

Sustainable Finance – AMAS introduces new ESG self-regulation

On 26 September 2022, the Asset Management Association Switzerland ("AMAS") published new ESG self-regulation, implementing a new ESG framework for producers and investment managers of Swiss collective investment schemes, being either positioned or managed based on sustainability criteria. The new rules will have an impact not only on the publication and reporting of sustainability-related information, but also on the governance and internal processes of the producers of such collective investments schemes and their managers.

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1. Background

Against the background of international developments, especially in the European Union, the Swiss government's stated objective is to align with the highest international sustainability standards to prevent international disparities as regards ESG regulations and hence to strengthen the credibility and competitiveness of the Swiss financial market as a whole. In this context, Swiss authorities, including FINMA, have put a particular focus on the prevention of greenwashing.

To answer the Swiss government's ESG objectives in the financial sector, the two leading financial

industry associations, which are the Swiss Bankers Association ("SBA") and AMAS, have issued industry specific self-regulation. This summer, SBA published Guidelines for the integration of ESG-preferences and ESG risks into investment advice and portfolio management (the "SBA ESG Guidelines"). To answer the needs of the asset management industry, AMAS has published a self-regulation on 26 September 2022 with a view of setting ESG standards for producers and investment managers of sustainability related collective investment schemes (the "AMAS ESG Guidelines").

The new ESG self-regulation by AMAS and SBA is in line with Switzerland's historic reliance on self-regulation in the financial sector. Other ESG self-regulation are expected to be published shortly, namely by the Swiss Association of Pensions Funds (ASIP), the Swiss pension funds industry association. This being said, the Swiss government is expected, within the next few months, to express whether the new ESG self-regulation is viewed as a sufficient measure to meet its objectives, or whether it intends to propose a legislative reform on sustainable finance.

2. Regulatory Nature

The AMAS ESG Guidelines are a so-called "free self-regulation", meaning that FINMA has not and will not declare this self-regulation as a minimum standard. While the AMAS ESG Guidelines expressly state that they are binding on AMAS members, the absence of recognition by FINMA is a conscious choice based on the current absence of a legal basis to do so.

The AMAS ESG Guidelines intend to set out certain standards that the entities in-scope can strengthen and is based on a "principle-based approach". This leaves room for in-scope institutions to comply with the AMAS ESG Guidelines in a way that suits their specific business model and ESG strategies.

3. Substituted Compliance

The AMAS ESG Guidelines are not intended to provide for a so-called "Swiss finish" (i.e. using non-Swiss rules and regulation as a basis and adding Swiss-specific requirements). The AMAS ESG Guidelines provide that in-scope institutions may opt to comply with comparable international foreign standards in lieu and place of the AMAS ESG Guidelines. The AMAS ESG Guidelines expressly recognize the EU regulations for the purpose of this "substituted compliance", without excluding the recognition of other foreign regulations a number of which AMAS is expected to recognize as comparable to the AMAS ESG Guidelines within the next months. A recognition by AMAS does not presuppose that the foreign standards are equivalent or comparable. Of note, it was a conscious choice of AMAS, as opposed to SBA, not to limit substituted compliance to EU laws, but also to include other jurisdictions in order to strengthen the position of Switzerland as an asset management center for collective investment schemes in a variety of jurisdictions. The list of recognized comparable foreign regulatory frameworks are expected to be published on AMAS' website.

In addition to substituted compliance, the AMAS ESG Guidelines also recognize that a financial institution has the option to alternatively comply with another Swiss self-regulation, such as the standards, which the pension funds industry is expected to publish soon, if the client so requires. This "alternative compliance" allows asset managers to comply in a commercially flexible manner with the standard chosen by their clients. If the client does not select any other standard, the AMAS ESG Guidelines apply by default.

4. Key Obligations

The AMAS ESG Guidelines include mainly governance requirements as well as organizational, process and documentation obligations for asset managers who must ensure that they have the required infrastructure, resources, organization, documentation and processes, including as to ESG compliance and risk management.

