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Frequently asked questions

about the Financial Services and Financial Institutions Acts (FinSA/FinIA)

Preliminary remarks:

Entry into force of the FinSA/FinIA on 1 January 2020 will mark a sweeping change in Switzerland's financial market architecture. The fund and asset management industry will be particularly affected since collective investment scheme legislation is being significantly amended under the FinSA/FinIA. Today's primarily sectoral regulation will in future be broken down into regulation under the FinSA and FinIA. Where possible and appropriate, the rules for the various financial instruments and financial services will be uniformly established and structured. This is not always easy especially since collective investment schemes remain the only financial instruments that will be subject to additional product-specific supervisory rules pursuant to the CISA, such as product approval.

The CISA currently essentially governs three different areas: (1) the licensing and supervision of financial institutions, (2) the distribution of collective investment schemes and (3) the approval of collective investment schemes as well as other product-specific rules.

The following is a summary of the new regulation architecture: (1) The licensing and supervision of fund management companies and managers of collective assets will be transferred to the FinIA, (2) the rules for the "distribution" of financial instruments and the provision of financial services as well as the corresponding requirements at the point of sale will in future be governed by the FinSA. (3) The product-specific rules, such as the approval requirement for collective investment schemes, ultimately remain under the CISA. Consequently, the concepts established under the CISA – such as the term "distribution" – will be dropped when the new regulations enter into force on 1 January 2020. Since, however, the level of client protection in Switzerland's financial centre is by and large to be appropriately increased, various of the previous regulatory areas in the CISA have been adequately integrated into the new regulations.

Over the past weeks and months, we have been confronted with various questions about the implementation of the new regulations. Various matters were unclear from the perspective of the fund and asset management industry, specifically with regard to the deletion of certain rules in the CISA and their integration into the FinSA and FinIA. The purpose of the present document is to provide answers to the most important of these questions and contribute to establishing a uniform practice during and after the envisaged transitional periods. In the course of November 2019, SFAMA conducted various member workshops at which these questions were also discussed. The key questions were additionally discussed in various SFAMA expert committees and task forces. The outcomes of these discussions have been integrated into this document. These FAQ focus on the fund and asset management business. FINMA has acknowledged the German version of the present document.

Finally, we wish to point out that the responses to the above-mentioned FAQ can only be of a general nature. It goes without saying that in a concrete individual case the specific circumstances have to be taken into account.

I. Questions relating to the FinSA

1. Definitions / scope of application (Article 3 FinSA)

1. Is pure funds distribution deemed to be a financial service under the FinSA?

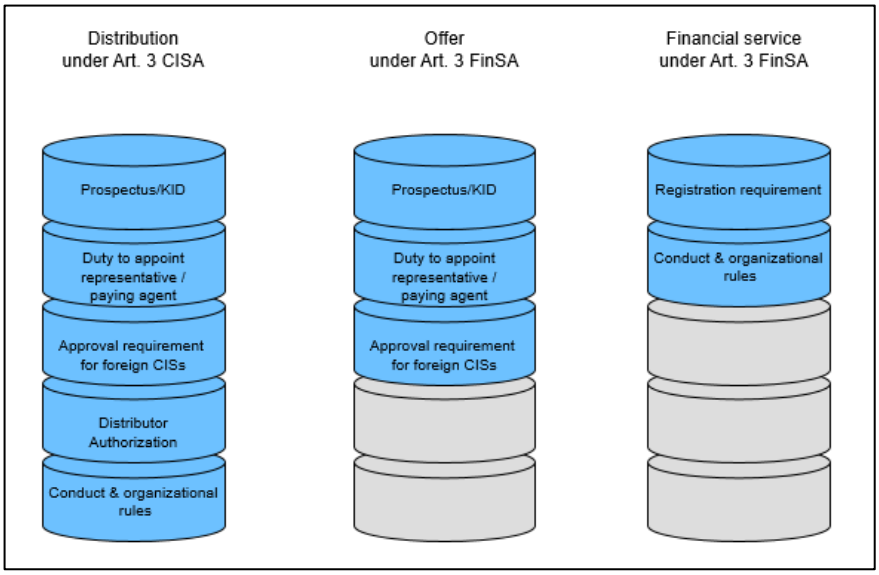
One of the main aims of Article 3 paragraph 2 FinSO was to make it clear that pure funds distribution, i.e. activities which do not achieve the quality of investment advice, is also deemed to be a financial service. The provision clarifies that the acquisition or disposal of financial instruments within the meaning of Article 3 letter c cipher 1 FinSA – and thus a financial service – is deemed to be any activity addressed directly at certain clients that is specifically aimed at the acquisition or disposal of a financial instrument. In practice, this will include interactions which, based on an assessment of the circumstances, must be considered, potentially or actually, as an important element, or "cause", of a specific investment decision by the client.

