

## Guidelines on the Distribution of Collective Investment Schemes

22 May 2014

### I Basic principles, objectives, and binding force

The present Guidelines are aimed at ensuring high quality standards on the Swiss market for collective investment schemes with regard to the information and advice provided to investors. They are part of the self-regulation regime of the Swiss fund industry, supplementing and defining in more detail the provisions on the distribution of collective investment schemes set down in the Code of Conduct for the Swiss Fund Industry issued by the SFAMA. 1

The Guidelines apply in respect of collective investment schemes which are distributed in Switzerland, including their subfunds and classes. The following are subject to these Guidelines: 2

- fund management companies pursuant to Art. 28 et seqq. CISA, 3
- investment companies with variable capital (SICAVs) pursuant to Art. 36 et seqq. CISA, 4
- investment companies with fixed capital (SICAFs) pursuant to Art. 110 et seqq. CISA, and 5
- representatives of foreign collective investment schemes pursuant to Art. 123 et seqq. CISA, 6

referred to below as “Providers”. 7

The *Provisions for Distributors* contained in the Appendix to these Guidelines form an integral part of the distribution agreements between Providers and Distributors in Switzerland. In the distribution agreements, the Distributors must be obliged to comply with the *Provisions for Distributors* at all times. 8

For the purposes of the present Guidelines, the term “Distributor” refers to all third parties engaged by a Provider to distribute collective investment schemes in accordance with Art. 24 para. 2 CISA. All “Distributors” within the meaning of the present Guidelines must conclude written distribution agreements with the Providers (in accordance with point 4 of the Guidelines). 9

Accordingly, for the purposes of these Guidelines the term “Distributor” includes the following: 10

- a) all persons domiciled in Switzerland who distribute (i) units of a Swiss or foreign collective investment scheme to non-qualified investors, **or** (ii) units of a foreign collective investment scheme to qualified investors and therefore require authorization as a Distributor (distributors requiring authorization in accordance with Art. 13 para. 1 and Art. 19 para. 1<sup>bis</sup> CISA) (referred to below as “*Distributors Requiring Authorization*”); 11

- b) institutions exempt from the requirement to obtain authorization, in accordance with Art. 13 para. 3 CISA in conjunction with Art. 8 CISO (referred to below as “*Exempt Distributors*”); **12**
- c) all persons who distribute exclusively units of a Swiss collective investment scheme and only to qualified investors and do not require authorization as a Distributor (since, in accordance with margin note 62 of FINMA Circular 2013/9 “Distribution of Collective Investment Schemes”, this distribution does not require authorization, neither is such authorization available) (referred to below as “*Distributors Not Requiring Authorization*”); **13**
- d) financial intermediaries domiciled outside Switzerland in accordance with Art. 19 para. 1<sup>bis</sup> CISA in conjunction with Art. 30a para. 1 CISO that distribute foreign collective investment schemes exclusively to qualified investors in Switzerland (referred to below as “*Foreign Distributors*”). **14**

Providers must also comply with the *Provisions for Distributors* if they themselves distribute collective investment schemes directly. **15**

The *Provisions for Distributors* apply to agents of an insurance company who are not de jure and de facto integrated in the organization of the insurance company on the basis of a commercial agency contract. **16**

## **II Guidelines**

### **A Selection of and collaboration with Distributors**

#### Basic principle

- 1. With regard to the distribution of the collective investment schemes they manage or represent, Providers must work exclusively with Distributors that can guarantee the proper conduct of business activities. **17**

Within the bounds set by the applicable statutory and regulatory provisions, Providers may delegate tasks set down in the present Guidelines to third parties. **18**

#### Selection of Distributors

- 2. Providers must select Distributors carefully in accordance with the principle set down under point 1. **19**
- 3. Providers must ensure that Distributors supply the evidence specified in the Appendix under IV. A. **20**

#### Conclusion of distribution agreements

- 4. Providers must conclude distribution agreements on the basis of the currently valid versions of the model distribution agreements issued by the SFAMA. The Provisions for Distributors contained in the Appendix to these Guidelines form an integral part of these distribution agreements. **21**
- 5. Providers must oblige Distributors to comply at all times with the Provisions for Dis- **22**

tributors contained in the Appendix to these Guidelines.