The AMAS ESG Guidelines impose new requirements as to the sustainability knowledge of executives, managers, and other employees of an asset manager entrusted with sustainability-relevant tasks. This may imply the obligation to organize trainings at all governance levels, but no training is imposed where the required ESG knowledge already exists.

Delegation and sub-delegation agreements shall include competencies, responsibilities, accountability, and control rights regarding sustainability matters. The rules on delegation in the AMAS ESG Guidelines are aligned with the delegation requirements under the Financial Institutions Act (FinIA). They require the relevant ESG criteria and requirements to be included in the relevant delegation agreements. In addition, general rules on delegation, risk management, and compliance are to be supplemented in order to include ESG aspects (for new and existing delegation and sub-delegation agreements).

Furthermore, the AMAS ESG Guidelines set out specific rules regarding the design of the investment policy and the use of sustainability data and metrics. In particular, the proportion of investments that must meet the sustainability requirements must be stated in the investment management agreement (or in a document referred to in such agreement). The asset managers must record sustainability metrics relevant to the implementation of the strategy in a verifiable manner.

Also, the question of the control of sustainability data and tools of third-party providers, which is an important element of any ESG process, has been solved in the AMAS ESG Guidelines in a pragmatic manner: The asset manager's responsibility is limited to the control of the third-party providers' organization, the scope of data and other key aspects which are decisive for the investment process.

Additional rules apply to specific approaches such as stewardship, impact investments or climate-oriented approach.

The AMAS ESG Guidelines also introduce reporting requirements. Asset managers (or a third party) must inform investors annually on the basis of a sustainability report (to be published on a website, for example). Such report must include the most important sustainability approaches used, describe such approaches and compare the most important ratings, metrics or other benchmarks. Regarding impact strategies, the reporting must include an evaluation of the extent to which the fund or pension fund has achieved the sustainability objectives.

5. Timeline

The AMAS ESG Guidelines enter into force on 30 September 2023, except for provisions requiring a change in the fund documents, which must be submitted to FINMA by 30 September 2024. New funds to be authorized after 30 September 2023 must already comply with the AMAS ESG Guidelines.

Investment management agreements with pension funds must be updated by the first contractual term or update occurring after 30 September 2024.



Reporting obligations must cover the first full year following the fund's approval or update of the fund documents, meaning year 2024 for new funds approved following 30 September 2023 or for funds which updated their documents by 30 December 2023, and year 2025 for funds which updated their documents after 1 January 2024.

6. Other initiatives

The SBA ESG Guidelines, by contrast to the AMAS ESG Guidelines, focus mainly on point-of-sale obligations, and apply only to portfolio management and investment advice services within the meaning of the Financial Services Act ("FinSA"). It is noteworthy that none of the SBA ESG Guidelines and the AMAS ESG Guidelines intend to set standards, which would apply to and govern distribution activities, i.e. the purchase and sale of financial instruments within the meaning of FinSA.

Other industry associations are also expected to publish similar self-regulation documents for their specific industry sector. As mentioned above, this holds true, in particular, for the Swiss Association of Pension Funds (ASIP), which is developing its own ESG self-regulatory standards to be published in fall 2022.

7. Outlook

The AMAS ESG Guidelines, together with the SBA ESG Guidelines, are a strong sign of the Swiss financial industry's commitment to align with the highest international standards on ESG, and particularly to mitigate greenwashing risks. It also preserves a certain flexibility to allow the implementation not only of local standards in line with the business models of smaller Swiss market participants but also to allow other more global Swiss financial institutions to implement international standards as applied within the context of their worldwide activities. Whether or not the proposed principles-based approach of the AMAS and SBA will be deemed sufficient by the Swiss authorities remains to be seen. .

Please do not hesitate to contact us if you have any questions.

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