It follows from the purpose of the FinSA that only interactions with "end investors" qualify as financial services in the sense of Article 3 paragraph 2 FinIO. Accordingly, the provision of information on financial instruments to supervised financial intermediaries is generally not regarded as a financial service within the meaning of Article 3 paragraph 2 FinSO. This would only be the case if a financial intermediary exceptionally acquired the financial instruments in question for its own account (i.e. nostro). The final version of the Explanatory Report also clearly states that the respective financial intermediary must be prudentially supervised (see ER, page 19). Furthermore, this differentiated approach corresponds to the current legal situation (Article 3 paragraphs 1 and 2 CISA) and has proven its merits, as it takes into account the need for protection of end clients without, at the same time, unnecessarily complicating, and thus potentially diminishing, financial intermediaries' access to financial instruments. In these cases, a financial service relevant in the context of Article 3 FinSA takes place downstream between the financial intermediary and its client.

2. How are financial services pursuant to Article 3 paragraph 2 FINSO (acquisition/disposal) on the one hand to be distinguished from the offering of and advertising for financial instruments on the other?

Unlike the current definition of distribution (Article 3 CISA), a financial service (Article 3 letter c) and an offer (Article 3 letter g) are two concepts independent of one another under FinSA. Depending on which questions are to be answered, it is necessary to verify whether a specific activity is deemed to be a financial service or an offer (see chart below). It is also possible in a concrete case that the definition of both terms is satisfied.

To some extent, advertising is a "preliminary stage" of the offer and only has isolated requirements directly attached to it. This applies, for instance, to the requirement to make advertising recognizable as such (Article 68 FinSA) as well as to the fund-specific rule in Article 127a CISO.



3. What are the consequences of an activity being deemed a financial service?

Where an activity is deemed to be a financial service, this mainly triggers the following requirements: (1) client segmentation (Article 4 et. seq. FinSA), (2) code of conduct (Articles 7-19; Article 20 FinSA), (3) organizational rules (Articles 21-27 FinSA), (4) registration in the register of advisers (Articles 28-34 FinSA) and (5) affiliation with an ombudsman (Articles 74-86 FinSA).

Depending on whether a financial service provider is prudentially supervised and/or whether its service is only targeted at professional clients, including institutional clients, certain exemptions to the requirement to be registered in the register of advisers as well as relaxations of the code of conduct may apply (see Article 20 FinSA (code of conduct) and Article 31 FinSO (register of advisers).

4. What are the consequences associated with the offering of and advertising for Swiss collective investment schemes?

Essentially, the following consequences are associated with the offering of Swiss collective investment schemes:

- duty to publish a KID for offers to retail clients (Article 58 FinSA).

Pro memoria: The duty required of Swiss collective investment schemes to publish a prospectus arises from Article 48 et seqq. FinSA (see also question 24) and – as with the authorization and approval requirements (Articles 13 and 15 CISA) which Swiss collective investment schemes are, in principle, subject to – is not directly linked to the offer.

The FinSA merely requires that advertising must be clearly indicated as such (Article 68 as well as Article 8 paragraph 6 FinSA). Advertising for Swiss collective investment schemes – unlike that for foreign collective investment schemes – does not trigger any special statutory consequences pursuant to the CISA (see question 5 for foreign collective investment schemes).

5. What are the consequences associated with the offering of and advertising for foreign collective investment schemes?

Essentially, the following consequences are associated with the offering of foreign collective investment schemes:

- Special statutory obligations within the meaning of Article 120 paragraphs 1, 2 and 4 revCISA, depending on whether an offer is made to non-qualified investors (product approval including prospectus and appointment of representative and paying agent) or high-net-worth clients within the meaning of Article 5 paragraph 1 FinSA (appointment of representative and paying agent);
- duty to publish a KID for offers to retail clients (Article 58 FinSA).

