Requiring Authorization* and *Exempt Distributors* must have their compliance with these Provisions with regard to the form of distribution concerned audited by an audit firm. The audit firm also audits the Distributor's compliance with Art. 16 CISA. The Distributor must inform the Provider of the person mandated to conduct the audit. **36**

The specific aspects of the audit are covered in detail in Enclosure 1 "Audit". **37**

C Confirmation

Distributors Not Requiring Authorization and *Foreign Distributors* must submit to the Provider, unsolicited, by the end of January each year a confirmation pursuant to Enclosure 2 "Confirmation". **38**

D Delegation to Sub-Distributors

The Distributor may delegate tasks delegated to it by the Provider subject to the latter's approval. The appointed Sub-Distributors must be Distributors as defined under margin note 10 of the Guidelines, and in the case of distribution to non-qualified investors only *Distributors Requiring Authorization* and *Exempt Distributors* may be appointed as sub-distributors or additional distributors. **39**

In the case of such further delegation, the Distributor is obliged to supply the Provider with all such information as the latter needs to perform its monitoring duties in accordance with margin notes 29 and 30 of the Guidelines. **40**

The Distributor must impose on any sub-distributors appointed the obligation to observe the present Provisions. The sub-distributors appointed must be obliged to have an annual audit conducted of their compliance with the *Provisions for Distributors* as set down in the Appendix and Enclosure 1 "Audit", and with the duty to report pursuant to Art. 16 CISA or, where applicable, to provide confirmation pursuant to Enclosure 2. The Distributors must monitor the timely submission of the audit reports concerned or the confirmations, and must evaluate these systematically. Reports from the audit firm, as well as knowledge of violations of the *Provisions for Distributors* or the duty to report pursuant to Art. 16 CISA gained in the ordinary course of cooperation between Distributors and Sub-Distributors, must be forwarded to the Provider. In the case of repeated or gross violations, the Distributor must terminate the distribution agreement with the Sub-Distributor, and must inform the Provider and the supervisory authority of this. **41**

E Entry into force

The present Provisions were approved by the Board of Directors of the Swiss Funds & Asset Managemen Association SFAMA on 22 May 2014. Subject to Section III B of the Guidelines on the Distribution of Collective Investment Schemes (other provisions / entry into force), they enter into force on 1 July 2014. **42**

The Swiss Financial Market Supervisory Authority FINMA has acknowledged and accepted the present Provisions as an Appendix to the Guidelines on the Distribution of Collective Investment Schemes. **43**

F Enclosures

1. *Audit of compliance with the Provisions for Distributors in accordance with IV B above and the duty to report pursuant to Art. 16 CISA.* **44**
2. *Model: Confirmation regarding distribution to qualified investors by Distributors Not Requiring Authorization or Foreign Distributors pursuant to IV C above* **45**

Enclosure 1: Audit

Audit of compliance with the Provisions for Distributors in accordance with Section IV B of the Provisions and the duty to report pursuant to Art. 16 CISA

A Audit of Exempt Distributors (Art. 13 para. 3 CISA in conjunction with Art. 8 CISO)

As part of the regulatory audit, the audit firm must check compliance with the *Provisions for Distributors* on the basis of the parameters set by the supervisory authority in the pertinent FINMA Circulars. **1**

It must set the audit findings down in the report on the regulatory audit. If it discovers any violations that would lead to a reservation in the report on the regulatory audit, it must inform the Provider concerned in writing. **2**

B Audit of Distributors Requiring Authorization (Art. 13 para. 1 CISA)

The following are permitted to conduct audits in respect of the *Provisions for Distributors*: **3**

- audit experts pursuant to Art. 4 of the Audit Oversight Act of 16 December 2005 (AOA); **4**
- auditors pursuant to Art. 5 AOA; **5**
- audit firms pursuant to Art. 6 para.1 AOA. **6**

The Distributor must inform the Provider of the person mandated to conduct the audit and of any change in this regard. **7**

The audit of compliance with the *Provisions for Distributors* must be conducted annually. The audit reports on compliance with the *Provisions for Distributors* are to be drawn up within three months of the end of the financial year. **8**

Compliance with the following points is to be audited in the case of distribution agreements that exclusively cover distribution to qualified investors: **9**

a) compliance at all times with the Provisions for Distributors applicable to distribution to qualified investors; **10**

b) distribution of foreign collective investment schemes exclusively to qualified investors and in compliance with all applicable regulatory and self-regulatory provisions; **11**

c) [for foreign collective investment schemes only: the exclusive use of fund documents that specify the representative, the paying agent, and the place of jurisdiction.] **12**

The person mandated to carry out the audit must deliver the audit report to the Provider concerned. If they find in their report that there have been violations of the *Provisions for Distributors* or the duties to report pursuant to Art. 16 CISA, they must also send a copy of their audit report to FINMA. **13**

Enclosure 2: Confirmation

Model: Confirmation regarding distribution to qualified investors by Distributors Not Requiring Authorization or Foreign Distributors pursuant to Section IV C of the Provisions

(As applicable) To [name of Distributor Not Requiring Authorization] [name of Foreign Distributor domiciled outside Switzerland] **1**

We, [name of Distributor] ("Distributor") distribute units of collective investment schemes exclusively to qualified investors in accordance with the distribution agreement of XXX. **2**

In this regard, we confirm the following: **3**

In the past calendar year, we [and the additional distributors / sub-distributors we have appointed]: **4**

a) have at all times complied with the *Provisions for Distributors* applicable to distribution to qualified investors; **5**

b) have distributed the foreign collective investment schemes exclusively to qualified investors and in compliance with all applicable regulatory and self-regulatory provisions; **6**

c) [for foreign collective investment schemes only: have exclusively used fund documents that specify the representative, the paying agent, and the place of jurisdiction.] **7**

Remarks: **8**

[Place] [Date] [Signature]: **9**

TABLE OF CONTENT

SwissBanking

November 2013

Guidelines on the duty to keep documentary records according to section 24(3) CISA (Collective Investment Schemes Act)

Introduction[1]

The duties set out in these guidelines are without prejudice to any other statutory, contractual or self-regulatory duties incumbent on authorised institutions.

Art. 1 Basic principle

These Swiss Bankers Association guidelines apply to the duty to keep documentary records according to section 24 (3) CISA. They set a minimum standard, and any authorised institution may apply higher standards.

These guidelines govern the form and content of the duty to keep documentary records. This duty only applies when an authorised institution provides *individual* advice to a client, i.e. when a client advisor makes a *personal recommendation to buy* units or shares in one or more *collective investment schemes* ("personal recommendation").

The duty to keep documentary records only applies where distribution activity within the meaning of section 3 CISA and section 3 CISO is conducted (for more details see FINMA Circular 2013/9 Distribution).

There is no duty to keep a documentary record when a client is given a personal recommendation to *hold* or *sell* units or shares in a collective investment scheme.

Art. 2 Client needs

The documentary record must contain information gathered on investment objectives and an indication of the client's risk profile. Existing information provided by the client when drawing up the general investment profile may be used.

[1] Translation of the original German version. In case of any divergence, the German version shall prevail.

Art. 3 Reasons for the client advisor making a personal recommendation to buy units or shares in a collective investment scheme

In addition to any information already gathered or held according to article 2, the reasons for the client advisor making a personal recommendation to buy units or shares in one or more collective investment schemes must always be documented.

Art. 4 Form of the documentary record

The documentary record must be in writing or on any other form of data carrier that allows it to be reproduced unchanged in writing for the client at any time. On that condition, the authorised institution is free to choose the type of the recording and the suitable data carrier.

The requirements for written form set out in sections 11 et seq. of the Code of Obligations (CO) do not apply, i.e. neither the authorised institution nor the client is required to sign the documentary record.

Art. 5 Language

The documentary record should generally be kept in the language in which the advice was given. The language selected by the client for correspondence may also be used. Authorised institutions may choose between the two.

Art. 6 Informing the client

Where a client advisor makes a personal recommendation to a client to buy units or shares in a collective investment scheme, the client must be informed in writing of the content of the documentary record drawn up under articles 2-4 above. This may be done in person or by

post, fax or e-mail or via the internet. The requirements for written form set out in sections 11 et seq. CO do not apply.

The client may expressly waive the handing over of the documentary record. Such waiver must be clearly recorded.

Art. 7 Informing the client where advice is given in writing

Where advice is given by correspondence there is no need to handing over the documentary record as specified in article 6 above, provided the key disclosures in articles 2-3 above are already included in the correspondence of the authorised institution.

Art. 8 Relationship to civil law

These guidelines govern the form and content of the documentation imposed by the supervisory regulation. Questions of the legal effectiveness or validity of any purchase of units or shares in collective investment schemes are not within the scope of these guidelines.

Art. 9 Entry into force

These guidelines have been recognised by FINMA as a minimum standard within the meaning of section 7 (3) of the Financial Market Supervision Act of 22 June 2007. They enter into force on 1 January 2014 ~~and apply until 31 December 2015~~.[2]

[2] Deletion by the Board of Directors of the SBA, approved by FINMA decision of 29 April 2015.

SwissBanking

Swiss Bankers Association
Aeschenplatz 7
PO Box 4182
4002 Basel
Switzerland
T +41 61 295 93 93
F +41 61 272 53 82
office@sba.ch
www.swissbanking.org

SFAMA Swiss Funds & Asset Management Association

Guidelines

Guidelines on Duties Regarding the Charging and Use of Fees and Costs (Transparency Guidelines)

22 May 2014

I Objectives and scope

The objective of these Guidelines is to provide more specific detail on the duty to provide information set down in Art. 20 para. 1 let. c CISA. They are aimed at ensuring that, according to their own needs, investors are able to gain a picture of the fees and costs charged to a fund's assets, and the use made of those fees and costs. The Guidelines are also designed to contribute to the relative equal treatment of the investors invested in a fund, ruling out the cross-subsidization of certain privileged investors by non-privileged investors. 1

In the absence of any provisions to the contrary, these Guidelines apply to all licensees as defined in Art. 13 CISA and their agents. They also apply to foreign funds distributed in Switzerland, their representatives, and the persons who distribute these funds in Switzerland. If foreign law provides for stricter rules regarding distribution in Switzerland and these rules are set down in the pertinent fund documents, it must be ensured that Swiss investors also benefit from them. The relevant rules must be explicitly and exhaustively listed in the appendix to the sales prospectus. The provisions of these Guidelines apply to all persons and funds only with regard to the relevant activities in Switzerland or from Switzerland. 2

These Guidelines are restricted to the applicable provisions of the CISA and CISO. They have no influence on the relationships under private law between a licensee / its agents and the investors, and they should in no way limit or influence the freedom of contract between the parties. 3

The scope of the present Guidelines is limited to the fund business. Hence they do not, for example, cover the asset management business for non-fund investors (individual asset management) of a Swiss fund management company. 4

II Guidelines

A Duty to provide information with regard to the charging of fees and costs

1. Setting fees and costs and definition of terms

In principle, the licensees set the type and amount of the fees, and negotiate the costs which are to be charged accordance with the fund regulations. This relates specifically to: 5

- the fees set down in Art. 37 para. 1 let. a to d CISO; 6
- the incidental costs set down in Art. 37 para. 2 CISO; and
- commissions and fees incurred in connection with the issue and redemption of units (Art. 38 CISO).

Licensees have the right to designate fees and costs individually or to aggregate them under one or more terms (e.g. “all-in fee” or “flat fee”). In the latter case, the licensee must take into account the provisions of Art. 37 para. 4 CISO. 7

A fund management company / SICAV may structure a Swiss fund to have various unit classes with different fee rates (including unit classes with a management fee of 0%). In such cases, the conditions for participating in a given class must be defined on the basis of objective criteria (e.g. a unit class for qualified investors or a unit class with a minimum investment volume) and this must be disclosed transparently in the fund documents. 8

2. General duty to provide information

In principle, licensees must disclose the information regarding the charging and use of fees and costs, in accordance with Art. 20 para. 1 let. c CISA, transparently in the fund documents (e.g. fund contract, investment regulations, prospectus or annual report). 9

In the absence of any further-reaching provisions under B below, the following information is to be disclosed in the fund documents[1] in respect of the charging of fees and costs: 10

- the fees and costs the licensee or its agents may charge to the fund; 11
- the level of such fees; bands or maximum rates may also be specified (in such cases, the actual fees charged must be disclosed in the annual report);
- the level of the fees and incidental costs in the last reporting period. The scope set down in Art. 94[2] CISO-FINMA is sufficient for the disclosure.

The following information is to be disclosed in the fund documents in respect of the use of fees and costs: 12

- whether the fees may be paid to third parties for the provision of services in connection with the performance of the fund business, without the identity of the third party or the amounts paid to them having to be disclosed (e.g. the identity of the distributor or the amount of the retrocessions paid to them, or the identity of the sub-custodian and the sub-custody fees paid to them); as well as 13
- the services concerned.

3. Investor-specific duty to provide information

In addition to the general information, the licensees and their agents are obliged to answer justified enquiries from investors free of charge, provided the following conditions are met: 14

- Existing investors are entitled to receive information, as are former investors[3]; 15
- The parties to the fund contract (as a rule the fund management company and custodian bank) or the SICAV / SICAF are obliged to disclose information in accordance with the information available to them, as are their agents who have a direct contractual relationship with the investors, in respect of the fees they receive;
- The investor must assert their justified interest; in particular, the duty to provide information is restricted to their specific investment and the period in which they were invested, taking into account the legal regulations on limitation periods and the reasonableness of their information request.

[1] For Swiss funds, this is essentially the fund contract (Art. 35a para. 1 let. j CISO, Art. 37 para. 3 CISO, and Art. 38 para. 2 CISO).
[2] New with the revised CISO-FINMA effective since 1 January 2015.
[3] With regard to the period during which they were invested.

B Duties in connection with the use of fees and costs (retrocessions and rebates)

1. Retrocessions

For the purposes of these Guidelines, retrocessions are deemed to be payments and other soft commissions paid by fund management companies, SICAVs and SICAFs and their agents for distribution activities in respect of fund units. 16

Retrocessions are normally paid from the management fee and/or the distribution fee, and on the basis of a written contract. 17

The granting of retrocessions is permitted, irrespective of the contractual relationship between the recipient of the retrocession and the investor (asset management agreement, advisory agreement, execution only) and irrespective of whether the service qualifies as distribution or is not deemed to be distribution pursuant to Art. 3 CISA. 18

Art. 34 para. 2bis CISO in conjunction with Art. 21 para. 1 CISA provides for a duty to provide information with regard to compensation for distribution. This duty to provide information is to be met by the licensees concerned that pay the retrocessions, by means of transparent disclosure of those retrocessions. They must state in the fund documents that retrocessions are paid, and for which services, without having to name the service providers. 19

The recipients of the retrocessions must ensure transparent disclosure. They must inform investors, unsolicited and free of charge, about the amount of the compensation they may receive for distribution, for example by giving the calculation parameters or compensation bands. On request, they must disclose the amounts they actually receive for the distribution of the collective investment schemes held by the investors concerned. 20

The receipt of retrocessions for distribution activities may give rise to conflicts of interest, for example if the recipients have already been compensated for their service. In such cases, the existence of the conflicts of interest and their nature are to be disclosed to the investors by the recipient of the retrocessions in a suitable and sufficiently specific form. 21

In addition to the above provisions, licensees and their agents must comply with all provisions applicable to them under civil law and the relevant provisions of the currently valid FINMA Circular “Guidelines on asset management” in respect of disclosure and, where applicable, waivers. 22

2. Rebates

For the purposes of the present Guidelines, rebates are defined as payments by fund management companies, SICAVs, SICAFs and their agents directly to investors from a fee or cost charged to the fund with the purpose of reducing the said fee or cost to a contractually agreed amount. 23

Rebates are permitted provided that **24**

- the aforementioned financial intermediaries pay them from the fees due to them (so that they are not charged additionally to the fund assets); **25**
- they are granted on the basis of objective criteria (see below);
- all investors (irrespective of whether they are qualified investors or not), who qualify on the basis of these objective criteria and demand rebates are also granted these within the same timeframe and to the same extent; and
- they are disclosed transparently in the fund documents[4] (see below).

Examples of objective criteria include the investment volume of a fund or the product range of a promoter of collective investment schemes, the amount of the fees generated by the investors, the expected investment period, and the willingness of the investor to provide support in the launch phase of a fund. **26**

The fund documents must disclose whether investors may be granted rebates on the fees or costs, and if so subject to which conditions (objective criteria). **27**

At the request of the investor, the aforementioned financial intermediaries must disclose free of charge the objective criteria for granting rebates, and the corresponding amounts. The names of the persons who already receive rebates need not be disclosed (business confidentiality). **28**

III Other provisions

A Minimum standard

The supervisory authority has recognized these Guidelines as a minimum standard (FINMA Circular 2008/10 “Self-Regulation as a Minimum Standard”). **29**

B Entry into force

The present Guidelines were approved by the Board of Directors of the Swiss Funds & Asset Management Association SFAMA on 22 May 2014. They enter into force on 1 July 2014. **30**

Fund management companies and SICAVs must submit fund contracts, investment regulations or sales prospectuses amended in line with these Guidelines to the supervisory authority for approval by no later than 1 March 2015. Representatives of foreign funds must submit fund contracts, investment regulations or sales prospectuses amended in line with these Guidelines to the supervisory authority for approval by no later than 1 June 2015. With respect to the granting of rebates (see margin number 23 et seqq.), compliance with the respective provisions is only required once the corresponding amendments have been made to the fund contract, investment regulations or sales prospectus. **31**

[4] For Swiss funds, this is the prospectus (Annex 1 point 1.12 CISO).

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SFAMA Swiss Funds & Asset Management Association

Guidelines

Guidelines on the valuation of the assets of collective investment schemes and the handling of valuation errors in the case of open-end collective investment schemes

20 June 2008

(Version 25 August 2015)

I Basic principles, aims and binding force

These guidelines are part of the self-regulatory measures implemented by the Swiss fund sector, and are subordinate to the Code of Conduct of the Swiss Funds & Asset Management Association SFAMA (SFAMA Code of Conduct). 1

The guidelines are aimed at ensuring the uniform implementation of the legal provisions on the valuation of the assets of collective investment schemes, the calculation of net asset values, and the issue and redemption of units in the case of open-end collective investment schemes. They also set down general principles for the handling of valuation discrepancies in the case of open-end collective investment schemes. 2

The guidelines apply to Swiss fund management companies pursuant to Art. 28 et seq. CISA and investment companies with variable capital (SICAVs) pursuant to Art. 36 et seq. CISA in respect of 3

- securities funds pursuant to Art. 53 et seq. CISA, and 4
- other funds for traditional and for alternative investments pursuant to Art. 68 et seq. CISA. 5

The guidelines apply to investment companies with fixed capital (SICAFs) pursuant to Art. 110 et seq. CISA only with regard to the valuation of the assets of the collective investment scheme for financial statements (cf. Art. 117 CISA). 6

Compliance with the present guidelines must also be ensured where tasks are delegated. The fund management company or SICAV/SICAF must ensure that its agents implement the provisions of the present guidelines in full in carrying out the functions delegated to them. 7

II Guidelines

A Valuation of the assets of collective investment schemes

Principles

1. The assets of collective investment schemes are to be valued at their current market value. In the case of assets traded on a stock exchange or another regulated market open to the public (referred to below collectively as “exchanges”), this corresponds 8

to the market price, which is in principle taken as being the last price paid.

2. If trading takes place on more than one exchange, the last price paid on the main market is to be used (Art. 88.1 CISA). **9**

If there is no paid price available for the main market, a paid price from a representative secondary market may be used instead. Such prices must be checked for plausibility against the bid and ask prices available on the main market. **10**

Deviations / special cases

3. Assets for which there is no reliable price, or which are not traded on an exchange, are to be valued at the price that would probably be obtained in a diligent sale at the time of valuation (Art. 88.2 CISA). The following methods may be used to determine such prices (please note that this is not an exhaustive list): **11**

Shares and other equity-type securities and rights

- Enquiries with a number of different brokers that are independent of each other. **12**

Bonds and other debt securities and rights (including discounted paper)

- Valuation on the basis of the current price of securities which are comparable in terms of maturity and credit rating and are traded on an exchange, or **13**
- Valuation on the basis of the current market return on comparable securities. **14**

Convertible and warrant bonds

- Valuation on the basis of the price or the calculated value of the individual components. **15**

Units and shares of other open-end collective investment schemes that are issued and redeemed on a daily basis

- Valuation in principle at the net asset value. **16**

Units and shares of other open-end collective investment schemes that are not issued and redeemed on a daily basis

- Valuation on the basis of the last reported net asset value, taking into account any market fluctuations which have occurred. **17**

Structured products

- Valuation on the basis of the prices of the underlying assets using appropriate valuation models that are recognized in practice (Art. 26.2 in conjunction with Art. 32.2 CISO-FINMA). **18**

Derivative financial instruments

- Valuation on the basis of the prices of the underlying assets using appropriate valuation models that are recognized in practice (Art. 32.2 CISO-SFBC). **19**

Mortgage investments

- Valuation on the basis of recognized guidelines for mortgage investments. **20**

Private equity holdings

- Valuation on the basis of internationally recognized standards for the valuation of such companies and projects (Art. 85.1 CISO-FINMA). **21**

Money market instruments (i.e. instruments with an original term to maturity or interest rate adjustment period of up to 12 months)

- Valuation at cost, with straight-line deferment of the difference vis-à-vis the redemption price until maturity. In the case of more marked changes in the market environment or the credit rating of the asset, the valuation is to be adjusted accordingly. **22**

Other assets and liabilities held by a collective investment scheme

- Bank deposits at sight and term deposits (including fiduciary investments), claims, etc., are to be valued at their nominal value. If the credit rating of the asset changes, the valuation is to be adjusted accordingly. Broken-period interest is to be deferred to each valuation day. **23**
- Liabilities (e.g. debit interest) and accrued costs are to be deferred to each valuation day. **24**

4. For the translation of the prices of assets denominated in foreign currencies, the middle rates supplied by a recognized quotation service are to be used. **25**

Organizational measures

5. The valuation of the assets is to be conducted by a unit which is independent from those responsible for the asset management and securities trading in respect of the collective investment scheme (cf. SFAMA Code of Conduct). **26**

6. The prices used for the valuation must be drawn from a recognized external source which is independent of the fund management company or the SICAV/SICAF and its agents. Once selected, the price source and the times at which prices are recorded may only be changed in justified exceptional cases. Any deviations must be readily verifiable at all times and must be officially documented. **27**

7. In the case of assets that cannot be satisfactorily valued through external sources or the methods listed under section 3 above, a valuation by the asset manager may be used in justifiable exceptional cases pertaining to a minor portion of the assets of a collective investment scheme. Valuations made by the asset manager must be readily verifiable by the fund management company or the SICAV/SICAF at all times and must be officially documented. In the case of additional purchases and partial sales, the valuation price delivered by the asset manager and used previously is to be compared with the actual transaction price and adjusted where necessary. **28**

8. The prices received from external sources are to be subjected to a plausibility check prior to the calculation of the net asset value. This applies especially to unlisted **29**

assets and/or assets that are seldom traded. In checking the reliability of the prices supplied, the fund management company or the SICAV/SICAF focuses on criteria including the following (the situations given in parentheses can be indications of erroneous prices or prices unsuitable for valuation purposes):

- deviations in price compared with the previous day and compared with the actual prices of additional purchases and partial sales (the deviations exceed certain tolerance levels or the reported price has remained unchanged for several days); **30**

- ensuring the last paid price is up to date (reported price is dated several days previously). **31**

If the fund management company or the SICAV/SICAF identifies an instance where a supplied price may be erroneous, or if, for other reasons, it regards the prices received from the external source as being inadequate for the valuation of the assets of the collective investment scheme, it may set the prices itself in accordance with a recognized method (see section 3 for examples). All deviations from the prices received from the external source must be readily verifiable at all times and are to be officially documented accordingly. **32**

B Calculating the net asset value of open-end collective investment schemes

Basic principle

9. The net asset value per unit is determined by the market value of the assets, minus all the fund's liabilities, divided by the number of units in circulation (Art. 83.2 CISA). In calculating the net asset value, all assets and liabilities held by the open-end collective investment scheme at the moment in question are to be taken into account. Adequate provision is to be made for transactions which have been concluded but not yet settled, as well as for pending corporate actions. **33**

Organizational measures

10. The calculated net asset values and the issue and redemption prices of the units are to be systematically checked (i.e. validated) before publication. The following measures, among others, can be used to identify errors: **34**

- plausibility check of the calculated net asset value, e.g. by comparison with the prior calculation (where the change is not plausible, the prior valuation is to be checked as well); **35**

- regular matching of holdings with the custodian bank. **36**

C Issue and redemption of units

Using the forward pricing method for the issue and redemption of units

11. The forward pricing method is to be used for the issue and redemption of units. With this method, orders for the acquisition and redemption of units received by a certain time (cut-off time) are settled by the fund management company/SICAV at a net asset value it determines on the basis of market prices paid after the cut-off time. For the purposes of determining the net asset value, assets for which there are no reliable market prices are also to be valued for a point in time **after** the cut-off time in accordance with section 3 of these guidelines. **37**

In setting the cut-off time, the fund management company/SICAV takes into account the trading hours on the exchanges on which the open-ended collective investment scheme's investments are traded. **38**

It values the assets of the open-end collective investment scheme at market prices paid **after** the cut-off time. **39**

If trading on an exchange closes in the morning or early afternoon Swiss time, the fund management company/SICAV may use prices that are already known at the cut-off time for accepting orders for the valuation. If the investments of an open-end collective investment scheme valued in this manner exceed 25% of its assets, the fund management company/SICAV must adjust the valuation in line with the developments known in the meantime which could have a relevant impact on the net asset value (cf. section 13 and 15). **40**

Any regulations in deviation from the above (e.g. historic pricing) are only permitted in the case of open-end collective investment schemes whose portfolios have an actual overall duration of up to 12 months. Exceptions in this regard are marked changes in the interest-rate and credit risks (cf. section 3, Money market instruments). **41**

The fund management company/SICAV must explain in the prospectus the conditions for the issue and redemption of units, as well as the principles for valuing the assets of the open-end collective investment scheme. **42**

Exchange-traded funds

12. In the case of exchange-traded funds, the fund management company/SICAV must appoint a market maker which must ensure that the difference between the net asset value – which is continually updated – and the current stock exchange price does not exceed a certain threshold limit. **43**

Deferral of repayment / suspension of the issue of units

13. Pursuant to Art. 110.1 CISO, in the cases envisaged in the fund regulations, the repayment may be temporarily deferred if a significant proportion of the assets of an open-end collective investment scheme can no longer be valued. In the cases listed under clauses a to c, units are also not to be issued. Depending on the reasons for which the calculation of the net asset value is impossible, a distinction is to be drawn between: **44**

ordinary situations such as

- regular exchange holidays in one or more investment countries, provided there are no special political or economic developments that could result in a considerable change in prices once trading resumes, and **45**

extraordinary situations such as

- instances where a market in one or more investment countries is likely to be closed for a lengthy period, or instances where there are restrictions on foreign exchange and asset transfers or other factors which prevent the normal functioning of the market. **46**

14. In ordinary situations, the fund management company/SICAV can maintain the issue and redemption of units for as long as the majority of the assets (in terms of value) can be valued properly. In determining the majority of the assets in terms of value, the last point in time when the assets of the open-end collective investment scheme could still be valued properly is to be taken as the basis. **47**

15. In extraordinary situations, the fund management company/SICAV will decide on a deferral of repayments and suspension of the issue of units on a case-by-case basis. As a general rule of thumb, the repayment should be deferred and the issue of units suspended if the proportion of the assets that cannot be valued exceeds 10% of the assets of the open-end collective investment scheme. In determining the 10% of the assets of the open-end collective investment scheme, the last point in time when the assets of the collective investment scheme could still be valued properly is to be taken as the basis. **48**

The fund management company/SICAV together with the custodian bank must prepare strategic measures for such situations that will enable it to act quickly in the interests of the investors and fulfill its duty to disclose information. **49**

D Procedure in the case of valuation errors (cf. Appendices 1 and 2)

Definition

16. In principle, any difference between a published net asset value and the correct net asset value determined subsequently is deemed to be an error if it would have resulted in a different net asset value when rounded off as defined in the fund regulations. If the issue and redemption prices include or are net of the open-end collective investment scheme's incidental costs incurred in the purchase and sale of assets, the difference is based on these prices. **50**

Organizational measures

17. The fund management company/SICAV must implement effective organizational measures to enable it to identify, as quickly as possible, errors in the valuation of the assets and in the calculation of the net asset value or the issue and redemption prices of the open-end collective investment scheme (cf. section 10), and to rectify the causes of such errors. **51**

The fund management company/SICAV must keep a record of all errors that occur that are directly connected with the calculation of the net asset value as well as the measures implemented to prevent a reoccurrence of the same error. It will allow the custodian bank and the auditors to inspect the error reports at any time. **52**

The steps to be taken when errors occur are outlined in Appendix 1. **53**

Assessing the significance of errors

18. When errors occur, the decision on the steps to be taken depends primarily on whether the errors are deemed to be significant or insignificant. **54**

An error is deemed to be significant if the percentage difference between the initially determined net asset value and the correct, rounded-off net asset value determined subsequently or the issue or redemption price exceeds the following limits[1] (as a percentage of the correct value or price): **55**

Open-end collective investment schemes by type of investment	Limit **56**
Money market funds	0,25%
Bond funds	0,5%
Equity funds	1,0%
Mixed funds	0,5%

In the case of other funds for alternative investments, the fund management company/SICAV will issue an internal guideline defining the parameters for assessing the significance of errors (cf. section 24). **57**

Measures to be taken in the case of errors deemed to be insignificant

19. In the case of errors deemed to be insignificant, the fund management company/SICAV will implement the measures envisaged in the internal guideline. In the case of recurring errors, errors that remain undetected for longer periods of time and errors in excess of a certain volume, the board of directors is to be formally informed by the executive management through the official channels. **58**

Measures to be taken in the case of errors deemed to be significant

20. Every error deemed to be significant is to be reported immediately to the custodian bank, the auditors and the supervisory authority. The report of the fund management company/SICAV in such instances must include the following information: **59**

- the scope and cause of the erroneous valuation; **60**
- the corrective measures implemented or an application for approval of such corrective measures; **61**
- the damage caused to the open-end collective scheme on the one hand and the investors on the other. **62**

Depending on the scope of the erroneous valuation and the damage arising as a result, the fund management company/SICAV must also observe its duty to disclose information to foreign supervisory authorities in countries where the open-end collective investment scheme in question is approved for distribution, as well as to the investors and distribution partners. **63**

[1] The limits stated under section 18 take into account aspects such as the risk/return profile, the daily price volatility and the usual bid/ask spread in the respective investment markets.

21. If **no** units were issued and/or redeemed on the basis of the erroneous net asset value, the measures to be implemented will be limited to compiling an error report and observing reporting obligations pursuant to section 20.1. **64**

22. If units were issued and/or redeemed on the basis of the erroneous net asset value, the fund management company/SICAV must at least cancel all transactions that were settled on the basis of the erroneous net asset value to the detriment of investors, and settle these transactions on the basis of the corrected net asset value. Section 23 notwithstanding, it will indemnify both the investors affected and the open-end collective investment scheme concerned. **65**

23. In minor cases where the resulting difference amounts to less than 50 Swiss francs per investor, the fund management company/SICAV may apply to the supervisory authority to be released from its obligation to cancel the settlements in question. However, the open-end collective investment scheme affected is to be indemnified in all cases. **66**

E Internal directive

24. The fund management company/SICAV will issue an internal directive setting down the principles and the operational procedures for valuing the open-end collective investment scheme's assets. The said directive will be specifically tailored to the requirements of its organizational structure and the range of funds offered, and must cover at least the following points: **67**

- structural organization and business processes, control systems (section 5); **68**
- access to the software used for valuation and booking; **69**
- the pertinent main markets and the price sources to be used (sections 1 and 6); **70**
- criteria for the plausibility checks of valuation prices (including tolerance levels for price deviations compared with the previous day, maximum tolerated "age" of prices) (section 8); **71**
- determining the frequency of the regular matching of holdings with the custodian bank (section 10); **72**
- measures, decision-making authority and the documentation of the necessary deviations from the standard external price sources used (sections 7 and 8); **73**
- methods for valuing positions that cannot be satisfactorily valued through external sources (section 3); **74**
- determining the threshold values for more marked changes in the market environment or a change in the credit rating of money market instruments (section 3); **75**
- criteria for the deferral of repayment and the suspension of the issue of units, corresponding measures and decision-making authority, taking particular account of the obligations to provide information to the supervisory authorities, auditors, the custodian bank, asset manager, distribution partners and investors (section 13 et seq.); **76**
- measures and decision-making authority when errors occur (including documentation, internal reporting), as well as the obligations to disclose information to the supervisory authorities, auditors, the custodian bank, distribution partners and investors (sections 17 and 19 et seq.); **77**
- specific definition of recurring errors, errors that remain undetected for longer periods of time and errors in excess of a certain volume (section 19); **78**
- framework for assessing the significance of valuation errors in the case of other funds for alternative investment (section 18). **79**

III Other provisions

A Implementation by the custodian bank

The custodian bank will ensure that the fund management company/SICAV complies with the law, the fund regulations and the present guidelines in calculating the net asset value of the units. **80**

B Minimum standard

The supervisory authority has recognized these guidelines as a minimum standard (FINMA Circular 2008/10 Self-Regulation as Minimum Standard). **81**

C Entry into force and transitional provisions

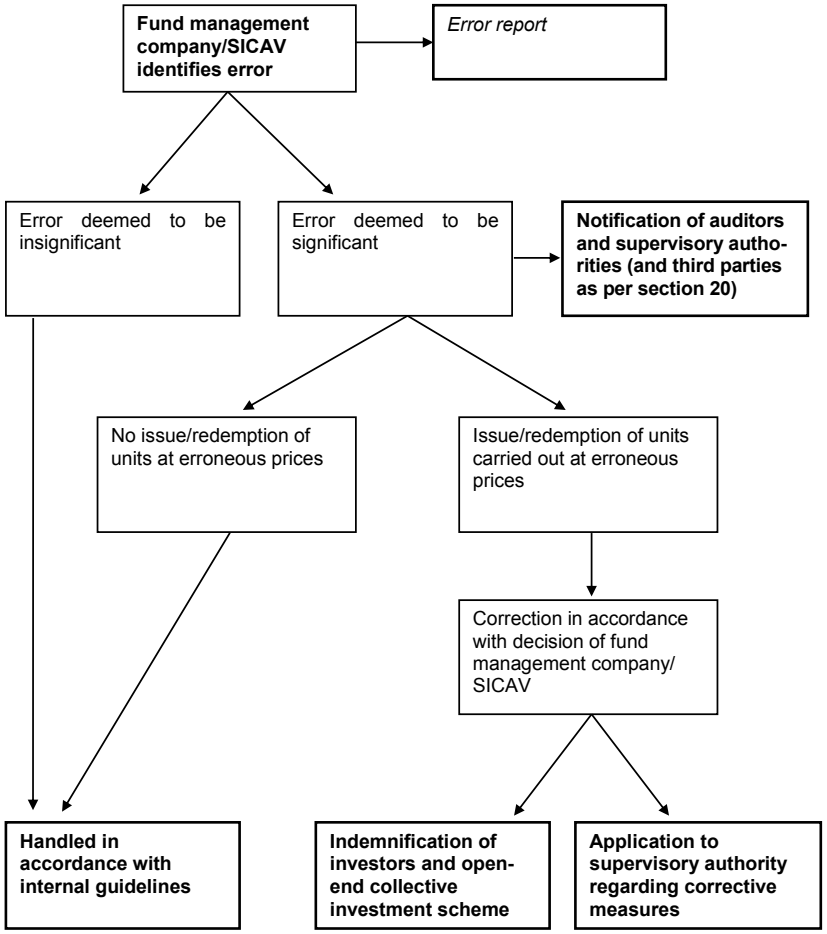
These guidelines were approved by the Board of Directors of the Swiss Funds & Asset Management Association SFAMA on 20 June 2008 and entered into force on 1 July 2008. **82**

The amendments in margin number 56 were approved by the Board of directors on 25 August 2015 and enter into force 1 July 2016. **83**

Existing internal directives pursuant to section 24 must be amended in line with the changed provisions in margin number 56 of these guidelines until 1 July 2016. **84**

Appendix 1 Guidelines on the valuation of the assets of collective investment schemes and the handling of valuation errors in the case of open-end collective investment schemes

Measures to be implemented in the case of erroneous prices (supplement to section 17 et seq.)



