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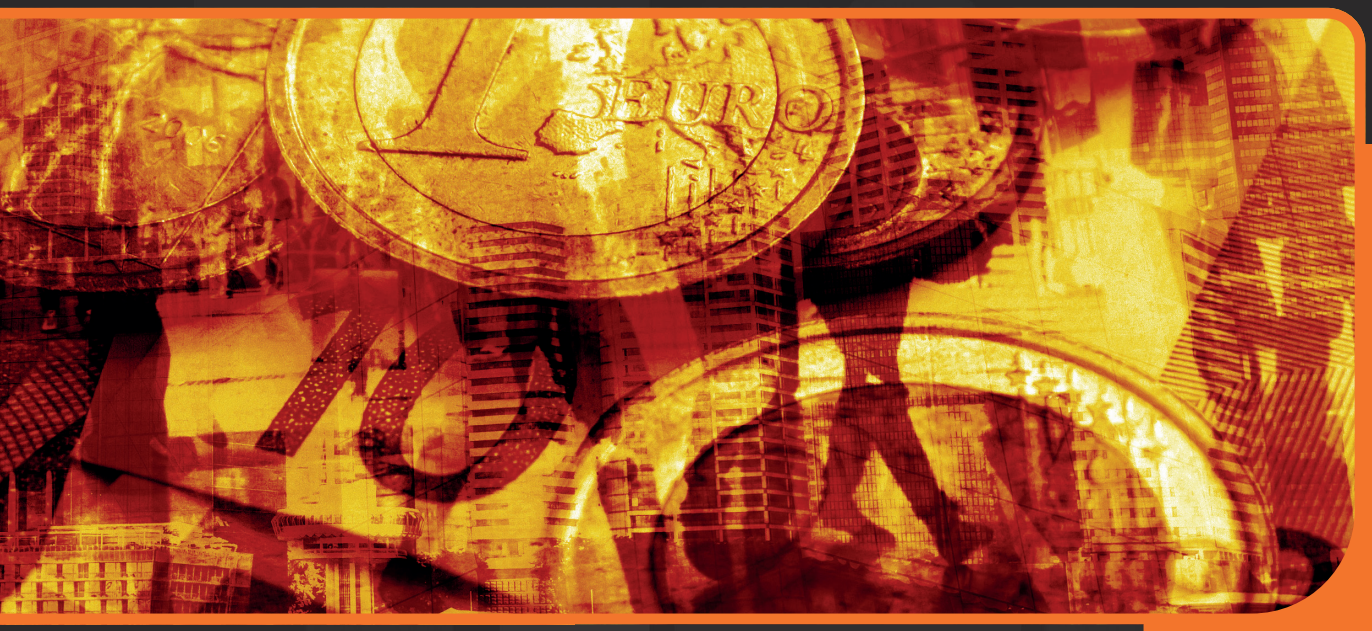

Practical cross-border insights into public investment funds

Public Investment Funds 2023

Sixth Edition

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1 Registration

1.1 Are funds that are offered to the public required to be registered under the securities laws of your jurisdiction? If so, what are the factors and criteria that determine whether a fund is required to be registered?

The current relevant Swiss legal and regulatory framework with respect to Swiss and non-Swiss collective investment schemes ("CISs") is the Collective Investment Schemes Act ("CISA") and its implementing Ordinance on Collective Investment Schemes ("CISO"), as well as FINMA's Ordinance on Collective Investment Schemes ("FINMA-CISO"). The relevant supervisory authority for CISs is the Swiss Financial Market Supervisory Authority ("FINMA").

As of 1 January 2020, two legislations entered into force: the Financial Services Act ("FinSA"); and the Financial Institutions Act ("FinIA"). The FinSA governs the provision of financial services and offer of financial instruments in Switzerland and contains organisational measures, as well as rules of conduct for financial services providers. The FinIA sets the licensing and organisational requirements for non-banking financial institutions active in Switzerland. Both the FinSA and the FinIA are complemented by implementing ordinances (the Financial Services Ordinance ("FinSO") and the Financial Institutions Ordinance ("FinIO")). Under this new regulatory framework, the authorisation and supervision of fund management companies and asset managers of CISs are regulated exclusively by the FinIA. By contrast, the product licensing requirements for CISs remain anchored in the CISA. The provision of financial services (which includes the offering of CISs; see question 3.1) and the corresponding rules of conduct are further regulated in the FinSA.