On the basis of the rule in Article 127a CISO, advertising for foreign collective investment schemes already triggers the corresponding special statutory obligations according to CISA (see above regarding the offering). Further, the FinSA merely requires that advertising must be clearly indicated as such (Article 68 as well as Article 8 paragraph 6 FinSA).

To sum up, in the case of "per se" qualified investors in foreign collective investment schemes, no special statutory obligations pursuant to the CISA arise from either the offer or from advertising.

For the offering of and advertising for Swiss collective investment schemes see question 4.

6. Are fund management companies which merely manage and do not themselves "distribute" their own investment funds considered to be financial service providers within the meaning of the FinSA?

No. Unlike under the current CISA, the FinSA links the code of conduct and organizational rules at the point of sale directly to the financial service providers. On the other hand, the remaining rules in the CISA, in particular Article 20 revCISA, are limited to product-specific aspects. Based on this, a fund management company which manages exclusively its own funds (including portfolio management) and does not itself "distribute" these as part of a financial service is not a financial service provider within the meaning of the FinSA.

However, the product-specific code of conduct and organizational rules remaining in the CISA under Article 20 revCISA continue to apply to fund management companies. They apply to all persons who manage or represent collective investment schemes or hold the assets of these schemes in safekeeping, as well as their agents. Unlike currently, codes of conduct and organizational rules at the point of sale are no longer set out in Article 20 revCISA, but in the FinSA. The revised SFAMA code of conduct will also follow this triage and essentially limit itself to product-specific topics (for the timetable of changes to SFAMA's self-regulation regime see question 33).

In order to be considered a financial service provider, it is consequently not enough if a corresponding financial institution might theoretically provide a financial service within the meaning of Article 3 letter c FinSA, but rather it needs to actually provide such a financial service. All other fund management activities will in future be subject to product-specific rules set out in the CISA as well as to those in the fund contract and the remaining fund documents.

If, however, in addition to conducting fund business as mentioned above, a fund management company also provides further services, such as, in particular, individual investment advice, asset management for third parties or pure fund distribution, these activities constitute a financial service and the requirements under the FinSA apply.

Accordingly, FinIA and CISA institutions are only deemed to be financial service providers if they are actually active at the point of sale (see also the clarification on FinIA institutions in Article 93 paragraph 2 FinIO). This also applies in particular to representatives of foreign funds.

7. Are fund management companies deemed to be financial service providers if they have been delegated to provide portfolio management for collective investment schemes that are not their own?

Yes. If a fund management company, SICAV or limited partnership for collective investment delegates portfolio management to a (different) fund management company, the latter is thus managing the financial instruments of a third party on a commercial basis and accordingly providing a financial service within the meaning of Article 3 letter c item 3 FinSA. In this case, the client within the meaning of the FinSA is the delegating fund management company, SICAV or limited partnership for collective investment. What is more, this applies analogously to a delegation of portfolio management to managers of collective assets within the meaning of Article 24 FinIA, including portfolio managers within the meaning of Article 24 paragraph 2 FinIA.

The delegation of portfolio management for Swiss funds is subject to the corresponding provisions in the FinIA (including Article 14 and Article 35 FinIA) and FinIO (including Articles 15-17 and 56 FinIO). In the case of foreign funds, the delegation provisions of the respective fund domiciles apply. It also appears clear that the delegating financial intermediary's product-specific code of conduct and organizational rules, which are associated with the portfolio management of collective investment schemes and based on collective investment scheme legislation, are likewise delegated and applied (for details of the relevant requirements see question 6).

The following applies to conduct rules within the meaning of the FinSA: Since the delegating institutions in the fund sector (fund management companies, SICAVs and limited partnerships for collective investment) are financial intermediaries within the meaning of the FinIA or CISA (Article 4 paragraph 3 letter a FinSA), they are deemed to be institutional clients pursuant to Article 4 paragraph 4 FinSA. Consequently, the code of conduct pursuant to Articles 7-19 FinSA generally does not apply to the latter (Article 20 paragraph 1 FinSA). On the other hand, however, as mentioned above, under the delegation the product-specific code of conduct and organizational rules pursuant to the CISA apply, including the corresponding SFAMA self-regulation regime. For this reason, Article 20 revCISA was retained (see question 6).