Appendix 2 Guidelines on the valuation of the assets of collective investment schemes and the handling of valuation errors in the case of open-end collective investment schemes

Framework for assessing corrective measures in the case of erroneously calculated net asset values (supplement to section 23)

	Measures affecting the **investor**	Measures affecting the **open-end collective investment scheme**	Compensation by the **fund management company/SICAV**
NAV too high Unit issues	Refund of the excess amount paid	Refunds to investors are debited	—
Unit redemptions	The excess amount credited on payment of the redemption price is reclaimed (debited)	Amounts reclaimed from investors and the fund management company/ SICAV are credited	Amount not covered by sums reclaimed from investors is credited immediately
NAV too low Unit issues	The shortfall is subsequently debited	Subsequent payments by the investors and the fund management company/SICAV are credited	Amount not covered by subsequent payments by the investors is credited immediately
Unit redemptions	Refund of the shortfall in the redemption price received	Refunds to investors are debited	—

In the case of erroneously calculated net asset values in favor of the investors (NAV too low in the case of unit issues or too high in the case of unit redemptions), corrective measures affecting the investors may be waived. However, the open-end collective investment scheme is to be indemnified in all cases.

CONTENTS

SFAMA Swiss Funds & Asset Management Association

Guidelines

Guidelines for Money Market Funds

6 June 2012

(Issue 1 July 2013)

I. Basic principles, aims and binding force

The Guidelines are part of the self-regulation regime of the Swiss fund industry. They are subsidiary to the "Code of Conduct for the Swiss Fund Industry" issued by the SFAMA. **1**

The Guidelines are aimed at adding more specific detail to the statutory protection for investors against confusion or deception (Art. 12.1 CISA) in that only those collective investment schemes under Swiss law that comply with the following Guidelines may call themselves "money market funds". **2**

A distinction is drawn here between "Short-Term Money Market Funds", which have a very short weighted average maturity (WAM) and weighted average life (WAL), and "Money Market Funds" with a longer WAM and WAL. **3**

The Guidelines apply to Swiss fund management companies pursuant to Art. 28 et seq. CISA and investment companies with variable capital (SICAVs) pursuant to Art. 36 et seq. CISA in respect of all collective investment schemes under Swiss law that bear the designation "money market fund", i.e. for both **4**

- securities funds pursuant to Art. 53 et seq. CISA, and also for
- other funds for traditional investments pursuant to Art. 68 et seq. CISA.

Compliance with the present Guidelines must also be ensured if tasks are delegated. The fund management company or SICAV must ensure that its agents comply with the provisions of the present Guidelines in full when carrying out the functions delegated to them. **5**

II Guidelines

Principles

A General provisions

1. Any Swiss collective investment undertaking labeled as a money market fund must comply with the present Guidelines. **6**

2. A money market fund must indicate in its prospectus as well as in its fund contract or investment regulations and – where required by law – in the simplified prospectus or Key Investor Information Document (KIID) whether it is a "Short-Term Money Market Fund" or a "Money Market Fund". **7**

3. A money market fund must provide appropriate information to investors on the risk and reward profile of the collective investment scheme so as to enable them to identify any specific risks linked to the investment strategy of the collective investment scheme. **8**

B Short-Term Money Market Funds

A Short-Term Money Market Fund must (in the case of points 1-3 and 5-13) / may (in the case of point 4): **9**

1. have the primary investment objective of maintaining the principal of the collective investment scheme and aim to provide a return in line with money market rates; **10**

2. invest in money market instruments and sight or time deposits which comply with the requirements set out in Art. 74 CISO and Art. 70.1e CISO. These apply mutatis mutandis to money market funds that are not securities funds; **11**

3. ensure the money market instruments the collective investment scheme invests in are of high quality, as determined by the fund management company or SICAV. In making this determination, a range of factors are to be taken into account, in particular: **12**

   a. the credit quality of the instrument,

   b. the nature of the asset class represented by the instrument,

   c. for structured financial instruments, the operational and counterparty risk inherent within the structured financial transaction, and

   d. the liquidity profile;

4. for the purposes of point 3a., consider a money market instrument not to be of high quality unless it has been awarded one of the two highest short-term credit ratings by each credit rating agency recognized by the supervisory authority that has rated the instrument or, if the instrument is not rated, it is of an equivalent quality as determined by the internal rating process of the fund management company / SICAV; **13**

5. limit investment in securities to those with a residual maturity until the legal redemption date of no more than 397 days; **14**

6. provide daily NAV and unit price calculation, and daily subscription and redemption of units. An exception in this regard is the weekly subscription and redemption of units in funds in the "other funds" category subject to the approval of the supervisory authority; **15**

7. ensure its portfolio has a weighted average maturity (WAM) of no more than 60 days; **16**

8. ensure its portfolio has a weighted average life (WAL) of no more than 120 days; **17**

9. when calculating the WAL for securities, including structured financial instruments, base the maturity calculation on the residual maturity until the legal redemption of **18**

the instruments. However, if a financial instrument embeds a put option, the exercise date of the put option may be used instead of the legal residual maturity only if the following conditions are fulfilled at all times:

- the put option can be freely exercised by the fund management company or SICAV at its exercise date,
- the strike price of the put option remains close to the expected value of the instrument at the next exercise date, and
- the investment strategy of the collective investment scheme implies that there is a high probability that the option will be exercised at the next exercise date;

10. take into account, for both the WAL and WAM calculations, the impact of financial derivative instruments, deposits and efficient portfolio management techniques; **19**

11. not take direct or indirect exposure to equity or commodities, including via derivatives; and only use derivatives in line with the money market investment strategy of the collective investment scheme. Derivatives which give exposure to foreign exchange may only be used for hedging purposes. Investment in non-base currency securities is allowed provided the currency exposure is fully hedged; **20**

12. limit investment in other collective investment schemes (target funds) to those which comply with the definition of a Short-Term Money Market Fund; **21**

13. have a fluctuating net asset value. **22**

C Money Market Funds

A Money Market Fund must: **23**

1. comply with points 1, 2, 3, 4, 6, 9, 10 and 11 of the above criteria for Short-Term Money Market Funds. **24**

In addition, a Money Market Fund can (point 2) / must (points 3-6) / may (point 7): **25**

2. as an exception to the requirement in point 4 of Part II B, hold sovereign issuance of at least investment grade quality. In accordance with Art. 74.2 a-i CISO, 'sovereign issuance' should be understood as money market instruments issued or guaranteed by: **26**

   a. the Swiss National Bank,

   b. the central bank of a member state of the European Union,

   c. the European Central Bank,

   d. the European Union,

   e. the European Investment Bank,

   f. the Organization for Economic Cooperation and Development (OECD),

   g. another state including its constituent parts,

   h. a public international body of which Switzerland or at least one member state of the European Union is a member,

   i. a public body;

3. have a fluctuating net asset value; **27**

4. limit investment in securities to those with a residual maturity until the legal redemption date of no more than 2 years, provided that the time remaining until the next interest rate reset date is no more than 397 days. Floating rate securities should reset to a money market rate or index; **28**

5. ensure its portfolio has a weighted average maturity (WAM) of no more than 6 months; **29**

6. ensure its portfolio has a weighted average life (WAL) of no more than 12 months; **30**

7. limit investment in units of other collective investment schemes to those which comply with the definitions of a Short-Term Money Market Fund or a Money Market Fund. **31**

III Other provisions

A Minimum standard

The supervisory authority has recognized these Guidelines as a minimum standard (FINMA Circular 2008/10 Self-Regulation as a Minimum Standard). **32**

B Entry into force and transitional provisions

The present Guidelines were approved by the Board of Directors of Swiss Funds Association SFA on 6 June 2012. They enter into force on 1 July 2012. **33**

Money market funds launched before 1 July 2012 must comply with the criteria set down in Part II A of these Guidelines as of that date and – as appropriate – comply with the criteria in either Part II B or Part II C in respect of any new investment made on or after 1 July 2012. However, in respect of all investments acquired prior to 1 July 2012, such collective investment schemes are allowed a transitional period (to 31 December 2012) to comply with the criteria of Part II B or Part II C of the present Guidelines (as appropriate). **34**

Appendix

Definitions

Weighted Average Maturity (WAM): The WAM is a measure of the average length of time to maturity of all of the underlying securities in a collective investment scheme weighted to reflect the relative holdings in each instrument, assuming that the maturity of a floating rate instrument is the time remaining until the next interest rate reset to the money market rate, rather than the time remaining before the principal value of the security must be repaid. In practice, the WAM is used to measure the sensitivity of a money market fund to changing money market interest rates. **35**

Weighted Average Life (WAL): The WAL is the weighted average of the remaining life (maturity) of each security held in a collective investment scheme, meaning the time until the principal is repaid in full (disregarding interest and not discounting). Contrary to what is done in the calculation of the WAM, the calculation of the WAL for floating rate securities and structured financial instruments does not permit the use of interest rate reset dates and instead only uses a security's stated final maturity. The WAL is used to measure the credit risk, as the longer the reimbursement of principal is postponed, the higher is the credit risk. The WAL is also used to limit the liquidity risk. **36**

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SWISS FUNDS ASSOCIATION SFA
Association for Funds & Asset Management

Swiss mandatory provisions for KIID of foreign collective investment schemes to be distributed in Switzerland

According to article 133.2, the following shall be indicated in the publications and advertising material :

- the country of origin of the collective investment scheme;

- the representative;

- the paying agent;

- the location where the relevant documents such as the prospectus and simplified prospectus, articles of association or fund contract, together with the annual and semi-annual report, may be obtained.

On the basis of:

(i) FINMA Guidelines for applications in respect of the approval of the relevant documents of foreign collective investment schemes that comply with Directive 2009/65/EC (referred to below as the UCITS IV Directive) and changes to the relevant documents of foreign collective investment schemes, issued on 17 January 2012 ;

(ii) FINMA Guidelines for applications in respect of the approval of the relevant documents of foreign collective investment schemes that are not EU-compatible and changes to the relevant documents of foreign collective investment schemes, issued on 17 January 2012.

this information must be contained on the two pages, or three pages in the case of a structured collective investment scheme of the KIID of foreign collective investment schemes to be distributed in Switzerland. In these FINMA Guidelines, the country of origin is not mentioned, given that this information is included in the penultimate sentence of the KIID ("*The fund is authorized in [***] and regulated by [***]*).

We recommend you to add this information (representative, paying agent and location where the relevant documents such as the prospectus and simplified prospectus, articles of association or fund contract, together with the annual and semi-annual report, may be obtained) under the title "Practical Information" in the KIID of foreign collective investment schemes to be distributed in Switzerland.

INHALTSVERZEICHNIS

I Grundlagen, Zielsetzungen und Verbindlichkeit

Der Bundesrat hat am 29. Juni 2011 die Einführung der „Wesentlichen Informationen für den Anleger“[1] (nachfolgend KIID genannt als Abkürzung für Key Investor Information Document) beschlossen und im Rahmen der Änderung der Verordnung über die kollektiven Kapitalanlagen (nachfolgend KKV genannt) auf den 15. Juli 2011 in Kraft gesetzt. Gemäss Art. 107a KKV haben die Fondsleitungen und die SICAV für schweizerische kollektive Kapitalanlagen der Art Effektenfonds und übrige Fonds für traditionelle Anlagen unter Beachtung der Übergangsfristen ein KIID zu erstellen. Inhaltlich sind die Vorgaben des Anhangs 3 zur KKV zu beachten. **1**

Das KIID soll einen standardisierten Überblick über die wichtigsten Aspekte einer Anlage in Effektenfonds und übrige Fonds für traditionelle Anlagen (nachfolgend kollektive Kapitalanlagen genannt) geben und zudem dazu beitragen, dass diese kollektiven Kapitalanlagen auf einfache Art und Weise vergleichbar sind. Dies soll es dem Anleger ermöglichen, einen fundierten Anlageentscheid zu fällen. Zu diesem Zweck müssen sich Inhalt und Aufbau des KIID an klare und verbindliche Vorgaben orientieren, die für alle KIID gleichermassen zur Anwendung gelangen. **2**

Um dies sicherzustellen, hat die Swiss Funds Association SFA die vorliegenden Richtlinien erarbeitet. Sie wurden von der Eidgenössischen Finanzmarktaufsicht FINMA am 21. Dezember 2011 im Sinne von Art. 7 Abs. 3 FINMAG und Art. 20 Abs. 2 KAG als Mindeststandard anerkannt. Grundlage bilden die Vorschriften gemäss Anhang 3 zur KKV. Bei der Ausgestaltung der Detailregelungen wurden die in Europa gültigen Standards berücksichtigt. **3**

Die Richtlinien enthalten die folgenden Kapitel: **4**

- Regeln zur Verwendung der einfachen und verständlichen Sprache und zur übersichtlichen Gestaltung des KIID (Rzn 5-55);
- Vorlage für das KIID (Rzn 56-58);
- Regeln zur Methodik der Berechnung des Synthetischen Indikators des Risiko- und Ertragsprofils im KIID (Rzn 59-93);
- Regeln zur Methodik der Berechnung der laufenden Kosten im KIID (Rzn 94-111);
- Regeln zur Auswahl und Präsentation der Szenarien der potenziellen Wertentwicklung im KIID für strukturierte kollektive Kapitalanlagen (Rzn 112-145).

II Regeln zur Verwendung der einfachen und verständlichen Sprache und zur übersichtlichen Gestaltung des KIID

A Einführung

Die Fondsleitungen und SICAV dürfen nur Informationen in das KIID gemäss Anhang 3 KKV aufnehmen, welche sich auf die entsprechenden Titel beziehen. Andere Informationen dürfen nicht aufgenommen werden. Die Beschränkung des Umfanges des KIID auf zwei DIN A4-Seiten (drei DIN A4-Seiten für strukturierte kollektive Kapitalanlagen) bringt dabei zum Ausdruck, dass **5**

- nur Informationen aufgenommen werden dürfen, welche erforderlich sind, damit sich die Anleger ein Urteil über die kollektive Kapitalanlage bilden können;
- die aufgenommenen Informationen klar und verständlich sein müssen; und
- die Informationen inhaltlich mit den wesentlichen Aussagen des vollständigen Prospekts sowie dem Fondsreglement („Fondsreglement“ entspricht beim vertraglichen Anlagefonds dem Fondsvertrag und bei der SICAV den Statuten und dem Anlagereglement) übereinstimmen müssen.

Die Beschränkung des Umfangs soll weder durch eine enge oder kleine Schrift noch durch Verweise auf andere Dokumente umgangen werden. Das KIID muss also so gestaltet sein, dass es den Leser anspricht und nicht abschreckt. Um dies zu erreichen, sollten die Textstellen nicht aus dem Prospekt resp. Fondsreglement kopiert werden. Vielmehr ist das KIID als eigenständiges Dokument zu erstellen. **6**

B Klare und verständliche Sprache

Schreiben Sie für den Leser

Die meisten kollektiven Kapitalanlagen werden an Anleger mit unterschiedlichsten Kenntnissen und Erfahrungen des Finanzmarktes vertrieben. Die wenigsten Anleger sind Juristen oder haben Kenntnisse von Finanzanlagen und selbst jene, welche über Erfahrung in Finanzanlagen verfügen, werden einen klaren Aufbau der Dokumente und eine klare Sprache begrüssen. Entsprechend empfiehlt es sich davon auszugehen, dass der Leser das erste Mal über eine kollektive Kapitalanlage liest. Ist ein Dokument schwer verständlich, wird es wohl falsch oder gar nicht verstanden. Das kann nicht im Sinne der Anleger und der Fondsleitung resp. der SICAV sein. **7**

Was heisst eine klare und verständliche Sprache?

Eine klare und verständliche Sprache wird nicht einfach dadurch erreicht, dass auf Fachausdrücke verzichtet wird. Vielmehr wird sie dadurch erreicht, dass das KIID mit dem Ziel geschrieben wird, dass interessierte und potentielle Anleger es auf Anhieb verstehen, und zwar so, wie es die Fondsleitung oder die SICAV meint. **8**

Eine klare und verständliche Sprache wird auch nicht einfach dadurch erreicht, dass komplexe Konzepte vermieden werden. Vielmehr bedeutet es, dass **9**

- die Leser nicht durch technische oder verheissungsvolle Ausdrücke bzw. gewundene Satzkonstruktionen abgeschreckt werden;
- schwer verständliche Informationen in einfachen Worten erläutert werden.

Ziel muss es sein, dass der Publikumsanleger das KIID auf Anhieb, also beim ersten Lesen versteht. **10**

Die Verwendung einer klaren und verständlichen Sprache bedeutet, dass unter Umständen auf Gewohnheiten verzichtet wird, welche im Rahmen des Verfassens herkömmlicher Dokumente kollektiver Kapitalanlagen gewonnen wurden. Die erhoffte **11**

[1] Aus Gründen der einfacheren Lesbarkeit wird auf die geschlechtsspezifische Differenzierung, z.B. Anlegerinnen und Anleger, verzichtet. Entsprechende Begriffe gelten grundsätzlich für beide Geschlechter.

Präzision juristischer, technischer oder komplexer Ausdrücke wird verfehlt, wenn der Leser diese Ausdrücke nicht versteht oder durch sie in die Irre geführt wird.

Die Fachausdrücke

Die Erfahrung zeigt, dass in der Finanzindustrie oftmals Fachausdrücke und ungewöhnliche Ausdrücke verwendet werden, wie z.B. „negatives Wachstum“. Der Begriff „negatives Wachstum“ wäre zum Beispiel insofern verwirrend, als er kein Wachstum sondern eine negative Entwicklung beschreibt. Es würde damit das genaue Gegenteil von Wachstum umschrieben. Dadurch kann es für den Anleger missverständlich sein. **12**

Die mit Fachausdrücken verbundene Problematik kann vermieden werden, indem **13**

- überhaupt keine Fachausdrücke verwendet werden, z.B. indem Ausdrücke nur umschrieben werden. Z.B. der Ausdruck „sogenannt“ weist oftmals gerade auf einen solchen Ausdruck hin, wie er zu vermeiden ist;
- Fachausdrücke bei ihrer ersten Verwendung in Klammern erläutert werden;
- Fachausdrücke in einer Fussnote erläutert werden;
- für Fachausdrücke auf ein Glossar in einem anderen Dokument verwiesen wird. Sollte dies aber zu mehreren Verweisen führen, ist dieses Vorgehen zu hinterfragen;
- bei der Verwendung von Verweisen mit grafischen Hervorhebungen gearbeitet wird.

Ausdrücke, welche normalerweise eine andere Bedeutung haben

Die Finanzindustrie tendiert überdies dazu, Ausdrücke anders zu verwenden, als sie der Publikumsanleger versteht. Wörterbücher geben zudem vielen Ausdrücken oftmals eine andere Bedeutung, als die Fondsleitung oder die SICAV dies beabsichtigt. Solche Ausdrücke sind zu vermeiden. **14**

Beispiele hierzu sind: Liquidität, Duration, Gates, Side-Pockets.

Andere Hindernisse einer klaren und verständlichen Sprache

Die Vermeidung von Fach- und missverständlichen Ausdrücken alleine ist noch keine Garantie dafür, dass die verwendete Sprache klar und verständlich ist. Vielmehr gibt es noch andere Hindernisse, wie z.B. juristische Ausdrücke oder auch fremdsprachige Ausdrücke, sofern es eine angemessene Alternative in der deutschen Sprache gibt. Ein formeller und unpersönlicher Schreibstil kann zu überflüssigen Wörtern führen und für den Leser abstossend wirken. **15**

Kurze Sätze

Eine klare Sprache führt in der Regel zu kürzeren und verständlichen Sätzen. Versuchen Sie, die Sätze möglichst kurz zu halten und 25 Wörter nicht zu überschreiten. **16**

Übersichtliche Gestaltung

Eine klare und verständliche Sprache muss durch eine übersichtliche Gestaltung des Dokumentes unterstützt werden. Es sollte darauf verzichtet werden, Fussnoten zu benutzen. Nur zwingend notwendige Erklärungen dürfen in einer Fussnote eingesetzt werden. **17**

C Verfassen des KIID

Das KIID muss für den Publikumsanleger sowohl wichtig wie auch ansprechend wirken. Nur so kann erreicht werden, dass es auch gelesen wird. Das bedeutet, dass es von anderen Dokumenten klar unterschieden werden kann und einfach lesbar ist. Vergleicht man das KIID mit Marketingunterlagen, sollte es nicht als Rechtsdokument erscheinen, wie z.B. der Fondsvertrag einer vertraglichen kollektiven Kapitalanlage. **18**

Auch wenn die Struktur und Länge des KIID vorgegeben sind, ist auf einen übersichtlichen Aufbau zu achten, wie unter Rzn 25-55 beschrieben. Ein übersichtlicher Aufbau macht ein Dokument leserlicher und verständlicher. **19**

Schriftart

Verwenden Sie eine Schriftart, welche einfach lesbar ist, wie z.B. Arial oder Times New Roman. **20**

Schriftgrösse

Wählen Sie eine Schriftgrösse, welche im Verhältnis zur Breite der Zeilen und zum Zeilenabstand ausgewogen erscheint. **21**

- Breite Zeilen mit kleiner Schriftgrösse sind für das Auge schwer zu lesen. Es sollte versucht werden, in einer mindestens 10-Punkte-Zeile zu schreiben. Zu diesem Zweck können sowohl „Spalten“ oder breite Ränder verwendet werden;
- Es können verschiedene Schriftarten verwendet werden. Aber wenn die ganze Breite eines A4-Papiers zur Verfügung steht, sollte mindestens die Schriftgrösse 11 für „Serif“-Schriftarten wie bspw. Times New Roman oder eine Schriftgrösse 10 für „Sans Serif“-Schriftarten wie z.B. Arial verwendet werden; eine etwas kleinere Schriftgrösse kann verwendet werden, wenn Sie schmale Spalten benutzen;
- Halten Sie den Raum zwischen den Zeilen in einem ausgewogenen Verhältnis zur Schriftgrösse.

Titel

Eine klare Hierarchie bei der Verwendung von Titeln und Untertiteln ist unbedingt zu beachten. Dies kann z.B. durch Fettdruck, Schattierungen, Farben oder verschiedene Schriftgrössen unterstützt werden. Die Hierarchie ist in Anhang 3 KKV und unter Rzn 25-55 vorgegeben. **22**

Seitengestaltung

Maximieren Sie die „weisse Fläche“, indem Sie **23**

- kurze Abschnitte schreiben;
- im Spaltenformat schreiben, wo dies angebracht ist;

- in Aufzählungszeichen schreiben statt im Fliesstext (wo dies angebracht ist);
- zwischen den Absätzen klare Unterbrüche haben.

Farben und Schattierungen

Farben sind visuell attraktiv, aber es gilt zu beachten, dass das KIID oftmals in schwarz-weiss ausgedruckt oder kopiert wird. Es muss auch in diesen Fällen gut lesbar sein. Farben sollten darum zurückhaltend verwendet werden und es sollte beachtet werden, dass genügend Kontrast zwischen dem Text und dem Hintergrund besteht – man erreicht einen grösseren Effekt, wenn der Text dunkel und der Hintergrund hell ist. Aus diesem Grund ist es besser, Schattierungen zu verwenden. **24**

D Anleitungen für jeden Abschnitt des KIID

Grundsätzlich wird auf die Ausführungen im Anhang 3 KKV verwiesen. **25**

a) Titel und Inhalt des Dokuments (Ziff. 1 Anhang 3 KKV)

Der Titel „Wesentliche Informationen für die Anlegerinnen und Anleger" ist hinreichend markant zu platzieren, so dass er jedem Leser ins Auge sticht. **26**

Die erklärenden Sätze sind obligatorisch (Ziff. 1.2, 1.6 und 1.7 Anhang 3 KKV), ebenso der Name und der ISIN-Code der kollektiven Kapitalanlage/des Teilvermögens bzw. der Anteilsklasse (wenn anwendbar) und der Name der Fondsleitung, sofern anwendbar. Ziff. 1.7 Anhang 3 KKV wird im Abschnitt „Praktische Informationen" angegeben. **27**

b) Titel – Anlageziele und Anlagepolitik (Ziff. 2 Anhang 3 KKV)

In diesem Abschnitt des KIID ist dem Publikumsanleger zu erläutern, **28**

- was die Anlageziele der kollektiven Kapitalanlage sind, ob Kapitalgewinne, Erträge oder eine Kombination davon angestrebt werden;
- mit welcher Anlagepolitik die kollektive Kapitalanlage die Anlageziele zu erreichen versucht, so dass der Anleger eine fundierte Entscheidung fällen kann. Juristische Ausdrücke und technische Texte, welche kaum verstanden werden, sind zu vermeiden.

Anlageziele und Anlagepolitik können in einem Absatz beschrieben werden, sofern dies angemessen erscheint. Sofern dies jedoch zu einem langen, schwer lesbaren Absatz führt, können Anlageziele und Anlagepolitik in unterschiedlichen Absätzen und allenfalls unter entsprechenden Untertiteln beschrieben werden. **29**

Die Ausführungen zu den Anlagezielen und der Anlagepolitik sollten nicht aus dem Fondsreglement oder aus dem Prospekt kopiert werden, ausser diese Textpassagen sind bereits klar und verständlich formuliert. Es ist nämlich gut möglich, dass einige Elemente des Fondsreglements oder des Prospekts: **30**

- für ein zusammenfassendes Dokument wie das KIID unwesentlich sind; oder
- im KIID in andere Abschnitte fallen. So gehören bspw. die Ausführungen zu den Risiken einer Anlage im KIID in den Abschnitt „Risiko- und Ertragsprofil".

Es bleibt aber stets zu beachten, dass Anlageziele und Anlagepolitik in ausgewogener Form zu beschreiben sind. Unter Umständen kann der Beschrieb weiter gehen als im Prospekt und Fondsreglement und/oder Elemente aufnehmen, welche im Prospekt und Fondsreglement an anderen Stellen beschrieben sind. **31**

Der von der Fondsleitung und der SICAV gewählte Ansatz hängt massgeblich von der Länge und der Komplexität des Inhalts des Prospektes ab. Eine klare und verständliche Sprache soll kürzere Sätze ermöglichen, ohne dass Elemente ausgelassen werden. So ist darauf zu achten, dass **32**

- überflüssige Wörter vermieden werden;
- ein persönlicher Stil gewählt wird, indem „Sie" anstelle von „der potentielle Anleger", „der Anteilsinhaber" und „wir" anstelle von „ABC Fondsleitung (Switzerland) AG" verwendet wird;
- unnötiger und selbstverständlicher Text vermieden wird, wie z.B. „soweit Gesetz, Prospekt und Fondsreglement dies zulassen";
- unklare Ausdrücke vermieden werden wie z.B. „die kollektive Kapitalanlage strebt langfristig eine ausgewogene Rendite an".

Sofern, nach Befolgung der obenstehenden Ausführungen, der Text nach wie vor zu lang ist, ist jede Ausführung auf ihre Notwendigkeit kritisch zu hinterfragen. Sofern z.B. die Möglichkeit besteht, in ein breites Spektrum an Anlagen auf verschiedenen Märkten zu investieren, ist deren Aufzählung aufgrund der gemachten Erfahrung und der beabsichtigten Anlagen zu prüfen. **33**

Besondere Ausführungen zu strukturierten kollektiven Kapitalanlagen („Structured Funds")

Es sind mindestens drei Wertentwicklungsszenarien zu beschreiben (siehe Ziff. 2.10 Anhang 3 KKV). **34**

Strukturierte kollektive Kapitalanlagen können unterschiedlichste Formeln für die Berechnung der Auszahlung am Ende der Laufzeit haben. Es ist sicherzustellen, dass die Formel(n) neutral beschrieben wird (werden), ohne dass die Möglichkeit positiver Resultate überbewertet wird. **35**

Beim Beschrieb der Formel(n) ist auf folgendes zu achten: **36**

- Es ist klarzustellen, dass die Strukturierung der kollektiven Kapitalanlage das Risiko- und Ertragsprofil gegenüber einer Direktanlage in den Basiswert verändert;
- Es ist klarzustellen, dass ein reduziertes Risiko durch ein reduziertes Ertragspotential ausgeglichen wird;
- Sofern keine rechtlich durchsetzbare Garantie besteht, kann sich der Anleger bei Verwendung des Ausdrucks „Garantie" bezüglich der Sicherheit der Rückzahlung seiner Einlage in falscher Sicherheit wiegen lassen;
- Sofern an einem Stichtag das Risiko eines Totalverlusts besteht, ist dies im Abschnitt „Anlageziele und Anlagepolitik" klarzustellen. Ebenso ist auch die Tatsache zu erwähnen, dass die Einlage des Anlegers nicht garantiert ist;

- Sofern weniger als 100% der Einlage eines Anlegers garantiert ist, sind Ausdrücke wie „Teil-Garantie für 90% des investierten Kapitals“ zu vermeiden. Vielmehr ist klarzustellen, dass die Einlage nicht vollumfänglich garantiert ist. Sofern keine rechtlich vollstreckbare Garantie vorliegt, ist klarzustellen, dass die Einlage nicht gesichert ist;

- Wo die Formel einer kollektiven Kapitalanlage an die durchschnittliche Wertentwicklung eines Index oder an eine gekappte Wertentwicklung des Index gebunden ist, ist der Grad der Indexierung zusammen mit den entsprechenden Auswirkungen zu erläutern;

- Es sind stets positive Ausdrücke zu verwenden, wie z.B. „sofern der Index um mehr als 30% fällt“ anstelle von „sofern die Entwicklung des Index unter -30% liegt“;

- Wo strukturierte kollektive Kapitalanlagen an mehreren aufeinanderfolgenden Daten ausgegeben werden, ist auf die Wiederholung gleicher Textstellen zu verzichten. So sind z.B. anstelle von „Ausgabedatum“ und „Enddatum“ die entsprechenden Daten zu verwenden.

c) Titel – Risiko- und Ertragsprofil (Ziff. 3 Anhang 3 KKV), siehe auch Rzn 59 ff.

Der Abschnitt zum Risiko- und Ertragsprofil hat einen ausgewogenen Beschrieb der Möglichkeiten für einen Gewinn und einen Verlust zu enthalten. **37**

Dabei ist auch zu beachten, welchen Eindruck der Name einer kollektiven Kapitalanlage beim Anleger hinterlässt. Ausdrücke wie „balanced“, „total return“ oder „absolute return“ suggerieren dem Anleger Aussagen über das Risiko der Anlage und sind somit zu erläutern. Es empfiehlt sich, die Art der Anlagen der kollektiven Kapitalanlage zu beschreiben (oder zumindest auf die Ausführungen im Abschnitt „Anlageziele und Anlagepolitik“ zu verweisen), so dass die Ausführungen im richtigen Kontext gelesen werden. **38**

Der synthetische Risiko- und Ertragsindikator (nachfolgend „Synthetischer Indikator“ genannt)

Für die Berechnung des Synthetischen Indikators wird auf die nachfolgenden Ausführungen hierzu verwiesen. **39**

Ziff. 3.1 Anhang 3 KKV enthält Ausführungen zu den Erklärungen, welche zwingend dem Synthetischen Indikator beizufügen sind. Diese Erklärungen müssen Ausführungen zu denjenigen Risiken beinhalten, welche im Risikoindikator nicht oder nicht vollumfänglich berücksichtigt sind. **40**

Ziel ist, dass der Anleger die mit der Anlage in eine kollektive Kapitalanlage verbundenen Unsicherheiten kennt, und zwar sowohl in Bezug auf Gewinne wie auch auf Verluste. Aus diesem Grund hat dieser Abschnitt stets zwei Elemente: **41**

- den Synthetischen Indikator und seine Erläuterungen;

- einen Beschrieb der Risiken, welche im Synthetischen Indikator nicht berücksichtigt sind.

Es ist zu erläutern, dass der Synthetische Indikator keine Garantie für das Risiko eines Kapitalverlustes darstellt, sondern die vergangenen Wertveränderungen der kollektiven Kapitalanlage misst. Bei neu aufgelegten kollektiven Kapitalanlagen ist zu erläutern, wie der Synthetische Indikator berechnet wurde. Für strukturierte kollektive Kapitalanlagen ist zu erklären, dass der Synthetische Indikator die Wahrscheinlichkeit eines Kapitalverlustes am Ende der Laufzeit der kollektiven Kapitalanlage aufzeigt. **42**

Ausführungen zu den Risiken, welche im Synthetischen Indikator nicht angemessen berücksichtigt sind

Bei allen Ausführungen zum Risiko hat man sich stets vor Augen zu halten, was „Risiko“ genau bedeutet. **43**

- Rendite als Abgeltung des Risikos **44**

  Dieser Abschnitt hat sowohl Ausführungen zum Risiko wie auch zum Ertrag zu enthalten und sollte darum nicht nur Ausführungen über die negativen Auswirkungen auf die kollektive Kapitalanlage und deren Vermögen enthalten. Vielmehr ist zu erläutern, warum ein bestimmtes Risiko eingegangen wird.

- Risiko ist als Ausdruck der Unsicherheit zu betrachten **45**

  Es sind nur die Unwägbarkeiten zu beschreiben, die sich auf das Vermögen der kollektiven Kapitalanlage auswirken können.

  Der komplette oder teilweise Verlust der Einlage als vorhersehbare Konsequenz des Handelns der Anleger, z.B. als Element der Anlage in die kollektive Kapitalanlage, qualifiziert nicht als Risiko. Soweit solche Konsequenzen substantiell sind, sind sie vielmehr an anderen Stellen im KIID zu erläutern, wo sie auch in den richtigen Kontext gestellt werden können, z.B. ist die Wahrscheinlichkeit eines Verlustes bei vorzeitiger Rückgabe der Anteile einer strukturierten kollektiven Kapitalanlage im Abschnitt „Anlageziele und Anlagepolitik“ zu erläutern.

  Der Abzug der Rücknahmekommission und der damit verbundene Verlust ist im Abschnitt „Kosten“ zu erläutern.

- Risiken werden aufgrund ihrer Eintretenswahrscheinlichkeit und ihrer Auswirkungen gemessen. **46**

  Es sind nicht einfach nur die Auswirkungen eines Risikos zu beschreiben. Vielmehr ist das Risiko auch zu analysieren. Dabei ist zu berücksichtigen, welcher Teil des Fondsvermögens einem bestimmten Risiko ausgesetzt ist, mit welcher Wahrscheinlichkeit das Risiko eintritt und welches dessen Auswirkungen sein können. Allenfalls sind Ausführungen hilfreich, wie Risiken minimiert werden können.

- Auswirkungen von Garantien **47**

  Sofern eine rechtlich vollstreckbare Garantie vorliegt, ist darauf hinzuweisen, dass das Risiko dadurch reduziert wird. Ebenso sind die Risiken zu erläutern, welche mit einer Rücknahme der Anteile ausserhalb der für Rücknahmen vorgesehenen Termine verbunden sind.

Im Rahmen der Analyse der Volatilität der vergangenen fünf Jahre ist leicht feststellbar, welche Risiken im Synthetischen Indikator berücksichtigt sind. **48**

Typischerweise sind die folgenden Risiken im Synthetischen Indikator nicht berücksichtigt: Gegenparteirisiko, Default, mangelnde Liquidität, operationelle Risiken wie auch die typischen Risiken von Schwellenländern. **49**

- Soweit ein Risiko für den Anleger wichtig ist, ist es klar zu erläutern, zusammen mit seiner Eintretenswahrscheinlichkeit. Dabei nützt der technische Ausdruck selbst wenig, das Risiko ist vielmehr in einer für den Publikumsanleger verständlichen Form zu beschreiben. Dies kann z.B. im Rahmen einer Aufzählung erfolgen;
- Nicht relevante Risiken sind nicht in das KIID aufzunehmen, selbst wenn Platz dafür vorhanden ist;
- Anstelle einer reinen Aufzählung können die Risiken auch anhand der Anlagen oder der Strategie gruppiert werden, wie z.B. die mit Anlagen in Emerging Markets oder in Schuldverschreibungen verbundenen Anlagen;
- Bei Umbrella-Strukturen ohne getrennte Haftung der einzelnen Teilvermögen sind die Auswirkungen im Abschnitt „Praktische Informationen" aufzuführen, nicht im Risiko- und Ertragsprofil.

Ausführungen zu den steuerlichen Auswirkungen gehören in den Abschnitt „Praktische Informationen", nicht in das Risiko- und Ertragsprofil. **50**

d) Titel – Kosten (Ziff. 4 Anhang 3 KKV), siehe auch Rzn 94 ff.

Die Kosten sind zwingend in dem in Ziff. 4.1 Anhang 3 KKV vorgeschriebenen Raster aufzuführen und anschliessend zu erläutern. Dabei ist folgendes zu beachten: **51**

- Sofern erforderlich ist darauf hinzuweisen, dass sich detaillierte Informationen zu den Kosten im Prospekt finden;
- Bei den Ausgabe- und Rücknahmekommissionen sind die Maximalansätze zu nennen, welche erhoben werden können. Den Anlegern ist zu empfehlen, einen Berater zu konsultieren, sofern bestimmte Kosten reduziert werden können;
- Die Ausgabe- bzw. die Rücknahmekommission muss jedwelche Differenzen zwischen dem Ausgabe- bzw. Rücknahmepreis abdecken;
- Für den Fall, dass die laufenden Kosten aus dem Vermögen und nicht aus den Erträgen des Fonds gedeckt werden und Sie die Auswirkungen auf die endgültige Rendite als materiell betrachten, erklären Sie dieselben im Abschnitt "Kosten" und nicht im Abschnitt "Risiko und Ertragsprofil";
- Fachausdrücke wie z.B. High Watermark sind zu vermeiden;
- Sofern die Kosten für den Umtausch von einem Teilvermögen zu einem anderen höher sind als die reinen Ausgabe- und Rücknahmekommissionen, ist dies zu erläutern;
- Sofern bestimmte, im Raster vorgesehene Kosten nicht erhoben werden, ist dies explizit festzuhalten, z.B. indem eine „0%" eingesetzt wird.