The type of licensing requirement a CIS is subject to mainly depends on: (i) its place of incorporation; and (ii) the category of its targeted investors.

Swiss CISs

The CISA provides for the following four different types of Swiss CISs:

(1) the contractual investment fund;
(2) the Swiss investment company with variable capital ("SICAV");
(3) the Swiss investment company with fixed capital ("SICAF"); and
(4) the Swiss limited partnership ("LP").

All Swiss CISs are supervised by FINMA, irrespective of the category of targeted investors. As opposed to contractual investment funds, corporate CISs have a dual role: as a product, in the form of a company; and as an institution subject to licensing requirement.

A new category of Swiss CISs, the limited qualified investment funds ("L-QIFs"), which are exclusively reserved for qualified investors (see below), will be introduced in Switzerland in 2023, as a result of a CISA revision approved by the Swiss Parliament in December 2021. L-QIFs will not require any registration or supervision by FINMA but will need to be operated by a fund management company itself supervised by FINMA (which may itself delegate investment decision to an asset manager of CISs). The investment rules of the L-QIFs will offer a wide range of flexibility in terms of investment types and risk diversification. The legal form of L-QIFs will correspond to one of the existing types of Swiss CISs (contractual fund, SICAV or LP). In this context, existing Swiss CISs that are already supervised by FINMA and qualify as L-QIFs will be able to opt for such regime and withdraw from FINMA supervision. In September 2022, the Swiss Federal Department of Finance put out for consultation a draft revised CISO for the purpose of integrating provisions governing L-QIFs. The consultation process lasted until 23 December 2022. The new provisions of CISA and CISO implementing the L-QIF funds are currently expected to enter into force in August 2023.

Non-Swiss CISs

The CISA defines non-Swiss CISs as comprising all forms of CISs, regardless of their legal form and structure (e.g., open- or closed-ended, corporate or contractual), which are established and managed from outside Switzerland. Non-Swiss CISs that are offered in Switzerland to non-qualified investors (as defined under question 3.1) are to be registered with FINMA. By contrast, non-Swiss CISs that target high-net-worth individuals ("HNWIs") and their private investment structures without professional treasury management are merely subject to certain limited requirements (see question 1.4). Finally, non-Swiss CISs targeting other qualified investors fall outside the ambit of the CISA and are therefore not subject to any Swiss-based requirement.

1.2 What does the fund registration process involve, e.g., what documents are required to be filed?

Swiss CISs

Swiss CISs must be authorised by FINMA prior to performing any activity. In relation to Swiss contractual investment funds, FINMA must approve the fund contract and the prospectus. In the case of an investment fund with sub-funds (an umbrella fund), each sub-fund requires separate approval. In relation to SICAVs, SICAFs and LPs, they must be authorised as institutions by FINMA before they can begin operations. This involves FINMA's approval of the corporate constituting documents. The Asset Management Association Switzerland ("AMAS",

formerly called SFAMA) has developed model agreements and prospectuses, which have been recognised by FINMA as adequate for the purposes of the authorisation applications.

Non-Swiss CISs

The registration process with respect to non-Swiss CISs distributed to non-qualified investors implies that FINMA approves the fund documentation (see also question 1.4). The following documents (in an official Swiss language or in English) are to be submitted in this context: the prospectus and the collective investment agreement with respect to contractual funds, respectively the Articles of Association and the investment regulations or the partnership agreement with respect to CISs organised under company law. In substance, FINMA will assess whether the non-Swiss CIS, the fund management company, the asset manager and the custodian are subject to prudential supervision and whether investor protection is appropriate and equivalent to the Swiss regulations (see also question 1.4). The authorisation requirements must be complied with at all times. Any change having a material impact on the requirements underlying the authorisation must be approved by FINMA in advance.

1.3 What are the consequences for failing to register a fund that is required to be registered in your jurisdiction?

Under the CISA, the constitution of a CIS without authorisation or the unauthorised offer of CISs (e.g., marketing of non-registered foreign CISs to non-qualified investors) may be punished by a fine or by imprisonment of up to three years. A negligent violation is punishable by a fine of up to a maximum of CHF 250,000. Further, activities carried out in breach of the CISA requirements may trigger regulatory sanctions from FINMA, which may range from a warning to licence withdrawal and liquidation of the entity in question. As the case may be, violations of those requirements may also give rise to tort liability.