8. Are managers of collective assets which have been delegated to manage collective investment schemes considered to be financial service providers?

Yes. See answer to question 7.

9. Are representatives of foreign collective investment schemes who do not themselves "distribute" these considered to be financial service providers?

No. See answer to question6.

10. Are roadshows considered as financial services?

Whether roadshows should be considered as financial services depends on the specific circumstances of each case. In light of the fact that an activity is only deemed to constitute a financial service in the sense of Article 3 paragraph 2 FinSO if a certain potential end investor is addressed directly, aiming at the acquisition or disposal of a specific financial instrument by such client, we are of the opinion that roadshows will, in many cases, not be characterized as a financial service.

Even if an activity is not deemed to constitute a financial service, a check should be made in each individual case as to whether the conditions are met for it to qualify as an offer or, in minimum, advertising. There might in fact be a thin line between activities constituting only an offer and

those which may also be characterized as a financial service. With the new financial market architecture however, those are two independent concepts.

2. Client segmentation (Article 4 et seq. FinSA / Article 10 revCISA)

11. When does client segmentation have to be implemented under the FinSA or the CISA?

Financial service providers can generally profit from a two-year transitional period when implementing client segmentation (Article 103 FinSO). For detailed information on the transitional periods under the FinSO see question 28 et seqq.

On entry into force of the FinSA/FinIA, however, the revised CISA also takes effect. The term "distribution" pursuant to Article 3 CISA as well as all related exemptions will no longer apply. Client groups previously exempted in this connection are, in principle, deemed to be qualified investors (QIs) effective 1 January 2020. This means in particular that investment advisory clients will newly be deemed to be QIs (previously falling under non-distribution; Article 3 paragraph 2 letter a CISA). Investment advisory and portfolio management clients must, among other things, be informed that they are deemed to be QIs (Article 6a revCISO). Since asset management clients are already deemed to be QIs under the current CISA and the requirement pursuant to Article 6a oldCISO previously already applied to them, any need for action primarily concerns investment advice.

Essentially, however, there is also a transitional period in place in respect of information pursuant to Article 6a revCISO (Article 144 paragraph 6 revCISO). Depending on the business model and client structure, with a view to the authorization of investment advisory clients for the acquisition of collective investment schemes for QIs, it makes sense to inform clients earlier.

Information and explanations provided pursuant to Article 6a oldCISO continue to apply in principle to collective investment schemes until the clients concerned have been segmented in accordance with the FinSA (see ER p. 84).

3. Code of conduct / organizational rules (FinSA) (Articles 7-27 FinSA)

12. What does best execution entail in the fund business?

Best execution requirements are currently set out in Article 22 oldCISA and in the SFAMA code of conduct (see margin no. 33 et seqq.). In future too, best execution rules in the fund business will be set out in the CISA and in the SFAMA code of conduct, provided the respective services in question are not considered to be financial services according to FinSA. The deletion of Article 22 oldCISA on entry into force of the FinSA/FinIA does not mean that there will no longer be any best execution rules within the fund business since these are in principle a component of the requirements under Article 20 revCISA, which will remain in force. The corresponding requirements also apply to agents of persons who manage or represent collective investment schemes or hold the assets of these schemes in safekeeping (Article 20 paragraph 1 revCISA) and thus also come into force when the portfolio management function of a fund is delegated (see question 7).

In respect of financial services, this matter will in future be regulated under Article 18 FinSA and 21 FinSO. Since fund management companies and other FinIA and CISA institutions which are not themselves active at the point of sale are not deemed to be financial service providers within the meaning of the FinSA, the provisions under the FinSA do not in principle apply to these institutions. Consequently, it does not matter that Article 18 FinSA does not apply to transactions involving institutional clients. Essentially, it can be assumed that the new SFAMA code of conduct follows the regulation in Article 18 FinSA with regard to best execution. For the timetable of SFAMA's new self-regulation regime see question 33.