Die Information bezüglich der Umtauschkommissionen sollte man unter dem Abschnitt „Kosten" oder an einer anderen geeigneten Stelle des KIID einsetzen. **52**

e) Titel – Bisherige Wertentwicklung (Ziff. 5 Anhang 3 KKV)

Dieser Abschnitt ist bei KIID von strukturierten kollektiven Kapitalanlagen nicht erforderlich. **53**

Dieser Abschnitt enthält ein Balkendiagramm, welches nicht grösser als eine halbe A4-Seite sein darf, mit gut sichtbaren, erläuternden Ausführungen (siehe Ziff. 5.2 Anhang 3 KKV). **54**

f) Titel – Praktische Informationen (Ziff. 6 Anhang 3 KKV)

Die Erklärungen gemäss Ziff. 1.7 und 6.4 Anhang 3 KKV sind zwingend. **55**

III Vorlage für das KIID

Das KIID gemäss Anhang 3 KKV orientiert sich an der nachfolgenden Vorlage. **56**

Textpassagen, welche in der nachstehenden Form zu übernehmen sind, finden sich in Kursivschrift. Sie sind im KIID nicht in Kursivschrift wiederzugeben. Textpassagen, welche nicht zwingend einzufügen sind, finden sich in [eckigen Klammern]. Textstellen, welche ergänzt werden müssen, sind in Grossbuchstaben geschrieben. **57**

Wesentliche Informationen für die Anlegerinnen und Anleger

Gegenstand dieses Dokuments sind wesentliche Informationen für die Anlegerinnen und Anleger über diese kollektive Kapitalanlage. Es handelt sich nicht um Werbematerial. Diese Informationen sind gesetzlich vorgeschrieben, um Ihnen die Wesensart dieser kollektiven Kapitalanlage und die Risiken einer Anlage zu erläutern. Wir raten Ihnen zur Lektüre dieses Dokuments, sodass Sie eine fundierte Anlageentscheidung treffen können.

123 Kollektive Kapitalanlage [, ein Teilvermögen des 123 Umbrella Fonds, Klasse A] (ISIN: xxxxyyyyyzzz)

Fondsleitung: ABC Fondsleitung (Schweiz) AG [, eine Gesellschaft ABC Gruppe]

Anlageziele und Anlagepolitik

Beschrieb der Anlageziele und der Anlagepolitik in klarer und verständlicher Sprache (es wird empfohlen, diesen Text nicht aus dem Prospekt zu kopieren).

Es sind die wesentlichen Aspekte der kollektiven Kapitalanlage zu beschreiben:

- Hauptkategorien der für die Anlage in Frage kommenden Finanzinstrumente;
- Hinweis auf das Kündigungsrecht des Anlegers unter Angabe der Rücknahmefrequenz;
- Angabe, ob die kollektive Kapitalanlage ein bestimmtes Ziel in Bezug auf einen branchenspezifischen, geografischen oder anderen Marktsektor oder in Bezug auf spezifische Anlageklassen verfolgt;
- Angabe, ob die kollektive Kapitalanlage die Anlageentscheide nach freiem Ermessen treffen kann und ob ein Referenzwert herangezogen wird;
- Angabe, ob die Erträge der kollektiven Kapitalanlage ausgeschüttet oder thesauriert werden.

Weitere Informationen, sofern anwendbar:

- werden besondere Anlagetechniken verwendet, wie z.B. „hedging“, „arbitrage“ oder „leverage“, so sind deren Auswirkungen auf die Wertentwicklung der kollektiven Kapitalanlage anzugeben;
- investiert die kollektive Kapitalanlage in Schuldtitel, sind diese zu beschreiben;
- nach welchen Kriterien die Anlagen ausgewählt werden, z.B. nach „Wachstum“, „Wert“ oder „hohe Dividenden“ mit Erläuterung dieser Kriterien;
- bei strukturierten kollektiven Kapitalanlagen die Faktoren, welche die Ausschüttungen sowie die Wertentwicklung der kollektiven Kapitalanlage beeinflussen;
- dass die Transaktionskosten zu Lasten des Fondsvermögens gehen und somit den Ertrag der kollektiven Kapitalanlage schmälern;
- sofern im Prospekt oder anderweitig eine Mindesthaltedauer empfohlen wird, ist der folgende Wortlaut beizufügen: „*Empfehlung: Diese kollektive Kapitalanlage ist unter Umständen für Anlegerinnen und Anleger nicht geeignet, die ihr Geld innerhalb eines Zeitraumes von […] aus der kollektiven Kapitalanlage wieder zurückziehen wollen.*“;
- bei Dachfonds ist anzugeben, nach welchen Kriterien die Zielfonds ausgewählt werden.

Risiko- und Ertragsprofil

Geringes Risiko — höheres Risiko

Typischerweise geringe Rendite — typischerweise höhere Rendite

1	**2**	3	4	5	6	7

Folgende Erläuterungen sind anzubringen:

- dass der Indikator keine zuverlässige Aussage über die zukünftige Wertentwicklung enthält;
- dass die Risikokategorie Veränderungen unterliegen und über die Jahre variieren kann;
- dass die geringste Risikokategorie nicht einer risikofreien Anlage entspricht;
- warum die kollektive Kapitalanlage in die entsprechende Risikokategorie eingeteilt ist;
- Einzelheiten zur Wesensart, Dauer und Tragweite einer Kapitalgarantie und eines Kapitalschutzes.

Ausserdem sind die folgenden, für die kollektive Kapitalanlage wesentlichen Risiken zu erläutern:

- das Kreditrisiko, sofern ein wesentlicher Teil des Vermögens in Schuldtitel angelegt wird;
- das Liquiditätsrisiko, sofern ein wesentlicher Teil des Vermögens in Anlagen angelegt ist, welche u.U. ein relativ niedriges Liquiditätsniveau erreichen können;
- das Ausfallrisiko, wenn die kollektive Kapitalanlage durch die Garantie einer Drittperson oder Verträgen mit einer Drittperson einem wesentlichen Gegenparteirisiko ausgesetzt ist;
- operationelle Risiken im Zusammenhang mit der Verwahrung von Vermögenswerten;
- Auswirkungen von Finanztechniken wie Derivaten.

Kosten

Die Kosten werden für den Betrieb der kollektiven Kapitalanlage verwendet, einschliesslich der Vermarktung und des Vertriebs. Diese Kosten reduzieren das potenzielle Wachstum Ihrer Anlage.

Kosten zulasten der Anlegerinnen und Anleger	
Ausgabekommission	[] %
Rücknahmekommission	[] %
Dabei handelt es sich um den höchsten Prozentsatz, der vom Zeichnungsbetrag des Anlegers in Abzug gebracht werden darf.	
Kosten zulasten des Fondsvermögens im Laufe des Jahres	
Laufende Kosten	[] %
Kosten zulasten des Fondsvermögens unter bestimmten Bedingungen	
An die Wertentwicklung der kollektiven Kapitalanlage gebundene Gebühren	[] % *

* pro Jahr einer jeden von der kollektiven Kapitalanlage erwirtschafteten Rendite über dem Referenzwert für diese Gebühren [Referenzwert einfügen]

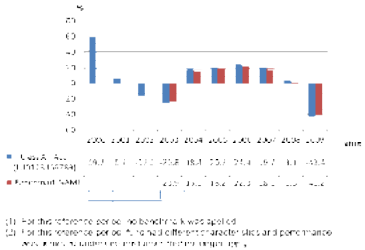
Bei der **Ausgabe- und Rücknahmekommission** handelt es sich um Höchstwerte, in einigen Fällen können die Anleger weniger bezahlen. Für die aktuelle Höhe der Ausgabe- und Rücknahmekommissionen konsultieren Sie Ihren Finanzberater.

Die **laufenden Kosten** basieren auf dem am [MONAT/JAHR] endenden Vorjahr und können von Jahr zu Jahr schwanken. Ausgeschlossen sind:

- die an die Wertentwicklung der kollektiven Kapitalanlage gebundenen Gebühren;
- die Transaktionskosten, ausgenommen Kosten, welche im Zusammenhang mit der Ausgabe oder der Rücknahme von Anteilen an Zielfonds stehen.

Für weitere Informationen zu den Kosten wird auf die S. [Y-Z] des Prospektes verwiesen.

Bisherige Wertentwicklung



Das Balkendiagramm wird ergänzt durch Angaben zu:

- der beschränkten Aussagekraft des Diagramms auf die zukünftige Wertentwicklung;
- den Kosten, welche berücksichtigt wurden und welche nicht;
- dem Erstausgabejahr der kollektiven Kapitalanlage;
- der Währung, in welcher die bisherige Wertentwicklung berechnet ist.

Praktische Informationen

- Firma der Depotbank
- Angabe, wo das Fondsreglement, der Prospekt sowie die letzten Jahres- und Halbjahresberichte kostenlos bezogen werden können und in welchen Amtssprachen sie vorliegen.
- Angabe, wo weitere praktische Informationen, einschliesslich der aktuellen Anteilspreise erhältlich sind.
- *[Den Namen der SICAV oder der Fondsleitung einfügen] kann lediglich auf der Grundlage einer in diesem Dokument enthaltenen Erklärung haftbar gemacht werden, die irreführend, unrichtig oder nicht mit den einschlägigen Teilen des Fondsreglements und des Prospekts vereinbar ist.*
- Hinweis bei Umbrella-Fonds, dass sich die Angaben in den Wesentlichen Informationen für die Anlegerinnen und Anleger nur auf das Teilvermögen 123 beziehen, nicht aber auch auf die anderen Teilvermögen des 123 Umbrella-Fonds.
- Angabe, dass die Teilvermögen des 123 Umbrella-Fonds rechtlich voneinander getrennt sind und nicht gegenseitig haften und eine Erklärung, wie sich dies auf die Anleger auswirkt.
- Angabe, ob die Anteile in Anteile eines anderen Teilvermögens getauscht werden können und wo Informationen zum Anteilstausch erhältlich sind.
- Angabe zu den verfügbaren Anteilsklassen.

Diese kollektive Kapitalanlage ist von der Eidg. Finanzmarktaufsicht FINMA genehmigt und beaufsichtigt. Diese wesentlichen Informationen für die Anlegerinnen und Anleger sind zutreffend und entsprechen dem Stand vom DATUM DER VEROEFFENTLICHUNG.

IV Regeln zur Methodik der Berechnung des Synthetischen Indikators des Risiko- und Ertragsprofils im KIID

A Hintergrund

Diese Richtlinien dienen dazu, basierend auf den nachfolgenden Kriterien einheitliche Regeln für die Berechnung des Synthetischen Indikators des Risiko- und Ertragsprofils festzulegen: **59**

- Den Anlegern soll eine sinnvolle Indikation des allgemeinen Risiko- und Ertragsprofils der kollektiven Kapitalanlage gewährt werden;
- Die kollektiven Kapitalanlagen sollen über das gesamte Risiko- und Ertragsspektrum angemessen verteilt sein;
- Der Synthetische Indikator soll auf die kollektiven Kapitalanlagen anwendbar sein;
- Der Synthetische Indikator soll keinen Raum für Manipulationen und Beschönigungen bieten;
- Der Synthetische Indikator soll für die Fondsleitung und die SICAV einfach und kostengünstig einzuführen und aufrechtzuerhalten sein;
- Der Synthetische Indikator soll für alle Marktteilnehmer einfach verständlich sein;
- Der Synthetische Indikator soll durch die Prüfgesellschaft einfach und effizient überwacht werden können;
- Der Synthetische Indikator soll im Rahmen der normalen Marktschwankungen eine stabile Risiko-Klassifikation ermöglichen.

Wichtig ist, dass der Synthetische Indikator genau nach diesen Regeln berechnet wird. Denn nur mit einer einheitlichen Anwendung kann sichergestellt werden, dass dieser Synthetische Indikator einen aufschlussreichen Vergleich zwischen den verschiedenen kollektiven Kapitalanlagen zulässt (siehe Rz 2). **60**

Der Synthetische Indikator basiert auf der Volatilität der wöchentlichen oder monatlichen Erträge der letzten fünf Jahre. Gestützt auf dieser errechneten Volatilität ist die kollektive Kapitalanlage in einer numerischen Skala von 1 bis 7 einzuordnen. Diese Richtlinien regeln die Intervalle der Volatilitätsklassen und liefern auch detaillierte Regeln in Bezug auf die Umklassifizierung einer kollektiven Kapitalanlage. Besondere Bestimmungen gelten für sog. „Absolute Return Funds“ (siehe Rzn 78-82), „Total Return Funds“ (siehe Rzn 83-85), „Life Cycle Funds“ (siehe Rzn 86-89) und strukturierte kollektive Kapitalanlagen („Structured Funds”) (siehe Rzn 90-93). Im Falle von strukturierten kollektiven Kapitalanlagen ist der Synthetische Indikator auf der Basis einer annualisierten Volatilität bei einem Value-at-Risk (VaR)-Ansatz und einem Konfidenzintervall von 99% am Ende der Laufzeit zu berechnen. **61**

B Generelle Methodik zur Berechnung des Synthetischen Indikators des Risiko- und Ertragsprofils

Der Synthetische Indikator basiert auf der Volatilität der vergangenen Wertveränderungen der kollektiven Kapitalanlage. **62**

Die Volatilität ist gestützt auf die vergangenen wöchentlichen Wertveränderungen der kollektiven Kapitalanlage zu errechnen. Wo keine Angaben zu den wöchentlichen Erträgen vorhanden sind, ist auf die vergangenen monatlichen Wertveränderungen abzustellen. **63**

Bei der Berechnung der Volatilität sind die letzten fünf Jahre zu berücksichtigen. Bei Ausschüttungen sowohl von Kapitalgewinnen wie auch von Dividenden sind diese in die Berechnung miteinzubeziehen. Da die Berechnungsweise auf die wöchentlichen, respektive monatlichen Wertveränderungen fokussiert, hat dieses Vorgehen lediglich einen Einfluss auf die Ertragsentwicklung derjenigen Zeitperiode (Woche/Monat), in welcher die Ausschüttung stattfindet. Obwohl die Ausschüttung beim entsprechenden Nettoinventarwert (NAV) berücksichtigt wird, hat dies keine Korrektur des NAV selbst zur Folge (d.h. keine Reinvestition). Das nachfolgende Beispiel veranschaulicht die Berücksichtigung von Ausschüttungen bei der Berechnung der wöchentlichen Wertveränderung: **64**

Woche	1	2	3	4	5
NAV	100	96	89	86	90
Ausschüttungen	keine	keine	5	keine	keine
Wöchentliche Wertveränderung		- 4.0%	- 2.08%	- 3.37%	4.65%
Details der Berechnung		(96-100)/100	((89+5)-96)/96	(86-89)/89	(90-86)/86

Die Volatilität der kollektiven Kapitalanlage ist gestützt auf die folgende Formel, die auf annualisierter Basis auszuweisen ist, zu berechnen, wobei die Erträge der kollektiven Kapitalanlage über T sich nicht überlappende Perioden berechnet werden, welche eine Dauer von 1/m Jahre aufweisen. **65**

$$\text{Volatilität} = \sigma_f = \sqrt{\frac{m}{T-1}\sum_{t=1}^{T}(r_{f,t} - \bar{r}_f)^2}$$

Das bedeutet bei wöchentlichen Erträgen:

m = 52 (da jedes Jahr 52 Wochen zählt)
T = 260 (da eine 5-Jahresperiode 5 x 52 = 260 Wochen zählt)

und bei monatlichen Erträgen:

m = 12 (da jedes Jahr 12 Monate zählt)
T = 60 (da eine 5-Jahresperiode 5 x 12 = 60 Monate zählt)

wobei $r_{f,t}$ die Erträge des Fonds für die Dauer von 1/m Jahre sind;

wobei $\bar{r}_f$ das arithmetische Mittel der Wertentwicklung der kollektiven Kapitalanlage über die Periode T ist:

$$\bar{r}_f = \frac{1}{T}\sum_{t=1}^{T} r_{f,t}$$

Der Synthetische Indikator wird immer ganzzahlig ausgewiesen. Bruchteile oder halbe Werte sind ausgeschlossen. Die Skala kennt nur die Zahlen von 1 bis 7, andere Klassifizierungen sind nicht zulässig. Eine Klassifizierung von 7 entspricht dabei der höchsten, eine Klassifizierung von 1 der geringsten Volatilität. 66

Die Darstellung des Synthetischen Indikators erfolgt in folgender Form: 67

	Grafische oder visualisierte Erläuterung	Geringes Risiko ⟷ höheres Risiko Typischerweise geringe Rendite ⟷ typischerweise höhere Rendite
Beispiel einer kollektiven Kapitalanlage, die in die Kategorie 2 fällt:	Risiko- und Ertragsskala	1 **2** 3 4 5 6 7

Die Fondsleitung und die SICAV haben den Synthetischen Indikator einer jeden kollektiven Kapitalanlage und mithin auch die Risikoklassifikation im Rahmen der Prozesse des Risiko Managements zu berechnen. Sie haben sicherzustellen, dass die Berechnung regelmässig überprüft wird. Ein laufendes Monitoring des Indikators im Rahmen der Prozesse des Risiko Managements ist unabdingbar. 68

Die Berechnung des Synthetischen Indikators wie auch jede Überarbeitung sind genau zu dokumentieren. Die Fondsleitung und die SICAV haben diese Berechnungsunterlagen während mindestens fünf Jahren aufzubewahren. Im Falle von strukturierten kollektiven Kapitalanlagen beschränkt sich die Aufbewahrungspflicht auf fünf Jahre nach Ende der Laufzeit. 69

C Bestimmung der Volatilitätsklassen zum Zwecke der Risikoklassifizierung der kollektiven Kapitalanlage

Die Einordnung einer kollektiven Kapitalanlage in die Risikoklassen hat nach dem folgenden Raster gemäss den annualisierten Volatilitätsintervallen zu erfolgen. Eine höhere Klasse geht dabei mit einer höheren Volatilität und einem höheren Risikolevel der kollektiven Kapitalanlage einher. 70

Risikoklasse	Volatilität gleich oder mehr	Volatilität tiefer als
1	0.0%	0.5%
2	0.5%	2.0%
3	2.0%	5.0%
4	5.0%	10.0%
5	10.0%	15.0%
6	15.0%	25.0%
7	25.0%	

D Überprüfung des Synthetischen Indikators – Regeln zur Bestimmung eines Wechsels der Risikoklasse

Grundsätzlich gilt, dass bei jeder materiell relevanten Veränderung des Risiko- und Ertragsprofils einer kollektiven Kapitalanlage das KIID und somit auch der Synthetische Indikator zu überprüfen ist. Dies gilt insbesondere, wenn sich die allgemeinen Bedingungen in denjenigen Marktsegmenten, welche für die kollektive Kapitalanlage relevant sind, substantiell verändert haben. 71

Der Synthetische Indikator ist im KIID anzupassen, sobald die kollektive Kapitalanlage 72 an jedem wöchentlichen/monatlichen Referenzpunkt der vergangenen vier Monate ausserhalb ihrer ursprünglichen Risikoklassifizierung gemäss dem Raster in Rz 70 fällt.

In Anlehnung an die obigen Randziffern soll zudem, wenn sich der Synthetische Indikator der kollektiven Kapitalanlage über die letzten vier Monate betrachtet zu mehr als nur einer neuen Risikoklasse verändert hat, als neue Klasse diejenige verwendet werden, in welche der Synthetische Indikator in der Mehrheit der wöchentlichen oder monatlichen Perioden gefallen ist. 73

Der Synthetische Indikator ist in jedem Fall zu überprüfen und gegebenenfalls anzupassen, wenn der Abschnitt „Risiko- und Ertragsprofil" des KIID aufgrund einer aktiven und substantiellen Veränderung der Anlagestrategie oder des Anlagezieles der kollektiven Kapitalanlage überarbeitet wird. 74

E Besondere Regeln zur Berechnung der Volatilität

i) Market Funds mit ungenügenden historischen Wertentwicklungsdaten

Market Funds sind kollektive Kapitalanlagen, welche gemäss ihrer Anlagepolitik und Anlagestrategie das Risiko- und Ertragsprofil eines spezifischen Segments des Kapitalmarktes, wie z.B. eines spezifischen Industriesektors, eines spezifischen geographischen Raums etc. ganz oder überwiegend abzubilden versuchen. 75

Die Berechnung der Volatilität und die daraus folgende Risikoklassifizierung eines Market Funds hat dann besonderen Regeln zu folgen, wenn die kollektive Kapitalanlage noch nicht über ausreichend historische Daten für die Periode gemäss Rz 64 verfügt. Dies gilt insbesondere für kollektive Kapitalanlagen, die erst aufgelegt wurden, und für solche, deren Anlagepolitik erst kürzlich substantiell überarbeitet wurde. Fehlende Ertragswerte sollten für Market Funds kein Problem darstellen. Eine solche Anlagepolitik und Anlagestrategie lässt es normalerweise zu, dass ein Referenzportfolio, ein Referenzwert oder eine Target Asset Allocation etc. identifiziert werden kann, auf welche zurückgegriffen werden kann. 76

Für Market Funds, welche nicht über die erforderlichen Wertentwicklungsdaten gemäss Rz 64 verfügen, ist die Methodik für die generelle Berechnung des Synthetischen Indikators gemäss den nachfolgenden Regeln anzupassen: 77

- Ausgangspunkt sind die vorhandenen Wertentwicklungszahlen der kollektiven Kapitalanlage;
- Dazu ist ein Referenzportfolio, ein Referenzwert oder eine Target Asset Allocation etc. der kollektiven Kapitalanlage zu bestimmen, welche so weit als möglich der Anlagepolitik der kollektiven Kapitalanlage entspricht;
- Für die Periode, für welche keine Wertentwicklungszahlen der kollektiven Kapitalanlage vorhanden sind, sind die Wertentwicklungszahlen des Referenzportfolios, der Referenzwert etc. zu berechnen – unter Berücksichtigung aller vorhandenen Daten. Dabei sind die fiktiven Kosten der kollektiven Kapitalanlage für diese Periode in die Berechnung mit einzubeziehen, allerdings nur dann, wenn erwartet werden kann/muss, dass diese Kosten auf die Volatilitätsberechnungen einen materiellen Einfluss ausüben;
- Die Ertragszeitreihe des Referenzportfolios, der Referenzwert etc. sind mit der

vorhandenen Ertragszeitreihe der kollektiven Kapitalanlage zu verbinden;

- Die annualisierte historische Volatilität ist in Anwendung der allgemeinen Formel zu berechnen.

ii) Absolute Return Funds

Absolute Return Funds sind kollektive Kapitalanlagen, welche eine flexible Vermögensallokation über verschiedene Asset-Klassen, unter Einhaltung einer vorgegebenen Risikolimite, basierend z.B. auf einer Volatilität oder VaR-Kennzahl, anstreben. Dieses „Risiko-Budget" ist zentral und muss in den Synthetischen Indikator einfliessen. **78**

Somit ist der Synthetische Indikator von Absolute Return Funds nach folgender Regel zu berechnen: **79**

- Sofern Wertentwicklungsdaten über die gesamte, in Rz 64 vorgesehene Periode vorhanden sind, ist zur Berechnung des Synthetischen Indikators jeweils das Maximum der folgenden Positionen zu verwenden:

  a. die effektive, annualisierte jährliche Volatilität und

  b. die Volatilität, welche mit den Risikobeschränkungen der kollektiven Kapitalanlage übereinstimmt;

- Für kollektive Kapitalanlagen, welche noch nicht die ganze Periode gemäss Rz 64 abdecken und für solche, welche erst kürzlich ihre Anlagepolitik substantiell geändert haben, ist auf die annualisierte Volatilität abzustützen, welche der Risikobeschränkung der kollektiven Kapitalanlage entspricht.

Die Volatilität gemäss Rz 79 Bst. b entspricht der Risikolimite der kollektiven Kapitalanlage, sofern letztere auch diese Risikovorgabe verfolgt oder wenn diese basierend auf dem VaR-Ansatz durch eine Rückrechnung („Reverse Engineering") der VaR-Kennzahl und unter der Annahme der Risikoneutralität berechnet wird. **80**

Wenn die Risikolimite eines Absolute Return Fund auf einer VaR-Kennzahl basiert, so ist die Volatilitätskennzahl für die Risikoklassifizierung über ein adäquates und einheitliches Reverse Engineering der VaR-Kennzahl unter Beachtung der Risikoneutralität herzuleiten. **81**

Beispiel: Bei einem Konfidenzintervall von 99% und einer Haltedauer von T-Perioden von 1/m Jahre ist die Volatilität nach der folgenden Formel zu berechnen: **82**

$$VaR = -\left(rf_{1/m} - \frac{\sigma^2_{1/m}}{2}\right) \times T + 2.33 \times \sigma_{1/m} \times \sqrt{T;}$$

$$\sigma_A = \sigma_{1/m} \times \sqrt{m}$$

wobei $rf_{1/m}$ der risikofreie Zinssatz im Zeitpunkt der Berechnung einer jeden der T-Perioden/Intervalle während der ganzen Haltedauer darstellt.

iii) Total Return Funds

Total Return Funds sind kollektive Kapitalanlagen, welche vordefinierte Ertragsziele aufgrund einer flexiblen Allokation von Anlagen in verschiedenen Asset-Klassen (bspw. in Beteiligungs- wie auch in Forderungswertpapieren) verfolgen. Das Spektrum an Total Return Funds ist sehr breit und kann auch kollektive Kapitalanlagen umfassen, welche eine Art Kapitalschutz beinhalten, wie z.B. Constant Proportion Portfolio Insurance-Strukturen oder Variable Proportion Portfolio Insurance-Strukturen. **83**

Der Synthetische Indikator von Total Return Funds ist nach folgenden Regeln zu berechnen: **84**

- Sofern Wertentwicklungsdaten über die gesamte, in Rz 64 vorgesehene Periode vorhanden sind, ist zur Berechnung des Synthetischen Indikators jeweils das Maximum der folgenden Positionen zu verwenden:

  a. die historische, annualisierte Volatilität und

  b. die annualisierte Volatilität einer pro-forma-Asset-Allokation, welche der Referenzallokation der kollektiven Kapitalanlage im Zeitpunkt der Berechnung entspricht, und

  c. der Volatilität, welche auf den Vorgaben von Rz 79 Bst. b basiert und den Risikobeschränkungen der kollektiven Kapitalanlage sofern vorhanden entspricht;

- Für neue kollektive Kapitalanlagen, welche nicht über genügend Wertentwicklungsdaten verfügen, wie auch für kollektive Kapitalanlagen, welche ihre Anlagepolitik während der Periode von Rz 64 substantiell geändert haben, ist nur auf die Maxima gemäss Rz 84 Bst. b und c abzustützen.

Diese Punkte machen deutlich, dass sich die Portfoliozusammensetzung eines Total Return Funds sowohl hinsichtlich der Anlagen wie auch der verschiedenen Asset Klassen schnell ändern kann. Aus diesem Grund ist der Synthetische Indikator unter Berücksichtigung der Volatilitätskennzahlen (i) über die ganze Berechnungsperiode gemäss Rz 64, (ii) der zuletzt verwendeten Portfoliozusammensetzung (Rz 84 Bst. b) und (iii) gemessen an den Risikobeschränkungen in deren Rahmen die kollektive Kapitalanlage verwaltet wird (Rz 84 Bst. c), zu berechnen. **85**

iv) Life Cycle Funds

Life Cycle Funds sind kollektive Kapitalanlagen, deren Anlagepolitik und Anlagestrategie vorsehen, dass die Vermögensallokation im Verlauf der Zeit nach vorgegebenen Kriterien defensiver wird und dabei das Portfolio von Beteiligungswertpapieren in Forderungswertpapiere umgeschichtet wird. Aufgrund dieses substantiellen Wechsels in der Portfoliozusammensetzung ist es möglich, dass nicht alle historischen Wertentwicklungszahlen als repräsentative Grundlage für das aktuelle Risikoprofil dienen können. **86**

Aus diesem Grund ist bei Life Cycle Funds die Methodik zur Berechnung des Synthetischen Indikators so zu ändern, dass die Veränderungen in der Portfoliozusammensetzung angemessen berücksichtigt werden. Der Synthetische Indikator ist mithin aufgrund folgender Regeln zu berechnen: **87**

- sofern Wertentwicklungsdaten über die gesamte, in Rz 64 vorgesehenen Periode vorhanden sind und sich die Zielallokation im Verlauf dieser Periode nicht geändert hat, ist auf die Volatilität dieser historischen Wertentwicklungsdaten abzustellen;

- für neue kollektive Kapitalanlagen, welche nicht über genügend historische Wertentwicklungsdaten verfügen und für kollektive Kapitalanlagen, deren Zielallokation sich während der Berechnungsperiode substantiell geändert hat:

  a. ist von den vorhandenen Wertentwicklungsdaten auszugehen,

  b. dazu ist ein repräsentativer Referenzwert, ein Referenzportfolio etc. zu bestimmen, wobei deren Wertentwicklungsdaten gemäss Rz 77 zu berechnen sind,

  c. die beiden Wertentwicklungsserien sind anschliessend so zu kombinieren, dass eine repräsentative, annualisierte Volatilität simuliert werden kann.

Substantielle Veränderungen in der Portfoliozusammensetzung und mithin im Risiko- und Ertragsprofil eines Life Cycle Fund sind typisch. Darum ist der Synthetische Indikator von Life Cycle Funds um eine Erklärung zu ergänzen, welche die Anleger genau über diese Veränderungen informiert. **88**

Die Verfügbarkeit eines repräsentativen Referenzwertes oder eines Referenzportfolios bzw. von entsprechenden Wertentwicklungsdaten ist nicht immer gewährleistet. In solchen Fällen ist es zulässig, die entsprechenden Daten zu simulieren. Dabei sind alle vorhandenen Informationen unter Anwendung von adäquaten Risikomodellen sowie der Annahme der Risikoneutralität zu berücksichtigen. **89**

v) Strukturierte kollektive Kapitalanlagen

Als strukturierte kollektive Kapitalanlagen gelten diejenigen kollektiven Kapitalanlagen, die an vordefinierten Daten Ausschüttungen leisten, deren Höhe von einem Algorithmus abgeleitet wird und die an die Wertentwicklung, Preisänderungen oder sonstige Bedingungen von Vermögenswerten, Indizes oder Referenzportfolios oder an die Entwicklung anderer kollektiver Kapitalanlagen mit ähnlicher Anlagestrategie gebunden sind. **90**

Der Synthetische Indikator für strukturierte kollektive Kapitalanlagen ist aufgrund der annualisierten Volatilität, die einem 99%-VaR-Ansatz am Ende der Laufzeit entsprechen würde, nach der folgenden Formel zu berechnen. Ziel ist es, die möglichen Verluste zu errechnen, welche die kollektive Kapitalanlage am Ende der Laufzeit unter verschiedenen Szenarien erleiden kann. **91**

$$ln(R_{fund}) \sim N\left(\left(rf_w - \frac{\sigma_w^2}{2}\right) x\ T;\ \sigma_w \sqrt{T}\right);\ R_{fund} = \frac{NAV^T}{NAV_0}$$

wobei:

T entspricht der Anzahl Wochen in der Halteperiode der kollektiven Kapitalanlage, welche auch der Laufzeit entspricht, auf die sich der Algorithmus der Anlagepolitik bezieht;

rf_w entspricht dem während der gesamten Halteperiode der kollektiven Kapitalanlage durchschnittlichen wöchentlichen risikofreien Zinssatz im Zeitpunkt der Berechnung;

σ_w entspricht der Volatilität der logarithmierten wöchentlichen Wertentwicklung der kollektiven Kapitalanlage.

Das mit einem Konfidenzintervall von 99% berechnete Risikomass am Ende der Laufzeit einer strukturierten kollektiven Kapitalanlage, deren Auszahlungen an die Anleger an die Wertentwicklung vorbestimmter Referenzwerte (nachfolgend XYZ-Index) gebunden sind, ist nach den nachfolgenden Vorgaben zu errechnen: **92**

a) Die Veränderungen im XYZ-Index sind für jede der T-Wochen der Halteperiode zu bestimmen. Sind nicht genügend Daten vorhanden, so kann dies in Anwendung der Ausführungen von Rz 77 durch Rückwärtssimulation hergeleitet werden;

b) Die (logarithmische) Wertentwicklung am Ende der Laufzeit der kollektiven Kapitalanlage, welche den in Rz 92 Bst. a bestimmten Veränderungen entspricht, ist zu simulieren. Wenn es der Algorithmus zulässt, dass Dividenden ausgeschüttet oder Erträge vorhergesagt werden können, so sind diese Ausschüttungen und Erträge am Ende der Laufzeit (d.h. am Ende der Halteperiode T) in Anwendung des risikofreien Zinssatzes im Zeitpunkt der Simulation zu kapitalisieren;

c) Die 1%-Überschreitungswahrscheinlichkeit der Wertentwicklung der kollektiven Kapitalanlage gemäss Rz 92 Bst. b ist zu isolieren. Diese Überschreitungswahrscheinlichkeit, mit umgekehrtem Zeichen gemäss internationalen Standards, entspricht der historischen VaR-Simulation mit einem Konfidenzintervall von 99%;

d) Steht der 99%-VaR-Ansatz am Ende der Laufzeit fest, ist die annualisierte Volatilität nach folgenden Regeln zu berechnen:

   i. rfw als durchschnittlicher, wöchentlicher risikoloser Zinssatz zum Zeitpunkt der Berechnung für die Haltedauer der kollektiven Kapitalanlage ist zu bestimmen. Dieser Satz ist zu schätzen, sofern er von der Zins-Swap-Kurve nicht hergeleitet werden kann,

   ii. Durch eine Rückwärtsrechnung des vorstehenden Modells ist die Volatilität der wöchentlichen Wertentwicklung der kollektiven Kapitalanlage (σ_w) zu errechnen. Diese entspricht der VaR-Kennzahl nach obenstehender Darstellung. Dies kann durch Auflösung der nachfolgenden Formel nach σ_w erfolgen:

$$VaR = -\left(rf_w - \frac{\sigma_w^2}{2}\right) x\ T + 2.33\ x\ \sigma_w\ x\ \sqrt{T}$$

e) Die Volatilität ist nach folgender Quadratwurzel-Regel zu annualisieren:

$$\sigma_A = \sigma_w\ x \sqrt{52}$$

Eine spezifische historische Zeitperiode für die Berechnung des Synthetischen Indikators kann das Resultat dieser Rechnung wegen der potentiellen Abweichung des zugrundeliegenden Index beeinträchtigen. Diese Beeinträchtigung ist durch die Fondsleitung und die SICAV angemessen zu korrigieren. Diese Regelung kommt insbesondere dann zur Anwendung, wenn das Risikoprofil aufgrund eines solchen Verzerrungseffektes zu positiv dargestellt würde. **93**

V Regeln zur Methodik der Berechnung der laufenden Kosten im KIID

A Einleitung

Das Ziel dieser Richtlinien besteht darin, vereinheitlichte Regeln für die Berechnung und Darstellung der einer kollektiven Kapitalanlage belasteten Gebühren und Kosten festzulegen. Das soll es dem Anleger ermöglichen, die sog. „laufenden Kosten" kollektiver Kapitalanlagen auf einfache Art zu vergleichen. Dabei wird insbesondere geregelt, welche Kosten und Gebühren bei der Berechnung der laufenden Kosten zu berücksichtigen sind. Dabei gilt die Vermutung, dass alle Kosten und Gebühren, welche dem Fondsvermögen belastet werden, in den laufenden Kosten zu berücksichtigen sind, ausser sie werden explizit davon ausgenommen. Dies gilt z.B. für Gebühren, welche an die Wertentwicklung einer kollektiven Kapitalanlage gebunden sind (nachfolgend „Performance Fee") wie auch für Ausgabe- und Rücknahmekommissionen, welche vom Anleger zu tragen sind. Unter Berücksichtigung von Rz 106 sollte, wenn immer möglich, eine ex-post Berechnung auf geprüften Zahlen durchgeführt werden. **94**

B Methodik für die Berechnung der laufenden Kosten

Fondsleitung und SICAV sind verantwortlich dafür, dass: **95**

a) die laufenden Kosten korrekt berechnet und im KIID veröffentlicht werden;

b) Prozesse für die Berechnung der laufenden Kosten bestehen, welche diesen Richtlinien entsprechen, und diese Prozesse angemessen dokumentiert sind;

c) die Unterlagen für die Berechnung der laufenden Kosten aufbewahrt werden. Die Aufbewahrungsfrist beträgt mindestens fünf Jahre, beginnend am letzten Tag, an welchem das betreffende KIID zuletzt für die Verteilung an die Anleger zur Verfügung stand.

i) Die Zusammensetzung der zu veröffentlichenden laufenden Kosten

Unter die „laufenden Kosten" gemäss diesen Richtlinien fallen alle Zahlungen, welche während einer bestimmten Periode aus dem Fondsvermögen getätigt werden und gemäss Gesetz, Verordnung, Fondsreglement oder Prospekt auch getätigt werden durften. Davon ausgenommen sind die Zahlungen gemäss Rz 99. **96**

Die laufenden Kosten umfassen ein breites Spektrum an Kosten im Zusammenhang mit der kollektiven Kapitalanlage. Es kann sich dabei um Kosten handeln, mit welchen nötige Dispositionen abgegolten werden oder aber um Entschädigungen von Dienstleistungserbringern, wie z.B. der Vermögensverwalter oder die Prüfgesellschaft. Die Art, wie diese Kosten berechnet werden, ist unmassgeblich. **97**

Die nachfolgende Liste enthält eine beispielhafte, nicht abschliessende Aufzählung der Kosten, welche unter die laufenden Kosten fallen – sofern sie dem Fondsvermögen belastet werden: **98**

a) Alle Zahlungen an die nachfolgenden Personen, wie auch an solche Personen, denen die nachfolgenden Personen Aufgaben delegiert haben:

- die Fondsleitung und die SICAV
- die Verwaltungsräte der SICAV
- die Depotbank
- der Vermögensverwalter und der Anlageberater;

b) Zahlungen für Dienstleistungen, welche Personen gemäss Rz 98 Bst. a zulässigerweise delegiert haben:

- Fondsbuchhaltung, Administration und Bewertung
- Führung des Anteilsregisters und Erbringung anderer Dienstleistungen für die Anlegerinnen und Anleger;

c) Aufsichtsgebühren und ähnliche Abgaben;

d) Prüfkosten der kollektiven Kapitalanlage;

e) Kosten für die Rechtsberatung;

f) Vertriebskosten jeder Art;

g) Gebührenteilungsvereinbarungen;

Sofern die Fondsleitung oder die SICAV im Rahmen von Gebührenteilungsvereinbarungen Erträge erhält, welche nicht vollumfänglich dem Fondsvermögen gutgeschrieben werden, ist der an die Fondsleitung oder die SICAV fallende Anteil als Kosten bei der Berechnung der laufenden Kosten der kollektiven Kapitalanlage zu berücksichtigen. Darunter fallen z.B. Retrozessionen auf Brokergebühren oder Erträge, welche im Zusammenhang mit Kommissionen aus der Effektenleihe anfallen. Ebenso sind diejenigen Anteile von Retrozessionen auf Zielfonds zu berücksichtigen, welche die Fondsleitung oder die SICAV auf eigene Rechnung zurückbehält.