### Cooperation with Distributors

6. Providers must check whether the Distributors have the personal and professional resources to perform their task. Where necessary, Providers must ensure appropriate support, instruction, and training to Distributors to enable them to comply with the Provisions for Distributors at all times. **23**

### Monitoring obligations

7. Providers must have appropriate measures and controls in place to allow them to determine any significant changes in the Distributor's legal form, structure (especially where other agents are used), staffing, business activity and/or business conduct, and also with regard to the means and methods used by the Distributor to distribute the collective investment schemes. **24**
8. Providers must oblige Distributors Requiring Authorization to have an audit firm as defined in the Appendix and in Enclosure 1 "Audit" conduct an annual audit of their compliance with the Provisions for Distributors and with the duty to report as specified in Art. 16 CISA. Providers must monitor the timely submission of the corresponding audit reports, and must evaluate these systematically. **25**
- Providers must oblige Exempt Distributors to instruct an audit firm as defined in the Appendix and in Enclosure 1 "Audit". The said audit firm must inform the Provider concerned in writing if it discovers violations of the Provisions for Distributors that would lead to a reservation in the report on the regulatory audit. **26**
- Providers must oblige Distributors Not Requiring Authorization and Foreign Distributors to submit each year written confirmation pursuant to Enclosure 2 "Confirmation" to the Appendix. If there are indications that the confirmation does not correspond to the facts, the Provider must take appropriate measures. **27**
9. Where violations of the *Provisions for Distributors* or the duty to report pursuant to Art. 16 CISA become known in the ordinary course of cooperation or from reports by the audit firm, the Provider must require the Distributor to take appropriate corrective action immediately and to report to the Provider on its completion. In the case of repeated or gross violations, the distribution agreement must be terminated and the supervisory authority informed. **28**
10. In the case of delegation to a Sub-Distributor, the Provider must oblige the Distributor to oblige the Sub-Distributor to comply with the duties specified in Section IV D of the Appendix. **29**

## **B Internal directive**

Providers must issue an internal directive setting down their policy and guiding principles with regard to the selection and ongoing support for/monitoring of Distributors. This directive must cover aspects including: **30**

- the selection criteria and process; **31**
- responsibilities for concluding distribution agreements and for the ongoing support **32**

for/monitoring of Distributors (measures to identify significant changes and unusual business conduct);

- procedure to be adopted if changes (pursuant to point 9) or unusual business conduct on the part of the Distributor are identified, or if the *Provisions for Distributors* are violated; **33**

### **III Other provisions**

#### **A Minimum standard**

The Swiss Financial Market Supervisory Authority FINMA has recognized the present Guidelines as a minimum standard (FINMA Circular 08/10 “Self-Regulation Recognized as a Minimum Standard”). **34**

#### **B Entry into force**

The present Guidelines were approved by the Board of Directors of the Swiss Funds & Asset Management Association SFAMA on 22 May 2014. They enter into force on 1 July 2014 subject to the transitional provisions in Art. 158d para. 4 CISA and Art. 144c para. 5 CISO. **35**

Existing distribution agreements must be amended by no later than 30 June 2015. Compliance with the requirement in the Appendix is only required once the corresponding amendments have been made to the respective distribution agreements. **36**

#### **C Appendix**

*Provisions for Distributors* **37**

## **Appendix: Provisions for Distributors (referred to below as “the Provisions”)**

### **I Objectives**

The following provisions are aimed at ensuring that investors receive sufficient information and advice in the distribution of collective investment schemes in Switzerland. Persons at whom distribution activities in Switzerland are aimed should be able to rely on the collective investment schemes being distributed in a professional and transparent manner. **1**

### **II Validity and binding force**

These provisions form an integral part of the distribution agreements between Providers and Distributors in Switzerland. In the absence of any explicit restrictions or specifications below, these Provisions apply to both distribution to non-qualified investors and distribution to qualified investors by the following Distributors: **2**