4. Register of advisers and ombudsman (Article 28 et seqq. and Article 74 et seq. FinSA)

13. Who does the duty to be registered in the register of advisers apply to and who can benefit from exemption?

Domestic financial service providers: The duty to be registered applies to client advisers of domestic financial service providers not subject to supervision in accordance with Article 3 of the FINMASA.

Foreign financial service providers: Further, the duty to be registered applies to client advisers of foreign financial service providers. They may profit from an exemption from the duty to be registered if the following two requirements are cumulatively satisfied (Article 31 FinSO):

(1) The foreign financial service provider is prudentially supervised abroad; and

(2) target clients in Switzerland are exclusively professional clients, including institutional clients.

According to the ER on Article 31 FinSO, the duty to register also does not apply to client advisers of branches and representations of foreign financial institutions, which pursuant to Article 52 or 58 FinIA require authorization from FINMA and are therefore FINMA-supervised.

Pro memoria: Only natural persons may be registered, but not legal persons. According to the ER on Article 31 FinSO, financial service providers may complete the registration on behalf of their client advisers.

In the context of transitional legislation, it should be noted that client advisers of asset managers and trustees which have reported to FINMA within 6 months of entry into force of the FinSA and FinIA and subsequently submit an application for authorization within the three-year transitional period are not required to be registered in the register of advisers during this period (see ER on Article 92, p. 114). For details of the transitional period for the duty to be registered in the register see question 28.

14. Are representatives of foreign collective investment schemes required to be registered in the register of advisers if they provide financial services?

Client advisers of domestic financial service providers, which are not subject to supervision pursuant to Article 3 FINMASA, must be registered in the register of advisers (Article 28 paragraph 1 FinSA). Since representatives of foreign collective investment schemes require approval from FINMA (Article 15 paragraph 2 letter h CISA), they are deemed to be FINMA-supervised within the meaning of Article 3 FINMASA. Employees of representative of foreign collective investment schemes are therefore not required to be registered in the register of advisers. All other requirements under the FinSA, i.e. affiliation with an ombudsman, must, however, be met if a representative of foreign investment schemes also provides financial services in accordance with the FinSA.

15. What are the criteria for satisfying the registration conditions (Article 29 FinSA), i.e. the necessary knowledge (Article 6 FinSA)?

The registers of advisers are responsible for defining the registration conditions. No further details are currently available.

16. Is there already a register of advisers in place?

FINMA has to date not yet approved a register of advisers. We expect this to happen in the first half of 2020. That is when the six-month period for registration in the register begins (Article 95 paragraph 2 FinSA und Article 107 FinSO; see question 28)

17. Are domestic or foreign financial service providers which are exempted from registration in the register of advisers also required to be affiliated with an ombudsman?

Yes, this requirement applies to all financial service providers, regardless of whether they have to be registered.

18. Is there already an ombudsman in place?

The FDF has to date not yet approved an ombudsman. We expect this to happen in the first quarter of 2020. That is when the six-month period for affiliation with the ombudsman begins (Article 95 paragraph 3 FinSA und Article 108 FinSO).

5. Prospectus / KID (Article 48 et seqq., Article 58 et seqq. FinSA and CISA)

19. What provisions apply to the prospectus for collective investment schemes?

According to the ER on Article 58 FinSO, the provisions for the prospectus of Swiss collective investment schemes (Articles 48-50 FinSA, Article 58 and Annex 6 FinSO) constitute lex specialis. Consequently, the general provisions on prospectuses are not applicable. This is also true of the general statutory exemption from the requirement to publish a prospectus where professional clients are being targeted (Article 36 paragraph 1 FinSA). According to the ER on Article 58 FinSO, FINMA may generally grant an exemption from the requirement to publish a prospectus for collective investment schemes for qualified investors, namely under a single ruling or, if necessary, under the CISO-FINMA. Corresponding exceptions pursuant to Article 10 paragraph 5 CISA are currently already being granted. FINMA will also continue this practice under the new regulations.

20. Do the FinSA requirements to publish a prospectus also apply to foreign investment schemes?

No. Foreign collective investment schemes are subject solely to the special statutory obligations under CISO and CISA (documents required of foreign collective investment schemes, see Article 15 CISA, Article 13a CISO and Article 51 paragraph 3 FinSA; ER on Article 58 FinSO).