Kosten im Zusammenhang mit Gebührenteilungsvereinbarungen, welche von den laufenden Kosten schon erfasst werden, sind nicht nochmals zu berücksichtigen.

Die folgenden Kosten fallen nicht unter die laufenden Kosten: **99**

a) Ausgabe- und Rücknahmekommissionen und andere Kosten, welche direkt dem Anleger belastet oder aber von der Zahlung in Abzug gebracht werden, welche dem Anleger ausbezahlt werden;

b) an die Wertentwicklung einer kollektiven Kapitalanlage gebundene Gebühr (Performance Fee);

c) Darlehenszinsen;

d) Zahlungen an Drittpersonen welche für den Erwerb von Anlagen für das Fondsvermögen oder für den Verkauf von Anlagen aus dem Fondsvermögen erforderlich sind, wobei es sich um ausdrückliche Kosten (wie z.B. Brokerage-Gebühren, Steuern oder Abgaben) oder um implizite Kosten (wie z.B. Kosten des „market impact") handeln kann;

e) Kosten, welche im Zusammenhang mit dem Halten von derivativen Finanzinstrumenten stehen (wie z.B. Kosten für margin calls);

f) Der Wert von Sachen und Dienstleistungen, welche die Fondsleitung, die SICAV oder eine Person, der von der Fondsleitung oder der SICAV Dienstleistungen delegiert wurden, als Gegenleistung für die Platzierung von Transaktionen etc. erhalten haben (soft commissions und ähnliches).

Die Ausnahme gemäss Rz 99 Bst. d bezieht sich nicht auf: **100**

a) Transaktionsabhängige Zahlungen an eine Person gemäss Rz 98 Bst. a und b;

b) Kosten, welche im Zusammenhang mit der Ausgabe oder der Rücknahme von Anteilen an anderen kollektiven Kapitalanlagen stehen. Diese Kosten sind in Anwendung von Rz 101 bei der Berechnung der laufenden Kosten zu berücksichtigen.

Sofern eine kollektive Kapitalanlage einen wesentlichen Teil in andere kollektive Kapitalanlagen investiert, so sind die laufenden Kosten, welche auf der Ebene des Zielfonds anfallen, in den laufenden Kosten der investierenden kollektiven Kapitalanlage zu berücksichtigen. Dies hat folgendermassen zu erfolgen: **101**

a) Sofern der Zielfonds die laufenden Kosten nach der vorliegenden Richtlinie oder gleichwertigen Regeln veröffentlicht, so ist auf die neueste Veröffentlichung der laufenden Kosten dieses Zielfonds abzustützen;

b) Sofern der Zielfonds von der gleichen Fondsleitung oder SICAV wie die investierende kollektive Kapitalanlage oder von einer mit ihr verbundenen Gesellschaft verwaltet wird, aber nicht unter Rz 101 Bst. a fällt, so hat die Fondsleitung oder die SICAV die laufenden Kosten aufgrund aller vorhandenen Informationen zu schätzen;

c) Sofern der Zielfonds weder unter Rz 101 Bst. a noch unter Rz 101 Bst. b fällt und keine laufenden Kosten nach diesen Richtlinien oder gleichwertigen Regeln veröffentlicht, so hat sich die Fondsleitung oder die SICAV auf andere vorhandene, zuverlässige Daten abzustützen wie z.B. die Total Expense Ratio oder andernfalls die Daten gestützt auf den Prospekt, den Jahresbericht und andere Veröffentlichungen bestmöglich zu schätzen;

d) Sofern die Zielfonds gemäss Rz 101 Bst. c weniger als 15% des Vermögens der investierenden kollektiven Kapitalanlage betragen, müssen die laufenden Kosten dieser Zielfonds nicht gemäss Rz 101 Bst. c berechnet oder geschätzt werden; vielmehr genügt es, die Verwaltungskommission dieser Zielfonds beizuziehen;

e) In jedem Fall sind die laufenden Kosten um den Betrag zu reduzieren, den die Fondsleitung oder die SICAV von den Zielfonds oder deren Dienstleistungserbringern in Form von Rückvergütungen, Retrozessionen und dergleichen erhält. Diese sind nämlich dem Fondsvermögen gutzuschreiben;

f) Sofern für die Anlage in oder die Rücknahme von Anteilen an Zielfonds Ausgabe- oder Rücknahmekommissionen zu zahlen sind, ist der Geldwert dieser Kommissionen für die Berechnungsperiode der laufenden Kosten zu berechnen und bei der Berechnung dieser laufenden Kosten zu berücksichtigen.

Bei kollektiven Kapitalanlagen, die als Umbrella-Fonds strukturiert sind, ist für die Berechnung der laufenden Kosten jedes Teilvermögen als separate Einheit zu betrachten. Kosten, welche dem Umbrella-Fonds als Ganzem belastet werden, sind nach einem für alle Anleger fairen Ansatz auf die einzelnen Teilvermögen zu verteilen. **102**

ii) Regeln für die Berechnung der laufenden Kosten (ausser bei neu aufgelegten kollektiven Kapitalanlagen)

Die laufenden Kosten errechnen sich als das Verhältnis zwischen der Summe aller Kosten gemäss Rzn 96-102 und dem durchschnittlichen Nettovermögen der kollektiven Kapitalanlage. Die Verhältniszahl ist als Prozentsatz mit zwei Dezimalstellen auszudrücken. **103**

Die laufenden Kosten sind mindestens einmal jährlich ex post zu berechnen, d.h. unter Berücksichtigung der abgelaufenen Berechnungsperiode. Sofern die ex-post-Betrachtung z.B. aufgrund einer materiellen Kostenveränderung (z.B. der Erhöhung der Verwaltungskommission) nicht sinnvoll ist, kann auf eine Schätzung abgestellt werden, bis eine verlässliche ex-post Betrachtung möglich ist, in der die materielle Veränderung berücksichtigt ist. **104**

Sofern eine kollektive Kapitalanlage über mehrere Anteilsklassen verfügt, sind die laufenden Kosten für jede Anteilsklasse separat zu berechnen. Verfügt eine kollektive Kapitalanlage jedoch über mehrere Anteilsklassen, deren Kosten proportional verlaufen, kann auch nur auf eine einzige Detail-Berechnung abgestellt werden. **105**

Die ex-post-Berechnung hat auf den neuesten vorhandenen Daten zu basieren, welche die Fondsleitung oder die SICAV als zu diesem Zweck am aufschlussreichsten betrachtet. Dies sind grundsätzlich die im letzten Jahres- oder Halbjahresbericht, je nach dem, welcher aktueller ist, veröffentlichten Kennzahlen; sind diese nicht aussagekräftig, ist eine Berechnung aufgrund der während der letzten 12 Monate belasteten Kosten zu erstellen. Dabei ist auf die Bruttokosten abzustellen, also unter Einbezug allfälliger Steuern. **106**

Das durchschnittliche Nettovermögen gemäss Rz 103 ist für die gleiche Periode zu berechnen wie die Summe aller Kosten gemäss Rz 103. Dabei ist auf das Nettovermögen an jedem Bewertungstag abzustellen. Als Bewertungstag gilt jeder Bankarbeitstag, ausser der Prospekt würde die Bewertung nur in geringerem Rhythmus vorschreiben. **107**

Bei Dachfonds, bei welchen die laufenden Kosten der Zielfonds in Anwendung von Rz 101 zu berücksichtigen sind, ist folgendes zu beachten: **108**

a) Die laufenden Kosten der Zielfonds bzw. deren vergleichbare Zahlen sind nur für den Teil des Nettovermögens einer kollektiven Kapitalanlage zu berücksichtigen, welcher am Stichtag in den entsprechenden Zielfonds investiert ist. Als Stichtag gilt derjenige Tag, für welchen die laufenden Kosten der investierenden kollektiven Kapitalanlage berechnet werden;

b) Die laufenden Kosten der Zielfonds sind zu den laufenden Kosten der investierenden kollektiven Kapitalanlage zu addieren. Dies führt zu einem synthetischen Total der laufenden Kosten.

Die laufenden Kosten für vergangene Berechnungsperioden sind an der Stelle zu publizieren, welche im KIID unter den Praktischen Informationen für allgemeine Angaben zur kollektiven Kapitalanlage angegeben ist (i.d.R. die Website der Fondsleitung oder der SICAV). **109**

iii) Regeln für die Berechnung der laufenden Kosten (bei neu aufgelegten kollektiven Kapitalanlagen)

Grundsätzlich finden bei neu aufgelegten kollektiven Kapitalanlagen die gleichen Regeln Anwendung wie bei bereits seit längerem aufgelegten kollektiven Kapitalanlagen. Es gelten jedoch die folgenden Abweichungen: **110**

a) Die Rzn 106 und 107 finden keine Anwendung. Dafür ist auf Schätzwerte abzustellen;

b) Sofern die Fondsleitung oder die SICAV der Ansicht ist, dass die Veröffentlichung von auf zwei Dezimalstellen gerundeten laufenden Kosten den Verdacht einer verfälschten Genauigkeit aufkommen lassen, so genügt es, auf nur eine Dezimalstelle gerundete laufende Kosten zu veröffentlichen;

c) Vereinbarungen über Ermässigungen und Gebührenverzichte zugunsten der kollektiven Kapitalanlage sind im KIID auszuweisen. Fehlen entsprechende Angaben, ist davon auszugehen, dass keine solchen vereinbart wurden.

Die Fondsleitung und die SICAV haben die geschätzten laufenden Kosten konstant auf ihre Aussagekraft zu überwachen. Sie haben selbst festzulegen, wann es angemessen ist, auf die ex-post-Berechnung zu wechseln. Spätestens 12 Monate nach Lancierung der kollektiven Kapitalanlage sind die Schätzwerte aber aufgrund einer ex-post-Berechnung auf ihre Exaktheit zu überprüfen. **111**

VI Regeln zur Auswahl und Präsentation der Szenarien der potenziellen Wertentwicklung im KIID für strukturierte kollektive Kapitalanlagen

A Hintergrund

Ziff. 5.9 Anhang 3 KKV bestimmt für strukturierte kollektive Kapitalanlagen, dass deren KIID keine Angaben zur bisherigen Wertentwicklung enthalten darf. In Anwendung von Ziff. 2.10 Anhang 3 KKV ist vielmehr eine Illustration von mindestens drei Szenarien der potenziellen Wertentwicklung der kollektiven Kapitalanlage beizufügen. Dabei sind zweckmässige Szenarien zu wählen, unter denen mit der Formel eine niedrige, mittlere oder hohe und gegebenenfalls auch eine negative Rendite für die Anlegerinnen und Anleger erwirtschaftet wird. **112**

Diese Szenarien stützen sich auf vernünftige und konservative Annahmen über künftige Marktbedingungen und Preisbewegungen. Setzt die Formel die Anlegerinnen und Anleger dem Risiko erheblicher Verluste aus, wie z.B. eine Kapitalgarantie, die nur unter Umständen durchsetzbar ist, sind diese Verluste angemessen zu erläutern, selbst wenn die entsprechenden Marktbedingungen nur ein geringes Risiko vermuten lassen. **113**

Den Szenarien ist eine Erklärung beizufügen, dass es sich dabei um Beispiele handelt, die zur Verdeutlichung der Formel aufgenommen wurden und keine Prognose künftiger Wertentwicklungen darstellen. Auch ist klar zu machen, dass die dargestellten Szenarien nicht mit gleicher Wahrscheinlichkeit eintreten werden. **114**

B Anwendungsbereich

Dieser Abschnitt findet nur auf strukturierte kollektive Kapitalanlagen (Rz 90) Anwendung. **115**

Zu den strukturierten kollektiven Kapitalanlagen gehören gewisse Typen kollektiver Kapitalanlagen mit Kapital- oder anderen Garantien. Diese kollektiven Kapitalanlagen haben oftmals ein schwer verständliches Risikoprofil, weswegen sinnvollerweise Grafiken verwendet werden, um den Anlegerinnen und Anlegern die Strategie der jeweiligen strukturierten kollektiven Kapitalanlage verständlich zu machen. **116**

C Auswahl der Szenarien der potenziellen Wertentwicklung der kollektiven Kapitalanlage

Bei der Auswahl, Darstellung und Erläuterung der Szenarien hat sich die Fondsleitung und die SICAV am Prinzip der fairen, klaren und nicht irreführenden Information zu orientieren. **117**

Die Fondsleitung und die SICAV hat mindestens drei Szenarien der potenziellen Wertentwicklung zu wählen, um zu illustrieren, wie das Auszahlungsschema unter verschiedenen Marktkonditionen funktioniert. **118**

Die Szenarien haben folgendes zu illustrieren: **119**

- Das Funktionieren der Formel unter Marktbedingungen, welche zu einem unvorteilhaften, zu einem vorteilhaften und zu einem mittleren Resultat für den Anleger führen;
- Besonderheiten der Formel, wie z.B. eine limitierte Wertentwicklung oder der Einsatz von Leverage;
- Situationen, in welchen die Mechanismen der Formel einen vorteilhaften oder einen unvorteilhaften Einfluss auf die finale Wertentwicklung haben.

Je nach Formel (z.B. Knock-out, bedingte Garantien etc.) können mehr als drei Szenarien erforderlich sein, um alle möglichen Resultate darzustellen. **120**

Die Beispiele, welche für die verschiedenen Szenarien gewählt werden, haben auf vernünftigen Annahmen zukünftiger Marktentwicklungen und Preisbewegungen zu basieren. **121**

Das unvorteilhafte Szenario ist stets als erstes darzustellen. **122**

Die ausgewählten Szenarien haben einen Beschrieb der Vor- und Nachteile der Formel zu enthalten, soweit diese nicht schon im Abschnitt „Risiko- und Ertragsprofil“ enthalten sind. **123**

Die Szenarien sollen Informationen widerspiegeln, welche ergänzend und konsistent sind mit den Informationen in anderen Abschnitten des KIID. **124**

Sofern relevant sind die Szenarien zu aktualisieren: **125**

- wenn sich die Marktverhältnisse seit der Auflegung der kollektiven Kapitalanlage substantiell verändert haben,

- zumindest einmal jährlich,
- um die zeitliche Abhängigkeit der Wertentwicklung darzustellen (z.B. wenn der jährliche Stichtag vergangen ist).

Ein Anleger erlangt oftmals ein besseres Verständnis der Vorteile und Beschränkungen von strukturierten kollektiven Kapitalanlagen, wenn er Antworten auf „was wenn?"-Fragen erhält. **126**

Das Beispiel mit einem geringen Ertrag soll ein unvorteilhaftes Szenario darstellen. **127**

- Sofern keine Garantie besteht, hat das Szenario darzulegen, dass ein Anleger einen Verlust erleiden kann und wie gross dieser Verlust sein kann;
- Sofern eine rechtlich vollstreckbare Garantie besteht, hat das Szenario den Fall zu beschreiben, in welchem die Garantie zur Anwendung kommt und die Formel ausser Kraft setzt (Ertrag gleich Null);
- Sofern z.B. ein bedingter Kapitalschutz besteht, ist es angebracht, mit einem zusätzlichen Beispiel klarzumachen, wie extreme Umstände die Schwelle überschreiten und zu einem Verlust des Kapitals führen können. Damit soll sichergestellt werden, dass der Anleger realisiert, dass er einen substantiellen Verlust erleiden kann.

Das Beispiel des hohen Ertrages soll ein für den Anleger positives Resultat widerspiegeln. Es darf jedoch nicht auf unvernünftig optimistischen Annahmen basieren, welche das wahrscheinliche Potential der kollektiven Kapitalanlage übertreiben. **128**

Das Beispiel mit dem mittleren Ertrag soll einen moderaten Kapitalgewinn widerspiegeln. **129**

Ein viertes Szenario kann erforderlich sein, um auf einen speziellen Aspekt der Formel hinzuweisen, wie das z.B. bei einer Knock-out-Struktur der Fall ist, wenn die Wertentwicklung der kollektiven Kapitalanlage eine bestimmte Schwelle erreicht. **130**

D Darstellung der Szenarien

Die Szenarien sind mit dem Titel „Beispiele von Wertentwicklungsszenarien" zu bezeichnen. Die Erläuterungen dazu haben klarzustellen, dass es sich dabei nicht um Vorhersagen der Kursentwicklung der kollektiven Kapitalanlage handelt und dass diese Szenarien nicht mit gleicher Wahrscheinlichkeit eintreten müssen. **131**

Die Szenarien sind entweder in der Form von Tabellen oder von Grafiken darzustellen, je nach dem, was für die Szenarien übersichtlicher und verständlicher ist. Für jedes Szenario ist eine Tabelle bzw. eine Grafik zu erstellen. **132**

- Tabellen sind geeignet, wenn die Anlagestrategie und die Formel einfach zu erläutern sind oder wenn die Auszahlung von der Wertentwicklung einer Mehrzahl von Wertpapieren abhängt, wie z.B. bei einem Index;
- Grafiken sind geeignet, wenn das Auszahlungsdiagramm mit einer Tabelle nicht sinnvoll dargestellt werden kann. Dies gilt z.B. für kollektive Kapitalanlagen mit einem pfadabhängigen Auszahlungsdiagramm oder für ein Auszahlungsdiagramm, welches von der durchschnittlichen Wertentwicklung eines Index abhängt.

Die beispielhaft dargelegten Erträge sind als jährliche Wertentwicklung auszuweisen und als solche zu erklären. Daneben darf auch die Gesamtwertentwicklung ausgewiesen werden. **133**

Um das Verständnis der Tabellen und Grafiken sicherzustellen, sollte folgendes unterlassen werden: **134**

- doppelte Skalen (mit je einer Skala links und rechts);
- grafische Besserstellung der positiven Wertentwicklung gegenüber den negativen Wertentwicklungsszenarien;
- nicht lineare Skalen;
- unterschiedliche Skalen je nach Szenario.

Die Erläuterungen haben darauf hinzuweisen, dass ein Anleger seine Anteile auch vor Ablauf der Laufzeit zurückgeben kann. Die Auswirkungen auf die Wertentwicklung sind klar und deutlich darzustellen, da der Rückzahlungsbetrag in diesem Fall nicht von der Formel abhängt, sondern vom Marktwert des Basiswertes. **135**

Die Erläuterungen haben überdies speziell darauf hinzuweisen, was der Anleger nicht erwartet oder für ihn ungewöhnlich ist. Dies gilt z.B. bei kollektiven Kapitalanlagen, deren Wertentwicklung sich an der durchschnittlichen Wertentwicklung von Basiswerten orientiert, da in diesem Fall sowohl die positive wie auch die negative Wertentwicklung der kollektiven Kapitalanlage beschränkt sind. **136**

E Beispiele

Die nachfolgenden Beispiele dienen ausschliesslich der Illustration der Vorgaben gemäss diesen Richtlinien. Sie sind nicht als Beispiele in das KIID zu übernehmen. **137**

i) Auswahl an Szenarien

Eine kollektive Kapitalanlage, welche die durchschnittliche Wertentwicklung eines Referenzwertes nachbildet, hat die folgenden Szenarien darzustellen: **138**

- die Auszahlung unter günstigen Bedingungen, also wenn der Referenzwert und somit auch die kollektive Kapitalanlage seit Auflegung an Wert gewonnen hat;
- den positiven Effekt der Formel, wenn der Referenzwert gegen Ende der Laufzeit an Wert verliert;
- den negativen Effekt der Formel, wenn der Referenzwert gegen Ende der Laufzeit stark an Wert zulegt.

ii) Darstellung mit Hilfe von Tabellen

Tabellen eignen sich vor allem für strukturierte kollektive Kapitalanlagen mit einem Auszahlungsdiagramm, welches sich an der durchschnittlichen Wertentwicklung einer Mehrzahl an Wertpapieren über eine bestimmte Zeitperiode orientiert. Beispiel: Eine kollektive Kapitalanlage mit der Strategie, den Jahresertrag eines Korbes von fünf **139**

Aktien, berechnet über zwei Jahre, auszuzahlen.

Die Auszahlung am Ende der Laufzeit besteht in der durchschnittlichen Wertentwicklung einer jeden Aktie im Korb. Die Wertentwicklung berechnet sich nach dem zugrundeliegenden Wert jeder Aktie im Korb über eine Periode von zwei Jahren, welche aber bei 9.5% limitiert ist. Dabei besteht eine rechtlich durchsetzbare Garantie des Ertrages auf dem investierten Betrag. **140**

Ungünstige Bedingungen (geringer Ertrag) **141**

Aktie	Zugrundeliegende Wertentwicklung	Wertentwicklung der kollektiven Kapitalanlage			
1	- 4.0%	- 4.0%		Durchschnittliche Wertentwicklung des Korbes aller Aktien	- 8.2%
2	- 2.0%	- 2.0%		Wertentwicklung der kollektiven Kapitalanlage	0.0%
3	- 12.0%	- 12.0%		Prozentualer Jahresertrag	0.0%
4	- 23.0%	- 23.0%			
5	- 0.0%	- 0.0%			

Am Ende der Laufzeit beträgt die durchschnittliche Wertentwicklung -8.2%. Somit kommt die Garantie zum Tragen.

Bei Rückgabe der Anteile vor dem Ende der Laufzeit: Der Wert berechnet sich nach dem Marktwert der derivativen Finanzinstrumente, welche die kollektive Kapitalanlage zum Zwecke der Nachbildung des Referenzwertes erworben hat und nicht nach dem Wert der zugrundeliegenden Aktien.

Günstige Bedingungen (hoher Ertrag)

Aktie	Zugrundeliegende Wertentwicklung	Wertentwicklung der kollektiven Kapitalanlage			
1	10%	9.5%		Durchschnittliche Wertentwicklung des Korbes aller Aktien	11.2%
2	11%	9.5%		Wertentwicklung der kollektiven Kapitalanlage	9.5%
3	12%	9.5%		Prozentualer Jahresertrag	4.65%
4	10%	9.5%			
5	13%	9.5%			

Aus diesem Beispiel ist ersichtlich, dass der Wertpapierkorb eine höhere Rendite als die strukturierte kollektive Kapitalanlage hat. Eine Anlage, welche bis zum Ende der Laufzeit gehalten wird, würde zu einem ausbezahlten Ertrag von 9.5% führen.

Mittlere Bedingungen (mittlerer Ertrag)

Aktie	Zugrundeliegende Wertentwicklung	Wertentwicklung der kollektiven Kapitalanlage			
1	2.0%	2.0%		Durchschnittliche Wertentwicklung des Korbes aller Aktien	3.2%
2	0.0%	0.0%		Wertentwicklung der kollektiven Kapitalanlage	2.9%
3	8.0%	8.0%		Prozentualer Jahresertrag	1.44%
4	- 5.0%	- 5.0 %			
5	11.0%	9.5 %			

Am Ende der Laufzeit beträgt die durchschnittliche Wertentwicklung des Aktienkorbes 3.2%, die Wertentwicklung der kollektiven Kapitalanlage aber nur 2.9%, wegen der Beschränkung, welche bei einer der Aktien im Korb zur Anwendung kam.

Bei diesen Szenarien wäre die Darstellung mittels Grafiken schwierig, da für jede Aktie eine Grafik gezeichnet werden müsste.

iii) Darstellung mit Hilfe von Grafiken

Für eine strukturierte kollektive Kapitalanlage mit einem Anlagehorizont von 8 Jahren, aber mit einem „kick-out". **142**

Wenn zu einem gegebenen jährlichen Stichtag der Eurostoxx Index mindestens auf der gleichen Höhe liegt wie zu Beginn der Laufzeit, so erfolgt eine Auszahlung der ursprünglichen Einlage zuzüglich 8% pro Jahr für jedes Jahr seit Auflegung. Sofern dies am Stichtag des zweiten oder eines nachfolgenden Jahres erfolgt, so beträgt der entsprechende jährliche Ertrag weniger als 8%. **143**

Sofern der Wert des Eurostoxx Index an jedem jährlichen Stichtag unter seinem Wert zu Beginn der Laufzeit liegt, so bestimmt sich die Auszahlung nach Ablauf der Laufzeit von 8 Jahren nach dem CAC 40 Index. **144**

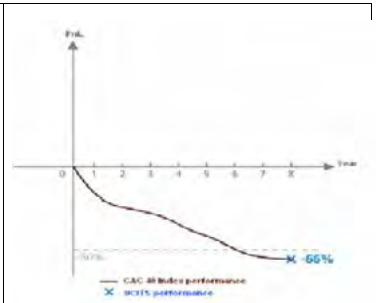
- Wenn der CAC 40 Index seit Beginn der Laufzeit um 50% oder weniger gefallen ist, so entspricht die Auszahlung der Einlage;
- Wenn der CAC 40 Index seit dem Beginn der Laufzeit um mehr als 50% gefallen ist, so reduziert sich die Auszahlung der Einlage um die entsprechende prozentuale Reduktion des Eurostoxx Index.

Die Einlage des Anlegers ist somit im Risiko und nicht gesichert.

Sehr ungünstige Bedingungen (sehr geringer Ertrag) **145**

Der Eurostoxx Index liegt unter dem Level, den er zu Beginn der Laufzeit hatte. Es gibt also keine vorzeitige Auszahlung.

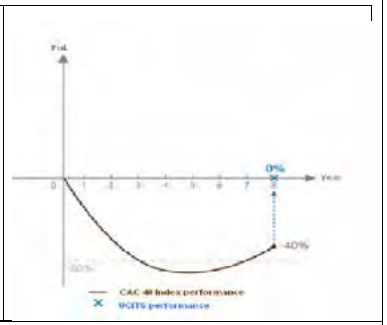
Nach 8 Jahren liegt der CAC 40 Index unter seinem Wert zu Beginn der Laufzeit. Dies bedeutet, dass die Auszahlung unter dem ursprünglich investierten Betrag liegt.



Ungünstige Bedingungen (geringer Ertrag)

Der Eurostoxx Index liegt unter dem Level, den er zu Beginn der Laufzeit hatte. Es gibt also keine vorzeitige Auszahlung.

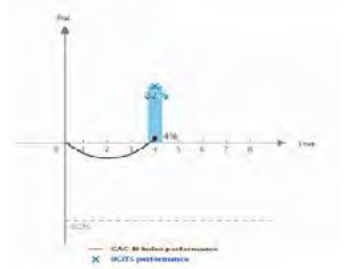
Nach 8 Jahren hat sich der CAC 40 Index gegenüber dem Beginn der Laufzeit um weniger als 50% reduziert. Die Auszahlung entspricht somit dem ursprünglich investierten Betrag.



Günstige Bedingungen (hoher Ertrag)

Der Eurostoxx Index überschreitet seinen Anfangswert erstmals am vierten Stichtag.

Zu diesem Zeitpunkt wird der ursprünglich investierte Betrag plus 32% (4 x 8%) ausbezahlt. Eine Anfangsanlage von CHF 1'000 wird also auf ca. CHF 1'320 wachsen.

Die jährliche Rendite entspricht 7.18%.	

Bei der Rückgabe der Anteile vor dem Ende der Laufzeit: Der Wert berechnet sich nicht nach der oben dargelegten Formel sondern nach dem NAV der kollektiven Kapitalanlage, d.h. nach dem Marktwert der verwendeten derivativen Finanzinstrumente.

VII Übrige Bestimmungen

A Mindeststandard

Der Verwaltungsrat der FINMA hat diese Richtlinien als Mindeststandard anerkannt (FINMA-Rundschreiben 2008/10 „Selbstregulierung als Mindeststandard“). **146**

B Inkrafttreten

Diese Richtlinien wurden am 20. Januar 2012 vom Vorstand der Swiss Funds Association SFA verabschiedet. Sie treten auf den 1. Februar 2012 in Kraft. **147**

SFAMA Swiss Funds & Asset Management Association

Richtlinie

Richtlinie zur Berechnung und Publikation der Performance von kollektiven Kapitalanlagen

16. Mai 2008

(Ausgabe 1. Juli 2013)

I. Grundlagen, Zielsetzungen und Verbindlichkeit

Gemäss den Verhaltensregeln für die schweizerische Fondswirtschaft der SFAMA halten sich Fondsleitungen gemäss Art. 28 ff. KAG, Investmentgesellschaften mit variablem Kapital (SICAV) gemäss Art. 36 ff. KAG, Investmentgesellschaften mit festem Kapital (SICAF) gemäss Art. 110 ff. KAG und Vertreter ausländischer kollektiver Kapitalanlagen gemäss Art. 123 ff. KAG (nachstehend "Bewilligungsträger kollektiver Kapitalanlagen" genannt) bei der Publikation von Performancedaten an international anerkannte Standards. 1

Diese Richtlinie soll eine einheitliche Umsetzung dieser Bestimmung sicherstellen und damit zu einer 2

- möglichst hohen Transparenz und Vergleichbarkeit der am schweizerischen Markt dem Publikum angebotenen kollektiven Kapitalanlagen, 3
- objektiven und seriösen Information der Anleger und 4
- hohen Glaubwürdigkeit der am Markt stark beachteten Performance-Informationen 5

beitragen.

