

# Update

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## New regulatory development for asset managers of Swiss pension funds

This note summarizes a recent regulatory development which affects unregulated Swiss-based asset managers intending to manage, or to continue to manage, assets of Swiss pension funds after **1 January 2014**. These external asset managers must register with the Swiss Supervisory Commission for Pension Funds before **31 August 2013**. This registration requirement does not apply to asset managers based outside of Switzerland and subject to an official supervision in their home jurisdiction.

### Background

On 19 March 2010, the Swiss Parliament enacted a reform of the legal framework applicable to the Swiss pension fund industry. The rules implementing this reform provide, among other things, that, as of **1 January 2014**, Swiss pension funds may only appoint as external asset managers financial intermediaries which are subject to an official supervision in Switzerland (or an equivalent supervision abroad).

Swiss banks and securities dealers are not affected by this aspect of the reform, as they are subject to the supervision of the Swiss financial regulator FINMA. These supervised financial intermediaries may therefore continue to act as external asset managers of Swiss pension funds after 1 January 2014.

By contrast, the reform has an impact on Swiss-based independent asset managers ("IAM"). Contrary to the situation prevailing in a number of other jurisdictions, asset management activities are, as things stand, not subject to prudential supervision in Switzerland, unless these activities are conducted in connection with a collective investment scheme. The fact that IAM are subject to the Swiss regulatory framework against money-laundering does not grant them the status of "supervised

financial intermediaries" within the meaning of the Swiss pension fund rules referred to above.

The Swiss Supervisory Commission for Pension Funds (the "**Supervisory Commission**") is expected to grant an *ad hoc* licence to IAM managing assets of Swiss pension funds, so as to allow such IAM to continue their activities after 1 January 2014. The enactment of the rules governing this *ad hoc* licence has however been delayed. Furthermore, contrary to the expectation of the industry, the recent reform of the Swiss Collective Investment Schemes Act (see our September 2012 Newsflash on this topic) did not result in the enactment of a tailor-made regulatory framework for asset managers of Swiss pension funds. In light of the above, Swiss-based IAM were exposed to the risk of being excluded from the market of asset management services for Swiss pension funds.

### Regulatory development

In order to alleviate these concerns, the Supervisory Commission announced recently that IAM managing assets of Swiss pension funds could apply for a "provisional" license, pending the enactment of the rules governing the "definitive" license.

In order to receive such a "provisional" license, Swiss-based IAM (even those which have already filed a licence application with the Supervisory Commission) must file before **31 August 2013** a one-page form which is available on the [website of the Supervisory Commission](#) (the form is available only in French, German and Italian).

On the basis of the form, the Supervisory Commission will issue a certification confirming that the relevant IAM is entitled to manage assets of Swiss pension funds after 1 January 2014.

The requirement to register with the Supervisory Commission does not apply:

- > to asset managers (of Swiss pension funds) which are based outside of Switzerland and which are subject, in their home jurisdiction, to a supervision which is equivalent to the Swiss standards of supervision; and
- > to investment *advisors* (as opposed to asset *managers*) of Swiss pension funds.

## Outlook

The license to be granted by the Supervisory Commission to IAM represents only a transitional solution. The Swiss authorities have recently launched a revision of the regulatory framework applicable to the provision of financial services (this project is generally referred to as project "LSFin" (French) or project "FIDLEG" (German)). Going forward, IAM will in all likelihood be subject to prudential supervision and therefore fall into the category of "supervised financial intermediaries", as set forth in the Swiss pension fund rules referred to above. In such event, the license granted by the Supervisory Commission will no longer be necessary.

A first draft of the rules implementing this regulatory reform is expected to be published in the fall of 2013. The date of entry into force is unknown for the time being.

Please do not hesitate to contact us for any follow-up queries you may have.

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