21. What is the required minimum content of a prospectus for Swiss collective investment schemes?

The minimum content is based on Annex 6 FinSO.

22. What is the required minimum content of a prospectus for foreign collective investment schemes?

The provisions of the FinSA, specifically also Annex 6 FinSO, do not apply to foreign collective investment schemes. The special statutory provisions under collective investment scheme legislation apply (see question 23).

23. Which language can the prospectus for capital investment schemes be published in and submitted to FINMA?

The prospectus for domestic collective investment schemes may be submitted in an official language of Switzerland or in English. The fund contract and investment regulations must,

however, be submitted in an official language. In principle, the prospectus may already be submitted in English to FINMA as of 1 January 2020. The prospectus must be published in the language stipulated in the approval decree issued by FINMA. Accordingly, any change in the prospectus language requires approval from FINMA in the form of a decree. For information on the transitional provisions, we also refer to our comments on the fund documents (see questions 28 and 31).

The prospectus and the documents of foreign collective investment schemes may be submitted in an official language of Switzerland or English. This also applies to the annual and semi-annual reports (Article 13a, Article15 paragraph 3 and Article 133 paragraph 1 revCISO). With regard to matters of form, the above remarks on domestic collective investment schemes apply.

24. Under which conditions does the duty to publish a KID apply?

This duty depends on the client segmentation according to the FinSA (not on QIs pursuant to the CISA). The KID must be made available to retail clients free of charge on a personal recommendation or on execution or transmission of client orders (execution only), insofar as in the latter case a KID is available (Article 8 paragraphs 3 und 4 FinSA). This duty does not apply in the case of a portfolio management mandate, especially since in these constellations it does not constitute an offer within the meaning of Article 3 FinSA.

25. What information must a KID contain?

The mandatory and exclusive content is detailed in Annex 9 FinSO.

26. Which documents pursuant to foreign legislation are recognized as equivalent to the KID?

According to Annex 10 FinSO, only the PRIIPs-KID (Regulation (EU) No 1286/2014 and Delegated Regulation (EU) No. 2017/653) is recognized as equivalent. According to the ER on Article 110 FinSO, a Swiss fund is permitted solely to publish a PRIIPs-KID in place of a KID. It must also be noted that for a product either a KID or a PRIIPs-KID may be published or used in Switzerland.

The UCITS-KIID is not recognized as equivalent since in the EU itself it is not considered equivalent to the PRIIPs-KID and is likely to be replaced by the latter. The transitional ruling contained in the PRIIPs with regard to the UCITS-KIID is taken into account by means of an analogous transitional ruling in Article 110 FinSO (see ER on Article 110 FinSO). This means that for these products instead of the UCITS-KIID the CISA-KID is still to be used, provided no KID is used.

27. Which language can the KID for collective investment schemes be drawn up in?

The KID for domestic and foreign collective investment schemes can be published in an official language of Switzerland or in English, but not in any other language of correspondence of the client since it has to be submitted to FINMA (Article 89 paragraph 2 FinSO as well as the related ER; Article 13a and 133 revCISO).

If CISA-KIDS or "key information for investors" in accordance with Annex 3 of the previous CISO continue to be used during the transitional period, these documents must – as has been the case up until now – be submitted in an official language (English is not permitted).

For details of the transitional periods for the KID, we refer to questions 28 et seqq.

II. Transitional periods under the FinSO: the phasing out of requirements pursuant to the CISA (Article 103 et seqq., in particular Article 105 and Article 106 FinSO)

28. Which transitional periods apply?

The transitional provisions on the FinSA (including the FinSO) can be found in Article 95 FinSA and in Article 103 et seqq. FinSO. Two-year transitional periods apply for the majority of new requirements. A six-month transitional period beginning no later than after authorization or appointment by FINMA or the Federal Council is in place for the requirement to be registered in the register of advisers pursuant to Article 28 et seqq. FinSA and for the requirement to be affiliated with an ombudsman pursuant to Article 74 et seqq. FinSA.

The two-year transitional period for implementation of the code of conduct and organizational rules pursuant to the FinSA also apply, in principle, to financial service providers newly entering the Swiss financial market after entry into force of the FinSA. From a practical point of view, it would not be particularly advisable or opportune to apply the previous rules first only to have to switch to the new rules shortly afterwards.