- a) all persons domiciled in Switzerland who distribute (i) units of a Swiss or foreign collective investment scheme to non-qualified investors or (ii) units of a foreign collective investment scheme to qualified investors and therefore require authorization as a Distributor (distributors requiring authorization in accordance with Art. 13 para. 1 and Art. 19 para. 1<sup>bis</sup> CISA) (referred to below as “Distributors Requiring Authorization”); **3**
- b) institutions exempt from the requirement to obtain authorization, in accordance with Art. 13 para. 3 CISA in conjunction with Art. 8 CISO (referred to below as “Exempt Distributors”); **4**
- c) all persons who distribute units of a Swiss collective investment scheme to qualified investors and do not require authorization as a Distributor (since, in accordance with margin note 62 of FINMA Circular 2013/9 “Distribution of Collective Investment Schemes”, this distribution does not require authorization, neither is such authorization available) (referred to below as “Distributors Not Requiring Authorization”); **5**
- d) financial intermediaries domiciled outside Switzerland in accordance with Art. 19 para. 1<sup>bis</sup> CISA in conjunction with Art. 30a para. 1 CISO that distribute foreign collective investment schemes exclusively to qualified investors in Switzerland (referred to below as “Foreign Distributors”). **6**

These provisions relate solely to activities in the distribution of collective investment schemes. They do not affect the Distributor’s other activities, neither do they contain any provisions on other functions, such as the administrative settlement of transactions, or requirements in connection with the Anti-Money Laundering Act, or obligations under tax law. **7**

### **III Provisions**

#### **A Organization of the Distributor**

1. The Distributor must take the necessary organizational steps to ensure that it complies with these Provisions at all times. The Distributor must supply the Provider with all such information as the latter requires to perform its monitoring duties. **8**
2. In providing advice on collective investment schemes, the Distributor must employ only persons who have the necessary professional training and experience to satisfy the principles of the Provisions. **9**
3. The Distributor must also comply with the duty to report specified under Art. 16 CISA. **10**

#### **B Duties to provide information**

4. The Distributor acts exclusively in the interests of the investors. **11**
5. The following principles must be observed if the Distributor distributes collective investment schemes in direct contact with investors, where individual advice is given: **12**
  - 5.1 In the case of distribution to non-qualified investors, and to qualified investors as defined in Art. 10 para. 3<sup>bis</sup> CISA (high-net-worth individuals) who do not waive advice, the Distributor must take the investor's individual needs into account, in particular their risk tolerance and risk capacity. **13**
  - 5.2 In the case of distribution to non-qualified investors, the Distributor must give investors objective information on the investment character, opportunities, and risks of the collective investment schemes being offered. In fulfilling this duty, the experience and specialist knowledge of the investor and the complexity of the collective investment scheme in question must be taken into account. The Distributor may assume that investors are familiar with the basic risks of investing in money market instruments, bonds, equities, and foreign currencies. **14**
  - 5.3 With regard to the duties in respect of disclosure and providing information, Distributors must comply with the Transparency Guidelines as amended from time to time. **15**
  - 5.4 The Distributor must also comply with the contractual, statutory and self-regulatory duties to which it is subject, including the duty to keep documentary records set down in Art. 24 para. 3 CISA, and the Swiss Bankers Association's guidelines on the duty to keep documentary records pursuant to Art. 24 para. 3 CISA. **16**
6. The following principles must be observed if the Distributor distributes collective investment schemes via electronic channels or by other means, without direct client contact as defined in point 5: **17**
  - 6.1 The Distributor must make explicit reference to the fact that it does not provide advice. **18**
  - 6.2 The Distributor must observe its duty to provide information pursuant to point **19**

