

**New self-regulatory guidelines of the Swiss Funds & Asset Management Association SFAMA (“SFAMA”) effective as from today**

As a consequence of the 2013 revision of the Swiss Collective Investment Schemes Act (“CISA”, see [fund circular #28](#) and [fund circular #29](#)), the following self-regulatory guidelines of the SFAMA had to be adapted in order to comply with the new distribution concept:

- Guidelines on the Distribution of Collective Investment Schemes (“Distribution Guidelines”); and
- Guidelines on Duties Regarding the Charging and Use of Fees and Costs (“Transparency Guidelines”).

The Distribution Guidelines and the Transparency Guidelines are applicable in the area of distribution (as defined in the CISA) of collective investment schemes (“CIS”) to non-qualified as well to qualified investors by FINMA-licensees and their agents (e.g. also distributors not domiciled in Switzerland who have entered into a distribution agreement with the Swiss representative of a foreign CIS with view to distribution of such foreign CIS to qualified investors in Switzerland). Whereas the Distribution Guidelines govern the conduct of distributors via the mandatory integration into the respective distribution agreements of the so called provisions for distributors set out in an Appendix to the Distribution Guidelines (“Provisions for Distributors”), the Transparency Guidelines require disclosures in the fund documents of the respective CIS regarding fees and costs in general and in particular also regarding retrocessions (for distribution activities) and/or rebates (to end-investors). The Distribution Guidelines further require that distribution agreements materially comply with the SFAMA model distribution agreements (for the distribution to non-qualified investors as well as for the distribution to qualified investors). Such SFAMA model distribution agreements are unfortunately not yet available but are expected to be released shortly.

**Key Points:****➤ Distribution Guidelines:**

- The Distribution Guidelines are guided by the same principles as their preceding version. However, following the extension of the scope of the CISA to the distribution to qualified investors by distributors domiciled in as well as outside Switzerland, the Distribution Guidelines’ scope has been extended accordingly.
- The new Provisions for Distributors, amongst other, contain certain provisions on organisational requirements and more or less extensive information and documentation duties of the distributor depending on the category of the investor concerned as well as explicit references to the Transparency Guidelines and, with regard to the distribution over the internet, to the respective provisions in the FINMA-Circular 2013/9 (Distribution of Collective Investment Schemes).
- Whereas for distributors domiciled in Switzerland compliance with the Provisions for Distributors is to be audited, distributors not domiciled in Switzerland are required to provide annually, by the end of January, a self-certified confirmation in a prescribed format on the compliance with the requirements of the Provisions for Distributors applicable to the distribution to qualified investors as well as with the requirement to exclusively distribute to qualified investors in accordance with all regulatory and self-regulatory requirements.
- Transition period: Existing distribution agreements must be amended in line with the applicable SFAMA model distribution agreement by no later than 30 June 2015.

➤ **Transparency Guidelines:**

- Besides the disclosures in the fund documents referred to above the Transparency Guidelines also stipulate a duty of the FINMA-licensees and their agents to provide investor specific information on costs and fees as well as their use on an investor's request.
- The Transparency Guidelines (which claim to generally not have any influence on the civil law relations between any parties) state that the payment of retrocessions (defined as payments and other pecuniary benefits for distribution activities) is generally permissible from a regulatory point of view and requires that (i) the fact that retrocessions may be paid as well as (ii) the services for which they are paid are disclosed in the fund documents. The recipients of the retrocessions shall inform investors, on their own initiative 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.
- With regard to rebates the Transparency Guidelines require that:
  - financial intermediaries pay them from the fees due to them (so that they are not charged additionally to the fund assets);
  - they are granted on the basis of objective criteria;
  - all investors, 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.
- In relation to foreign CIS the Transparency Guidelines require that in case of stricter rules of the respective foreign jurisdiction in relation to the distribution in Switzerland it must be ensured that Swiss investors benefit from such rules (as set out in the fund documents) as well. The relevant rules must be explicitly and exhaustively listed in an appendix to the prospectus.
- Transition periods: Swiss CIS: Submission to FINMA for approval of accordingly amended relevant fund documents by 1 March 2015. Representatives of foreign CIS approved for distribution to non-qualified investors must submit amended relevant fund documents to the FINMA for approval by no later than 1 June 2015. No guidance is provided regarding transition period for foreign CIS with appointed Swiss representative to be distributed to qualified investors only.

For more information feel free to contact any of our investment fund specialists ([www.nastra.ch](http://www.nastra.ch))