Die Richtlinie ist auf alle in der Schweiz genehmigten kollektiven Kapitalanlagen anzuwenden. 6

Materiell orientiert sich diese Richtlinie an internationalen Standards (z.B. Global Investment Performance Standards, GIPS). 7

II. Richtlinie

Einleitung

Die vorliegende Richtlinie beschränkt sich auf wesentliche Aspekte. Wo keine Regelungen getroffen sind, haben die Bewilligungsträger kollektiver Kapitalanlagen die Informationen im Sinne der mit dieser Richtlinie verfolgten Ziele zu gestalten. 8

A Berechnung

1. Grundsatz

Die Performance einer kollektiven Kapitalanlage entspricht mit Ausnahme der unter Ziff. 3 genannten Fälle dem auf einem Anteil innerhalb einer bestimmten Periode erzielten Gesamterfolg (total return) in der Rechnungseinheit der kollektiven Kapitalanlage. Sie wird in Prozenten des Nettoinventarwertes je Anteil zu Beginn des Betrachtungszeitraums ausgedrückt und berechnet sich wie folgt: 9

Kollektive Kapitalanlagen ohne Ausschüttung im Betrachtungszeitraum 10

- Veränderung des Nettoinventarwerts je Anteil 11

Kollektive Kapitalanlagen mit Ausschüttung im Betrachtungszeitraum 12

- Veränderung des Nettoinventarwerts je Anteil unter der Annahme, dass 13

der Bruttobetrag der Ertrags- und/oder Kapitalgewinnausschüttungen unmittelbar und ohne Abzüge (Steuern, Kommissionen usw.) wieder in der kollektiven Kapitalanlage angelegt wird. 14

Schweizerische kollektive Kapitalanlagen mit Ertragsthesaurierung 15

- Veränderung des Nettoinventarwertes je Anteil unter der Annahme, dass 16

die abgelieferte eidg. Verrechnungssteuer unmittelbar und ohne Abzüge (Steuern, Kommissionen usw.) wieder in der kollektiven Kapitalanlage angelegt wird. 17

2. Allgemeine Berechnungsformel

$$\text{Performance \%} = \left\{ \frac{NAV_{\text{Ende P}} \times f_1, f_2 \ldots f_n}{NAV_{\text{Beginn P}}} - 1 \right\} \times 100 \quad 18$$

$NAV_{\text{Ende P}}$	Nettoinventarwert je Anteil am Ende des Betrachtungszeitraums	19
$NAV_{\text{Beginn P}}$	Nettoinventarwert je Anteil zu Beginn des Betrachtungszeitraums (d.h. letzter Wert des vorangegangenen Betrachtungszeitraums)	
$f_1, f_2 \ldots f_n$	Adjustierungsfaktoren für Ausschüttungen wobei:	

$$f = \frac{NAV_{ex} + \text{Bruttoausschüttung}}{NAV_{ex}} \quad 20$$

NAV_{ex}	Nettoinventarwert nach Abgang der Ausschüttung	21
Bruttoaus-schüttung	Bruttobetrag der Ertrags- und Kapitalgewinnausschüttungen je Anteil an Anleger in der Schweiz (bei schweizerischen kollektiven Kapitalanlagen mit Affidavit)	

Eine über mehrere Jahre hinweg kumulierte Performance errechnet sich aus der geometrischen Verknüpfung der in den einzelnen Jahren bzw. Betrachtungszeiträumen erzielten Performance; der jährliche Durchschnittswert aus einer über mehrere Jahre hinweg kumulierten Gesamtperformance entspricht dem geometrischen Durchschnitt. 22

Die Performance ist immer auf mindestens eine Stelle nach dem Komma genau auszuweisen. 23

3. Ausnahmefälle

Bei kollektiven Kapitalanlagen ohne tägliche Ausgabe und Rücknahme, deren Anteile jedoch an einem geregelten, dem Publikum offen stehenden Markt regelmässig gehandelt werden (z.B. schweizerische Immobilienfonds), ist die Performance gemäss obiger Formel und unter Verwendung der an diesem geregelten, dem Publikum offen stehenden Markt notierten Kurse zu berechnen. Ist eine Wiederanlage zum tieferen Nettoinventarwert möglich, so ist dieser auch bei der Berechnung des Adjustierungsfaktors zu verwenden. 24

4. Umrechnung in andere Währungen

Die Performance kann auch auf Nettoinventarwerten, welche nicht auf die Rechnungseinheit der kollektiven Kapitalanlage lauten, berechnet werden. In diesem Fall ist anzugeben, dass es sich um eine Umrechnung aus der zu nennenden Rechnungseinheit handelt. Dabei muss klar ersichtlich sein, in welcher Währung die Performance gerechnet wird. Zudem ist der Nettoinventarwert am Anfang und Ende des Betrachtungszeitraums zu dem von einem anerkannten Kursmeldedienst als Schlusskurs des betreffenden Tages gelieferten Devisenkurs umzurechnen. 25

B Publikation von Performancedaten

5. Zeitperioden und Aktualität

Historische Performancedaten müssen für mindestens folgende Betrachtungszeiträume veröffentlicht werden: 26

- für das vergangene Kalenderjahr einzeln und 27

  entweder

  - für die vergangenen drei Kalenderjahre oder 28
  - für die vergangenen fünf Kalenderjahre oder 29
  - seit Gründung der kollektiven Kapitalanlage 30

    entweder

    - für jedes Jahr einzeln, 31
    - als kumulierter Gesamtwert für mehrere Kalenderjahre oder 32
    - als jährlicher Durchschnittswert für mehrere Kalenderjahre. 33

Zusätzlich dürfen historische Performancedaten für das laufende Kalenderjahr einzeln veröffentlicht werden. Die Performance für das laufende Kalenderjahr ist auf ein Monatsende hin zu berechnen, das längstens 60 Tage vor dem Erscheinungsdatum der Veröffentlichung liegt. Die für Zeiträume von weniger als einem Jahr berechnete Performance darf nicht annualisiert werden. 34

Zusätzlich zu den Angaben für die vergangenen Kalenderjahre kann die Performance ausgehend vom letzten Stichtag für rollierende Zeitperioden (z.B. jeweils September - September) veröffentlicht werden. Zur Berechnung der Performance der rollierenden Perioden dürfen jeweils nur Monatsendwerte verwendet werden. 35

Es muss klar ersichtlich sein, in welcher Währung die Performance gerechnet wird. 36

6. Vergleiche mit Indices

Weist eine kollektive Kapitalanlage im Prospekt einen Index als Benchmark aus, so darf nur dieser für vergleichende Darstellungen verwendet werden. Enthält der Prospekt keinen Benchmark, darf zum Vergleich ein Index (oder eine andere geeignete Vergleichsgrösse) verwendet werden. Dieser muss für die Anlagepolitik und den -charakter der kollektiven Kapitalanlage möglichst repräsentativ sein und genau benannt werden. 37

Benchmark/Index (bzw. Vergleichsgrösse) sind in der gleichen Währung wie die Rechnungseinheit der kollektiven Kapitalanlage und für den gleichen Betrachtungszeitraum wie die Performance der kollektiven Kapitalanlage anzugeben. Werden im Betrachtungszeitraum Benchmark/Index (bzw. Vergleichsgrösse) geändert, so 38

- sind die zuvor verwendeten Werte unverändert beizubehalten; 39
- dürfen die Datenreihen verknüpft werden (verknüpfter Benchmark); 40
- ist das Datum der Änderung anzugeben; 41
- ist die Bezeichnung des zuvor verwendeten Benchmark/Index (bzw. Vergleichsgrösse) anzugeben (siehe Beispiel in der Beilage). 42

Handelt es sich beim Benchmark/Index (bzw. der Vergleichsgrösse) um einen nicht anerkannten oder einen nicht öffentlich zugänglichen Index eines bestimmten Anlagemarktes, so ist dessen Zusammensetzung sowie der bzw. die unabhängigen Provider im Jahres- und Halbjahresbericht der kollektiven Kapitalanlage offen zu legen. Im Prospekt ist in diesem Fall auf diese Offenlegung hinzuweisen. Bei jeder Veröffentlichung ist darauf hinzuweisen, wo sich die Anleger über die Zusammensetzung des Benchmark/Index (bzw. Vergleichsgrösse) informieren können. 43

Wird kein Benchmark/Index (bzw. Vergleichsgrösse) ausgewiesen, so ist dies zu begründen. 44

7. Vergleiche mit Durchschnittswerten von Kategorien kollektiver Kapitalanlagen

Vergleiche mit Durchschnittswerten von Kategorien kollektiver Kapitalanlagen (z.B. kollektive Kapitalanlagen mit einer vergleichbaren Anlagepolitik) sind unter folgenden Voraussetzungen zulässig: 45

- die Vergleichsdaten müssen zeitlich exakt übereinstimmen; 46
- die Kategorie muss eine repräsentative Auswahl darstellen und die betreffende 47

kollektive Kapitalanlage sowie mindestens vier weitere kollektive Kapitalanlagen beinhalten, die über eine vergleichbare Anlagepolitik verfügen (z.B. gleiche Kategorie bei Swiss Fund Data AG); sind weniger als vier vergleichbare kollektive Kapitalanlagen in einer Kategorie, so dürfen diese nicht zu Vergleichszwecken beigezogen werden;

- die Performance der einzelnen kollektiven Kapitalanlagen muss auf die gleiche Art und Weise berechnet werden; **48**

- die Bezeichnung der Kategorie und die Quelle der Vergleichsdaten müssen genannt werden. **49**

8. Disclaimer

Bei jeder Publikation von Performancedaten ist darauf hinzuweisen, dass **50**

- die historische Performance keinen Indikator für die laufende oder zukünftige Performance darstellt und **51**

- die Performancedaten die bei der Ausgabe und Rücknahme der Anteile erhobenen Kommissionen und Kosten unberücksichtigt lassen. **52**

Dieser Disclaimer ist deutlich sichtbar anzubringen. **53**

9. Unzulässigkeit von Performanceversprechen

Nicht garantierte Performanceversprechen sind unzulässig. Dies gilt nicht für die Veröffentlichung indikativer Mindestpreise bei kollektiven Kapitalanlagen mit begrenzten Kursrisiken. **54**

10. Performancedaten von Anlagemärkten oder anderen Portefeuilles

Bei neuen kollektiven Kapitalanlagen kann die historische Entwicklung indikativ anhand der Performance des der Anlagepolitik der kollektiven Kapitalanlage entsprechenden Anlagemarktes oder eines vergleichbaren (echten oder simulierten) Portefeuilles dargestellt werden. Solche Daten dürfen längstens während zweier Jahre mit verwendet werden. **55**

Werden Marktindices, die Daten des vergleichbaren Portefeuilles oder andere Daten zur Illustration einer hypothetischen, historischen Performance herbeigezogen, so sind diese klar und in deutlicher Schrift entsprechend zu benennen. Sie sind getrennt von der Performance der kollektiven Kapitalanlage darzustellen und dürfen auf keinen Fall mit letzterer verknüpft werden, so dass der Eindruck eines längerfristigen Track Records für die kollektive Kapitalanlage erweckt wird. Auch ist darauf hinzuweisen, dass solche Angaben rein indikativen Charakter haben und dass daraus keine Schlüsse auf die zukünftige Performance der kollektiven Kapitalanlage gezogen werden können. **56**

Die vom Vermögensverwalter einer kollektiven Kapitalanlage in anderen verwalteten Portefeuilles erzielte Performance darf zu informativen Zwecken in Publikationen der kollektiven Kapitalanlage veröffentlicht werden, sofern die Angaben mit internationalen Standards (wie GIPS) übereinstimmen. Auch diese Angaben sind klar und in deutlicher Schrift entsprechend zu benennen. Sie sind getrennt von der Performance der kollektiven Kapitalanlage darzustellen und dürfen auf keinen Fall mit letzterer verknüpft werden. **57**

11. Repositionierung (Änderung der Anlagepolitik)

Wird die Anlagepolitik nachhaltig geändert und verändert sich somit der Anlagecharakter weitgehend, so ist dies in geeigneter Weise offenzulegen. **58**

12. Umstrukturierungen / Vereinigungen von kollektiven Kapitalanlagen

Bei Umstrukturierungen von kollektiven Kapitalanlagen dürfen historische Performance-daten nur dann weiter verwendet werden, wenn die Anlagepolitik und der -charakter der kollektiven Kapitalanlage sowie die belasteten Kommissionen und Kosten weitestgehend unverändert bleiben. **59**

Bei einer Vereinigung ist zu wählen, ob der Track Record der “übernehmenden“ oder jener der “eingebrachten“, grösseren kollektiven Kapitalanlage weitergeführt werden soll. Vorausgesetzt ist, dass die vereinigte kollektive Kapitalanlage weiterhin weitestgehend nach bisherigen Grundsätzen und im gleichen Stil wie zuvor verwaltet wird und die zu übernehmende historische Performance auch für die neue kollektive Kapitalanlage repräsentativ ist. **60**

Die Übernahme des Track Records ist auch im Falle einer Repatriierung (grenz-überschreitende Vereinigungen) möglich. Die vorstehenden Voraussetzungen gelten analog. **61**

13. Kollektive Kapitalanlagen mit mehreren Anteilsklassen

Wenden kollektive Kapitalanlagen für einzelne Anteilsklassen unterschiedliche Kommissionen und Kosten zulasten ihres Vermögens an, so ist für jede Anteilsklasse die Performance separat auszuweisen. In Werbe- und Marketingunterlagen sind die Daten der für das angesprochene Zielpublikum konzipierten Anteilsklasse zu verwenden. **62**

Haben kollektive Kapitalanlagen Währungsanteilsklassen, deren Referenzwährung von der Rechnungseinheit der kollektiven Kapitalanlage und/oder Anlagewährung abweichen, muss die Performance mindestens in der entsprechenden Referenzwährung der Anteilsklasse ausgewiesen werden. **63**

14. Publikation der Performance im vereinfachten Prospekt

Die Publikation der Performance im vereinfachten Prospekt richtet sich nach den dafür jeweils massgebenden Bestimmungen. **64**

15. Zusätzliche Kennzahlen

Für einzelne kollektive Kapitalanlagen bzw. Arten von kollektiven Kapitalanlagen können zusätzliche Ertrags- oder Renditekennzahlen (z.B. Ausschüttungsrendite, Kapitalrendite) veröffentlicht werden. Dafür massgebend sind allfällige, von der SFA im Rahmen der Selbstregulierung festgelegte Definitionen und Berechnungsformeln. **65**

Werden solche Kennzahlen publiziert, so sind diese klar von der Performance abzugrenzen. **66**

III. Übrige Bestimmungen

A Mindeststandard

Die Aufsichtsbehörde hat diese Richtlinie als Mindeststandard anerkannt (FINMA-RS 08/10 Selbstregulierung als Mindeststandard). **67**

B Inkrafttreten

Diese Richtlinie wurde am 16. Mai 2008 vom Vorstand der Swiss Funds & Asset Management Association SFAMA verabschiedet. Sie tritt auf den 1. Juli 2008 in Kraft. **68**

Beilage: Beispiel zur Berechnung der Performance und Beispiel zur Darstellung der Performance in Publikationen **69**

Beilage Richtlinie zur Berechnung und Publikation der Performance von kollektiven Kapitalanlagen

A Beispiel zur Berechnung der Performance

1. Ausgangslage

2003:	Nettoinventarwert am Jahresende ($NAV_{Beginn\ P}$)	350 RE	**1**
2004:	Ertrags- und Kapitalgewinnausschüttungen Nettoinventarwert am Jahresende	8 + 10 RE; NAV_{ex} 348 RE 357 RE	**2**
2005:	Ertragsausschüttung Nettoinventarwert am Jahresende	8 RE; NAV_{ex} 335 RE 340 RE	**3**
2006:	"Split" der Anteile Ertragsausschüttung Nettoinventarwert am Jahresende	1 : 5 1.50 RE; NAV_{ex} 77 RE 79 RE	**4**
2007:	Nettoinventarwert am 30.06.	81 RE	**5**

2. Berechnung der Performance für einzelne Jahre

2004:

$$\text{Performance } r_1 = \left\{\frac{357\ \text{RE} \times 1.051724}{350\ \text{RE}} - 1\right\} \times 100 = 7.2759\ \%$$ **bzw. 7.3 %** **6**

Berechnung des Adjustierungsfaktors f (in den Folgejahren gleich vorgehen): **7**

$$f = \frac{348 + 8 + 10\ \text{RE}}{348\ \text{RE}} = 1.051724$$

2005:

$$\text{Performance } r_2 = \left\{\frac{340\ \text{RE} \times 1.023881}{357\ \text{RE}} - 1\right\} \times 100 = -2.4875\ \%$$ **bzw. −2.5 %** **8**

2006:

$$\text{Performance } r_3 = \left\{\frac{79\ \text{RE} \times 5 \times 1.019481}{340\ \text{RE}} - 1\right\} \times 100 = 18.4397\ \%$$ **bzw. 18.4 %** **9**

2007 (bis 30.06.):

$$\text{Performance } r_4 = \left\{\frac{81\ \text{RE}}{79\ \text{RE}} - 1\right\} \times 100 = 2.5316\ \%$$ **bzw. 2.5 %** **10**

3. Berechnung der kumulierten Performance für die Jahre 2004-2006
(zwei Möglichkeiten)

a) durch Anwendung der allgemeinen Formel: **11**

$$\text{Performance \%} = \left\{ \frac{NAV_{\text{Ende P}} \times f_1 \times f_2 .. \times f_n}{NAV_{\text{Beginn P}}} - 1 \right\} \times 100$$ **12**

Berechnung

$$r_{\text{3 Jahre}} = \left\{ \frac{79\ RE \times 1.051724 \times 1.023881 \times 5 \times 1.019481}{350\ RE} - 1 \right\} \times 100 = 23.8965\ \%$$ **bzw. 23.9 %** **13**

b) durch geometrische Verknüpfung der in Teilperioden erzielten Performance gemäss folgender Formel: **14**

$$r_{\text{kumul n}}\ \% = \left\{ \left(1 + \frac{r_{P1}}{100} \right) \times \left(1 + \frac{r_{P2}}{100} \right) \times \left(1 + \frac{r_{Pn}}{100} \right) - 1 \right\} \times 100$$ **15**

$r_{\text{kumul n}}$ Für n Perioden kumulierte Performance **16**

$r_{P1} \ldots r_{Pn}$ Performance für Teilperiode 1....n **17**

Berechnung

$$r_{\text{Jahre 1-3}} = \left\{ \left(1 + \frac{7.2759}{100} \right) \times \left(1 + \frac{-2.4875}{100} \right) \times \left(1 + \frac{18.4397}{100} \right) - 1 \right\} \times 100 =$$ **18**

$$\{1.072759 \times 0.975125 \times 1.184397 - 1\} \times 100 = 23.8967\ \%$$ **bzw. 23.9 %**

4. Berechnung der durchschnittlichen Jahresperformance

Allgemeine Formel: **19**

$$\text{Durchschnittliche Performance p.a. \%} = \left\{ \sqrt[n]{\left(1 + \frac{r_{\text{kumul n}}}{100} \right)} - 1 \right\} \times 100$$ **20**

Berechnung

$$\text{Durchschnittliche Performance p.a. \%} = \left\{ \sqrt[3]{\left(1 + \frac{23.8966}{100} \right)} - 1 \right\} \times 100 = 7.4038\ \%$$ **bzw. 7.4 %** **21**

B Beispiel zur Darstellung der Performance in Publikationen

1. 2007 und 2006 und für jedes weitere Kalenderjahr einzeln

XYZ-Fonds - Performance **22**

Berechnet in RE	2007 01.01. - 30.06.	2006	2005	2004
XYZ-Fonds	2.5 %	18.4 %	− 2.5 %	7.3 %
Vergleichsindex	2.6 %	18.9 %	− 2.9 %*	7.1 %

* bis 30.06.2005 Index ..... (Bezeichnung des zuvor verwendeten Vergleichsindex)

2. 2007 und 2006 und jährlicher Durchschnitt der letzten 3 und 5 Jahre

XYZ-Fonds - Performance **23**

Berechnet in RE	2007 01.01. - 30.06.	2006	2004 – 2006 Durchschnitt p.a.	2002 – 2006 Durchschnitt p.a.
XYZ-Fonds	2.5 %	18.4 %	7.4 % p.a.	10.6 %*
Vergleichsindex		18.9 %	7.3 %*	9.9 %

* bis 30.06.2005 Index ..... (Bezeichnung des zuvor verwendeten Vergleichsindex)

Die historische Performance stellt keinen Indikator für die laufende oder zukünftige Performance dar. Die Performancedaten lassen die bei der Ausgabe und Rücknahme der Anteile erhobenen Kommissionen und Kosten unberücksichtigt. **24**

INHALTSVERZEICHNIS

SFAMA Swiss Funds & Asset Management Association

Guidelines

Guidelines on the calculation and disclosure of the Total Expense Ratio (TER) of collective investment schemes

16 May 2008

(Version of 20 April 2015)

I Basic principles, aims and binding force

According to the Code of Conduct of the Swiss Funds & Asset Management Association SFAMA, fund management companies pursuant to Art. 28 et seqq. CISA, investment companies with variable capital (SICAVs) pursuant to Art. 36 et seqq. CISA, investment companies with fixed capital (SICAFs) pursuant to Art. 110 et seqq. CISA and representatives of foreign collective investment schemes pursuant to Art. 123 et seqq. CISA in Switzerland must ensure cost transparency in line with international standards. **1**

These guidelines are aimed at ensuring the uniform implementation of this provision with regard to the fees (commissions) and incidental costs incurred in connection with the management of collective investment schemes, thereby contributing to the highest possible pricing transparency for the collective investment schemes offered on the Swiss market. The guidelines are to be used for all collective investment schemes authorized in Switzerland with the exception of the limited partnership for collective investment and real estate funds. **2**

Materially, these guidelines are based on international standards. **3**

II Guidelines

A Standard ratio

1. Basic principle

The fees and incidental costs charged on the management of collective investment schemes are to be disclosed using the internationally recognized Total Expense Ratio (TER). This ratio expresses the sum of all fees and incidental costs charged on an ongoing basis to the collective investment scheme's assets (operating expenses) taken retrospectively as a percentage of the net assets, and is in principle calculated using the following formula: **4**

$$\text{TER \%} = \frac{\text{Total operating expenses in CU*}}{\text{Average net assets in CU*}} \times 100$$ **5**

* CU = currency units in the accounting currency of the collective investment scheme

2. Frequency of calculation

The TER is to be calculated for the preceding 12 months at the close of the annual and semi-annual accounts, i.e. either **6**

- for the financial year just ended, or **7**
- for the first half of the current financial year and the second half of the preceding financial year. **8**

The calculation is to be based on the fees and incidental costs listed in the income statement. **9**

The calculation methods for newly launched collective investment schemes and in cases where collective investment schemes are restructured are detailed under sections 8 and 9 below. **10**

3. Operating expenses

All fees and incidental costs charged to the income statement of the collective investment scheme during the reporting period are to be included in the TER: **11**

- Management fee of the fund management company / SICAV / SICAF or the management company for the remuneration of its activity; **12**
- Custody fee and other costs for the remuneration of the custodian bank's activity, including the costs for the safekeeping of the fund's assets by third-party custodians or collective securities depositories; **13**
- Management fee and any performance fees for the remuneration of the asset manager of collective investment schemes; **13a**
- Distribution fee for remuneration of the distributors' activity; **13b**
- Incidental costs that may be charged to the fund's assets in accordance with the fund regulations, provided they are not included in the above fees. **14**

[repealed] **15-24**

- Taxes and duty (e.g. taxe d'abonnement); **25**

or alternatively:

- an "all-in fee" charged by the fund management company / SICAV / SICAF or management company; including all incidental costs; **26**
- a "flat fee" charged by the fund management company / SICAV / SICAF or management company plus any fees and incidental costs the flat fee does not include. **27**

Essentially the operating expenses correspond to the expense side of a collective investment scheme's income statement excluding the negative investment income (e.g. interest payable) and accruals and deferrals (e.g. payment of current income). Fees and incidental costs that form part of the operating expenses may not be offset against the investment income. **28**

The incidental costs incurred by the collective investment scheme on the purchase and sale of investments are not included in the operating expenses (except in the case of an "all-in fee"). These are integral to the investments themselves and accrue to the realized capital gains / losses on the sale of the investments. 29

4. Average net assets

The average net assets are defined as the arithmetic mean of the net assets on a given valuation day calculated using the following formula: 30

$$\text{Average net assets in CU*} = \frac{\sum \text{net assets on n valuation days}}{n} \quad 31$$

* CU = currency units in the accounting currency of the collective investment scheme

B Special cases

5. Collective investment schemes paying a performance fee to the asset manager

If a performance fee for the remuneration of the asset manager is applied, this is to be included in the TER and stated separately as a percentage of the average net assets. 32

6. Composite (synthetic) TER in the case of acquisitions of units of other collective investment schemes (target funds)

If a collective investment scheme invests at least 10% of its net assets as a fund of funds in other collective investment schemes (target funds) which publish a TER within the meaning of the present guidelines, a composite (synthetic) TER of the fund of funds is to be calculated as of the closing date of the financial year or the end of the first half of the financial year. This corresponds to the sum of 33

- the prorated TER of the individual target funds, weighted on the basis of their proportion in the net assets of the fund of funds as of the closing date, 34
- the issue and redemption commissions of the target funds actually paid, and 35
- the TER of the fund of funds minus the retrocessions and rebates received from the target funds during the reporting period. 36

If any of the target funds does not publish a TER pursuant to the present guidelines, the following procedure must be followed when disclosing the costs incurred by the fund of funds: 37

- Reference must be made to the fact that no composite (synthetic) TER can be determined for the respective portion of the fund of funds. 38
- A composite (synthetic) value must be indicated for the overall costs that the fund of funds is expected to incur. To this end 39
  - a truncated (synthetic) TER is calculated which – weighted on the basis of the fund of fund's investment proportion – includes the TERs of all target funds for which the TER is determined as per the present guidelines (i.e. target funds with TER), and 40
  - to this are added for each of the other target funds (i.e. target funds without TER) the issue and redemption commissions plus as precise as possible an estimate of the upper limit of the costs relevant for the TER. This value – weighted on the basis of the target funds' weighting in the fund of fund – must include the maximum management fee and the most recent performance fee available for this target fund. 41

If a collective investment scheme pursuant to Art. 68 and Art. 110 CISA invests a significant portion of its net assets in target funds which do not publish a TER as per the present guidelines or for which no current TER is available (e.g. hedge funds), a calculation may be waived and a corresponding explanation is to be published. 42

7. Changes to the percentage rates of the fees

If any of the fees set out in margin notes 12 to 13b have been changed during the reporting period or between the end of the reporting period and the publication of the TER, attention must be drawn to this fact in a corresponding footnote. 43

8. Initial publication of the TER for newly launched collective investment schemes

In the case of newly launched collective investment schemes, the TER is to be calculated for the first time on the basis of the income statement published in the first annual or semi-annual report. Where necessary, the operating expenses are to be annualized. The average value for the net assets is taken as the mean of the month-end values during the reporting period. 44

$$\text{Annualized operating expenses in CU*} = \frac{\text{Operating expenses in n months}}{n} \times 12 \quad 45$$

* CU = currency units in the accounting currency of the collective investment scheme

9. Restructuring of collective investment schemes

In cases where a collective investment scheme is restructured, the historical TER is only to be used if historical performance data are also published. Similarly, in cases where collective investment schemes are merged, the TER is to be calculated for the collective investment scheme whose historical performance is taken over. 46

If a new collective investment scheme is created as the result of restructuring or a merger, and no meaningful historical performance data can be produced for this new collective investment scheme, no TER is to be calculated until the first annual or semi-annual report is issued for the corresponding collective investment scheme. 47

10. Collective investment schemes with subfunds (umbrella funds)

In the case of an umbrella fund, the TER for each subfund is to be calculated and published in accordance with these guidelines. 48

11. Collective investment schemes with several unit classes

If collective investment schemes charge different fees and incidental costs to their assets for individual unit classes, a separate TER is to be calculated for each unit class on the basis of the income statement issued for the class concerned. **49**

[12.-14. repealed] **50-56**

C. Publication

15. Publication of the TER in the annual and semi-annual report

The TER is to be published in the annual and semi-annual report, together with a reference to any change in the percentage rate of the fees if applicable (cf. point 7 above). **57**

16. Disclosure of fees and incidental costs in the fund regulations, prospectus, and Key Investor Information Document (KIID)

The disclosure of fees and incidental costs in the above fund documents is governed by the applicable provisions. **58**

III Other provisions

A Minimum standard

The supervisory authority has recognized these guidelines as a minimum standard (FINMA-Circ. 08/10 Self-Regulation as a Minimum Standard). **59**

B Entry into force

These amended guidelines were approved by the Board of Directors of the Swiss Funds & Asset Management Association SFAMA on 20 April 2015 and enter into force on 1 June 2015. **60**

Appendix: Calculation example – calculating and publishing the TER **61**

Appendix to the guidelines on the calculation and disclosure of the Total Expense Ratio (TER) of collective investment schemes

Example: calculation and publication of the TER

Scenario

Close of accounts of the collective investment scheme:	30 June	**1**
Management fee charged by fund management company / SICAV / SICAF:	until 30.06.07: 1.5% from 01.07.07: 2.0%	**2**
Average net assets for the period 31.12.06 - 31.12.07:	77,142,857 CU*	**3**

Excerpt from income statement

Expenses (in CU* 1,000)	31.12.06 Semi-annual report	30.06.07 Annual report	31.12.07 Semi-annual report
Management fee of fund management company / SICAV / SICAF	500	1,200	650
Performance fee of asset manager of collective investment schemes	0	100	0
Custody fee of custodian bank	75	160	80
Other expenses	50	120	70
Taxes	12	25	13
Total operating expenses	637	1,605 (H2: 968)	813

4

Calculating the TER for the 12 months from 31.12.2006 to 31.12.2007

TER including the performance fee **5**

$$\text{TER\%} = \frac{(968{,}000\ \text{CU*} + 813{,}000\ \text{CU*})}{77{,}142{,}857\ \text{CU*}} \times 100 = \mathbf{3.31\%}$$ **6**

Performance fee as a percentage of the average net assets **7**

$$\% = \frac{(100{,}000\ \text{CU*} + 0\ \text{CU*})}{77{,}142{,}857\ \text{CU*}} \times 100 = \mathbf{0.13\%}$$ **8**

* CU = currency units in the accounting currency of the collective investment scheme

Publication of the TER

The TER is to be published including the performance fee together with the date (as of 31 December 2007) and a reference to the increase in the management fee charged by the fund management company / SICAV / SICAF from 1.5% to 2.0% as of 1 July 2007. In addition the performance fee is to be stated separately as a percentage of the average net assets. **9**

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SFAMA Swiss Funds & Asset Management Association

Fachinformation

Teilnahme an Sammelklagen (class actions)

22. April 2014

I Ausgangslage

Die Fondsleitung und die SICAV sind gemäss Art. 20 Abs. 1 Bst. a KAG im Rahmen ihrer Treuepflichten dazu verpflichtet, unabhängig zu handeln und ausschliesslich die Interessen der Anleger zu wahren. Rz 17ff. der Verhaltensregeln für die schweizerische Fondswirtschaft konkretisieren die Treuepflichten aus dem KAG und der KKV und halten in Rz 40f. fest, dass die Fondsleitung und die SICAV im Interesse der Anleger an Anlegerschutzklagen oder Auszahlungsverfahren nach Abschluss von Sammelklagen, die mit Anlagen der verwalteten Fonds verbunden sind, teilnehmen können. Dabei steht es ihnen frei, selbst teilzunehmen, d.h. die Ansprüche wahrzunehmen, einen Vertreter dafür zu bestimmen oder den Anspruch gegen Entgelt oder zum Zwecke der Geltendmachung abzutreten. **1**

II Zweck

Die vorliegende Fachinformation soll als Leitfaden bei der Umsetzung von Rz 40 und 41 der Verhaltensregeln für die schweizerische Fondswirtschaft verstanden werden und bezieht sich ausschliesslich auf die Verwaltung von offenen kollektiven Kapitalanlagen im Sinne von Art. 8 KAG. **2**

Diese Fachinformation beschränkt sich insbesondere auf den Umgang mit der passiven Teilnahme an Sammelklagen gemäss der nachfolgenden Definition in Rz 5. Es steht der Fondsleitung bzw. SICAV frei, sich auch aktiv an einer Sammelklage zu beteiligen. **3**

III Definition des Begriffs Sammelklagen (class actions)

Die nachfolgende Definition des Begriffs Sammelklagen (class actions) beschränkt sich auf diejenigen Begriffsmerkmale, die aus schweizerischer Sicht relevant sein können. **4**

Mit Sammelklagen werden im traditionellen Sinne solche Klagen bezeichnet, die in einer repräsentativen Art Ansprüche einer bestimmbaren Gruppe (der „Class“) geltend machen, ohne dass der einzelne Betroffene einer solchen Sammelklage zustimmt oder sich aktiv daran beteiligt. Ursprünglich stammen Sammelklagen aus den USA. Die aktive Teilnahme an einer Sammelklage bedeutet in der Regel, dass man sich als „Lead Plaintiff“ zur Verfügung stellt, um das Verfahren vor Gericht zu führen und zu kontrollieren. Die Teilnahme an passiven Sammelklagen bedeutet keine gerichtliche Handlung, sondern nur die Anmeldung von entsprechenden Auszahlungsanträgen im Rahmen der „Claims Administration“ was als „passive Teilnahme“ zu sehen ist. Bei der passivem Teilnahme an Sammelklagen kann unterscheiden werden zwischen der „Teilnahme an Sammelklagen“ (als „Co-Plaintiff“) sowie der „Teilnahme an Auszahlungsverfahren aus Sammelklagevergleichen“ (Geltendmachung einer Forderung im Anschluss an eine Klage). **5**

Im US-Amerikanischem Recht werden beispielsweise Sammelklagen gemäss Rule 23 Federal Rules of Civil Procedures von einem oder mehreren geeigneten und repräsentativen Vertretern (sog. „Lead Plaintiff[s]“) geführt und in einer überwiegenden Mehrzahl in Vergleichen („Settlements“) enden. Nach Abschluss eines Vergleiches (oder auch nach einem entsprechenden, die Klage bestätigenden Urteil) wird dieser durch ein Gericht genehmigt und den aktiven und den stillschweigend Beteiligten eine Frist („Opt Out Period“) eingeräumt, sich von der Bindungswirkung eines solchen Sammelklagevergleiches (oder –urteils) zu befreien. Dies wird in der Regel nur dann gemacht, wenn der einzelne Betroffene seine Ansprüche getrennt geltend machen und nicht an den Vergleich gebunden sein will (sog. „Opt Out“). In anderen Jurisdiktionen können andere Regelwerke bestehen. **6**

Bezüglich einer Teilnahme an Vergleichen aus einer Sammelklage muss eine aktive Entscheidung getroffen werden. Nur so kann die Fondsleitung an dem Auszahlungsverfahren (sog. „Claims Administration“) teilnehmen. Ohne aktive Geltendmachung bzw. Anmeldung von Ansprüchen wird die Fondsleitung bzw. die SICAV keine Auszahlung erhalten. **7**

IV Pflicht zur Vornahme einer Interessenabwägung

Rz 41 der Verhaltensregeln für die schweizerische Fondswirtschaft ist dahingehend zu verstehen, dass die Fondsleitung bzw. SICAV in jedem Falle eine Interessenabwägung vornehmen und prüfen muss, ob es aufgrund der Interessen der Anleger und der möglichen Kostenfolgen angemessen erscheint, im konkreten Fall an einer Sammelklage teilzunehmen. Ein genereller Entscheid der Fondsleitung bzw. der SICAV, nicht an Sammelklagen teilzunehmen, ist nicht zulässig. Im Rahmen der Interessenabwägung können die Fondsleitung bzw. die SICAV jedoch darauf verzichten, in einem konkreten Fall an einer Sammelklage teilzunehmen. **8**

V Interne Regelung der Teilnahme an Sammelklagen

Die Fondsleitung bzw. SICAV halten die für die Teilnahme an Sammelklagen geltenden Grundsätze in einer internen Richtlinie oder im Rahmen der Regelung der übrigen Treuepflichten fest. Dabei regeln sie insbesondere folgende Punkte: **9**

- Kriterien für die Interessenabwägung für die Teilnahme bzw. Nichtteilnahme;
- Festlegung der operationellen und technischen Abläufe im Zusammenhang mit Sammelklagen;
- Festlegung der Zuständigkeiten und Kompetenzen;
- Festlegung der Überwachung und Kontrollprozesse;
- Allokation und Verbuchung allfälliger Entschädigungen bei bestehenden, liquidierten und vereinigten kollektiven Kapitalanlagen bzw. Teilvermögen;
- Zuweisung der internen und externen Kosten, die im Zusammenhang mit Sammelklagen entstehen, auf die erhaltene Entschädigung oder die einzelnen kollektiven Kapitalanlagen bzw. Teilvermögen;
- Dokumentation im Zusammenhang mit der Teilnahme an Sammelklagen.