1.4 Are there local residency or other local qualification requirements that a fund must meet in order to register in your jurisdiction? Or are foreign funds permitted to register in your jurisdiction?

Foreign CISs targeting non-qualified investors are to be registered with FINMA prior to being offered in or from Switzerland. In addition to the fund documentation approval by FINMA (see question 1.2), the following material conditions are to be met for the purposes of the registration:

- the CIS, the fund manager and the custodian bank (if any) are subject to public supervision, with a focus on investor protection, and subject to equivalent regulations in terms of organisation, investor rights and investment policy;
- the CIS is not presented in such a way so as to deceive or confuse (namely, as regards its investment policy);
- a representative and paying agent have been appointed with respect to units being offered in Switzerland; and
- there is a cooperation and information exchange agreement between FINMA and the relevant foreign supervisory authorities.

In practice, FINMA almost exclusively registers funds that are organised as Undertakings for Collective Investments in Transferable Securities ("UCITS").

It is worth noting that foreign CISs targeting HNWIs and their investment structures without professional treasury management (subject to opting-out) are not subject to registration requirements but are to comply at all times with the second and third requirements above. By contrast, foreign CISs targeting other types of qualified investors are not subject to any specific requirements.

2 Regulatory Framework

2.1 What are the main regulatory restrictions and requirements that a public fund must comply with in the following areas, if any? Are there other main areas of regulation that are imposed on public funds?

i. Governance

The persons in charge of the management and business operations of a Swiss CIS and its asset manager are subject to a "fit and proper test" in order to ensure that they do not exercise any adverse influence on the CIS. Both the CIS and managers are to further ensure that they have proper and appropriate risk management, an internal control system and compliance covering their entire business activities. In this context, risk management functions, internal control systems and compliance must be separated in functional and hierarchical terms from the investment decision functions.

ii. Selection of investment adviser, and review and approval of investment advisory agreement

Swiss CISs usually appoint their investment advisers on the basis of a written asset management or advisory agreement setting out the terms of their relationship or directly, as the case may be, in the partnership agreement. Swiss CIS asset managers may delegate certain tasks to third parties to the extent that such delegation is in the best interest of the CIS. The asset management function (i.e., investment decision) may, however, only be delegated to CIS asset managers that are subject to recognised supervision and have the necessary experience and knowledge (see question 2.2). Such delegation should, in addition, not give rise to conflicts of interest with respect to the investors and asset managers themselves.

iii. Capital structure

The minimum required capital structure and net assets depend upon the type of the Swiss CIS:

- contractual funds, sub-fund of an umbrella fund and SICAVs must have net assets of at least CHF 5 million the year following their launch, at the latest;
- SICAFs must have, and maintain at all times, shares amounting to at least CHF 500,000 fully paid-up in cash at the time of formation; and
- the Swiss LP is not subject to any capital requirements (while the minimum share capital of the general partner must amount to CHF 100,000 and be fully paid-in).

iv. Limits on portfolio investments

Generally speaking, Swiss CISs and their agents must pursue the investment policy corresponding to the investment characteristics of the CIS, as set out in the relevant fund documentation. As regards open-ended funds and SICAFs, depending on whether the fund qualifies as a securities fund, a real estate fund, or other fund for traditional and alternative investments, the following restrictions to investments apply:

- securities funds are allowed to invest in securities, derivative financial instruments, units of CISs, money-maker instruments and sight or time deposits with a term to maturity not exceeding 12 months. On the other hand, they are not allowed to invest in precious metals and commodities or to engage in short-selling;

- real estate funds may invest in real estate, real estate companies, units in real estate funds and foreign real estate assets. Real estate funds must spread their investments over at least 10 properties and the market value of a single property may not exceed 25% of the fund's assets; and
- other funds for traditional and alternative investments are allowed to make the same investments as securities funds, and, in addition, they may invest in precious metals and structured products.

