

**Swiss Funds & Asset Management Association SFAMA-Model Annex "Additional information for investors in Switzerland" for prospectuses of foreign collective investment schemes („CIS“) distributed in Switzerland finally released**

*The SFAMA-Model Annex "Additional information for investors in Switzerland" for prospectuses of foreign CIS (the „SFAMA-Model Annex“) has finally been released. The revised Swiss Collective Investment Schemes Act (“CISA”) and the revised implementing ordinance („CISO“) are effective since 1 March 2013. However, it was not until 1 July 2014 that the new SFAMA-Guidelines on Duties Regarding the Charging and Use of Fees and Costs (“Transparency Guidelines”) were enacted (see [fund circular #31](#)). Due to long discussions between the SFAMA and the FINMA it took further 8 months until the model wordings for the disclosures required by the Transparency Guidelines in prospectuses of foreign CIS distributed in Switzerland were released in the updated SFAMA-Model Annex.*

**Key Points:**

- The Transparency Guidelines require disclosures in the prospectuses of foreign CIS (to be) distributed in Switzerland (distribution to non-qualified and/or qualified investors) in relation to so called **retrocessions** (payments by CIS, fund management companies and their agents and other pecuniary benefits remunerating distribution activities) and **rebates** (payments by CIS, fund management companies and their agents directly to investors from a fee or cost charged to the CIS with the purpose of reducing the said fee or cost to a contractually agreed amount);
- The SFAMA-Model Annex clarifies that the categorisation of a payment as a retrocession prevails even if such payment is ultimately forwarded by the recipient to end-investors;
- The SFAMA-Model Annex amongst other contains model wordings for the disclosures:
  - that retrocessions may be paid/may not be paid in the context of distribution in and from Switzerland and, for the case that they may be paid, requires a detailed list of the distribution services for which they may be paid without, however, suggesting any points for such list which is to be drafted on the basis of the individual case;
  - that rebates may be paid/may not be paid in the context of distribution in and from Switzerland by the respective parties from the fees due to them (so that they are not charged additionally to the fund assets), within the same timeframe and to the same extent on the basis of objective criteria to all investors demanding rebates, who qualify on the basis of such objective criteria. The SFAMA-Model Annex provides a non conclusive list with examples of possible objective criteria but also states that these criteria have to be defined in the individual case.
  - to be made if the country of domicile of the CIS/fund management company compared to Swiss law foresees stricter rules on retrocessions/rebates which are mandatorily applicable to distribution in Switzerland. A negative statement in case of absence of such stricter rules in the country of domicile of the CIS/fund management company is not foreseen.
- Deadline for implementation of the SFAMA-Model Annex into the prospectuses of foreign CIS:
  - CIS approved for distribution to non-qualified investors in or from Switzerland („Approved CIS“): Prospectuses with disclosures in line with the SFAMA-Model Annex need to be filed with FINMA by 1 June 2015 (deadline set by the Transparency Guidelines);

- CIS not approved for distribution to non-qualified investors in or from Switzerland („Non-Approved CIS“) and (to be) distributed in or from Switzerland to qualified investors: Neither the SFAMA-Model Annex nor the Transparency Guidelines explicitly foresee a deadline for implementation. According to the revised CISA, FINMA-licencees (as far as having benefitted from a transition period) must fully comply with the revised CISA as from 1 March 2015 which would initially include compliance with the SFAMA-Model Annex from such date. However, it would be difficult to explain why investors in a Non-Approved CIS compared to investors in an Approved CIS should be given the advantage that such disclosures are required to be implemented earlier (which would be an argument for a 1 June 2015 deadline), especially also as the SFAMA-Model Annex was not released before 1 March 2015.

**Initial clarifications needed from Fund Providers:**

- Fund providers will need to clarify whether:
  - retrocessions may be paid and, if so, define the list of the distribution services for which the retrocessions may be paid;
  - rebates may be paid and, if so, define the objective criteria on the basis of which rebates may be paid;
  - the country of domicile of the CIS/fund management company compared to Swiss law foresees stricter rules on retrocessions/rebates which are mandatorily applicable to distribution in Switzerland.

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

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