The transitional provisions of the FinSA (including the FinSO) can be found in Article 74 FinSA and in Article 92 et seq. FinSO. Financial institutions which on entry into force of the FinIA already have a license from FINMA are granted a one-year transitional period to satisfy the requirement under the FinIA. They do not require a new license. This applies specifically to fund management companies and asset managers pursuant to the CISA. Financial institutions, which on entry into force of the FinIA will now require authorization, must report to FINMA within six months after the said entry into force. They must satisfy the requirements of the FinIA and submit an application for authorization within three years of the Act coming into force.

The changes to the CISA (including the CISO) made in connection with the FinSA/FinIA enter into force immediately. The corresponding transitional provisions can be found in Article 144 CISO. These transitional provisions are to be seen in connection with those in the FinSA/FinSO and FinIA/FinIO. In principle, the simplified prospectus and the key investor information or key investment document (KID) pursuant to the FinSA are subject to a two-year transitional period, as are the other fund documents. Existing sample documents from SFAMA can also still be used until the end of this two-year transitional period. This applies both to funds already approved as at 31 December 2019 and to new funds.

29. How are the transitional periods in connection with the code of conduct and organizational rules pursuant to the CISA to be understood (Articles 105/106 FinSO)?

The new code of conduct (Articles 7-18 FinSA) and the organizational rules (Articles 21-27 FinSA) are subject to a two-year transitional period. For financial service providers wishing to profit from this transitional period, the code of conduct and organizational rules pursuant to Articles 20-24 oldCISA will remain in force until such time as they have implemented the new FinSA rules.

This includes not only compliance with the CISA and its implementing ordinance (CISO), but also compliance with the relevant SFAMA self-regulation regime recognized by FINMA as a minimum standard. As a consequence, this also means that the existing regulatory requirement to conclude distribution agreements remains in force. It therefore follows that the requirement for "distributors" to undergo an audit regarding their compliance with the SFAMA Guidelines on the Distribution of Collective Investment Schemes also remains in force. The same ultimately applies to the retention of the representative and the paying agent, regardless of whether the foreign fund is only offered to "per se" qualified investors.

Pro memoria: On entry into force of the FinSA/FinIA the terms "distribution" and "distributor license" will no longer apply. It is also interesting to note that the transitional periods under the

FinSO will also apply to financial service providers entering the Swiss market after 31 December 2019 (see ER, p. 68).

30. What is the procedure for switching to the new rules?

It is at the discretion of every financial service provider to decide when within the two-year transitional period they wish to start complying with the new requirements under the FinSA. All financial service providers must be compliant with the FinSA on 1 January 2022. Financial service providers implementing the new FinSA regulations before the end of the transitional period must inform their audit company accordingly. This creates clarity as to which supervisory regime (FinSA, CISA, SESTA, etc.) applies to the respective financial service provider (see ER, p. 69). For this reason such a reporting obligation can only apply to financial service providers required to undergo a more prudential audit in Switzerland either based on their authorization by FINMA or on a corresponding requirement in the distribution agreement within the meaning of Article 24 paragraph 2 oldCISA.

For financial service providers not required to undergo a prudential audit in Switzerland there is no corresponding reporting obligation if they implement the FinSA provisions within the two-year transitional period. From a practical point of view, however, to terminate the distribution agreement required under the current version of the CISA, formal notification of the parties to the distribution agreement, e.g. the representative for foreign funds, is always required.

31. Which fund documents are in future to be used for existing and new collective investment schemes as at 1 January 2020? What applies for the key information document for existing and new collective investment schemes as at 1 January 2020?

Generally, changes to fund documents (including the prospectus for collective investment schemes) are subject to a two-year transitional period (Article 144 CISO). Specifically, the following applies:

(1) for existing products, either the old or the new fund documents can be used; and

(2) for new products, either the old or the new fund documents can be used.

The fund contract and the investment regulations may only be submitted in an official language of Switzerland, but not in English. For further questions on the prospectus, the KID and the languages permitted, see questions 23.

Pursuant to Article 111 paragraph 2 FinSO, publication of a KID for collective investment schemes other than those mentioned in Article 110 FinSO is also subject to a two-year transitional period. This applies to collective investment schemes in place as at 31 December 2019 as well as for new ones.