Finally, Swiss LPs are specifically authorised to invest in construction, real estate, infrastructure projects and alternative investments. This is expected to be also the case for the future L-QIFs (see question 1.1).

v. Conflicts of interest

In order to protect the interests of the investors, Swiss CISs must implement effective organisational and administrative measures to identify, prevent, settle and monitor conflicts of interests. In the event that a conflict of interest cannot be avoided, the same must be disclosed to the investors. The AMAS Code of Conduct specifies that CISA-authorised institutions must implement the above measures in accordance with their size and structure. They must also apply an appropriate remuneration policy that protects the investors' interests, as well as adopt written regulations on the receipt and granting of rebates and other benefits by employees and prohibit churning (i.e., shifts in clients' portfolios without any economic reason). Further requirements with respect to conflicts of interest apply to financial services providers themselves under the FinSA (see question 3.1).

vi. Reporting and recordkeeping

Swiss CISs are required to publish an annual report within four months after the closing of the financial year. In addition, a semi-annual report must be issued within two months after the end of the first half of the financial year.

vii. Other

As of January 1, 2023, a key information document ("KID") must be published for any CIS that is offered to retail investors in Switzerland. It is, however, not required to prepare a KID for financial instruments that may be acquired by retail clients solely within the scope of a portfolio management agreement. Non-Swiss CISs that are registered with FINMA or offered to qualified investors that are private clients (as defined under FinSA) or non-discretionary clients are also required to publish a KID. EU-PRIIPs KIDs have been recognised as equivalent to the Swiss KID and may be used instead of a Swiss KID. The EU-PRIIPs must, however, include Swiss specific information.

Further, please refer to question 3.1 with respect to regulatory restrictions and requirements applicable to financial services providers under the FinSA.

2.2 Are investment advisers that advise public funds required to be registered and/or regulated in your jurisdiction? If so, what does the registration process involve?

Under the FinIA, Swiss-based asset managers of both Swiss and non-Swiss CISs, including managers of pension funds, must obtain a licence from FINMA as the asset managers of CISs (by opposition to a portfolio manager licence). In a nutshell, the general requirements to obtain FINMA's authorisation are the following:

- being organised as a legal entity in the form of a limited company (necessary for Swiss LPs), a partnership limited by shares or a limited liability company under Swiss law, as a general or limited partnership, or as a Swiss branch of a foreign asset manager of CISs;
- the persons in charge of the management and the business operations have a good reputation, offer all the guarantees of proper management and have appropriate professional qualifications;
- having the required equity capital and financial guarantees;
- qualified shareholders (i.e., an individual or legal entity that directly or indirectly owns at least 10% of the capital or voting rights or that may have a material influence in another way) must have a good reputation and must not exercise their influence to the detriment of a cautious and sound management;
- internal regulations and a proper organisation are in place in order to ensure compliance with the obligations provided for in the Swiss fund regulations; and
- managing at least one CIS.

The FinIA, however, contains a *de minimis* rule, according to which asset managers with a portfolio manager licence may manage certain assets of CISs, namely:

- assets under management, including those resulting from the use of leverage, below the threshold of CHF 100 million;
- assets under management not exceeding CHF 500 million if the CISs are unleveraged and closed-ended for a five-year period.

The asset manager of a non-Swiss CIS that meets one of the above conditions may, however, opt in and apply for a FINMA licence as an asset manager of CISs, provided that such authorisation is required under the law of the jurisdiction where the CIS is incorporated or offered.

It should be noted that the FinIA provides for a limited number of exemptions, when, under certain conditions, the assets under management belong to group companies of the manager or to persons having family ties with the manager.

2.3 In addition to the requirements above, are there additional regulatory restrictions and requirements imposed on investment advisers that advise public funds?

Requirements under the FinSA

Under the FinSA, asset managers have to classify their clients and apply the relevant rules of conduct based on this classification. The provision of asset management activities (as well as pure investment advisory activities) requires compliance with rules of conduct such as: (1) an up-front obligation of information; (2) an obligation to verify whether a financial instrument or service is appropriate and suitable; (3) a documentation obligation and accountability requirement; and (4) transparency and due diligence requirements for the execution of client orders (see question 3.3, point (i)). In addition, they have an obligation to verify whether a financial instrument or service is appropriate and suitable for their clients (see question 3.3, point (iii)).

Swiss Anti-Money Laundering Regulations

Under the Swiss Anti-Money Laundering Act ("AMLA"), asset managers of CISs are treated as financial intermediaries and, as such, are subject to the Swiss regulations against money laundering. In particular, they are to comply with know-your-customer rules and procedures, as well as certain organisational requirements (e.g., internal controls, documentation and continuing education).