VI Wichtige Themen im Zusammenhang mit Sammelklagen

Allokation und Verbuchung bei Liquidation und Vereinigungen

Interessenabwägung bei Liquidation

Die Fondsleitung bzw. SICAV haben im Fall der Eröffnung des Liquidationsverfahrens eines sich in einer Sammelklage befindlichen Teilvermögens die Interessen bezüglich des geführten gerichtlichen oder aussergerichtlichen Verfahrens neu zu beurteilen und abzuwägen. Sie haben dabei die Möglichkeit, die Teilnahme an der Sammelklage zurückzuziehen oder die Ansprüche daraus gegen eine angemessene Entschädigung an eine dritte Partei abzutreten. **13**

Zahlungen, welche nach Vereinigung oder Fondsleitungswechsel eingehen

Zahlungen, welche für ein Teilvermögen eingehen, welches mit einem anderen Anlagefonds oder Teilvermögen vereinigt wurde oder welches nicht mehr von der Fondsleitung verwaltet wird bzw. nicht mehr Bestandteil der SICAV ist, sind zugunsten des weiter bestehenden Teilvermögens zu verbuchen bzw. an die neue Fondsleitung oder SICAV weiterzuleiten. **14**

Zeitpunkt für den Anspruch auf Erlös

Anspruch auf Erlös aus einer Sammelklage haben diejenigen Anleger eines Teilvermögens, die im Zeitpunkt der Verbuchung der Entschädigung aus einer Sammelklage an die Fondsleitung bzw. SICAV im anspruchsberechtigten Teilvermögen investiert sind. Die Fondsleitung bzw. SICAV stellen sicher, dass die Auszahlung innerhalb von fünfzehn Bankwerktagen nach dem Eingang der Entschädigung verbucht wird. **15**

Weitere Regeln sind in der internen Richtlinie festzuhalten. **16**

INHALTSVERZEICHNIS

SFAMA Swiss Funds & Asset Management Association

Fachinformation

Ausübung von Mitgliedschafts- und Gläubigerrechten

27. Juli 2012

(Stand 28. Oktober 2014)

I Absicht

- Wahrung der Anlegerinteressen; 1
- Schutz der Fondsleitung bzw. SICAV vor Schadenfall resp. Reputationsverlust. 2

II Unabhängige Wahrnehmung im Anlegerinteresse / Auskunftserteilung

Die Fondsleitung bzw. SICAV üben die mit den Anlagen der verwalteten Fonds verbundenen Mitgliedschafts- und Gläubigerrechte unabhängig und ausschliesslich im Anlegerinteresse aus. Sie müssen in der Lage sein, über die Ausübung ihrer Mitgliedschafts- und Gläubigerrechte gegenüber den Anlegerinnen und Anlegern Auskunft zu geben. 3

Bei allen Traktanden, welche die Anlegerinteressen nachhaltig tangieren, haben die Fondsleitung bzw. SICAV die Mitgliedschafts- und Gläubigerrechte, welche ihnen als Aktionäre bzw. Gläubiger zustehen, selber auszuüben oder einem Dritten, wie z.B. der Depotbank, dem Vermögensverwalter oder dem Stimmrechtsvertreter, ausdrückliche Weisung zu erteilen. 4

Gemäss der Verordnung gegen übermässige Vergütungen bei börsenkotierten Aktiengesellschaften (VegüV) unterliegen Vorsorgeeinrichtungen im Sinne des Freizügigkeitsgesetzes in bestimmten Fällen einer Stimm- und Offenlegungspflicht bezüglich der von ihnen direkt gehaltenen Aktien von börsenkotierten Schweizer Aktiengesellschaften (Art. 22 ff VegüV). Sofern von diesen Vorsorgeeinrichtungen indirekt, im Rahmen von kollektiven Kapitalanlagen Schweizerischen Rechts, solche Aktien gehaltenen werden, sind die Stimm- und Offenlegungspflichten nur auszuüben, wenn diese Aktien in einem Einanlegerfonds gemäss Art. 7 Abs. 3 KAG gehalten werden. Die Stimm- und Offenlegungspflichten gemäss VegüV sind ab 1. Januar 2015 einzuhalten. 5

Ausdrückliche Weisung können die Fondsleitung bzw. SICAV dem beauftragten Dritten erteilen durch: 6

- Konkrete Instruktionen, wie dieser ein bestimmtes Mitgliedschafts- oder Gläubigerrecht auszuüben hat (z.B. an der General- bzw. Gläubigerversammlung); 7
- Generelle Weisung(en), welche z.B. in einer Stimmrechtspolitik festgehalten ist und welche die Prinzipien und Vorgaben zur Ausübung der Mitgliedschafts- und Gläubigerrechte soweit vorschreiben, dass diese vom Dritten ohne weiteres im konkreten Fall und ohne weiteren Instruktionsbedarf der Fondsleitung bzw. SICAV umgesetzt werden können. 8

Die Fondsleitung bzw. SICAV stellen sicher, dass sie jederzeit die Möglichkeit haben, anstelle ausdrücklicher Weisungen an Dritte, selbst über die Ausübung der Mitgliedschafts- und Gläubigerrechte zu entscheiden bzw. diese auszuüben. 9

Die Fondsleitung bzw. SICAV legen in einer generellen Politik fest, in welchen Fällen die Anlegerinteressen nachhaltig tangiert sind. Dabei geht es in erster Linie um finanzielle Interessen der Anlegerinnen und Anleger, es sei denn, dass explizit (z.B. im Prospekt) etwas anderes festgelegt wurde. 10

Bei Routinegeschäften, d.h. bei Geschäften welche die Anlegerinteressen nicht nachhaltig tangieren, steht es der Fondsleitung bzw. SICAV frei, die Mitgliedschafts- bzw. Gläubigerrechte selber auszuüben, die Ausübung an Dritte zu delegieren oder jene Rechte nicht wahrzunehmen. 11

Eine Delegation an Dritte kann sowohl bei nachhaltigen als auch bei Routinegeschäften nur erfolgen, wenn dadurch keine mit den Anlegerinteressen divergierenden relevanten Interessenkonflikte bestehen. Das Abklären entsprechender Interessenkonflikte kann in allgemeiner Form erfolgen. 12

Liegen sachliche, im Anlegerinteressen stehende Gründe vor, kann die Fondsleitung bzw. SICAV Mitgliedschafts- und Gläubigerrechte für verschiedene kollektive Kapitalanlagen unterschiedlich ausüben. 13

III Massnahmen / Hinweise

A. Stimmrechtspolitik

- Generelle Politik bezüglich Stimmverhalten festlegen (gilt grundsätzlich für Beteiligungen an schweizerischen und ausländischen Unternehmen); 14
- Vorgehen regeln (z.B. Informationsfluss von Portfolio Manager zur Fondsleitung bzw. SICAV, Entscheidungskompetenzen, Art und Weise der Ausübung des Stimmrechts); 15
- Sicherstellen, dass Titel auch beim Securities Lending im Bedarfsfall rechtzeitig zurückgerufen werden können. 16

B. Auskunftserteilung und Dokumentation

- Getroffene Entscheide sowie Art und Weise der Ausübung des Stimmrechts müssen dokumentiert sein und im Bedarfsfall ist darüber den Anlegerinnen und Anlegern Auskunft zu geben. 17

C. Bei einer Delegation an Dritte

- Art und Umfang der Delegation regeln (z.B. Delegation an Depotbank oder Portfolio Manager bzw. Stimmrechtsvertreter), evtl. bezüglich Routinegeschäften Stimmenthaltung festlegen; 18

- Abklärung allfälliger relevanter Interessenkonflikte des für die Delegation vorgesehenen Dritten (in allgemeiner Form ausreichend). **19**

D. Nachhaltige Beeinflussung der Anlegerinteressen

Die Anlegerinteressen können namentlich nachhaltig tangiert sein: **20**

- Beim Überschreiten einer bestimmten Mindestschwelle (z.B. Prozentsatz des Fondsvermögens bzw. von Stimmrechten an Gesellschaften); **21**
- Bei besonders umstrittenen Geschäften und Traktanden; **22**
- Bei gewichtigen Fusionen, Übernahmen, Reorganisationen, Veräusserung von Teilbereichen und Änderungen in der Kapital- und Stimmrechtsstruktur von Unternehmen bzw. Doppelmandaten von Organen. **23**

E. Gläubigerrechte

- Massgebliche Gläubigerrechte sind bei (drohendem) Teil-/ Ausfall eines Schuldners durch die Fondsleitung bzw. SICAV im Anlegerinteresse wahrzunehmen. **24**

INHALTSVERZEICHNIS

SWISS FUNDS ASSOCIATION SFA

Fachinformation

Kompensation von Kosten für die Anpassung des Fondsportefeuilles bei Ausgaben und Rücknahmen von Anteilen

14. März 2007

I Zweck

Beim Kauf und Verkauf von Effekten und anderen Anlagen (Transaktionen) entstehen dem Anlagefonds (Effektenfonds und übrige Fonds für traditionelle und alternative Anlagen, nachfolgend "Anlagefonds" genannt) Nebenkosten (Transaktionskosten). Die im Zusammenhang mit der Anpassung des Fondsportefeuilles bei Ausgaben und Rücknahmen von Anteilen anfallenden Nebenkosten können entweder dem Fondsvermögen belastet oder auf diejenigen Anleger überwälzt werden, die mit ihrem Ein- und Aussteigen in bzw. aus dem Anlagefonds die Transaktionen verursachen. 1

Somit können durch Mittelzu- und –abflüsse ausgelöste Transaktionskosten die Performance von Anlagefonds beeinträchtigen. 2

Daher ist es angezeigt zu prüfen, wie die Interessen der langfristig im Anlagefonds investierten Anleger vor negativen Auswirkungen häufiger bzw. hoher Anteilausgaben und -rücknahmen wirksam geschützt werden können. 3

Die nachfolgenden Ausführungen erläutern die heute international üblichen Methoden, mit denen diese Performance-Beeinträchtigung auf ein Minimum reduziert werden kann. Sie stellen keine Empfehlung für eine bestimmte Methode dar. 4

Im Prospekt und Fondsvertrag des betreffenden Anlagefonds sind die gewählte(n) Methode(n) offen zu legen. 5

Die Wahl der Methode(n) ist von verschiedenen Faktoren abhängig. Anlageuniversum eines Anlagefonds, Art des Vertriebs und der Kunden, Zeichnungs- und Rücknahmevolumen sowie die ermittelten Kosten beeinflussen den Entscheid. Über eine Palette von Anlagefonds bzw. in einem Anlagefonds mit Teilvermögen und/oder Anteilsklassen dürfen mehr als eine Methode angewendet werden. 6

II Transaktionskosten und Fondsperformance

Definition der Transaktionskosten

Beim Kauf und Verkauf von Effekten und anderen Anlagen (Transaktionen) entstehen dem Anlagefonds Nebenkosten (Transaktionskosten). Diese entsprechen der Differenz zwischen 7

a) dem Bewertungskurs der betreffenden Anlage zum Zeitpunkt des Anlageentscheides bzw. am Stichtag bei Abrechnung von Ausgabe und Rücknahme von Anteilen und 8

b) dem effektiven Kurswert inkl. Geld/Brief-Spanne (Spread), Courtagen, Kommissionen, Steuern und Abgaben, zu dem der Kauf oder Verkauf der betreffenden Anlage letztlich abgewickelt wurde. 9

Bei Fixed Income-Produkten fallen in der Regel keine zusätzlichen Kommissionen oder Courtagen an. Diese Kosten sind in der Geld/Brief-Spanne (Spread) enthalten. 10

Bei Aktienanlagen fallen in der Regel Courtagen, Kommissionen und Steuern an, die beim Kauf oder Verkauf zusätzlich belastet werden. 11

Letztlich hängen die Transaktionskosten von der Anlagekategorie (Aktien, Obligationen, Anlagefonds, Derivate etc.) und vom Anlagemarkt (Schweiz, UK, USA, Emerging Markets etc.) ab. 12

Ermittlung der Transaktionskosten

Die Transaktionskosten können auf unterschiedliche Art ermittelt werden: 13

- Ermittlung der tatsächlich angefallenen Transaktionskosten (Effektivtransaktionskosten) 14
- Ermittlung der durchschnittlichen Transaktionskosten über einen bestimmten Zeitraum (Pauschaltransaktionskosten) 15

Unterschiedlicher Hintergrund von Transaktionen

Je nach ihrem Hintergrund können Transaktionen durch zwei verschiedene Faktoren ausgelöst werden: 16

- Einerseits gibt es Transaktionen, die im Rahmen der ordentlichen Verwaltung des Fondsvermögens aus marktbedingten oder anlagepolitischen Überlegungen und unabhängig von Mittelzuflüssen und -abflüssen durchgeführt werden. Die damit verbundenen Kosten wirken sich über die Performance auf alle im Anlagefonds investierten Anleger gleichermassen aus. 17
- Andererseits gibt es Transaktionen, die im Zusammenhang mit der Anpassung des Fondsportefeuilles bei Ausgaben und Rücknahmen von Anteilen stehen, indem neue Mittel investiert oder Anlagen zur Finanzierung von Anteilrückgaben verkauft werden müssen. Die damit verbundenen Transaktionskosten können entweder dem Fondsvermögen belastet oder wie nachfolgend beschrieben auf diejenigen Anleger überwälzt werden, die mit ihrem Ein- und Aussteigen in bzw. aus dem Anlagefonds die Transaktion verursachen. 18

Performanceeffekt von Anteilausgaben und -rücknahmen

Werden die Transaktionskosten für die Anpassung des Fondsportefeuilles bei Anteilausgaben und –rücknahmen dem Fondsvermögen belastet, so wirkt sich dies direkt auf die Performance des Anlagefonds und damit auf die im Anlagefonds investierten Anleger aus. 19

Anleger, die Anteile erwerben, tragen die bei der Anlage der zugeflossenen Mittel anfallenden Transaktionskosten ebenso mit, wie die bereits im Anlagefonds investierten Anleger. Die Transaktionskosten verteilen sich auf eine höhere Anzahl von Anteilen und beeinflussen daher die Performance weniger stark als bei Anteilrücknahmen. 20

Indessen können Anleger, die durch die Rückgabe von Anteilen Transaktionskosten verursachen, von den induzierten Auswirkungen auf die Performance verschont bleiben. Dies in jenen Fällen, wo Rücknahmen aus dem Cash finanziert werden und die entsprechenden Transaktionskosten im Anlagefonds erst einen Tag später ausgelöst werden. 21

Bei jeweils gleichen Beträgen beeinträchtigen Mittelrückzüge die Performance stärker, da die angefallenen Transaktionskosten auf eine kleinere Anzahl von Anteilen umgelegt werden. Besonders nachteilig für die Performance sind daher fortgesetzte Anteilrückgaben sowie insbesondere grosse Transaktionsvolumen. 22

III Massnahmen gegen eine Performance-Beeinträchtigung

Verursachergerechte Überwälzung der Kosten auf die in den Anlagefonds eintretenden bzw. aus dem Anlagefonds austretenden Anleger 23

In folgenden Situationen (Aufzählung nicht abschliessend) sind Anlagefonds gegenüber einer potentiellen Beeinträchtigung der Performance als Folge von Anteilausgaben und -rücknahmen besonders exponiert: 24

- Die Anpassungen des Portefeuilles verursachen höhere Kosten wie z.B. bei Anlagefonds, die ihr Vermögen in Märkten mit geringen Handelsvolumen (Schwellenländer; Titel von kleinen Gesellschaften, Emerging Market Debt usw.) anlegen, komplexe Derivatstrukturen einsetzen, hohen zusätzlichen Steuern (z.B. UK stamp duty) ausgesetzt sind oder auf alternative Anlagen fokussiert sind. 25
- Zwischen der Fondsperformance und einer Benchmarkrendite werden nur minimale Abweichungen toleriert, wie z.B. bei Indexfonds. 26
- Neu lancierte Anlagefonds, die rasch wachsen. 27
- Anlagefonds, die aufgrund eines langfristigen Trends konstant anwachsen bzw. konstante Abflüsse verzeichnen. 28
- Anlagefonds, die verstärkt in Vermögensverwaltungsmandaten oder Dachfonds eingesetzt werden und dementsprechend höheren Zu- oder Abflüssen ausgesetzt sind. 29
- Anlagefonds, die sowohl Retail- als auch institutionelle Anleger haben und bei denen der überwiegende Anteil der Transaktionen durch institutionelle Anleger ausgelöst wird. 30

Diese Situationen erfordern eine erhöhte Aufmerksamkeit bezüglich der Frage, wie die Interessen der im Anlagefonds investierten Anleger vor negativen Einflüssen durch Fluktuationen im Anteilbestand geschützt werden können. 31

Das Problem von Performance-Beeinträchtigungen bei Mittelzuflüssen und –abflüssen liesse sich korrekt nur lösen, wenn die dadurch entstandenen Transaktionskosten verursachergerecht auf die in den Anlagefonds eintretenden bzw. aus dem Anlagefonds austretenden Anleger umgelegt würden. Dies ist bei Anlagefonds, für welche öffentlich geworben werden darf, jedoch praktisch nicht durchführbar. Zusätzlich zur Möglichkeit, die Transaktionskosten dem Fondsvermögen zu belasten, gibt es derzeit folgende pragmatische Methoden: 32

1. **“Titelankaufsspesen bzw. –verkaufsspesen“** - Für Rechnung des Anlagefonds werden bei der Ausgabe und/oder Rücknahme fixe oder variable Beträge erhoben. 33
2. **“Swinging Single Pricing“** - Variable Anpassung des Nettoinventarwerts bei Ausgaben oder Rücknahmen von Anteilen. 34
3. **“Dual Pricing“** - Berechnung von unterschiedlichen Nettoinventarwerten für die Ausgaben und Rücknahmen von Anteilen anhand der Geld- bzw. Briefkurse der Anlagen +/- Courtagen und andere Nebenkosten. 35

Bei allen Systemen wirken ausschliesslich die mit dem Fondsvermögen verrechneten Ausgabe- und Rücknahmepreise bzw. Zuschläge und Abzüge einer Beeinträchtigung der Performance entgegen. Die von der Fondsleitung resp. SICAV, der Depotbank, den Vertriebsträgern oder anderen Parteien erhobenen und nicht dem Fondsvermögen zufliessenden Kommissionen kompensieren weder die Transaktionskosten noch beeinflussen sie die Performance der Anleger im Anlagefonds. 36

1. “Titelankaufsspesen bzw. –verkaufsspesen“

Bei diesem System basieren der Ausgabe- und Rücknahmepreis auf dem gleichen, jeweils anhand der Schlusskurse der Anlagen berechneten Nettoinventarwert. Die Transaktionskosten werden mittels Anpassung des Nettoinventarwertes den ein- und aussteigenden Anlegern belastet. 37

- Bei der Ausgabe von Anteilen wird zu Gunsten des Anlagefonds ein Zuschlag in Höhe der durchschnittlichen prozentualen “Nebenkosten“ (d.h. die Kosten, die dem Anlagefonds bei der Anlage des einbezahlten Betrages erwachsen) erhoben. 38
- Bei der Rücknahme von Anteilen wird zu Gunsten des Anlagefonds ein Abschlag in Höhe der durchschnittlichen prozentualen “Nebenkosten“ (d.h. die Kosten, die dem Anlagefonds beim Verkauf von Anlagen erwachsen) verrechnet. 39

Partei	**Ausgabe von Anteilen**	**Rücknahme von Anteilen**
Anlagefonds	Nettoinventarwert	
	Zuschlag in Höhe der Transaktionskosten, die dem Anlagefonds im Durchschnitt bei der Anlage des zugeflossenen Betrages erwachsen	Abzug in Höhe der Transaktionskosten, die dem Anlagefonds im Durchschnitt beim Verkauf eines dem gekündigten Anteil entsprechenden Teils der Anlagen erwachsen
Fondsleitung/SICAV, Depotbank und/oder Vertriebsträger	Ausgabekommission	Rücknahmekommission
Anleger	**Ausgabepreis**	**Rücknahmepreis**

40

Als Variante der Titelankaufs- bzw. –verkaufsspesen ist die sogenannte **"Dilution Levy"**-Methode zu erwähnen. Diese Methode charakterisiert sich in erster Linie dadurch, dass ein Grenzwert für die Belastung der "Levy" festgelegt wird. Die Belastung der "Levy" erfolgt, wenn die Nettozeichnungen oder -rücknahmen den festgelegten Grenzwert übersteigen. Dieser Grenzwert kann als Netto-Betrag oder als Prozentwert des Fondsvermögens ausgedrückt werden. Es können je nach Anlagefonds unterschiedliche Grenzwerte festgelegt werden. Am häufigsten wird die "Dilution Levy" auf der Rücknahmeseite angewandt (Dilution = Verwässerung). 41

Hauptmerkmale: 42

- Es wird nur ein Nettoinventarwert berechnet. 43
- Die Belastung der Nebenkosten erfolgt durch separat ausgewiesene Zu- bzw. Abschläge zum Nettoinventarwert. 44
- Stellt eine Annäherung an das unter "Dual-Pricing" beschriebene System dar. 45
- Der Zuschlag bzw. Abzug von Nebenkosten wird bei jeder Ausgabe und Rücknahme von Anteilen erhoben. 46
- Bei der "Dilution Levy"-Methode kommt in der Regel ein Grenzwert zur Anwendung. 47

Verbreitung/Anwendung: 48

- Die Methode der Titelankaufs- bzw. –verkaufsspesen findet häufig bei Indexfonds oder bei institutionellen Anlagefonds Anwendung. 49
- Das System der "Dilution Levy" ist in Grossbritannien relativ stark verbreitet. Diese Methode kommt häufig bei Produkten zur Anwendung, wo eine Beeinträchtigung aufgrund grosser Transaktionen vermieden werden soll. 50

2. "Swinging Single Pricing"

Beim Swinging Single Pricing werden die Transaktionskosten mittels einer Anpassung des Nettoinventarwertes dem ein- bzw. austretenden Anleger "belastet". 51

- Überwiegen an einem Bewertungstag die Anteilausgaben, so wird der Nettoinventarwert um die Transaktionskosten, die dem Anlagefonds bei der Anlage der zugeflossenen Mittel im Durchschnitt oder effektiv erwachsen (sog. "Swing Faktor"), erhöht. 52
- Überwiegen an einem Bewertungstag die Anteilrückgaben, so wird der Nettoinventarwert um die Transaktionskosten, die dem Anlagefonds im Durchschnitt oder effektiv beim Verkauf eines dem gekündigten Anteil entsprechenden Teils der Anlagen erwachsen, reduziert. 53

Partei	**Ausgabe von Anteilen**	**Rücknahme von Anteilen**
Anlagefonds	Nettoinventarwert vor Anpassung	
	Situativ: Zuschlag in Höhe der Transaktionskosten, die dem Anlagefonds im Durchschnitt (oder effektiv) bei der Anlage des zugeflossenen Betrages erwachsen	Situativ: Abzug in Höhe der Transaktionskosten, die dem Anlagefonds im Durchschnitt (oder effektiv) beim Verkauf eines dem gekündigten Anteil entsprechenden Teils der Anlagen erwachsen
	Nettoinventarwert nach Anpassung	
Fondsleitung/SICAV, Depotbank und/oder Vertriebsträger	Ausgabekommission	Rücknahmekommission
Anleger	**Ausgabepreis**	**Rücknahmepreis**

54

Die Anpassung des Nettoinventarwertes mittels Swinging Single Pricing kann entweder anlässlich jeder Anteilsausgabe bzw. -rücknahme oder bei Erreichen eines vordefinierten Grenzwertes erfolgen. Im ersten Fall wird die Methode als **"Full Swing"**-Methode bezeichnet. Im zweiten Fall, bei der **"Partial Swing"**-Methode, kann als auslösender Tatbestand ein bestimmter Grenzwert für Nettoausgaben oder -rücknahmen festgelegt werden. Dieser Grenzwert kann als Netto-Betrag oder als Prozentwert des Fondsvermögens ausgedrückt werden. 55

Hauptmerkmale: 56

- Es wird nur ein Nettoinventarwert berechnet. 57
- Die Belastung der Nebenkosten ist in die Berechnung des Nettoinventarwertes integriert. 58
- Der berechnete und durch den Swing Faktor angepasste Inventarwert gilt am entsprechenden Tag für alle Ausgaben und Rücknahmen von Anteilen. 59

Verbreitung/Anwendung: 60

- Swinging Single Pricing gelangt heute in Europa v.a. in Grossbritannien und in Luxemburg zur Anwendung. 61

3. "Dual Pricing"

Bei diesem System werden für die Ausgabe und die Rücknahme von Anteilen zwei unterschiedliche Nettoinventarwerte ("Bottom-up") berechnet: 62

- Die Zeichnungen eines Handelstages werden zu Briefkursen abgerechnet und die Rücknahmen zu Geldkursen. 63
- Die Differenz zwischen Geld- und Briefkurs (Spread) entspricht den ermittelten Transaktionskosten des jeweiligen Anlagefonds. 64

Partei	Ausgabe von Anteilen	Rücknahme von Anteilen
Anlagefonds	Nettoinventarwert berechnet anhand der Brief-Kurse der Anlagen und/oder	Nettoinventarwert berechnet anhand der Geld-Kurse der Anlagen und/oder
	Kosten und Kommissionen, die dem Anlagefonds beim Kauf von Anlagen entstehen	Kosten und Kommissionen, die dem Anlagefonds beim Verkauf von Anlagen entstehen
Fondsleitung/SICAV, Depotbank und/oder Vertriebsträger	Ausgabekommission	Rücknahmekommission
Anleger	**Ausgabepreis**	**Rücknahmepreis**

65

Eine Variante des "Dual Pricings" stellt die sogenannte **"Spread-Netting"**-Methode dar. Hier wird die Geld-/Briefspanne aufgrund des Verhältnisses der Zu- oder Abflüsse verändert. 66

Hauptmerkmale: 67

- Es werden zwei Nettoinventarwerte gerechnet und publiziert. 68
- Die Transaktionskosten sind als Spread definiert. 69
- Beim sog. „Spread-Netting" wird der Spread nicht nur durch die Höhe der Transaktionskosten sondern auch durch das Verhältnis der Zeichnungen zu Rücknahmen bestimmt. 70
- Die beiden Nettoinventarwerte gelten jeweils für alle an einem Tag abgerechneten Ausgaben und Rücknahmen von Anteilen. 71
- Beim System des "Dual Pricing" können die berechneten Nettoinventarwerte je nach Spanne zwischen den Geld- und Briefkursen der Anlagen erheblich voneinander abweichen. 72

Verbreitung/Anwendung: 73

- Die "Dual-Pricing"–Methode findet insbesondere in Grossbritannien bei Unit Trusts Anwendung. 74

Zusammenfassende Beurteilung der Methoden

Mit den in dieser Fachinformation beschriebenen Methoden kann die durch Transaktionen verursachte Performance-Beeinträchtigung vermindert werden, falls dies für notwendig erachtet wird. Es besteht nach wie vor die Möglichkeit, die Transaktionskosten dem Fondsvermögen zu belasten. 75

Wie erwähnt, gibt es kein Patentrezept in Form einer einzigen, absolut verursachergerechten Lösung. Die dargestellten Methoden unterscheiden sich nach der grundsätzlichen Preisgestaltung (ein oder zwei Nettoinventarwerte, zusätzlich zum Nettoinventarwert oder integriert), möglichen Varianten (mit oder ohne Grenzwert) und der Komplexität (effektive oder durchschnittliche Kosten, fixer Spread oder "Spread-Netting"). 76

Aufgrund einer Analyse der Fondspalette (Anlageklassen, tägliche Volumen, Kosten), der Art des Vertriebs (Inhouse, extern), der Kunden (Retail, Institutionell, Fund-of-Funds) und der internen Möglichkeiten (Administration, Systeme) kann die Wahl auf eine oder aber auch mehrere der erwähnten Methoden fallen. 77

Jedes verursachergerechte Umlegen der durch Mittelzuflüsse und –abflüsse induzierten Kosten auf die in den Anlagefonds eintretenden bzw. aus dem Anlagefonds austretenden Anleger erhöht oder reduziert den Ausgabe- bzw. Rücknahmepreis von Fondsanteilen. Dies wird von Anlegern oft als nachteilig empfunden, obwohl die getroffenen Massnahmen gerade dem Anleger dienen. Selbst wenn Anleger nur wenige Jahre in einem Anlagefonds investiert bleiben, können die während dieser Zeit vermiedenen Performance-Einbussen den bei Erwerb oder Rückgabe von Anteilen erhobenen Zuschlag bzw. Abzug bereits ausgleichen. 78

Disclaimer 79

Die Eidgenössische Bankenkommission (EBK) hat noch nicht entschieden, welche Methoden sie mit Bezug auf Art. 83 Abs. 3 KAG als zulässig erachtet.

Die EBK wird erst im Rahmen von konkreten Gesuchen Stellung beziehen.

INHALTSVERZEICHNIS

SFAMA Swiss Funds & Asset Management Association

Guidelines

Guidelines for Real Estate Funds

2. April 2008

(Version of 20 April 2015)

I Basic principles, aims and binding force

The following guidelines provide detailed information in respect of specific matters pertaining to the duties of loyalty, due diligence and disclosure of real estate fund management companies and real estate SICAVs as well as representatives of foreign real estate funds, the objective being to ensure the high quality of real estate funds in Switzerland. The guidelines contain basic principles on uniform valuation and information for investors. By establishing standards, the guidelines are also aimed at ensuring the greatest possible transparency in the offering of these products. 1

The guidelines are part of the self-regulation regime of the Swiss fund industry. They are based on Section II of the Code of Conduct of the Swiss Funds & Asset Management Association SFAMA, which applies to all fund management companies and SICAVs as well as representatives of foreign collective investment schemes (referred to below as the "Code of Conduct"). 2

The guidelines apply to 3

- Swiss fund management companies of real estate funds and real estate SICAVs (pursuant to Art. 58 et seqq. CISA); 4
- representatives of foreign real estate funds (pursuant to Art. 119 et seqq. CISA) in respect of Sections D and E of the present guidelines. 5

Exceptions approved by the supervisory authority for real estate funds reserved exclusively for qualified investors pursuant to Art. 10 paras. 3, 3bis, 3ter and Art. 10 para. 4 CISA apply notwithstanding. 6

II Guidelines

A Duty of the fund management company/SICAV in respect of due diligence

1. Ensuring a proper organizational structure

The fund management company/SICAV must implement the necessary organizational measures pursuant to the Code of Conduct (including an internal control system) to enable it to manage its real estate fund business in a proper manner. At the least, it must observe adequate separation of functions with regard to the following activities: 7

- decision-making (in particular in respect of acquisitions, sales and the maintenance 8

of properties) and

- controlling (e.g. of valuations, execution of delegated tasks and the real estate companies). 9

It will delegate executive functions in respect of the management of real estate funds exclusively to persons with many years of suitable experience in the real estate business and – depending on the task – also in the collective investment business. 10

2. Real estate companies belonging to real estate funds

The fund management company/SICAV must ensure that the same basic principles and standards apply to real estate companies belonging to the real estate fund as apply to the fund management company/SICAV. In particular, with regard to the structure of the Board of Directors and the Executive Board, the same requirements must apply as for the governing and executive bodies of the fund management company/SICAV. 11

3. Delegation of tasks (Art. 31.1 CISA)

Where tasks are delegated pursuant to Art. 31.1 CISA, the fund management company/SICAV must conclude an agreement with the agent(s) with specific regulations governing the delegated task, the performance of that task while avoiding potential conflicts of interest, areas of responsibility, powers of authority, scope of liability and fees. Barring any provisions to the contrary in the fund regulations, the agents' fees are borne by the fund management company or the shareholder's assets in the case of a SICAV. 12

The fund management company/SICAV must ensure that the agents are aware of the provisions of the present guidelines and other pertinent guidelines, and it must ensure that the agents are contractually obliged to comply in full with such provisions. 13

4. Relationship with the custodian bank

The fund management company/SICAV must conclude an agreement with the custodian bank governing the parties' respective areas of responsibility, settlement procedures and interfaces. 14

5. Relationship with the independent valuation experts

For each real estate fund, the fund management company/SICAV must appoint at least two natural persons or one legal entity familiar with the pertinent real estate markets as independent valuation experts. The appointment requires the approval of the supervisory authority. 15

The fund management company/SICAV will only appoint valuation experts that, in particular, meet the requirements laid down in the law and the regulations with regard to independence, training, experience and knowledge of the market. 16

The details in respect of the cooperation, specifically with regard to settlement procedures, areas of responsibility and fees, are to be covered in an agreement. 17

While safeguarding the independence of the valuation experts, the agreement must also stipulate the valuation method that the valuation experts will as a rule use in conducting their valuations. 18

B Principles for determining the market value of the properties and other investments

6. Market value

The market value of a property corresponds to the price that would probably be obtained in a diligent sale at the time of valuation. 19

7. Determining the market value

The market value of the properties is to be determined using a discounted income value approach. The market value is to be determined on the basis of the result of the valuation method applied, taking due consideration of the market environment. 20

Subject to the exceptions listed below, all properties of a real estate fund must be valued using the same discounted income value approach (standard valuation method). 21

In the case of those properties that can only be valued using a different valuation method (e.g. undeveloped building land or properties for demolition), the valuation report must give the reasons for selecting the different valuation method and a description of the method in question (cf. Section 16). 22

8. Discounted income value approaches

The cash value method, the discounted cash flow (DCF) method and other recognized discounted income value methods are recognized as discounted income value approaches. 23

9. Individual (property-specific) valuation

In every case, the income value of a property requires an individual valuation. Such valuations must take into account all of the factors that experience shows to have an impact on the selling price at the time of the valuation, such as specifically the market environment and the quality of the property concerned. 24

10. Market environment

The current and expected market environments are decisive factors. The market environment is determined by all of the significant circumstances influencing supply and demand in the regular conduct of commercial activity at the time of the valuation, such as specifically the prevailing economic situation, the capital market and developments, which are to be taken in the context of their impact on the specific property. In this regard, unusual or speculative scenarios may only be taken into account if they are of a lasting nature and their impact on the valuation can be quantified. 25

The market environment that could result if all of the properties of one or all real estate 26

funds were to be offered on the market at the same time is not to be taken into account.

11. Quality

The quality of a property is determined in particular by the characteristics of the location, the size and design of the property, utility, rights or liabilities under private or public law, interior works, construction materials, age, condition, rental status, rental potential, rental income, rental income reserves, etc. **27**

Characteristics of a property's location include in particular transport links, neighborhood, attractiveness as a place of residence/business, and environmental factors. **28**

12. Conducting the valuations

The fund management company/SICAV must compile all the relevant documents for the valuation of the property that the valuation experts will need for their valuation activities, and must provide these documents to the valuation experts. **29**

In respect of reviewing the market values pursuant to Art. 93 and Art. 97.3 CISO, the fund management company/SICAV must deliver all the necessary data that have changed since the last valuation. It is responsible for controlling and verifying the valuation results. **30**

13. Valuation report

The fund management company/SICAV must ensure that each valuation is documented in a valuation report in such a manner that it can be readily understood by a professional. The valuation report must be signed by the valuation expert in question. **31**

Reasons must be given for the amounts of the discount rates and other parameters used in the DCF valuation practice, as well as any changes compared with the previous year, and these must be verified. **32**

14. Changing the valuation method

If the fund management company/SICAV changes the valuation method, the valuation experts must inspect all the properties. **33**

The investors must be notified in advance of the change in the valuation method, with reference to the fact that this may result in a higher or a lower valuation. The supervisory authority must also be informed in advance. **34**

15. Valuation of other investments

The fund management company/SICAV must value securities, liquid assets and other investments in accordance with the SFAMA Guidelines on the Valuation of the Assets of Collective Investment Schemes and the Handling of Valuation Errors in the case of Open-End Collective Investment Schemes. **35**

16. Internal directive on valuation and the calculation of the net asset value

The fund management company/SICAV must set down in an internal directive the basic principles, processes and responsibilities applicable in respect of the valuation of the fund's assets. This directive must at least cover the following: **36**

- the description of the valuation method used as standard; **37**
- the description of cases in which methods other than the standard valuation method are used together with a description of the methods (cf. Section 7); **38**
- the interfaces, processes and responsibilities in respect of the valuation experts; **39**
- measures to verify the valuation figures provided by the valuation experts, and procedure to be followed if the fund management company/SICAV does not intend to use these figures; **40**
- responsibility for verifying the determined net asset value within the fund management company/SICAV; **41**
- the internal flow of information (avoidance of conflicts of interest). **42**

17. Issuing units (Art. 66 CISA in conjunction with Art. 97 CISO)

In issuing units, the fund management company/SICAV must take into account the pertinent specialist information factsheet of SFAMA. **43**

C Duty of the fund management company/SICAV in respect of loyalty

Avoidance of conflicts of interest

18. Transactions with closely related persons/entities

[rescinded] **44-51**

The fund management company/SICAV must ensure that it buys/sells real estate assets for the account of the real estate fund only from/to persons/entities who do not qualify as closely related persons pursuant to Art. 91a CISO. It will conclude transactions pursuant to Art. 63 paras. 2 and 3 CISA with related persons only if an exemption has been granted by the supervisory authority (Art. 32a CISO). **52**

The fund management company/SICAV will conclude rental contracts with closely related persons/entities at standard market terms. It will have this confirmed annually by the valuation expert responsible. **53**

The fund management company/SICAV will also conduct all other dealings with closely related persons/entities at standard market terms (at arm's length). **54**

19. Transactions between real estate funds

If a fund management company/SICAV manages several real estate funds, in all transactions between these real estate funds it must be ensured that the real estate funds involved are treated equally and that none is given preferential treatment to the detriment of the others. **55**

20. Personal account dealing by employees

The fund management company/SICAV will issue suitable regulations pursuant to the Code of Conduct governing personal account dealing by its employees in units of the real estate fund. **56**

Investment of fund assets

21. Basic principle

The fund management company/SICAV manages the real estate funds it establishes in accordance with the investment policy and requirements defined for the individual real estate funds. It will not give certain real estate funds and/or investor groups preferential treatment to the detriment of others (e.g. when allocating newly acquired properties). **57**

22. Maintenance and renovations

The fund management company/SICAV must ensure that the properties are properly and regularly maintained. It will award contracts independently and only to carefully selected counterparties that offer the best execution overall in terms of price, time and quality. It will use retrocessions and rebates received exclusively for the benefit of the real estate fund. If more than one real estate fund is involved, they will benefit on a pro rata basis. **58**

23. Joint construction projects

If the fund management company/SICAV realizes a construction project for the account of the real estate fund jointly with the custodian bank or a closely related person/entity, it must ensure that any ensuing benefits (e.g. favorable terms in the case of a major contract) accrue to the real estate fund in proportion to its stake in the project. **59**

24. Commissions from real estate transactions

Any commissions accruing to the fund management company/SICAV for brokering the services of closely related persons/entities in connection with real estate transactions will be credited against the remuneration due to it in accordance with the fund regulations. **60**

25. Other investments

If the fund management company/SICAV takes up a loan from the custodian bank for the account of the real estate fund or if it invests liquid assets with the custodian bank, it must make regular comparisons with competitors to ensure that the interest rate is in line with the standard market conditions. **61**

D Duty of the fund management company/SICAV in respect of the disclosure of information

26. Investment character and suitability of the real estate fund

In the sales documentation, the fund management company/SICAV must explain the investment character and suitability of the fund as well as the characteristics of free trading in the fund's units (premium/discount) in a form and language readily accessible to investors (i.e. reader-friendly). It must refrain from making statements on the future performance of the real estate fund. Sales documentation is deemed as being issuing prospectuses and marketing documents that provide detailed information on the fund as promotional material. **62**

However, the fund management company/SICAV may assume that the investor is familiar with the basic fundamentals of investing in real estate. The duty of disclosure thus refers above all to the specific characteristics and risks of the real estate fund, such as for example **63**

- the dependence of earnings on (regional) economic developments; **64**
- key regional factors. **65**

In the annual and semi-annual reports, the fund management company/SICAV must disclose any tenants that account for more than 5% of the total rental income of the real estate fund on the pertinent reference date. If no tenant reaches this 5% threshold, it must disclose this fact. **66**

27. Disclosure of the valuation method

In the annual and semi-annual reports, the fund management company/SICAV must provide information on the method used to value the properties. It must disclose in the annual report the average discount factor applied and must explain the key characteristics of the method selected. **67**

In the event of a change in the valuation method, the duty of disclosure is as covered in Section 14. **68**

28. Standardized key data

The fund management company/SICAV must publish at least the following key data in the annual and semi-annual reports: **69**

- Rent default (loss of income) rate **70**
- Borrowing ratio **71**
- Operating profit margin (EBIT margin) **72**
- Fund operating expense ratio (TER_{REF}) **73**
- Dividend yield
- Payout ratio
- Premium / discount
- Performance

- Return on equity (ROE)
- Investment return

74

In addition to these, the fund management company/SICAV is free to publish the following key data, among others: 75

- Net return on completed buildings 76
- Average age of completed buildings 77
- Gearing 78
- Return on invested capital (ROIC) 79
- Price/earnings ratio (P/E)
- Price/cash flow ratio
- Market capitalization

The above terms may only be used for key data that correspond exactly to the definitions listed in the SFAMA specialist information factsheet "Key Data for Real Estate Funds" and that are also calculated in accordance with the said factsheet. It is not permitted to use these terms for other key data or key data calculated in a different manner. 80

To ensure the continuity of information for investors, the fund management company/SICAV will publish the same key data in other publications (e.g. factsheets, quarterly reports). In so doing it may restrict itself to the most important key data, but once these have been selected they must be maintained over a prolonged period. 81

