

To the fund and asset management industry

Basel, 17 June 2021
member/circular KBR

No. 01/2021

Implementation of FinSA/FinIA – publication of revised guidelines – initially without FINMA recognition as minimum standard

Dear Sir/Madam

The industry has entered the final phase of implementing the FinSA and FinIA. The transition periods specified in the FinIA for existing licensees expired at the end of 2020. The FinSA, meanwhile, gives financial service providers until the end of 2021 to implement its new rules. The transitional provisions additionally specify deadlines for phasing out certain provisions of the old CISA. These also expire on 31 December 2021.

The changes brought about by the new financial market legislation architecture have a particularly profound impact on the fund and asset management industry. All aspects of collective investment schemes were previously governed by the CISA, but the cross-sector rules set out in the FinSA and FinIA have resulted in significant changes in this respect, including extensive amendments to the Federal Council's implementing ordinance (CISO) and the corresponding FINMA texts. The fund and asset management industry's self-regulation has also had to be updated.

The new financial market legislation architecture has resulted in the following **conceptual** changes:

- The distribution of collective investment schemes and the related code of conduct in relation to the provision of **financial services** are now governed by the FinSA.

Among other things, this means that the term "**distribution**" as defined in Article 3 of the old CISA has been **replaced**, depending on the context, by "financial service", "offering", and in some cases "advertising". The entire concept of what did or did not qualify as "distribution" under the old CISA has therefore ceased to apply, as has the requirement to obtain a distributor license.

The FinSA now governs conduct at the point of sale with respect to all financial instruments, which is why the corresponding **CISA** requirements (Art. 10 and Art. 20 et seqq. old CISA) have been **restricted to product-specific aspects**. Product documentation, i.e. the prospectus requirement and the rules on producing a key information document (KID) for retail clients, is now essentially governed by the FinSA as well.

- The **licensing** and **supervision** of fund management companies and fund managers – now collectively referred to as "managers of collective assets" along with external managers of

pension fund assets – are now governed comprehensively by the **FinIA**. The provisions in question have largely been copied directly from the old CISA.

- **Following these changes, only the product-specific rules have remained in the CISA;** these include the duty to obtain authorization and the rules on investment companies with variable capital (SICAVs), investment companies with fixed capital (SICAFs), and limited partnerships for collective investment, as well as the duty to appoint a representative and paying agent for foreign collective investment schemes.

The self-regulation materials must add clarity to the **product-specific rules** remaining in the CISA now that the FinSA and FinIA are in force, but they are no longer required to address aspects that are now governed by the FinSA. The wording of the existing guidelines has been adapted in line with the terminology and provisions of the new legislation over the past few months. A small number of further changes not resulting directly from the new legislation were required.

As part of our ongoing effort to finalize the implementation of the FinSA and FinIA, the following Asset Management Association Switzerland guidelines have been revised: the Code of Conduct, the Guidelines for real estate funds, and the technical guidelines (Guidelines for money market funds, Guidelines on the valuation of assets and the handling of valuation errors, Guidelines on the calculation and publication of performance data, Guidelines on the calculation and disclosure of the TER). The provisions of the old Transparency Guidelines were also revised and integrated into the revised Code of Conduct. The Distribution Guidelines of 22 May 2014 and the KIID Guidelines of 20 January 2012 will cease to apply as of 31 December 2021.

As a rule, all required revisions to the guidelines must be recognized by FINMA as a minimum standard in accordance with Article 7 para. 3 of the Financial Market Supervision Act (FINMASA). However, the new Ordinance to the FINMASA (FINMASA Ordinance) provides for further consultation procedures in relation to FINMA's recognition of the self-regulation materials. Various questions have suddenly arisen in recent weeks regarding the new formalities for recognition of the revised guidelines, in particular what the "broad support" the new ordinance requires for recognition as a minimum standard by FINMA means and how it is to be ensured.

These latest developments mean that it is now doubtful that the revised self-regulation materials can be recognized as a minimum standard before the fall of 2021. However, waiting until then to publish them would be too late for many of our members. It is vital that they are published now so that the fund and asset management industry can implement the FinSA, FinIA, and revised CISA in time. Furthermore, the revised guidelines are essential with regard to updating the model documents. It is therefore not practical to wait for them to be recognized as a minimum standard by FINMA.

With this in mind, the Association has decided to proceed in four steps:

1. The revised guidelines will be published as self-regulation materials, initially without formal recognition as a minimum standard, on 17 June 2021 (entering into force on 1 January 2022).
2. The updated model documents based on the guidelines will provisionally be published in mid-2021 (all existing SFAMA model documents can continue to be used until the end of the two-year transition period on 1 January 2022).
3. At the same time, we will continue to seek FINMA's recognition of the guidelines as a minimum standard so that they can be recognized by the time they enter into force on 1 January 2022.
4. The final step will involve assessing the extension of the scope of application of the minimum standard to custodian banks and "de minimis" managers.

In view of the fact that the formal recognition procedure and in particular the official consultations provided for in the new FINMASA Ordinance are taking place after the fact, some changes may be required before FINMA recognizes the revised guidelines as a minimum standard. Based on feedback received from our members, however, we have concluded that the revised guidelines must be published before they are formally recognized by FINMA in order to ensure that members can implement the new regulations in time.

Please do not hesitate to contact Katja Brunner (katja.brunner@am-switzerland.ch) or Diana Imbach (diana.imbach@am-switzerland.ch) if you have any questions.

Sincerely

Asset Management Association Switzerland



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Enclosed:
Revised Asset Management Association Switzerland guidelines