2.4 Are there any requirements or restrictions in your jurisdiction for public funds investing in digital currencies?

On 1 July 2021, the Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology entered into force and adapted various Swiss laws to develop the blockchain and DLT area in Switzerland (e.g., licence for DLT trading facilities). However, it does not address CISs, nor does it impact the CISA.

With respect to open-ended CISs, the category "other funds for alternative assets" (see question 2.1, point (iv)) is the only one that may invest in cryptocurrencies. The risk profile of those funds is typically in line with such alternative investments (whether in terms of structure, investment techniques and restrictions). By contrast, SICAFs, LPs, as well as the future L-QIFs, may invest in such alternative products. In any event, managers of CISs invested in crypto-currencies and their custodian banks are to take organisational measures for appropriate risk management in such context. In September 2021, FINMA approved the first Swiss crypto fund, investing primarily in crypto assets. This fund is restricted to qualified investors. Further, it has been confirmed that the regime applicable to the offering of foreign CISs in Switzerland applies without restriction to CISs investing in cryptocurrencies.

2.5 Are there additional requirements in your jurisdiction for exchange-traded funds?

A Swiss KID must be published insofar as an Exchange Trade Fund ("ETF") is listed and can therefore be purchased by retail clients (see question 2.1, point (vii)).

In addition to the provisions regarding L-QIF funds (see question 1.1), the draft revised CISO contains, among others, a new provision specifically dedicated to ETFs (Article 106 of the revised CISO). The introduction of a dedicated provision for ETFs is intended to align Swiss rules with international standards, by including, in particular, increased disclosure requirements. This new provision defines ETFs as units or classes of units of an open-ended CIS that are permanently listed on a Swiss stock exchange and for which at least one "market maker" guarantees that their value, when traded, does not deviate significantly from the indicative net asset value. Even where so-called "mixed-funds" are recognised in Switzerland, a CIS can only qualify as an ETF if all of its units or unit classes are designed as ETFs.

In order to allow investors to get a complete picture of the product, the prospectus will need to mention the name of the market maker and provide information on the listing and the spreads to be complied with. It should also contain a description of the trading process of the ETF and the risks associated with it. It will therefore be necessary to publish information on the subscription and redemption mechanism on the primary market and on the arbitrage possibilities. Further, the prospectus must inform investors of their right to obtain redemption by the fund management company or the SICAV, specifying the conditions and costs involved. The prospectus must also specify where and how often the net asset value and the composition of the ETF's portfolio or its basket of securities will be published. Further, if the ETFs are actively managed, this must be described in the fund contract or the investment regulations, as well as in the prospectus and in the KIDs. In addition, the prospectus must specify how the investment policy is implemented.

Finally, where a CIS contains both ETF and non-ETF unit classes, the new provision specifies that the ETF-type unit classes must bear in their designation the word "ETF" and the prospectus must provide information on the particularities of ETF unit classes, in particular their mode of operation, trading and other differences from other unit classes, as well as the consequences and risks they present for investors. It must also be stated on the first page of the fund contract or the investment regulations, the prospectus and the basic fact sheet, as well as any advertising, that the CIS contains both ETF and non-ETF unit classes.

3 Marketing of Public Funds

3.1 What regulatory frameworks apply to the marketing of public funds?

Concept of offer of CISs

The FinSA defines an offer as any proposal to acquire a financial instrument (e.g., units/shares in CISs, equity and debt securities, structured products, derivatives) that includes sufficient information on the terms of the offer and the financial instrument itself and any communication, which is customarily intended to draw attention to a certain financial instrument and to sell it. According to the FinSO, the following situations do not, however, fall within the definition of an "offer":

- the provision of information in reverse solicitation cases, where no advertisement related to any specific financial instrument has been made by the financial services provider or an agent thereof;
- the nominal indication of financial instruments, accompanied, where applicable, by factual information (e.g., ISIN code, NAV, prices, information on risks, price trends, tax data);
- the simple provision of factual information; or
- the preparation, provision, publication and transmission to existing clients or financial intermediaries of information and documents prescribed by law or contract relating to financial instruments.

The definition of "offer" is defined narrowly and does not cover certain cases of advertising or marketing, which are, however, covered by the concept of "advertisement" under the FinSA (see question 3.3, point (ii)). Further, typical distribution activities of Swiss and foreign CISs generally fall under the definition of "financial services", as a form of acquisition or disposal of a financial instrument. As a result, the requirements applicable to financial services providers under the FinSA are also addressed below.