29. Announcing price-sensitive changes

The fund management company/SICAV must openly inform investors about changes that could have a significant influence on the pricing of units on the free market. It must take the necessary precautions to prevent insider trading. 82

The fund management company/SICAV must ensure that price-sensitive information is only passed on to the custodian bank's trading units if it is also published for the attention of investors at the same time. 83

For the purposes of the present section, price-sensitive changes are deemed to include the following: 84

- changes of more than 5% in the net asset value of units compared with the most recently published figure; 85
- unexpected events having a significant impact on the income statement (e.g. in the case of an important tenant defaulting or the need for major, unscheduled refurbishment); 86
- decisions by the responsible bodies to restructure, merge or liquidate the real estate fund; 87
- notice having been served on units corresponding to more than 20% of the net fund assets. 88

In the case of listed real estate funds, the fund management company/SICAV must comply with the regulations of the SIX Swiss Exchange on the disclosure of price-sensitive facts (ad hoc publicity pursuant to Art. 72 of the Listing Rules) and on the suspension of trading. 89

In the case of unlisted real estate funds, the fund management company/SICAV will disclose in the prospectus / annex the procedure for notifying investors of price-sensitive changes. 90

E Duties of due diligence and loyalty in the distribution of collective investment schemes

30. Application of the SFAMA Guidelines on the Distribution of Collective Investment Schemes

If the fund management company/SICAV distributes the real estate funds it manages via distributors, it must apply the provisions of the SFAMA Guidelines on the Distribution of Collective Investment Schemes. 91

III Other provisions

A Minimum standard

The Swiss Financial Market Supervisory Authority FINMA has recognized these guidelines as a minimum standard (FINMA Circular 08/10 Self-Regulation as a Minimum Standard). 92

B Entry into force

The present amended guidelines were approved by the Board of Directors of the Swiss Funds & Asset Management Association SFAMA on 20 April 2015. They enter into force on 1 June 2015. 93

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SFAMA Swiss Funds & Asset Management Association

Fachinformation

Fachinformation Kennzahlen von Immobilienfonds

23. Oktober 2013

I. Einleitung

Die Selbstregulierung in der schweizerischen Fondswirtschaft verpflichtet Fondsleitungen und SICAV von Immobilienfonds sowie Vertreter ausländischer Immobilienfonds dazu, in den Fondsinformationen einheitliche Kennzahlen zu verwenden. Dabei haben sie sich an die in der vorliegenden Publikation festgelegten Begriffe und Definitionen zu halten und in den Jahres- und Halbjahresberichten mindestens die nachfolgend **in fetter Schrift** hervorgehobenen Kennzahlen offen zu legen. Grundlage für die Ermittlung der Kennzahlen ist eine minimale Harmonisierung der Rechnungslegung. Wir verweisen diesbezüglich auf die in Art. 68 KKV-FINMA für die Immobilienfonds festgelegte Mindestgliederung der Vermögens- und Erfolgsrechnung. **1**

Mit dem Erlass dieser Bestimmungen will die SFAMA eine einheitliche und vergleichbare Information der Anleger sicherstellen und zu einer möglichst hohen Transparenz zum Produktangebot am schweizerischen Fondsmarkt beitragen. **2**

Die wichtigsten, hier aufgeführten Kennzahlen sind auch in der Unternehmens- und Aktienanalyse gebräuchlich. Damit vereinfachen sie einen Vergleich der Anteile von Immobilienfonds mit Aktien von Immobiliengesellschaften. **3**

II. Kennzahlen zum Immobilienbestand des Anlagefonds

1. Mietzinsausfall-(Ertragsausfall-)quote

Die Mietzinsausfall-(Ertragsausfall-)quote ist ein wichtiger Indikator für die Vermietungssituation bei fertigen Bauten des Fonds. **4**

Definition: **5**

Mietzinsausfälle (Minderertrag Leerstand und Inkassoverluste auf Mietzinsen) in % der Soll-Nettomietzinsen

Als Mietzinsausfälle gelten: **6**

Leerstandsverluste (bewertet zum letztbezahlten Mietzins) auf Mietzinsen, plus

- Inkassoverluste auf Mietzinsen

Formel:

$$\text{Mietzinsausfallquote \%} = \frac{\text{Mietzinsausfälle}}{\text{Soll-Nettomietzinsen}} \times 100$$ **7**

2. Nettorendite der fertigen Bauten

Die Nettorendite der fertigen Bauten ist ein wichtiger Indikator für die Ertragskraft der zum Fonds gehörenden fertigen Bauten. **8**

Definition: **9**

Im Berichtsjahr erzielter Nettoertrag der fertigen Bauten in % des Verkehrswertes der fertigen Bauten am Ende der Berichtsperiode

Als Nettoertrag gilt: **10**

Mietzinseinnahmen (inkl. Baurechtszinserträge), minus

- Baurechtszinsen
- Aufwand für Unterhalt und Reparaturen exkl. Instandsetzungen
- Liegenschaftsaufwand
- Verwaltungsaufwand
- Liegenschaftssteuern (Objektsteuern)

Erträge von fertigen Bauten, die in der Berichtsperiode veräussert wurden, sind bei der Berechnung völlig zu eliminieren. **11**

Der Nettoertrag von fertigen Bauten, die in der Berichtsperiode erworben wurden, ist auf 12 Monate hoch zu rechnen. **12**

Formel:

$$\text{Nettorendite \%} = \frac{\text{Nettoertrag}}{\text{Verkehrswert der fertigen Bauten am Ende der Berichtsperiode}} \times 100$$ **13**

3. Durchschnittsalter der fertigen Bauten

Das Durchschnittsalter der fertigen Bauten ist anhand des wirtschaftlichen Alters anzugeben. Wird dieses angegeben, sind die Grundsätze der Berechnung zu erläutern. **14**

III. Kennzahlen zur Vermögensrechnung des Fonds

4. Fremdfinanzierungsquote

Die Fremdfinanzierungsquote zeigt den Grad der Fremdfinanzierung der Grundstücke auf. **15**

Definition: **16**

Zur Finanzierung aufgenommene fremde Mittel in % des Verkehrswertes der Grundstücke

Als aufgenommene Fremdmittel gelten: **17**

Hypothekarschulden (inkl. hypothekarisch gesicherte Darlehen), plus

- alle anderen, zu verzinsenden Verbindlichkeiten gegenüber Banken und Dritten

Formel:

$$\text{Fremdfinanzierungsquote \%} = \frac{\text{Aufgenommene Fremdmittel *}}{\text{Verkehrswert der Grundstücke *}} \times 100$$ **18**

* am Ende der Berichtsperiode

5. Fremdkapitalquote

Die Fremdkapitalquote ist ein wichtiger Indikator für die Bilanz-Struktur des Fonds. Sie gibt an, wie hoch der Anteil des Fremdkapitals am Gesamtfondsvermögen ist. **19**

Definition: **20**

Fremdkapital in % des Gesamtfondsvermögens

Als Fremdkapital gilt: **21**

Hypothekarschulden (inkl. hypothekarisch gesicherte Darlehen), plus

- Sonstige Verbindlichkeiten
- Geschätzte Liquidationssteuern

Formel:

$$\text{Fremdkapitalquote \%} = \frac{\text{Fremdkapital *}}{\text{Gesamtfondsvermögen *}} \times 100$$ **22**

* am Ende der Berichtsperiode

IV. Kennzahlen zur Erfolgsrechnung des Fonds

6. Betriebsgewinnmarge (EBIT-Marge)

Die Betriebsgewinnmarge zählt zu den wichtigsten in der Unternehmensanalyse verwendeten Kennzahlen. Sie kann für einen Fonds genau so wie für eine Immobiliengesellschaft berechnet und verglichen werden. **23**

Definition: **24**

Betriebsgewinn in % der Netto-Mietzinseinnahmen

Als Betriebsgewinn gilt: **25**

Mietzinseinnahmen, plus

- Erträge der Post- und Bankguthaben
- Erträge der kurzfristigen festverzinslichen Effekten
- Aktivierte Bauzinsen
- Sonstige Erträge

minus

- Baurechtszinsen
- Aufwand für Unterhalt und Reparaturen exkl. Instandsetzungen
- Liegenschaftsaufwand
- Verwaltungsaufwand
- Liegenschaftssteuern (Objektsteuern)
- Schätzungs- und Prüfaufwand
- Abschreibungen und Rückstellungen (soweit betriebswirtschaftlich begründet)
- Reglementarische Vergütungen an die Fondsleitung resp. den Unternehmeraktionär
- Reglementarische Vergütungen an die Depotbank
- Reglementarische Vergütungen an den Immobilienverwalter
- Sonstige Aufwendungen

Formel:

$$\text{Betriebsgewinnmarge \%} = \frac{\text{Betriebsgewinn}}{\text{Mietzinseinnamen}} \times 100$$ **26**

7. Fondsbetriebsaufwandquote (TER_{REF})

Die TER_{REF} ($TER_{Real\ Estate\ Funds}$) lehnt sich an die TER von Wertschriftenfonds an und ist ein Indikator für die Belastung des Fonds durch den Betriebsaufwand. Die Belastung ist sowohl ins Verhältnis zum Gesamtfondsvermögen (GAV: Gross Asset Value) als auch zum Nettofondsvermögen (NAV: Net Asset Value) zu stellen. **27**

Definition: **28**

Fondsbetriebsaufwand in % des durchschnittlichen Gesamtfondsvermögens (Summe aller Aktiven) und in % des durchschnittlichen Nettofondsvermögens (Summe aller Aktiven abzüglich Fremdkapital)

Als Betriebsaufwand des Fonds gilt: **29**

Reglementarische Vergütungen an die Fondsleitung und Depotbank, plus

- Sonstige Aufwendungen (sofern diese den Fonds betreffen, wie z.B. Kosten für Publikationen und Rechts- und Steuerberatung, Werbung, externer Beratungsaufwand, Handelsregistergebühren etc.)
- Gebühren für die Aufsicht über den Anlagefonds
- Vergütungen an den Immobilienverwalter
- Schätzungs- und Prüfaufwand

Für Immobilienfonds, welche in andere Immobilienfonds investieren, kommt zum eigenen Betriebsaufwand der anteilsmässige Betriebsaufwand der Immobilienfonds, an denen sie beteiligt sind, hinzu. **30**

Nicht unter den Betriebsaufwand fallen insbesondere Erstvermietungshonorare, Baukommissionen, welche direkt den Immobilien belastet werden können, sowie Kaufs- und Verkaufskommissionen. **31**

Formeln:

$$TER_{REF}\ (GAV)\ \% = \frac{\text{Betriebsaufwand}}{\text{durchschnittliches Gesamtfondsvermögen}} \times 100 \quad \textbf{32}$$

$$\text{Ø Gesamtfondsvermögen } * = \frac{\sum \text{Gesamtfondsvermögen an n Stichtagen}}{n} \quad \textbf{33}$$

$$TER_{REF}\ (NAV)\ \% = \frac{\text{Betriebsaufwand}}{\text{durchschnittliches Nettofondsvermögen}} \times 100 \quad \textbf{34}$$

$$\text{Ø Nettofondsvermögen } * = \frac{\sum \text{Nettofondsvermögen an n Stichtagen}}{n} \quad \textbf{35}$$

Existieren innerhalb des Fonds verschiedene Teilvermögen mit unterschiedlichen Kostenbelastungen, so ist die TER_{REF} (NAV) für diese gesondert auszuweisen.

* Die Wahl der Anzahl Messpunkte zur Ermittlung des durchschnittlichen Gesamt- und Nettofondsvermögens ist grundsätzlich frei, hat jedoch bei der Berechnung der TER_{REF} (GAV) und der TER_{REF} (NAV) übereinzustimmen.

8. Eigenkapitalrendite "Return on Equity" (ROE)

Die Eigenkapitalrendite zählt zu den wichtigsten, in der Unternehmensanalyse verwendeten Kennzahlen. Sie kann für einen Fonds genau so wie für eine Immobiliengesellschaft berechnet und verglichen werden. **36**

Definition: **37**

Gesamterfolg in % des Nettofondsvermögens am Ende der Berichtsperiode

Formel:

$$ROE\ \% = \frac{\text{Gesamterfolg}}{\text{Nettofondsvermögen am Ende der Berichtsperiode}} \times 100 \quad \textbf{38}$$

Anmerkung zum Nettofondsvermögen: **39**

Der "Einkauf in laufende Erträge bei der Ausgabe von Anteilen" bzw. die "Ausrichtung laufender Erträge bei der Rücknahme von Anteilen" gewährleisten eine direkte Vergleichbarkeit des Gesamterfolgs mit dem Nettofondsvermögen am Ende der Berichtsperiode.

9. "Return on invested capital" (ROIC)

Diese Kennzahl gibt über die Rendite des Gesamtfondsvermögens Auskunft. **40**

Definition: **41**

Bereinigter Gesamterfolg zuzüglich Zinsaufwand (Hypothekarzinsen und Zinsen aus hypothekarisch gesicherten Verbindlichkeiten sowie sonstige Passivzinsen) in % des durchschnittlichen Gesamtfondsvermögens

Als bereinigter Gesamterfolg gilt: **42**

Gesamterfolg, plus

- Ausrichtung laufender Erträge bei der Rücknahme von Anteilen

minus

- Einkauf in laufende Erträge bei der Ausgabe von Anteilen

Formel:

$$ROIC\ \% = \frac{\text{Bereinigter Gesamterfolg + Zinsaufwand}}{\text{Durchschnittliches Gesamtfondsvermögen}} \times 100 \quad \textbf{43}$$

Das durchschnittliche Gesamtfondsvermögen ist analog den Ausführungen zur TER_{REF} zu berechnen. **44**

V. Kennzahlen zu den Anteilen

Die nachfolgenden Kennzahlen zu den Anteilen lehnen sich so weit wie möglich an die in der Finanzanalyse gebräuchlichen Indikatoren an. Sie erleichtern einen Vergleich von Anteilen von Immobilienfonds mit Aktien von Immobiliengesellschaften. **45**

10. Ausschüttungsrendite

Definition: **46**

Letzter pro Anteil ausgeschütteter Bruttobetrag in % des Börsen- bzw. Marktkurses

Formel:

$$\text{Ausschüttungsrendite \%} = \frac{\text{Bruttoausschüttung effektiv *}}{\text{Börsen- bzw. Marktkurs der Anteile Ende Periode}} \times 100 \quad \textbf{47}$$

* Erwirtschaftete Bruttoausschüttung des abgeschlossenen Rechnungsjahres

11. Ausschüttungsquote (Payout ratio)

Die Ausschüttungsquote zeigt den Anteil der Ertragsausschüttung am erwirtschafteten Nettoertrag, bereinigt um Rückstellungen für künftige Reparaturen. In erster Linie dient sie zur Beurteilung der Ausschüttungs- und Finanzierungspolitik eines Unternehmens bzw. Immobilienfonds. **48**

Definition: **49**

Gesamtbetrag der ausgeschütteten Erträge in % des Nettoertrages, bereinigt um Rückstellungen für künftige Reparaturen

Formel:

$$\text{Ausschüttungsquote \%} = \frac{\text{Gesamtbetrag der ausgeschütteten Erträge}}{\text{Nettoertrag, bereinigt um Rückstellungen für künftige Reparaturen}} \times 100 \quad \textbf{50}$$

12. Agio/Disagio

Definition: **51**

Agio: Positive Differenz zwischen Börsen- bzw. Marktkurs und Nettoinventarwert je Anteil in % des Nettoinventarwertes je Anteil

Disagio: Negative Differenz zwischen Börsen- bzw. Marktkurs und Nettoinventarwert je Anteil in % des Nettoinventarwertes je Anteil **52**

Formeln:

$$\text{Agio \%} = \left\{\frac{\text{Aktueller Börsen- bzw. Marktkurs der Anteile}}{\text{Nettoinventarwert pro Anteil}} - 1\right\} \times 100 \quad \textbf{53}$$

$$\text{Disagio \%} = \left\{1 - \frac{\text{Aktueller Börsen- bzw. Marktkurs der Anteile}}{\text{Nettoinventarwert pro Anteil}}\right\} \times 100 \quad \textbf{54}$$

13. Performance

Definition: **55**

Die Performance eines Immobilienfonds entspricht dem auf einem Anteil innerhalb einer bestimmten Periode erzielten Gesamtertrag. Sie wird in Prozenten des Börsen- bzw. Marktkurses der Anteile zu Beginn der Berichtsperiode ausgedrückt und berechnet sich wie folgt:

- Veränderung des Börsen- bzw. Marktkurses unter der Annahme, dass
- der Bruttobetrag von Ertrags- und/oder Kursgewinnausschüttungen unmittelbar und ohne Abzüge wieder im Fonds zum Börsenkurs der Anteile angelegt wird.

Formel:

$$\text{Performance \%} = \left\{\frac{\text{Börsenkurs}_{\text{Ende P}} \times f}{\text{Börsenkurs}_{\text{Beginn P}}} - 1\right\} \times 100 \quad \textbf{56}$$

Der Adjustierungsfaktor f berechnet sich nach folgender Formel:

$$f = \frac{\text{Börsenkurs}_{ex} + \text{Bruttoausschüttung}}{\text{Börsenkurs}_{ex}} \quad \textbf{57}$$

Im Falle einer Änderung der Kapitalbasis (Bsp. Kapitalerhöhung) oder eines Splittings von Anteilen während der Berichtsperiode sind die Börsenkurse vor der Kapitalerhöhung ($\text{Börsenkurs}_{\text{Beginn P}}$ und unter Umständen auch Börsenkurs_{ex}) um einen Faktor zu korrigieren. **58**

$$\text{Korrekturfaktor} = \frac{BV \times CP + BP}{(BV + 1)} \,/\, CP$$

wobei BV Bezugsverhältnis alt zu neu
CP Closing Price am Vortag der Kapitalerhöhung
BP Bezugspreis

Die bei der Ausgabe und/oder Rücknahme der Fondsanteile erhobenen Kommissionen sind in der Berechnung der Performance nicht zu berücksichtigen. **59**

Eine über mehrere Jahre hinweg kumulierte Gesamtperformance errechnet sich aus der geometrischen Verknüpfung der in den einzelnen Jahren bzw. Teilperioden erzielten **60**

Performance; der jährliche Durchschnittswert aus einer über mehrere Jahre hinweg kumulierten Gesamtperformance entspricht dem geometrischen Durchschnitt.

Bei der Publikation von Performancedaten sind die Bestimmungen der Richtlinie zur Berechnung und Publikation der Fondsperformance zu beachten. **61**

14. Anlagerendite

Die Anlagerendite eines Immobilienfonds entspricht der **62**

- Veränderung des Nettoinventarwertes der Anteile unter der Annahme, dass
- der Bruttobetrag von Ertrags- und/oder Kursgewinnausschüttungen unmittelbar und ohne Abzüge wieder im Fonds zum Nettoinventarwert der Anteile angelegt wird.

Formel:

$$\text{Anlagerendite \%} = \left\{ \frac{\text{Inventarwert}_{\text{Ende P}} \text{ vor Ausschüttung} \times f}{\text{Inventarwert}_{\text{Beginn P}} \text{ vor Ausschüttung}} - 1 \right\} \times 100$$ **63**

Der Adjustierungsfaktor f berechnet sich nach folgender Formel:

$$f = \frac{\text{Inventarwert}_{ex} \text{ Beginn Periode} + \text{Bruttoausschüttung}}{\text{Inventarwert}_{ex} \text{ Beginn Periode}}$$ **64**

Nach erfolgter Kürzung ergibt sich folgende vereinfachte Formel für die Anlagerendite: **65**

$$\text{Anlagerendite \%} = \left\{ \frac{\text{Inventarwert}_{\text{Ende P}} \text{ vor Ausschüttung}}{\text{Inventarwert}_{ex} \text{ Beginn Periode}} - 1 \right\} \times 100$$

Als Inventarwert_{ex} gilt der Inventarwert nach Abgang der Ausschüttung. **66**

Anmerkung zum Adjustierungsfaktor f: **67**

Der Adjustierungsfaktor f kann alternativ wie folgt ermittelt werden, sofern der Inventarwert ex am Ausschüttungstag zur Verfügung steht:

$$f = \frac{\text{Inventarwert}_{ex} \text{ Ausschüttungstag} + \text{Bruttoausschüttung}}{\text{Inventarwert}_{ex} \text{ Ausschüttungstag}}$$

Eine über mehrere Jahre hinweg kumulierte Gesamt-Anlagerendite errechnet sich aus der geometrischen Verknüpfung der in den einzelnen Jahren erzielten Anlagerenditen; der jährliche Durchschnittswert aus einer über mehrere Jahre hinweg kumulierten Gesamt-Anlagerendite entspricht dem geometrischen Durchschnitt. **68**

Bei der Publikation von Daten zur Anlagerendite sind die Bestimmungen der Richtlinie zur Berechnung und Publikation der Fondsperformance sinngemäss zu beachten. **69**

15. Kurs/Gewinnverhältnis (P/E ratio)

Das Kurs/Gewinnverhältnis ist eine der wichtigsten, in der Finanzanalyse verwendeten Kennzahl zur Bewertung einer Aktie. Sie zeigt an, wie viel Mal höher der Kurs einer Aktie oder eines Anteils ist als der bereinigte Gesamterfolg je Aktie bzw. Anteil (Kehrwert der "Gewinnrendite"). Das Kurs/Gewinnverhältnis ist auf der Basis des jeweils im letzten Geschäftsjahr ausgewiesenen Gesamterfolgs zu berechnen. **70**

Definition: **71**

Börsenkurs dividiert durch den bereinigten Gesamterfolg je Anteil

Als bereinigter Gesamterfolg gilt: **72**

Gesamterfolg, plus

- Ausrichtung laufender Erträge bei Rücknahme von Anteilen

minus

- Einkauf in laufende Erträge bei der Ausgabe von Anteilen

Als durchschnittliche Anzahl der ausstehenden Anteile gilt: **73**

das arithmetische Mittel zwischen der Anzahl der ausstehenden Anteile am Ende der Vorperiode und am Ende der Berichtsperiode. Erfolgte innerhalb der Berichtsperiode eine Rücknahme oder Ausgabe von Anteilen von mehr als 5%, so ist ein gewichteter Durchschnitt (Berechnung analog zu den Ausführungen zur TER_{REF})zu verwenden.

Formel:

$$\text{Kurs/Gewinnverhältnis} = \frac{\text{Börsenkurs des Anteils}}{\text{Bereinigter Gesamterfolg je Anteil}}$$ **74**

Der Gesamterfolg je Anteil berechnet sich nach folgender Formel:

$$\text{Gesamterfolg je Anteil} = \frac{\text{Bereinigter Gesamterfolg}}{\text{Durchschnittliche Anzahl der ausstehenden Anteile}}$$ **75**

16. Kurs/Cashflowverhältnis (P/CF ratio)

Definition: **76**

Börsenkurs dividiert durch Cashflow je Anteil

Berechnung: **77**

Nach gleichen Regeln wie das Kurs-/Gewinnverhältnis

17. Börsenkapitalisierung

Die Börsenkapitalisierung zeigt den auf der Basis der Börsenkurse der Anteile berechneten Wert des Fonds an. **78**

Definition: **79**

Anzahl ausgegebener Anteile multipliziert mit dem aktuellen Börsenkurs

Formel:

Anzahl ausgegebene Anteile x Börsenkurs je Anteil **80**

INHALTSVERZEICHNIS

SFAMA Swiss Funds & Asset Management Association

Fachinformation

Fachinformation Ausgabe von Immobilienfondsanteilen

25. Mai 2010

(Ausgabe 1. Juli 2013)

1. Zielsetzungen und Geltungsbereich

Die nachstehende Fachinformation soll als Leitfaden für Fondsleitungen bzw. SICAV bei der Planung und Durchführung von Emissionen von Immobilienfondsanteilen dienen und zu einer konsistenten Handhabung von Emissionen im schweizerischen Immobilienfondsmarkt beitragen. Gemäss Ziff. 17 der Richtlinie für die Immobilienfonds vom 2. April 2008 berücksichtigt die Fondsleitung bzw. die SICAV bei der Ausgabe von Anteilen die einschlägige Fachinformation der SFAMA. 1

Die Fachinformation richtet sich an schweizerische Fondsleitungen bzw. SICAV von Immobilienfonds gemäss Art. 58ff KAG und deren Depotbanken. Für börsenkotierte Immobilienfonds gelten überdies die Kotierungsbestimmungen der SIX Swiss Exchange, die nicht Gegenstand dieser Fachinformation sind. 2

2. Voraussetzungen für eine Emission

2.1 Gesetzliche Rahmenbedingungen

Die Emission von neuen Anteilen ist in Art. 66 KAG und Art. 97 KKV geregelt. Danach können jederzeit neue Anteile ausgegeben werden (Art. 97 Abs. 1 KKV). Neue Anteile müssen immer zuerst den bisherigen Anlegerinnen und Anlegern angeboten werden (Bezugsrechtsemission, Art. 66 Abs. 1 KAG). 3

Die Fondsleitung bzw. SICAV entscheidet über die Durchführung einer Emission und bestimmt die Emissionsbedingungen (Art. 97 Abs. 2 KKV). Die Durchführung der Emission obliegt der Depotbank (Art. 73 Abs. 1 KAG). 4

2.2 Marktumfeld

Die folgenden Aspekte bezüglich des Marktumfeldes zum Emissionszeitpunkt beeinflussen den Entscheid zur Durchführung einer Emission und die Planung des Emissionsvolumens: 5

- Erwartete Entwicklung auf den Kapital- und Finanzmärkten; 6
- Einschätzung der relevanten Immobilienmarktsegmente; 7
- Agio. 8

2.3 Aktualität der Verkehrswertschätzungen

Zur Berechnung des Inventarwertes und zur Festlegung des Ausgabepreises müssen die Schätzungsexperten die Verkehrswerte aller Grundstücke überprüfen (Art. 97 Abs. 3 KKV). Eine Überprüfung der Verkehrswerte ist jedoch gemäss Praxis der FINMA nicht erforderlich, wenn eine Emission bis längstens 60 Tage nach der Frist zur Veröffentlichung des Jahresberichtes (also höchstens 6 Monate nach dem Abschluss des Rechnungsjahres des Immobilienfonds) durchgeführt wird. **9**

3. Bestimmung des Emissionsbetrages

3.1 Feste Anzahl neuer Anteile

Die Fondsleitung bzw. die SICAV gibt vor Beginn der Bezugsfrist die geplante Anzahl der zu emittierenden Anteile sowie das entsprechende Bezugsverhältnis bekannt. Nicht gezeichnete Anteile können nach dem Ende der Bezugsfrist durch die Fondsleitung bzw. die SICAV übernommen und anschliessend zusammen mit der Depotbank oder Dritten mit der gebotenen Sorgfalt im Markt platziert werden. Nach dem Ende der Bezugsfrist kann die Fondsleitung bzw. die SICAV die Anzahl der neu zu emittierenden Anteile bekannt geben. **10**

3.2 Variable Anzahl neuer Anteile (Best effort-Emission)

Die Fondsleitung bzw. die SICAV gibt vor Beginn der Bezugsfrist die geplante maximale Anzahl der zu emittierenden Anteile sowie das entsprechende Bezugsverhältnis bekannt. Die Best effort-Emission muss gegenüber den Anlegerinnen und Anlegern klar als solche kommuniziert werden. Nicht gezeichnete Anteile werden nicht emittiert, wodurch sich der Emissionsbetrag reduziert. Nicht gezeichnete Anteile können nach dem Ende der Bezugsfrist durch die Fondsleitung bzw. die SICAV übernommen und anschliessend zusammen mit der Depotbank oder Dritten mit der gebotenen Sorgfalt im Markt platziert werden. Nach dem Ende der Bezugsfrist gibt die Fondsleitung bzw. die SICAV die Anzahl der effektiv neu zu emittierenden Anteile bekannt. **11**

4. Emissionsmethoden

Die folgenden zwei Emissionsmethoden können wahlweise angewandt werden: **12**

4.1 Emission mit Börsenhandel der Bezugsrechte

Die Bezugsrechte werden für die Bezugsfrist an der SIX Swiss Exchange kotiert und in diesem Zeitraum frei gehandelt. Nicht ausgeübte Bezugsrechte verfallen am Ende der Bezugsfrist wertlos. **13**

4.2 Emission ohne Börsenhandel der Bezugsrechte

Während der Bezugsfrist findet kein offizieller Bezugsrechtshandel statt. Nach Abschluss der Bezugsfrist werden sämtliche während der Bezugsfrist präsentierten und nicht ausgeübten Bezugsrechte sowie nicht präsentierte Bezugsrechte von bei Banken deponierten Anteilen zu einem Einheitspreis vergütet. Während der Bezugsfrist nicht präsentierte Bezugsrechte von nicht bei Banken deponierten Anteilen verfallen am Ende der Bezugsfrist wertlos. Der Einheitspreis der Bezugsrechte wird gemäss einer im Emissionsprospekt definierten Formel berechnet. **14**

5. Berechnung des Emissionspreises

Der zur Festlegung des Emissionspreises (siehe § 17 Ziff. 3 des Musterfondsvertrages eines schweizerischen Immobilienfonds) verwendete aktuelle Nettoinventarwert pro Anteil basiert auf dem Nettoinventarwert per letztem Jahresabschluss zuzüglich der aufgelaufenen bzw. budgetierten Erträge des laufenden Geschäftsjahres bis zum Liberierungsdatum. **15**

Schliesslich werden die Ausgabekommission sowie allenfalls die Nebenkosten gemäss dem jeweiligen Fondsreglement addiert. Der Emissionspreis wird gemäss Fondsreglement gerundet. **16**

6. Ablauf und Publikationspflichten

6.1 Vorinformation von Anlegerinnen und Anlegern

Zur Ermittlung des Emissionsvolumens kann die Fondsleitung bzw. die SICAV frühzeitig Anlegerinnen und Anleger über eine geplante Emission, den ungefähren Emissionsbetrag und den ungefähren Zeitraum der Bezugsfrist informieren (ohne Bekanntgabe der detaillierten Emissionskonditionen). **17**

Zeitpunkt:	ca. 20 – 30 Werktage vor Beginn der Bezugsfrist
Publikationspflicht:	Optional

18

6.2 Veröffentlichung der Emissionskonditionen

Die detaillierten Emissionskonditionen werden zur gleichzeitigen Information aller Anlegerinnen und Anleger publiziert. Die publizierten Emissionskonditionen umfassen mindestens die folgenden Angaben: **19**

- Geplante (maximale) Anzahl neue Anteile; **20**
- Geplantes Bezugsverhältnis; **21**
- Bezugspreis; **22**
- Daten für Beginn und Ende der Bezugsfrist; **23**
- Daten für den Börsenhandel der Bezugsrechte (nur bei Emission mit Börsenhandel der Bezugsrechte); **24**
- Berechnungsformel für den Bezugsrechtspreis (nur bei Emission ohne Börsenhandel der Bezugsrechte); **25**
- Liberierungsdatum; **26**

- Verwendung des Emissionserlöses. **27**

Zeitpunkt: ca. 0 – 10 Werktage vor Beginn der Bezugsfrist **28**
Publikationspflicht: Pflichtpublikationsinserate, Pressemitteilung

6.3 Veröffentlichung des Emissionsprospektes

Der Emissionsprospekt dient der detaillierten Information bisheriger und potenzieller neuer Anlegerinnen und Anleger über die Emission. Der Prospekt enthält mindestens die folgenden Informationen: **29**

- Detaillierte Emissionskonditionen (Bezugsangebot); **30**
- Hinweis auf variable Anzahl neuer Anteile (nur bei Best effort-Emission); **31**
- Allgemeine Angaben über den Immobilienfonds (geplante Verwendung des Emissionserlöses, Fondsportrait, Anlageziele, Anlegerkreis (bei Immobilienfonds für qualifizierte Anlegerinnen und Anleger), Kapitalveränderungen mindestens über die letzten 3 Jahre vor der Emission, Kursentwicklung mindestens über die letzten 3 Jahre vor der Emission, Ausschüttungsentwicklung mindestens über die letzten 3 Jahre vor der Emission, Portfolioveränderungen seit dem letzten Abschluss); **32**
- Jahresbericht des letzten abgeschlossenen Geschäftsjahres oder Auszüge aus der Jahresberichterstattung des letzten abgeschlossenen Geschäftsjahres (mindestens enthaltend Angaben zur Organisation, Jahresrechnung, Liegenschaftsverzeichnis, Käufe und Verkäufe von Grundstücken, Stellungnahme der Prüfgesellschaft); **33**
- Immobilienfondsreglement. **34**

Zeitpunkt: Vor Beginn der Bezugsfrist **35**
Publikationspflicht: Auf Verlangen an bisherige und potenzielle neue Anleger, Informationsexemplar an die FINMA

6.4 Bezugsfrist

Während der Bezugsfrist werden Bezugsrechte zur Zeichnung neuer Anteile eingereicht oder zum Verkauf angemeldet. Im Falle eines Börsenhandels werden zum Verkauf angemeldete Bezugsrechte an der Börse gehandelt. Bei Emission ohne Börsenhandel werden sie der Depotbank übergeben, die sie entweder zum Einheitspreis vergüten oder allenfalls weiterverkaufen kann. **36**

Dauer der Bezugsfrist: ca. 5 – 10 Werktage **37**

6.5 Liberierung

Am Liberierungstag müssen alle Anlegerinnen und Anleger, die neue Anteile gezeichnet haben, den entsprechenden Betrag leisten. Danach überweist die Depotbank am Liberierungstag den Emissionserlös an die Fondsleitung bzw. die SICAV. Im Falle einer Übernahme von nicht gezeichneten Anteilen durch die Fondsleitung bzw. die SICAV übernimmt diese am Liberierungstag die entsprechenden Anteile auf eigene Rechnung. **38**

Zeitpunkt: ca. 5 – 10 Werktage nach Ende der Bezugsfrist **39**

6.6 Bekanntgabe des Emissionsresultates

Nach Abschluss der Emission kann die Fondsleitung bzw. die SICAV die Anzahl der neu zu emittierenden Anteile publizieren. Im Falle einer Best effort-Emission gibt die Fondsleitung bzw. die SICAV die Anzahl der effektiv neu zu emittierenden Anteile bekannt. **40**

Zeitpunkt: Gleichzeitig mit der Liberierung; im Falle der Best effort-Emission nach Abschluss der Bezugsfrist **41**
Publikationspflicht: Optional; im Falle der Best effort-Emission Pflichtpublikationsinserate in den vorgesehenen Pflichtpublikationsorganen

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Part G: Practical guidelines

Practical guidelines

I. Overview of the matters subject to mandatory authorisation, approval and reporting for collective investment schemes and authorised institutions in Switzerland

1. Target

This table summarizes the matters subject to mandatory authorisation, approval and reporting in a concise manner. It intends to enable all affected parties to easily monitor their duties.