32. In the case of closed-ended collective investment schemes offered exclusively to qualified investors, for how long must a representative and a paying agent be appointed?

With regard to transitional periods for the continued application of existing requirements pursuant to the oldCISA, we refer to question 29. Accordingly, in practice, the requirement for foreign collective investment schemes to appoint a representative as well as a paying agent, including for QI funds, generally remains in force until such time as all financial service providers which provide a service for the corresponding collective investment scheme have implemented the code of conduct and organizational rules pursuant to the FinSA.

In the case of closed-ended collective investment schemes which were exclusively distributed to "per se" QIs and which were closed before 1 January 2020 and thus no longer offered, the question arises as to when the representative and paying agent agreement can be terminated.

Since the transitional provisions on the retention of the representative and the paying agent for all QIs until implementation of the code of conduct and organizational rules at the point of sale relate solely to the financial service, in these cases the requirement to appoint a representative and a paying agent is no longer applicable as at 1 January 2020. Given, however, that investors of closed-ended collective investment schemes "must" in principle remain with them, they are to be duly notified in the event of a termination of the representative and the paying agent.

It should generally be noted that when terminating representative and paying agent agreements, regardless of the supervisory perspective mentioned above, any civil law and contractual restrictions on termination options must be respected.

III. SFAMA self-regulation regime

33. What does SFAMA's timetable for reframing its self-regulation regime look like?

Owing to the new two-year transitional periods in the final versions of the FinSO and the amended CISO, the "old" CISA requirements continue to apply. Consequently, the current SFAMA guidelines will remain in force until after expiry of these transitional periods (see also questions 30 et seqq.). This also applies to the SFAMA Distribution Guidelines, in which connection it must be noted that the term or concept "distribution" is to be dropped as at 1 January 2020 and replaced by the financial service or offer (see question 1 et seqq.).

SFAMA aims to change its entire self-regulation regime (guidelines, expert recommendations and sample documents) owing to the entry into force of the new acts (FinSA/FinIA), the revised CISA, the related federal ordinances as well as the new/amended FINMA ordinances and circulars.

The amended SFAMA guidelines require approval from FINMA. This approval will only be given after FINMA has adopted its ordinances and circulars. This is unlikely to happen before autumn 2020.

IV. Questions relating to the FinIA

34. Will the de minimis exemption in future also apply to managers of Swiss collective investment schemes?

Yes. The de minimis exemption will also apply to managers of Swiss collective investment schemes? Unlike today, where such de minimis managers do not require FINMA authorization, they will, however, in future be considered portfolio managers pursuant to Article 17 paragraph 1 FinIA. Consequently, they require authorization as portfolio managers.

In future, even if fund managers falling under the de minimis exemption pursuant to Article 24 paragraph 2 FinIA are exempted from the duty to obtain authorization as managers of collective assets, they must still materially comply with the corresponding provisions regulating their activities as fund managers.

Pro memoria: In principle, there is no option available to choose between obtaining authorization as a manager of collective assets (Article 24 FinIA) or as a portfolio manager pursuant to Article 17 paragraph 1 in conjunction with Article 24 paragraph 2 FinIA. With regard to managers of foreign collective investment schemes, this means that FINMA will issue authorization as a manager of collective assets if proof is provided that, as a condition for managing a foreign collective investment scheme, the responsible foreign supervisory authority requires the issuance of authorization as a manager of collective assets (Article 24 paragraph 3 FinIA) and if all other authorization requirements pursuant to the FinIA are met.

35. Can a manager of collective assets also operate as a trustee?

Yes. However, unlike banks and securities firms, they require additional authorization from FINMA. This is a consequence of the authorization chain in Article 6 FinIA and is supported by the Dispatch (see p. 115).

36. How are FinIA and CISA institutions required to proceed in the event of a change in the facts on which the authorization is based?

FinIA and CISA institutions must report material changes to FINMA in advance and have them authorized. Other changes in facts on which the authorization is based must also be reported to FINMA. FINMA will verify whether the authorization and operational requirements are still being met and will intervene where necessary (Article 8 FinIA; Article 16 CISA).

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