Investor classification

The requirements applicable to the offer of CISs in Switzerland depend on the regulatory status of the targeted investors. The revised CISA maintains the distinction between qualified investors and non-qualified investors, but the definition of qualified investors has been adjusted to align it with the client segmentation provided for by the FinSA: all professional investors (as defined below) are qualified investors. It is also worth noting that the FinSA introduced a flexible regime allowing the opting in and opting out across the different categories of clients. This election impacts the level of protection applicable to the relevant investors.

The FinSA provides for the following client classification:

Institutional clients

- Financial intermediaries pursuant to the Banking Act, FinIA and CISA (i.e., banks, securities firms, fund management companies, managers of CISs, portfolios managers and trustees).
- Foreign financial intermediaries and insurance institutions (subject to prudential supervision).
- Central banks.
- Regulated insurance institutions.

- National and supranational public entities with professional treasury operations.
- Swiss and foreign CISs and management companies (which are not already deemed institutional investors), provided they have "opted-out".

Professional clients

- Public entities and retirement benefit institutions (pension funds) with professional treasury operations.
- Companies with professional treasury operations.
- Large companies (with a balance sheet of CHF 20 million, a turnover of CHF 40 million or an equity of CHF 2 million).
- Private investment structures with professional treasury operations created for HNWIs.
- HNWIs and private investment structures (without professional treasury operations) created for them, provided they have "opted-out" subject to certain wealth or sophistication conditions.

Professional and institutional clients are considered qualified investors under the CISA, while other types of clients (retail clients) are considered non-qualified investors under the CISA. Private clients are, however, considered qualified investors if a financial intermediary (or foreign financial intermediary subject to equivalent prudential supervision) provides asset management or investment advisory services under a long-term asset management or investment advisory relationship (unless the clients have declared in writing that they do not wish to be considered qualified investors).

Requirements with respect to foreign CISs

Under the regulatory regime, as of 1 January 2020, the offer of foreign CISs is generally more flexible than before, given that (i) the concept of qualified investors is broader under the revised CISA, and (ii) the requirement to appoint a Swiss representative and Swiss paying agent has been substantially reduced. In particular, the appointment of a Swiss representative and paying agent is only required for foreign CISs offered to qualified investors that are HNWIs and private investment structures established for HNWIs without professional treasury operations, which have declared to be treated as professional clients ("opting-out"). The offer to other qualified investors does not trigger any such requirements (see question 1.4).

Main requirements under the FinSA

As indicated previously, the distribution of CISs qualifying as a financial service under FinSA triggers the need to comply with certain rules of conduct and organisational requirements. The following summarises the main obligations imposed on financial services providers in such context:

1. Client advisers' register
   The FinSA introduced an obligation for client advisers (i.e., individuals who actually provide financial services within a given institution or on their own) to register with a specific register held by a registration body, if such client adviser is not employed by a financial institution that is itself subject to FINMA prudential supervision. This obligation also extends to client advisers of foreign financial services providers, unless a statutory exception applies. In this respect, an exemption from the duty to register is provided to client advisers of foreign financial institutions that are subject to prudential supervision in their home jurisdiction, provided that those target only institutional and professional investors (to the exclusion of opted-out HNWIs and structures without professional treasury management created for them) (see above).
2. Mediation body
   The FinSA further introduced an affiliation duty with a mediation body for all financial services providers in Switzerland, as well as for foreign financial intermediaries acting on a cross-border basis. Swiss and foreign financial services providers are, however, exempted from such affiliation, provided they do not target private clients (see above).
3. Rules of conduct
   In relation to offer and marketing activities, information obligations in particular apply. In this context, financial services providers are to inform their clients up-front on: their regulatory status; the general risks linked to the financial instruments that are offered; the specific risks linked to the services that are personally recommended to the client; the related costs; the possibility for the client to initiate procedure with a mediation body; and the existence of economic ties with third parties, which include group companies, in relation to the financial services and instruments that are offered.
   Further, accounting and documentation obligations include the obligation for financial services providers to document: the financial services that have been agreed upon; whether the verification of the appropriate or suitable character of an instrument/service has been made (in case of asset management and investment advice services); the financial services actually provided; and the need and reasons for a recommendation made to a client. By contrast to MiFID II, a financial services provider only has to account to a client upon request and within a timeframe agreed with that client. There is no obligation to account for the costs on a regular basis, unless agreed otherwise between the client and the financial services provider.
   It is worth noting that rules of conduct do not apply towards institutional clients, while professional clients may waive the application of the information and documentation requirements.
4. Organisational measures
   Organisational measures must be implemented in order to ensure an appropriate organisation of the financial service providers and to ensure that its staff possess the necessary skills, knowledge and experience and to prevent and manage conflicts of interests. This also include specific rules in relation to compensation from third parties (see question 3.3, point (i)).