2. Swiss investment funds: Matters subject to mandatory approval

	Content	Basis	Deadline
2.1	**Duties to obtain approval**		
2.1.1	**Duties to obtain approval when setting up a fund contract**		
	Creation of investment fund (Securities funds, Other funds for Traditional and Alternative Investments) with/without subfunds	Art. 26 para. 1 CISA; Art. 15 para. 1 lit. a CISA; Art. 27 para. 1 CISA	Prior to initial issuance
	Creation of subfunds	Art. 26 para. 1 CISA; Art. 15 para. 2 CISA	Prior to initial issuance
	Creation of a Master- and/or Feeder-Fund	Art. 57 CISO-FINMA; Art. 73a CISO	Prior to initial issuance
	Use of model approach as a risk measurement procedure	Art. 33 para. 2 CISO-FINMA	Prior to implementation in the course of approval of the fund contract
	Appointment of permanent and independent valuation experts for real estate funds	Art. 64 para. 1 CISA	Prior to initial issuance in the course of approval of the fund contract
2.1.2	**Duties to obtain approval in the course of day-to-day business activity**		
	Amendments to the fund contract for investment funds with/without subfunds	Art. 27 para. 1 CISA; Art. 16 CISA	Prior to amendment
	Changes to model approach as a risk measurement procedure, back-testing and stress tests	Art. 43 para. 3 CISO-FINMA	Prior to change to approved procedure, prior approval by FINMA
	Merging of unit classes in the context of amending a fund contract	Art. 27 para. 1 CISA; Art. 40 para. 3 CISO	Prior to merger
	Change of valuation experts for real estate funds	Art. 64 para. 1 CISA	Prior to appointment
	Exemptions from the ban on transactions with closely related persons with regard to real estate funds	Art. 63 para. 4 CISA; Art. 32a para. 1 and 91a CISO	Prior to conclusion of transaction
	Time limit extension for launch of the investment fund or the subfund of an umbrella fund	Art. 35 para. 3 CISO	Within one year of approval
	Time limit extension for complying with investment regulations	Art. 67 para. 5 CISO Art. 67 para. 3, 4 CISO	Within six months of launch for securities funds and other funds and within two years of launch for real estate funds
	Time limit extension for reaching net minimum assets requirement (investment fund and/or subfunds)	Art. 35 para. 3 CISO	Within one year of launch of the investment fund and/or subfunds
	Temporary deferment of the repayment of units (in exceptional instances)	Art. 81 para. 1 CISA Art. 110 para. 2 CISO	As soon as exceptional instances arise, FINMA and audit company must be informed immediately
	Release from obligation to cancel settlements in question in minor cases, where the resulting difference amounts to less than 50 Swiss Francs per investor	*Guidelines on the valuation of the assets of collective investment schemes para. 23*	After determination of materiality
	Final payment to the investors after liquidation of the investment fund	Art. 116 para. 3 CISO	Prior to final payment
	Final payment of the master fund	Art. 63 para. 2 CISO-FINMA	Prior approval by FINMA needed Exception applies in the case of Art. 63 para. 1 lit. b-c CISO-FINMA, if payment will be used for efficient liquidity risk management.
	Submission of any necessary application by the feeder fund to FINMA regarding amendments to the fund contract or investment regulations (SICAV)	Art. 64 para. 2 CISO-FINMA	Simultaneously with the notification according to Art. 64 para. 1 lit. a-d CISO-FINMA
	Return of units of the master fund by the feeder fund in the event of merger, conversion or transfer of assets	Art. 64 para. 3 CISO-FINMA	Immediately; Exception applies, if merger, conversion or transfer of assets of the

			master fund takes place prior to approval of application according to Art. 64 para. 1 lit. c and d CISO-FINMA (switch to another master fund or conversion to non-feeder fund), return only possible, if proceeds received are reinvested for the sole purpose of efficient liquidity management until the amendments enter into force

3. Swiss investment funds : Matters subject to mandatory reporting

	Content	Basis	Deadline
3.1	**Obligation to give notice**		
3.1.1	**Obligation to give notice in the course of the approval procedure for the business establishment or in the context of day-to-day business activity**		
	Prospectus	Art. 77 para. 2 CISA; Art. 15 para. 3 CISO Art. 106 para. 2 and 3 CISO	Immediately before or after amendment and/or publication, at least once a year
	Dated ‚Key Investor Information Document' (KIID) for securities funds and other funds for traditional investments and the simplified prospectus for real estate funds respectively	Art. 77 para. 2 CISA; Art. 15 para. 3 CISO Art. 107 para. 2 and 3 CISO Art. 107a para. 2 CISO Art. 107d para. 1 and 2 CISO Art. 107e CISO	Immediately before or after amendment and/or publication, at least once a year
	Merging of investment funds and/or subfunds	Art. 115 para. 4 CISO	After completion (conclusion) of merger
	Dissolution by resolution for investment funds and/or subfunds (liquidation)	Art. 96 para. 4 CISA	Immediately after resolution
	Notification to other investors when accepting into master fund of a master- feeder structures by fund management company or SICAV	Art. 56 CISO-FINMA	Prior disclosure
	Notification to FINMA regarding feeder funds investing in master fund	Art. 59 para. 1 CISO-FINMA	Immediately
	Master fund shall ensure all information required by law or contract is made available to the feeder fund, its custodian bank and the audit company as well as FINMA	Art. 59 para. 3 CISO-FINMA	Immediately
	Providing all the necessary information regarding the master fund by the feeder fund to its custodian bank		
	After resolution to dissolve by the master fund, deferment of repayments by the feeder fund and application regarding a) dissolution of the feeder fund, b) amendment to the fund contract or investment regulations (SICAV) due to (1) change of master fund or (2) conversion into a non-feeder fund	Art. 60 para. 1 CISO-FINMA Art. 63 para. 1 lit. a-c CISO-FINMA	Immediately Immediate deferment and application within one month after master fund's announcement to dissolve to FINMA
	Decision by the master fund on a merger, conversion or transfer of assets		Immediately
	Notification by the feeder fund after announcement by master fund concerning merger, conversion or transfer of assets to FINMA regarding a) dissolution, b) retaining same master fund, c) switch to another master fund or d) conversion into a non-feeder fund	Art. 64 para. 1 CISO-FINMA Art. 64 para. 1 lit. a-d CISO-FINMA	Within one month of announcement by the master fund
3.1.2	**Financial statements**		
	Annual report	Art. 89 para. 4 CISA	No later than simultaneously with publication within four months of the close of the financial year
	Semi-annual report	Art. 89 para. 4 CISA	No later than simultaneously with publication within two months after the end of the first half of the financial year.
3.1.3	**Additional reporting duties in the context of ongoing business activity**		
	Nonfulfillment and/or subsequent shortfall of the minimum net asset requirement (investment fund and/or subfunds)	Art. 35 para. 2, 3 and 4 CISO	Within one year or immediately
	Deferment of repayment by fund management company (if provided by fund contract); information to FINMA, custodian bank, distributors, audit company and the investors	Art. 110 para. 2 CISO; *Guidelines on the valuation of the assets of collective investment schemes para. 13*	Ordinary circumstances: prior to deferment Extraordinary circumstances: immediately

Notification in case of significant valuation errors (scope and cause of erroneous valuation, corrective measures implemented or application for corrective measures, damage caused to the open-end collective scheme and/or the investors) to FINMA, custodian bank and audit company	*Guidelines on the valuation of the assets of collective investment schemes para. 20*	Immediately
Changes to the risk assessment model, back-testing or stress tests	Art. 43 para. 3 CISO-FINMA	Approval by FINMA in advance
Statistical reports to the Swiss National Bank (collective investment schemes statistics by investment funds managers of Swiss funds, Swiss companies offering collective investment schemes according to CISA)	Art. 14, 15 NBA; Art. 5 NBO with annex	No later than 20 days after end of quarter according to guidelines of the Swiss National bank

4. Swiss SICAV: Matters subject to mandatory authorisation and approval

	Content	Basis	Deadline
4.1	**Authorisation and approval requirements**		
4.1.1	**Authorisation and approval requirements when creating the SICAV**		
	Start of business operations as SICAV with/without subfunds	Art. 13 para. 2 lit. b CISA	Prior to formation
	Approval for the articles of association and investment regulations	Art. 15 para. 1 lit. b CISA; Art. 7 lit. a CISO	Prior to formation
	Creation of subfunds	Art. 15 para. 2 CISA; Art. 7 lit. a CISO	Prior to initial issuance
	Use of model approach as a risk measurement procedure	Art. 33 para. 2 CISO-FINMA	Prior to implementation in the course of approval process
	Appointment of permanent and independent valuation experts for real estate SICAV	Art. 64 para. 1 CISA	Prior to initial issuance in the course of approval of the articles of association and investment regulations
4.1.2	**Additional authorisation and approval requirements in the course of day-to-day business activity**		
	Amendment to the articles of association and/or investment regulations of the SICAV with/without subfunds	Art. 16 CISA; Art. 7 lit. a CISO	Prior to amendment
	Changes to model approach as a risk measurement procedure, back-testing and stress tests	Art. 43 para. 3 CISO-FINMA	Prior to change to approved procedure, prior approval by FINMA
	Merging of unit classes	Art. 61 para. 1 CISA; Art. 40 para. 3 CISO	Prior to merger
	Change of valuation experts for real estate SICAV	Art. 64 para. 1 CISA	Prior to appointment
	Time limit extension for launch of the SICAV or the subfund of an umbrella SICAV	Art. 35 para. 3 CISO	Within one year of approval by FINMA
	Time limit extension for complying with investment regulations	Art. 67 para. 5 CISO; Art. 67 para. 3, 4 CISO	Within six months of launch for securities funds and other funds and within two years of launch for real estate funds
	Time limit extension for reaching net minimum assets requirement (SICAV and/or subfunds)	Art. 53 CISO; Art. 35 para. 3 CISO	Within one year of launch of the SICAV and/or subfunds
	Temporary deferment of the repayment of units (in exceptional instances)	Art. 81 para. 1 CISA; Art. 110 para. 2 CISO	As soon as exceptional instances arise, FINMA and audit company must be informed immediately
	Release from obligation to cancel settlements in question in minor cases, where the resulting difference amounts to less than 50 Swiss Francs.	*Guidelines on the valuation of the assets of collective investment schemes para. 23*	After determination of materiality
	Final payment to the investors after liquidation of the SICAV	Art. 116 para. 3 CISO	Prior to final payment

5. Swiss SICAV: Matters subject to mandatory reporting

	Content	Basis	Deadline
5.1	**Obligation to give notice**		
5.1.1	**Obligation to give notice in the course of the approval procedure for the business establishment or in the context of day-to-day business activities**		
	Change in persons responsible for the management and the business operations	Art. 15 para. 1 lit. a CISO	Prior to change

Facts which might call into question the good reputation or the guaranteeing of proper management by the persons responsible for the management and the business operations (specifically the instigation of criminal proceedings)	Art. 15 para. 1 lit. b CISO	Immediately after becoming known
Change in significant equity holders with regard to company shareholders	Art. 15 para. 1 lit. c CISO	Prior to change
Facts which might call into question the good reputation of significant equity holders with regard to company shareholders (specifically the instigation of criminal proceedings)	Art. 15 para. 1 lit. d CISO	Immediately after becoming known
Facts which call into question the prudent and sound business practice of the SICAV owing to the influence of the significant equity holders	Art. 15 para. 1 lit. e CISO	Immediately after becoming known
Shortfall of minimum investment amount for company shareholders	Art. 15 para. 1 lit. f; Art. 54 para. 4 CISO	Immediately
Notification of capital inadequacy (self-managed SICAV)	Art. 55 para. 6 CISO	Immediately
Prospectus	Art. 77 para. 2 CISA; Art. 15 para. 3 CISO	Immediately after amendment and/or publication
‚Key Investor Information Document' (KIID) for SICAV as a securities fund and other funds for traditional investment and the simplified prospectus for real estate SICAVs respectively	Art. 77 para. 2 CISA; Art. 15 para. 3 CISO	Immediately after amendment and/or publication
Transfer of assets in the case of SICAVs and/or subfunds	Art. 95 para. 1 lit. c CISA (according to MergerA) ; Art. 115 para. 4 and 5 CISO	After conclusion of asset transfer
Approval to enter transfer of assets in the Commercial Register	Art. 95 para. 2 CISA	Entry only after FINMA approval
Resolution for Liquidation of Fund	Art. 96 para. 4 CISA	Immediately after resolution
Notification to other investors when accepting into master fund of a master- feeder structures by fund management company or SICAV	Art. 56 CISO-FINMA	Prior information
Notification to FINMA regarding feeder funds investing in master fund	Art. 59 para. 1 CISO-FINMA	Immediately
Master fund shall ensure all information required by law or contract is made available to the feeder fund, its custodian bank and the audit company as well as FINMA	Art. 59 para. 3 CISO-FINMA	Immediately
Providing all the necessary information regarding the master fund by the feeder fund to its custodian bank	Art. 60 para. 1 CISO-FINMA	Immediately
Change of audit company	Art. 13 para. 1 FINMA-FMAO	Immediately

5.1.2 Financial statements

Annual report	Art. 89 para. 4 CISA	No later than simultaneously with publication within four months of the close of the financial year
Semi-annual report	Art. 89 para. 4 CISA	No later than simultaneously with publication within two months after the end of the first half of the financial year

5.1.3 Additional reporting duties in the context of ongoing business activity

Nonfulfillment and/or subsequent shortfall of the minimum net asset requirement (SICAV and/or subfunds)	Art. 53 CISO; Art. 35 para. 2 and 4 CISO	Within one year/immediately
Deferment of repayment by SICAV (if provided by the articles of association); information to FINMA, custodian bank, distributors, audit company and the investors	Art. 110 para. 2 CISO; *Guidelines on the valuation of the assets of collective investment schemes para. 13*	Ordinary circumstances: prior to deferment Extraordinary circumstances: immediately
Dissolution by resolution for SICAV and/or subfunds	Art. 96 para. 4 CISA	Immediately after resolution
Termination of the custodian bank agreement	Art. 116 para. 5 CISO	Immediately to FINMA and audit company
Notification in case of significant valuation errors (scope and cause of erroneous valuation, corrective measures implemented or application for corrective measures, damage caused to SICAV and/or the investors) to FINMA, custodian bank and audit company	*Guidelines on the valuation of the assets of collective investment schemes para. 20*	Immediately
Changes to the risk assessment model, back-testing or stress tests	Art. 41 para. 4 and 5 CISO-FINMA	Approval by FINMA in advance
Statistical reports to the Swiss National Bank (collective investment schemes statistics by investment funds managers of Swiss funds, Swiss companies offering collective investment schemes according to CISA)	Art. 14, 15 NBA; Art. 5 NBO with annex	No later than 20 days after end of quarter according to guidelines of the Swiss National bank

6. Fund management company: Matters subject to mandatory authorisation

	Content	Basis	Deadline
6.1.	**Authorisation requirements**		
6.1.1	**Authorisation requirements when creating a fund management company**		
	Start of business operations as fund management company	Art. 13 para. 2 lit. a CISA	Prior to start of business operations
6.1.2	**Additional requirements in the course of day-to-day business activity**		
	Change of fund management company/merger of fund management companies	Art. 34 para. 2 and 3 CISA; Art. 50 para. 2 CISO	Prior to change/merger
	Change in circumstances	Art. 16 CISA	Compare 7.1.1: Matters subject to mandatory reporting

7. Fund management company: Matters subject to mandatory reporting

	Content	Basis	Deadline
7.1	**Obligation to give notice**		
7.1.1	**Obligation to give notice in the course of the approval procedure for the business establishment or in the context of changes in day-to-day business activities**		
	Change in persons responsible for the management and the business operations	Art. 15 para. 1 lit. a CISO	Prior to change
	Facts which might call into question the good reputation or the guaranteeing of proper management by the persons responsible for the management and the business operations (specifically the instigation of criminal proceedings)	Art. 15 para. 1 lit. b CISO	Immediately after becoming known
	Change in significant equity holders	Art. 15 para. 1 lit. c CISO	Prior to change
	Facts which might call into question the good reputation of significant equity holders (specifically the instigation of criminal proceedings)	Art. 15 para. 1 lit. d CISO	Immediately after becoming known
	Facts which call into question the prudent and sound business practice of the fund management company owing to the influence of the significant equity holders	Art. 15 para. 1 lit. e CISO	Immediately after becoming known
	Any change with respect to the financial guarantees	Art. 15 para. 1 lit. f CISO	Immediately after becoming known
	Articles of association, organisational regulations	Art. 7 lit. a CISO; Art. 14 para. 1 CISO	Prior to start of business operations and immediately prior to each amendment
	Change of audit company	Art. 13 para. 1 FINMA-FMAO	Immediately
7.2.1	**Additional reporting duties in the ongoing business activity** (see also 7.1.1)		
	Falling below minimum capital requirement	Art. 15 para. 1 lit. f CISO; Art. 43 CISO	Immediately
	Capital inadequacy	Art. 48 para. 7 CISO	Immediately
	Submitting annual report with breakdown of capital adequacy attached	Art. 49 para. 1 and 2 CISO	Within 10 days of approval by the general meeting of shareholders
	Statistical reports to the Swiss National Bank (collective investment schemes statistics by investment funds managers of Swiss funds, Swiss companies offering collective investment schemes according to CISA)	Art. 14, 15 NBA; Art. 5 NBO with annex	No later than 20 days after end of quarter according to guidelines of the Swiss National bank

8. Custodian bank: Matters subject to mandatory authorisation

	Content	Basis	Deadline
8.1	**Authorisation requirements**		
8.1.1.	**Authorisation requirements when starting business operations**		
	Start of business operations as custodian bank	Art. 13 para. 2 lit. e CISA	Prior to start of business operations
8.1.2	**Additional requirements in the course of day-to-day business activity**		

Change of custodian bank/merger	Art. 74 para. 1 CISA; Art. 34 para. 2 and 5 (for investment fund) or Art. 74 para. 2 CISA (for SICAV); Art. 105 para. 1 (for investment fund) or Art. 105 para. 2 CISO (for SICAV)	Prior to change

9. Custodian bank: Matters subject to mandatory reporting

	Content	Basis	Deadline
9.1	**Obligation to give notice**		
9.1.1	**Obligation to give notice in the course of the approval procedure for the business establishment or in the context of changes in day-to-day business activities**		
	Report any change of *executive persons* entrusted with the performance of the custodian bank's duties	Art. 15 para. 2 CISO; Art. 103 CISO	Prior to starting business operations and in case of change to FINMA and audit company
	Those entrusted with the performance of the custodian bank's duties must have a good reputation, guarantee proper management, and possess the requisite specialist qualifications	Art. 72 para. 2 CISA; Art. 14 para. 1 lit. a CISA	Immediately after each change, prior authorisation by FINMA mandatory
9.1.2	**Additional reporting duties in the ongoing business activity**		
	If the master fund's custodian bank identifies any irregularities that may have a negative impact on the feeder fund, it shall notify its audit company and the feeder fund or the feeder fund's fund management company or the SICAV and custodian bank respectively	Art. 61 para. 1 lit. a-d CISO-FINMA	Immediately
	Announcement of custodians to the fund management company	Custodian bank agreement	At least semi-annual
	Forwarding audit report to fund management company	Custodian bank agreement	Upon receipt

10. Asset manager: Matters subject to mandatory authorisation

	Content	Basis	Deadline
10.1.	**Authorisation requirements**		
10.1.1	**Authorisation requirements when starting business operations**		
	Start of business operations as asset manager	Art. 13 para. 2 lit. f CISA; Art. 7 CISO; Art. 2 para. 2 lit. h CISA	Prior to start of business operations in the case of Swiss collective investment schemes or foreign collective investment schemes in accordance with de minimis rules (no authorisation required, if assets acquired through use of leveraged finance < CHF 100 Mio. or non-leveraged assets < CHF 500 Mio.)
	Authorisation to operate a subsidiary, a branch or a representative office abroad	Art. 24 para. 2 CISO	Prior to start of business operation of subsidiary, branch or representative office
10.1.2	**Additional authorisation requirements in the course of ongoing business activity**		
	Change in asset manager	Art. 18c CISA	For Swiss collective investment schemes: notification prior to change For foreign collective investment schemes, which are admitted for distribution to non-qualified investors in the course of amending the prospectus, reporting duties in accordance with foreign law have to be examined separately For foreign collective investment schemes, which are distributed exclusively to qualified investors, no reporting duties, but amendment of prospectus necessary Reporting duties in accordance with foreign law have to be examined separately

	Changes to the relevant organisational documents (Articles of association, organisational regulations etc.)	Art. 16 CISA; Art. 14 para. 1 CISO; Art. 7 para. 1 lit. c CISO	Prior to each change, authorisation in advance by FINMA

11. Asset manager: Matters subject to mandatory reporting

	Content	Basis	Deadline
11.1.	**Obligation to give notice**		
11.1.1	**Obligation to give notice in the course of the approval procedure for the business establishment or in the context of changes in day-to-day business activity**		
	Change in persons responsible for the management and the business operations	Art. 15 para. 1 lit. a CISO	Prior to change
	Facts which might call into question the good reputation or the guaranteeing of proper management by the persons responsible for the management and the business operations (specifically the instigation of criminal proceedings)	Art. 15 para. 1 lit. b CISO	Immediately after becoming known
	Change in significant equity holders	Art. 15 para. 1 lit. c CISO	Prior to change
	Facts which might call into question the good reputation of significant equity holders (specifically the instigation of criminal proceedings)	Art. 15 para. 1 lit. d CISO	Immediately after becoming known
	Facts which call into question the prudent and sound business practice of the asset manager owing to the influence of the significant equity holders	Art. 15 para. 1 lit. e CISO	Immediately after becoming known
	Change of audit company	Art. 13 para. 1 FINMA-FMAO	Immediately
11.2.1	**Additional reporting duties in the ongoing business activity** (see also 11.1.1)		
	Falling below minimum capital requirement	Art. 15 para. 1 lit. f CISO; Art. 19 para. 5 CISO	Immediately
	Capital inadequacy	Art. 21 para. 6 CISO	Immediately
	Material changes in relation to their subsidiaries, branches or representative offices abroad	Art. 24 para. 3 CISO	Immediately prior to each change

12. Limited partnership for collective capital investments: Matters subject to mandatory authorisation and approval

	Content	Basis	Deadline
12.1.	**Authorisation requirements**		
12.1.1	**Authorisation requirements when starting business operations**		
	Start of business operations as limited partnership for collective capital investments	Art. 13 para. 2 lit. c CISA	Prior to start of business operations
	Approval for company agreement	Art. 15 para. 1 lit. c CISA	Prior to start of business operations
12.1.2	**Additional requirements in the course of day-to-day business activity**		
	Notification to FINMA regarding change of audit company	Art. 13 para. 1 FINMA-FMAO	Immediately

13. Limited partnership for collective capital investments: Matters subject to mandatory reporting

	Content	Basis	Deadline
13.1	**Obligation to give notice**		
13.1.1	**Obligation to give notice in the course of the approval procedure for the business establishment or in the context of changes in day-to-day business activities**		
	Change in persons responsible for the management and the business operations (general partner)	Art. 118 para. 3 CISO; Art. 15 para. 1 lit. a CISO	Prior to start of business operations
	Facts which might call into question the good reputation or the guaranteeing of proper management by the persons responsible for the management and the business operations (general partners; specifically the instigation of criminal proceedings)	Art. 118 para. 3 CISO; Art. 15 para. 1 lit. b CISO	Immediately after becoming known
	Change in significant equity holders (general partner)	Art. 118 para. 3 CISO; Art. 15 para. 1 lit. c CISO	Prior to change
	Facts which might call into question the good reputation of significant equity holders (general partners; specifically the instigation of criminal proceedings)	Art. 118 para. 3 CISO; Art. 15 para. 1 lit. d CISO	Immediately after becoming known

	Facts which call into question the prudent and sound business practice owing to the influence of the significant equity holders (general partner)	Art. 118 para. 3 CISO; Art. 15 para. 1 lit. e CISO	Immediately after becoming known
	Change of audit company	Art. 13 para. 1 FINMA-FMAO	Immediately
	Changes to company agreement (not however changes to limited partner's contribution)	Art. 16 CISA; Art. 7 lit. b CISO Art. 14 para. 2 lit. b CISO	Immediately before each change
	Prospectus	Art. 15 para. 3 CISO	Prior to publication or changes
13.1.2	**Financial statements**		
	Annual report	Art. 108 para. 1 CISA; Art. 89 para. 4 CISA	No later than simultaneously with publication within four months of the close of the financial year
	Semi-annual report	Art. 108 para. 1 CISA; Art. 89 para. 4 CISA	No later than simultaneously with publication within two months after the end of the first half of the financial year.
13.1.3	**Additional reporting duties in the ongoing business activity** (see also 14.1.1)		
	Falling below minimum capital requirement	Art. 15 para. 1 lit. f CISO; Art. 118 para. 2 and 3 CISO	Immediately
	Dissolution by resolution	Art. 109 CISA	Immediately after resolution
	Statistical reports to the Swiss National Bank (collective investment schemes statistics by investment funds managers of Swiss funds, Swiss companies offering collective investment schemes according to CISA)	Art. 14, 15 NBO; Art. 5 NBA with annex	No later than 20 days after end of quarter according to guidelines of the Swiss National bank

14. Investment Company with Fixed Capital (SICAF): Matters subject to mandatory authorisation and approval

	Content	Basis	Deadline
14.1.	**Authorisation requirements**		
14.1.1.	**Authorisation requirements when starting business operations**		
	Start of business operations as SICAF	Art. 13 para. 2 lit. d CISA	Prior to start of business operations
	Approval for the articles of association and investment regulations	Art. 15 para. 1 lit. d CISA	Prior to start of business operations
14.1.2	**Additional requirements in the course of day-to-day business activity**		
	Failure to get listed within one year (Mandatory authorisation as SICAF or dissolution)	Art. 2 CISO	Before Deadline
	Notification to FINMA regarding change of audit company	Art. 13 para. 1 FINMA-FMAO	Immediately

15. Investment Company with Fixed Capital (SICAF): Matters subject to mandatory reporting

	Content	Basis	Deadline
15.1	**Obligation to give notice**		
15.1.1	**Obligation to give notice in the course of the approval procedure for the business establishment or in the context of changes in day-to-day business activities**		
	Change in persons responsible for the management and the business operations	Art. 15 para. 1 lit. a CISO	Prior to change
	Facts which might call into question the good reputation or the guaranteeing of proper management by the persons responsible for the management and the business operations (specifically the instigation of criminal proceedings)	Art. 15 para. 1 lit. b CISO	Immediately after becoming known
	Change in significant equity holders	Art. 15 para. 1 lit. c CISO	Prior to change
	Facts which might call into question the good reputation of significant equity holders (specifically the instigation of criminal proceedings)	Art. 15 para. 1 lit. d CISO	Immediately after becoming known

	Facts which call into question the prudent and sound business practice owing to the influence of the significant equity holders	Art. 15 para. 1 lit. e CISO	Immediately after becoming known
	Prospectus	Art. 116 CISA; Art. 77 para. 2 CISA; Art. 15 para. 3 CISO	Prior to publication or changes
15.1.2	**Financial statements**		
	Annual report	Art. 117 CISA; Art. 89 para. 4 CISA	No later than simultaneously with publication within four months of the close of the financial year
	Semi-annual report	Art. 117 CISA; Art. 89 para. 4 CISA	No later than simultaneously with publication within two months after the end of the first half of the financial year.
15.1.3	**Additional reporting duties in the ongoing business activity** (see 16.1.1)		
	Statistical reports to the Swiss National Bank (collective investment schemes statistics by investment funds managers of Swiss funds, Swiss companies offering collective investment schemes according to CISA)	Art. 14, 15 NBA; Art. 5 NBO with annex	No later than 20 days after end of quarter according to guidelines of the Swiss National bank
	Reporting core and movement data as well as submission of documents	Art. 144 para. 1 CISA; Art. 142 CISO;	According to guidelines of the Swiss National bank
	Notification of standing data and sending of documents.	Art. 144 para. 1 CISA; Art. 142 CISO;	According to SNB

16. Representatives of Foreign Collective Investment Schemes for non-qualified and qualified investors: Matters subject to mandatory authorisation

	Content	Basis	Deadline
16.1	**Authorisation requirements**		
16.1.1	**Authorisation requirements when starting business operations**		
	Start of business operations as representatives of foreign collective investment schemes for non-qualified investors and/or qualified investors	Art. 13 para. 2 lit. h CISA; Art. 131a para. 1 CISA (qualified investors only)	Prior to start of business operations
16.1.2	**Additional requirements in the course of day-to-day business activity**		
	Change in organisation or relevant organisational documents	Art. 16 CISA Art. 14 para. 1 CISO Art. 7 lit. c CISO	Prior to change
	Cancellation of representative and pay agent contracts	Art. 120 para. 2bis CISA	Prior to cancellation

17. Representatives of Foreign Collective Investment Schemes for non-qualified and qualified investors: Matters subject to mandatory reporting

	Content	Basis	Deadline
17.1	**Obligation to give notice**		
17.1.1	**Obligation to give notice in the course of the approval procedure for the business establishment or in the context of changes in day-to-day business activities**		
	Change in persons responsible for the management and the business operations	Art. 15 para. 1 lit. a CISO	Prior to change
	Facts which might call into question the good reputation or the guaranteeing of proper management by the persons responsible for the management and the business operations (specifically the instigation of criminal proceedings)	Art. 15 para. 1 lit. b CISO	Immediately after becoming known
	Change in significant equity holders	Art. 15 para. 1 lit. c CISO	Prior to change
	Facts which might call into question the good reputation of significant equity holders (specifically the instigation of criminal proceedings)	Art. 15 para. 1 lit. d CISO	Immediately after becoming known
	Facts which call into question the prudent and sound business practice owing to the influence of the significant equity holders	Art. 15 para. 1 lit. e CISO	Immediately after becoming known
17.1.2	**Additional reporting duties in the ongoing business activity** (see 17.1.1)		
	Falling below minimum capital requirement	Art. 15 para. 1 lit. f CISO; Art. 131 para. 1 CISO	Immediately

Only representatives of foreign collective investment schemes for non-qualified investors		
Submission of annual and semi-annual reports by representative of a foreign collective investment scheme	Art. 133 para. 3 CISO	Immediately when available
Notification of amendments to relevant documents by representative of a foreign collective investment scheme	Art. 15 para. 4 lit. b CISO; Art. 133 para. 3 CISO	Immediately when available
Measures taken by a foreign supervisory authority against the collective investment scheme, specifically its withdrawal of approval	Art. 15 para. 4 lit. a CISO	Immediately after becoming known

18. Distributors: Matters subject to mandatory authorisation

	Content	Basis	Deadline
18.1.	**Authorisation requirements**		
18.1.1	**Authorisation requirements in the course of the approval procedure for the business establishment or in the context of changes in day-to-day business activities**		
	Start of business operations as distributor of foreign collective investment schemes for non-qualified and/or qualified investors	Art. 13 para. 2 lit. g CISA; Art. 19 CISA	Prior to start of business operations
	Announcing firm and address of audit company to fund management company or representative	Annex to the Guidelines on the Distribution of Collective Investment Schemes	Prior to start of business operations

19. Distributors: Matters subject to mandatory reporting

	Content	Basis	Deadline
19.1	**Obligation to give notice**		
19.1.1	**Obligation to give notice in the course of the approval procedure for the business establishment or in the context of changes in day-to-day business activities**		
	Organisational documents	Art. 14 para. 1 CISO; Art. 7 lit. c CISO	Prior to change
	Announcing firm and address of audit company to fund management company or representative	Annex to the Guidelines on the Distribution of Collective Investment Schemes	With each change
	Changes to the articles of association	Art. 14 para. 1 CISO	
	Changes to the organisational regulations	Art. 14 para. 1 CISO	
	Changes to the board of directors	Art. 15 para. 1 lit. a CISO	
	Changes to the executive board	Art. 15 para. 1 lit. a CISO	
	Change in significant equity holders	Art. 15 para. 1 lit. c CISO	
	Reporting facts which might call into question the good reputation or the guaranteeing of proper management by the persons responsible for the management and the business operations as well as significant equity holders or question the prudent and sound business practice owing to the influence of the significant equity holders	Art. 15 para. 1 lit. b, d and e CISO	
	Changes with respect to the financial guarantees	Art. 15 para. 1 lit. f CISO	
	Establishment of subsidiaries or opening of branches and representative offices or the acquisition of interests in other companies	Art. 16 CISA	
	Relevant changes in regard to subsidiaries, branches and representative offices		
	Other relevant changes in the circumstances underlying the authorisation		

20. Banks and securities dealers: Matters subject to mandatory reporting

	Content	Basis	Deadline
20.1.	**In-house funds**		
	Notification of creation and dissolution of in-house funds	Art. 4 para. 2 CISA	Prior to creation or immediately after resolution to dissolve to audit company

21. Duty to publish

	Content	Basis	Deadline
21.1	**Fund management company**		
	Publishing summary of significant amendments to the fund regulation with reference to locations where full wording of contractual amendments may be obtained free of charge	Art. 27 para. 2 CISA; Art. 41 para. 1 CISO	Prior to approval of amendment by FINMA
	Publishing planned change of fund management company in at least one media of publication	Art. 34 para. 3 CISA ; Art. 74 para. 1 CISA	Prior to approval by FINMA
	Publishing issue and redemption prices in the print media or electronic platforms cited	Art. 83 para. 4 CISA; Art. 106 CISO-FINMA	Rule: with each issue and redemption; Securities funds and other funds: at least twice a month; Real estate funds and funds, where right to redeem at any time is restricted according to Art. 109 para. 3 CISO: at least once a month
	Publishing market value of the funds' assets and resulting net asset value of the fund units by fund management company for real estate fund	Art. 95 para. 1 CISO	According to provisions regarding issues and redemptions in the fund contract
	Publishing the creation, liquidation or merger of unit classes in at least one media of publication	Art. 40 para. 3 CISO	After decision and before FINMA approval
21.2	**SICAV**		
	Publishing summary of significant amendments to the fund regulation with reference to locations where full wording of contractual amendments may be obtained free of charge	Art. 63 para. 4 CISO	After approval by the general meeting and prior to approval of amendment by FINMA
	Invitation to the general meeting	Art. 50 para. 2 CISA; Art. 700 CO	At least 20 days before general meeting
	Publishing the creation, liquidation or merger of unit classes in at least one media of publication	Art. 40 para. 3 CISO; Art. 61 para. 2 CISO	After resolution by the fund management company or SICAV (merger requires approval by the general meeting) and prior to approval by FINMA
	Publishing issue and redemption prices in the print media or electronic platforms cited	Art. 83 para. 4 CISA; Art. 106 CISO-FINMA	Rule: with each issue and redemption; Securities funds and other funds: at least twice a month; Real estate funds and funds, where right to redeem at any time is restricted according to Art. 109 para. 3 CISO: at least once a month
	Publishing market value of the funds' assets and resulting net asset value of the fund units by SICAV for real estate SICAV	Art. 95 para. 1 CISO	According to provisions regarding issues and redemptions in the fund contract
21.3	**Custodian bank**		
	Publishing planned change of custodian bank in at least one media of publication of the investment fund or SICAV	Art. 74 para. 1 and 2 CISA; Art. 34 para. 3 CISA; Art. 105 CISO; Art. 41 CISO	Prior to approval by FINMA; SICAV: prior approval by FINMA mandatory
21.4	**Investment fund and SICAV**		
21.4.1	**Prospectus**		
	Providing the prospectus to interested persons on request for existing or new investment funds or SICAV free of charge (for investment funds incl. fund regulations, where those interested are not informed where to obtain these free of charge prior to agreement or subscription)	Art. 75 para. 2 CISA; Art. 106 para. 1 CISO	Prior to agreement or subscription
21.4.2	**Key Investor Information Document for securities funds and other funds for traditional investments**		
	Providing Key Investor Information Document to interested persons on request for existing or new investment funds or SICAV free of charge	Art. 76 para. 1 and 5 CISA; Art. 77 para. 2 CISA; Art. 107a para. 1 CISO Art. 107e CISO	Prior to agreement or subscription
	Publishing appropriately revised presentation of the past performance in the period to December 31		Publication within 35 days of the following year

	Publishing issue and redemption prices in the print media or electronic platforms cited	Art. 83 para. 4 CISA; Art. 106 CISO-FINMA	Rule: with each issue and redemption; Securities funds and other funds: at least twice a month; Real estate funds and funds, where right to redeem at any time is restricted according to Art. 109 para. 3 CISO: at least once a month
	Publishing market value of the funds' assets and resulting net asset value of the fund units by SICAV for real estate SICAV	Art. 95 para. 1 CISO	According to provisions regarding issues and redemptions in the fund contract
21.3	**Custodian bank**		
	Publishing planned change of custodian bank in at least one media of publication of the investment fund or SICAV	Art. 74 para. 1 and 2 CISA; Art. 34 para. 3 CISA; Art. 105 CISO; Art. 41 CISO	Prior to approval by FINMA; SICAV: prior approval by FINMA mandatory
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	Publishing appropriately revised presentation of the past performance in the period to December 31		Publication within 35 days of the following year

Contacts

Dieter Wirth
Partner, Leader Asset Management Switzerland
dieter.wirth@ch.pwc.com
+41 58 792 44 88
Birchstrasse 160, P.O. Box, 8050 Zurich

Jean-Sébastien Lassonde
Partner, Leader Assurance Asset Management Switzerland
jean.sebastien.lassonde@ch.pwc.com
+41 58 792 81 46
Avenue C.-F.-Ramuz 45, Case postale, 1001 Lausanne

Daniel Pajer
Partner, Asset Management
daniel.pajer@ch.pwc.com
+41 58 792 24 86
Birchstrasse 160, P.O. Box, 8050 Zurich
St. Jakobs-Strasse 25, P.O. Box, 4052 Basel

Günther Dobrauz
Partner, Asset Management, Leader Legal FS Regulatory and Compliance Services
guenther.dobrauz@ch.pwc.com
+41 58 792 14 97
Birchstrasse 160, P.O. Box, 8050 Zurich

Heinz Furrer
Director, Assurance Financial Services
heinz.furrer@ch.pwc.com
+41 58 792 63 19
Werftestrasse 3, P.O. Box, 6002 Luzern

Dimitri Senik
Director, Asset Management
dimitri.senik@ch.pwc.com
+41 58 792 23 72
Birchstrasse 160, P.O. Box, 8050 Zurich

Simon Bandi
Director, Asset Management
simon.bandi@ch.pwc.com
+41 58 792 23 93
Birchstrasse 160, P.O. Box, 8050 Zurich
Bahnhofplatz 10, P.O. Box, 3011 Bern

Patrick Frigo
Senior Manager, Asset Management
patrick.frigo@ch.pwc.com
+41 58 792 22 76
Birchstrasse 160, P.O. Box, 8050 Zurich
Grafenauweg 8, P.O. Box 7763, 6302 Zug