5.2 and point 5.3 mutatis mutandis. In doing so, it may supply information in standardized formats.	
6.3 The Distributor is not subject to any duty to provide information pursuant to points 5.2 and 5.3 above in respect of investors who issue a written declaration stating that they waive their right to receive additional information.	<b>20</b>
If an investor issues a subscription order for units in collective investment schemes on their own initiative or if they themselves request information on certain collective investment schemes, the provisions of the present Section B do not apply. The contact initiated by the investor is to be documented.	<b>21</b>
7. With regard to distribution via the Internet, the Distributor must comply with FINMA Circular 2013/9 “Distribution of Collective Investment Schemes”.	<b>22</b>
8. The Distributor must make the documents supplied to it by the Provider available to interested investors free of charge. This applies specifically to prospectuses, simplified prospectuses / Key Investor Information Documents, collective investment agreements, articles of association, and investment regulations, as well as the annual reports and semi-annual reports of the collective investment schemes offered.	<b>23</b>
9. The information and documentation provided by the Distributor must be complete, and must be structured – in both written and spoken form – in such a way that they are clear and comprehensible for investors at all times. In particular, it is not permitted to give misleading information or promises with regard to returns. (This does not apply in the case of information on the indicative minimum price for collective investment schemes with limited downside risks.) When using historical performance data, it must be pointed out that this performance cannot be guaranteed in the future. Where the Distributor makes material statements on individual collective investment schemes, it must adhere to the information contained in the documentation supplied to it by the Provider.	<b>24</b>
10. The Distributor must refrain from all forms of aggressive sales techniques, such as, for example, unsolicited and intrusive contacting of potential clients by telephone (cold calling) or via electronic media (spamming).	<b>25</b>
11. Recommendations made primarily in the Distributor’s own interests, and at the expense of investors, are not permitted. This applies in particular to any practice that causes investors to make a disproportionately high number of switches in their portfolio (portfolio churning).	<b>26</b>
12. The Distributor must refrain from any form of front running. Front running refers to proprietary transactions concluded by the Distributor or its employees in anticipation of securities transactions on the part of a collective investment scheme, e.g. as a result of significant subscriptions or redemptions of units by investors.	<b>27</b>
<b>C Distributor documentation</b>	
13. The Distributor must issue written regulations or documentation governing the following:	<b>28</b>
• organizational measures implemented pursuant to point 1;	<b>29</b>

- requirements for professional training and experience, and instruction and training pursuant to point 2; **30**
- advice and, in the case of distribution to non-qualified investors, explanation of risks pursuant to point 5 (e.g. in minutes taken of discussions); **31**
- waiver of additional information pursuant to point 6.3 (e.g. in a memorandum). **32**

## **IV Other provisions**

### **A Evidence**

Distributors must supply the Provider with the following evidence: **33**

- proof from the supervisory authority of authorization as a Distributor, or, in the case of a Foreign Distributor, proof that it is admitted for the distribution of collective investment schemes in its country of domicile (Art. 30a para.1 CISO). This does not apply to *Exempt Distributors* or *Distributors Not Requiring Authorization*; **34**
- information on its organization in respect of the distribution of collective investment schemes. This does not apply to *Exempt Distributors*. **35**

### **B Audit**

Irrespective of their legal form, *Distributors Requiring Authorization* and *Exempt Distributors* must have their compliance with these Provisions with regard to the form of distribution concerned audited by an audit firm. The audit firm also audits the Distributor's compliance with Art. 16 CISA. The Distributor must inform the Provider of the person mandated to conduct the audit. **36**

The specific aspects of the audit are covered in detail in Enclosure 1 "Audit". **37**

### **C Confirmation**

*Distributors Not Requiring Authorization* and *Foreign Distributors* must submit to the Provider, unsolicited, by the end of January each year a confirmation pursuant to Enclosure 2 "Confirmation". **38**

### **D Delegation to Sub-Distributors**

The Distributor may delegate tasks delegated to it by the Provider subject to the latter's approval. The appointed Sub-Distributors must be Distributors as defined under margin note 10 of the Guidelines, and in the case of distribution to non-qualified investors only *Distributors Requiring Authorization* and *Exempt Distributors* may be appointed as sub-distributors or additional distributors. **39**

In the case of such further delegation, the Distributor is obliged to supply the Provider with all such information as the latter needs to perform its monitoring duties in accordance with **40**



margin notes 29 and 30 of the Guidelines.