3.2 Is licensure with a regulatory authority required of persons (whether entities or natural persons) engaged in marketing activities? If so: (i) are there commonly available exceptions that may be relied on?; and (ii) describe the level of substantive regulation applied to licensed persons.

As of 1 January 2020, the licensing requirements for Swiss distributors have been abolished. As a result, no regulatory authorisation from FINMA is required to conduct purely offering or marketing activities. That being said, with the entry into force of the FinSA, such "distributors" are generally deemed to provide financial services and are therefore subject to certain duties, namely the registration duty with a client advisers' register and a mediation body, as well as the compliance with FinSA's rules of conduct and organisational measures described under question 3.1.

3.3 What are the main regulatory restrictions and requirements in the following areas, if any, that must be complied with by entities that are involved in marketing public funds?

i. Distribution fees or other charges

Financial services providers are entitled to retain retrocessions and other distribution fees they receive in connection with

their mandate, only on the basis of a comprehensive waiver based on an informed consent of the client covering the type, the scope, and the amounts of the compensation. In all other circumstances, the client is entitled to such retrocessions and fees. Under the FinSA, the disclosure requirement applies irrespective of any mandate relationship, i.e., including in case of "execution only" transactions. Under the AMAS Code of Conduct (which incorporates the former AMAS Transparency Guidelines), distributors and Swiss CIS representatives are to inform investors of fees, costs, rebates and retrocessions paid or received in relation to the CIS.

ii. Advertising

Advertisement is defined as any communication aimed at investors (i.e., not limited to qualified investors) that draw their attention to certain financial services or instruments. The advertisement for a CIS must be clearly identifiable as such. Further, it shall mention the prospectus and the KID on the CIS and where these documents can be obtained. Such advertisement must be consistent with the information contained in the prospectus and the KID.

The following, however, does not constitute an advertisement:

- the nominal mention of financial instruments whether or not related to the publication of prices, rates, NAV, price lists, price movements or tax data;
- announcements as regards issuers or transactions, in particular if they are prescribed by law, by supervisory law or by rules specific to trading platforms;
- the provision or transmission by the financial services provider of an issuer's communications to existing clients; and
- articles in specialised press.

In terms of content, it should be noted that, under the CISA, foreign fund documentation, marketing materials and any other publications or websites must disclose the identity of the Swiss representative and paying agent (if any), the home jurisdiction of the CIS, the place where the relevant fund documents are available, as well as the place of performance and jurisdiction at the registered office of the Swiss representative (if any).

iii. Investor suitability

Under the FinSA, the obligation to verify whether a financial instrument/service is appropriate or suitable applies in the context of advisory or discretionary asset management services. By contrast and contrary to MiFID II, no verification of the suitability and appropriateness of a financial service/instrument is required in the context of "execution only" transactions (although the financial services provider is to inform the investor that no verification is made in this context). Furthermore, the FinSA distinguishes between advisory services linked to an individual transaction, which only triggers the obligation to verify the appropriateness of that transaction, as opposed to a global advisory service taking into account the entire client portfolio, which triggers the verification of the suitability of the financial instruments or services for the specific client. The above obligations do not apply in relation to services provided to institutional clients. Likewise, financial services providers may assume that professional clients have necessary knowledge and experience, as well as assuming economically the risks associated with the proposed services.

iv. Custody of investor funds or securities

Unlike Swiss LPs, fund management companies, SICAVs and SICAFs must designate a custodian bank with respect to their CISs. Custodian banks are to be authorised by FINMA. The custodian banks' role comprises the holding of fund assets on deposit, the handling of payments processing and the issuance and the redemption of units. Safe-keeping tasks may be delegated to third-party or collective depositories in Switzerland or abroad, provided this appears appropriate. In that event, investors are to be informed of the risks associated with such a delegation in the fund prospectus and the KID. Custodian banks are to further ensure that the fund management company, the SICAV or the SICAF complies with the applicable law and the fund regulations.

