

EVOLVING NEW SWISS FINANCIAL MARKETS REGULATION – PROMINENT POLITICAL HURDLE TAKEN

Today, the Committee for Economic Affairs and Taxation ([CEAT](#)) of the Swiss Council of States published its [amended drafts](#) of the new **Financial Services Act** (FinSA) and the **Financial Institutions Act** (FinIA). Such publication follows the [conclusion of the CEAT consultation proceedings](#) which started in February 2016 and provides for substantial material amendments to the initial drafts. The first chamber of Swiss parliament, the Council of States, will now debate both drafts in the upcoming December session.

In practice this means that the draft FinSA and FinIA have taken a first and prominent hurdle in the Swiss political decision making process and that Switzerland is, subject to the yet unknown outcome of the political debate in parliament, a step closer to finally enact rules intended to become MiFID and Prospectus Directive equivalent regulations.

Our view: You may have noticed that this is our first update newsletter with regard to these two Swiss legislative projects having evolved and meandered for years. The interim results of the above mentioned ongoing political discussions seem to be an indicator that the proven Swiss notion of the “mature investor” in financial regulation seems not to prevail anymore among expert politicians. While new and additional means of purported investor protection will most likely be introduced to Swiss financial markets regulation, it remains unclear how the final FinSA and FinIA will look like and whether the EU will deem this new legislation equivalent to EU financial market law and whether the declared aim of Swiss access to EU financial markets will finally become reality.

We think that with the CEAT amended drafts, it may be a good time for participants in the Swiss financial market to observe more closely the developments to identify the potential ramifications on their business in Switzerland. We will continue to inform about further hurdles being taken.

Key Points: Focusing on inbound and onshore offering of structured products (SP) in Switzerland the following points in the drafts and their discussion in parliament may be of particular relevance for the current distribution set-ups (Distribution to non-qualified investors by way of Swiss simplified prospectus or listing on SIX Swiss Exchange, distribution to qualified investors or “private placements”):

- Re-definition of investor categories by introduction of a new client segmentation system and the replacement of the term “distribution” by “(public) offering”;
- Abolition of Swiss simplified prospectus requirement and introduction of the requirements to a) prepare a prospectus before start of a “public offering” and to file such prospectus for an *ex ante* approval with a yet to be appointed supervisory body and b) to prepare and maintain a Swiss Basic Information Document (Swiss “KID”); deemed approval of certain foreign prospectuses/acceptance of foreign PRIIPS-KIDs (and ramifications to the review by SIX Exchange Regulation of such prospectus in case of listed structured products); transition periods;
- Introduction of a reversal of the burden of proof for civil prospectus liability and an administrative criminal liability for intentional violation of the Swiss prospectus rules;
- Introduction of a new register for client advisors active onshore or on a cross-border basis;
- Introduction of a new code of conduct by FinSA applicable to all market participants.

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