The Distributor must impose on any sub-distributors appointed the obligation to observe the present Provisions. The sub-distributors appointed must be obliged to have an annual audit conducted of their compliance with the *Provisions for Distributors* as set down in the Appendix and Enclosure 1 “Audit”, and with the duty to report pursuant to Art. 16 CISA or, where applicable, to provide confirmation pursuant to Enclosure 2. The Distributors must monitor the timely submission of the audit reports concerned or the confirmations, and must evaluate these systematically. Reports from the audit firm, as well as knowledge of violations of the *Provisions for Distributors* or the duty to report pursuant to Art. 16 CISA gained in the ordinary course of cooperation between Distributors and Sub-Distributors, must be forwarded to the Provider. In the case of repeated or gross violations, the Distributor must terminate the distribution agreement with the Sub-Distributor, and must inform the Provider and the supervisory authority of this. **41**

## **E Entry into force**

The present Provisions were approved by the Board of Directors of the Swiss Funds & Asset Management Association SFAMA on 22 May 2014. Subject to Section III B of the Guidelines on the Distribution of Collective Investment Schemes (other provisions / entry into force), they enter into force on 1 July 2014. **42**

The Swiss Financial Market Supervisory Authority FINMA has acknowledged and accepted the present Provisions as an Appendix to the Guidelines on the Distribution of Collective Investment Schemes. **43**

## **F Enclosures**

1. *Audit of compliance with the Provisions for Distributors in accordance with IV B above and the duty to report pursuant to Art. 16 CISA.* **44**
2. *Model: Confirmation regarding distribution to qualified investors by Distributors Not Requiring Authorization or Foreign Distributors pursuant to IV C above* **45**

## Enclosure 1: Audit

### **Audit of compliance with the Provisions for Distributors in accordance with Section IV B of the Provisions and the duty to report pursuant to Art. 16 CISA**

#### **A Audit of Exempt Distributors (Art. 13 para. 3 CISA in conjunction with Art. 8 CISO)**

As part of the regulatory audit, the audit firm must check compliance with the *Provisions for Distributors* on the basis of the parameters set by the supervisory authority in the pertinent FINMA Circulars. 1

It must set the audit findings down in the report on the regulatory audit. If it discovers any violations that would lead to a reservation in the report on the regulatory audit, it must inform the Provider concerned in writing. 2

#### **B Audit of Distributors Requiring Authorization (Art. 13 para. 1 CISA)**

The following are permitted to conduct audits in respect of the *Provisions for Distributors*: 3

- audit experts pursuant to Art. 4 of the Audit Oversight Act of 16 December 2005 (AOA); 4
- auditors pursuant to Art. 5 AOA; 5
- audit firms pursuant to Art. 6 para.1 AOA. 6

The Distributor must inform the Provider of the person mandated to conduct the audit and of any change in this regard. 7

The audit of compliance with the *Provisions for Distributors* must be conducted annually. The audit reports on compliance with the *Provisions for Distributors* are to be drawn up within three months of the end of the financial year. 8

Compliance with the following points is to be audited in the case of distribution agreements that exclusively cover distribution to qualified investors: 9

- a) compliance at all times with the Provisions for Distributors applicable to distribution to qualified investors; 10
- b) distribution of foreign collective investment schemes exclusively to qualified investors and in compliance with all applicable regulatory and self-regulatory provisions; 11
- c) [for foreign collective investment schemes only: the exclusive use of fund documents that specify the representative, the paying agent, and the place of jurisdiction.] 12

The person mandated to carry out the audit must deliver the audit report to the Provider concerned. If they find in their report that there have been violations of the *Provisions for Distributors* or the duties to report pursuant to Art. 16 CISA, they must also send a copy of their audit report to FINMA. **13**

**Enclosure 2: Confirmation**

**Model: Confirmation regarding distribution to qualified investors by Distributors Not Requiring Authorization or Foreign Distributors pursuant to Section IV C of the Provisions**

(As applicable) To [name of Distributor Not Requiring Authorization] [name of Foreign Distributor domiciled outside Switzerland] **1**

We, [name of Distributor] (“Distributor”) distribute units of collective investment schemes exclusively to qualified investors in accordance with the distribution agreement of XXX. **2**

In this regard, we confirm the following: **3**

In the past calendar year, we [and the additional distributors / sub-distributors we have appointed]: **4**

a) have at all times complied with the *Provisions for Distributors* applicable to distribution to qualified investors; **5**

b) have distributed the foreign collective investment schemes exclusively to qualified investors and in compliance with all applicable regulatory and self-regulatory provisions; **6**

c) [for foreign collective investment schemes only: have exclusively used fund documents that specify the representative, the paying agent, and the place of jurisdiction.] **7**

Remarks: **8**

[Place] [Date] [Signature]: **9**

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