

100 DAYS LEFT UNTIL EXPIRY OF TRANSITION PERIOD FOR COMPLIANCE WITH THE NEW REQUIREMENTS REGARDING DISTRIBUTION OF FOREIGN COLLECTIVE INVESTMENT SCHEMES (“foreign CIS”) TO QUALIFIED INVESTORS IN SWITZERLAND

The revised Swiss Collective Investment Schemes Act (“CISA”) and the revised implementing ordinance („CISO”) are effective since 1 March 2013. However, both CISA and CISO contain transitory provisions that apply to certain newly introduced requirements.

In the area of distribution of foreign CIS to qualified investors in Switzerland* the following deadlines apply to the distribution by distributors who benefit from the transition period (i.e. distributors who have been active in such area before 1 March 2013):

- **PRODUCT LEVEL:** In order that its distribution may seamlessly continue from 1 March 2015 onwards, the foreign CIS concerned must with effect on 1 March 2015 at the latest:
 - appoint a **Swiss representative** (which is authorised by FINMA in accordance with art. 13 para. (a) or (h) CISA);
 - appoint a **Swiss paying agent** (which is authorised by FINMA as a bank);
 - ensure that its **name is neither misleading nor confusing**;
 - make available **fund documents** (e.g. prospectus) with the required **Swiss disclosures** (i.e. indication of Swiss representative, Swiss paying agent and place of jurisdiction and disclosures according to Guidelines on Duties Regarding the Charging and Use of Fees and Costs (Transparency Guidelines**) dated 22 May 2014 of the Swiss Funds & Asset Management Association SFAMA).

- **DISTRIBUTOR LEVEL:** In order to be able to seamlessly continue distributing CIS to qualified investors from 1 March 2015 onwards:
 - **distributors domiciled outside Switzerland** (foreign financial intermediaries who distribute cross border on “fly-in”-basis) must be **adequately supervised in their country of domicile**;
 - **distributors domiciled in Switzerland** must have filed an application for **FINMA-authorisation as fund distributor** (if not yet sufficiently authorised) until 28 February 2015; and
 - **All distributors** must have entered into a **distribution agreement with the Swiss representative of the foreign CIS concerned** (reflecting the mandatory parts of the SFAMA model distribution agreement concerning distribution in Switzerland to qualified investors) with effect on 1 March 2015 at the latest and must strictly comply with the respective duties (including but not limited to duties set out in the SFAMA provisions for distributors (Annex to SFAMA Guidelines on the Distribution of Collective Investment Schemes dated 22 May 2014) and, where applicable, the protocol duty pursuant to art. 24 para. 3 CISA (detailed in Swiss Bankers Association’s Guidelines on the duty to keep documentary records according to section 24(3) CISA dated November 2013)).

A distributor/financial intermediary intending to become active in the area of distribution to qualified investors in Switzerland as from 1 March 2013 does not benefit from any transition periods and will have to fulfil all legal requirements applicable to activity according to revised CISA before taking up the activity.

*i.e. distribution to public entities, pension schemes and companies with professional treasury management, high net worth individuals (if opted-in) as well as independent investment managers (under certain conditions).

**The deadline to comply with the disclosure requirements according to the SFAMA Transparency Guidelines may according to the circumstances expire on 1 March 2015 or 1 June 2015.

For more information feel free to contact any of our investment fund specialists (www.nastra.ch)

Note: None of the information contained herein is to be regarded as legal advice.