3.4 Are there restrictions on to whom public funds may be marketed or sold?

Please refer to question 1.4, as well as question 3.1 as regards the different types of investors.

3.5 Are there other main areas of regulation that are imposed with respect to the marketing of public funds?

Under the FinSA, anyone who makes a public offer (i.e., an offer that is addressed to an unlimited number of investors) to purchase financial instruments in Switzerland must first publish a prospectus. The offering of foreign CISs to qualified investors is, however, not subject to such prospectus requirements. Likewise, the duty to establish a KID only applies with respect to private clients (i.e., non-qualified investors). The requirements with respect to advertising are reserved (see question 3.3, point (ii)).

Separately, marketing activities in Switzerland are subject to the Swiss Unfair Competition Act ("UCA"), which addresses commercial communication with customers and prohibits unfair business practices. Under the UCA, any behaviour or business practice that is deceptive or that infringes the principle of good faith with the result of affecting the relationship between suppliers and customers is deemed unfair and unlawful.

4 Tax Treatment

4.1 What are the types of entities that can be public funds in your jurisdiction?

Please refer to question 1.1.

4.2 What is the tax treatment of each such entity (both entity-level tax and taxation of investors in respect of allocations of income or distributions, as the case may be)?

As a matter of principle, Swiss CISs are not liable to income and capital taxes. Taxation does not take place at the level of the CIS, but usually directly targets investors, provided the CIS is deemed transparent for tax purposes. The taxation regime largely depends upon the legal structure under the CISA.

Swiss CISs

Open-ended CISs, such as the contractual investment fund and the SICAV, are not considered entities subject to Swiss corporate income tax. Taxation is applied directly to investors according to their country of tax residence. The same regime is applicable to the Swiss LP. That being said, there are two exceptions to these general taxation principles:

- a SICAF is subject to Swiss corporate income tax, as it is treated as a separate taxpayer under Swiss tax law; and
- CISs owning real estate are taxed as corporations on the portion of their income that is directly derived from real estate.

All income that is distributed by Swiss CISs is subject to a withholding tax of 35%, which is entirely or partially recoverable by the investor (as regards investors based outside of Switzerland, the reimbursement of the withholding tax depends upon the provisions of the applicable double tax treaty). Exceptions to this general principle are possible. For example, a distribution of net capital gains realised by a CIS is exempt from withholding tax to the extent that these capital gains are clearly separated from the income.

Fund management companies

Fund management companies are considered taxpayers in their own right as they are incorporated as a corporation. As any other legal entity, they are subject to corporate income tax. Management and distribution services provided by such companies to Swiss and non-Swiss CISs remain generally exempt from Swiss value-added tax.

Investors

Swiss-resident investors of CISs that are transparent for tax purposes are taxed on their share of fund income. This taxation principle depends upon the structure of the fund (i.e., distributing or growth) and the income received (i.e., capital gains or other ordinary income realised by the CIS). Capital gains attributable to private investors are normally exempt to the extent that they are distributed with a separate coupon or they are separately booked in the accounts of the CIS.

4.3 If a public fund, or a type of entity that may be a public fund, qualifies for a special tax regime, what are the requirements necessary to permit the entity to qualify for this special tax regime?

This is not applicable in our jurisdiction.

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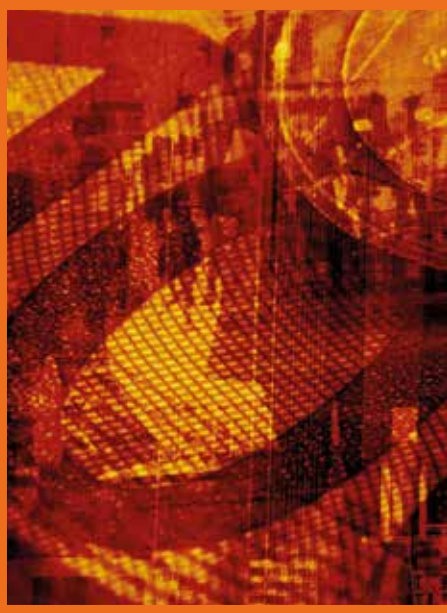

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