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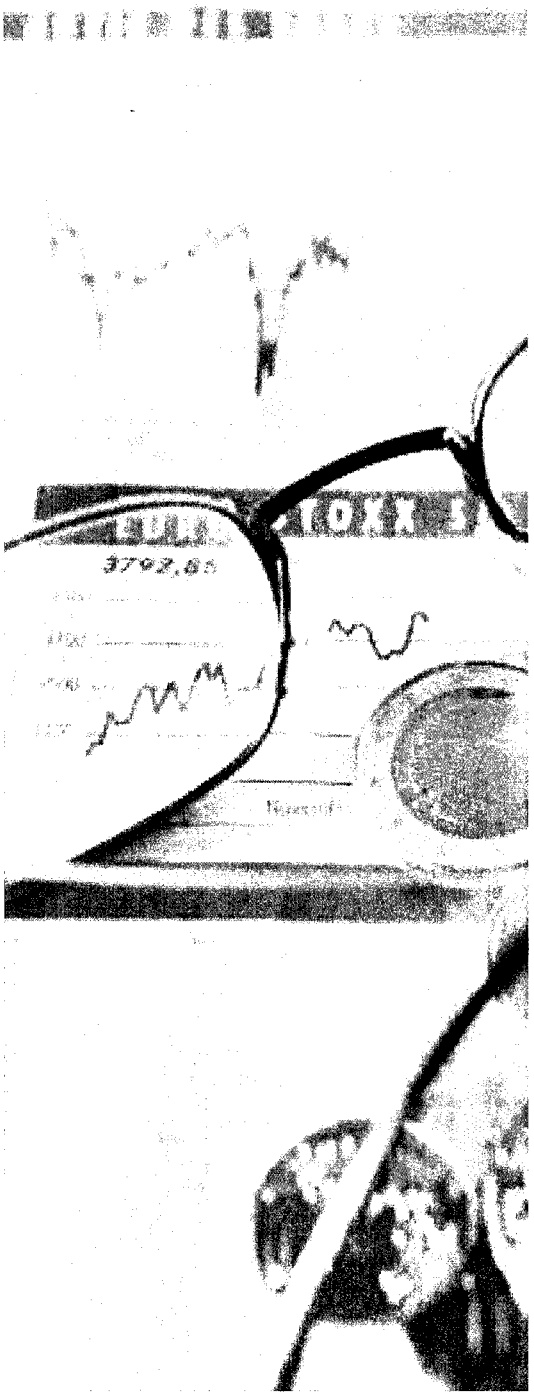

Switzerland Facilitates the Approval Process for the Public Distribution of Foreign Collective Investment Schemes in or from Switzerland

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The Swiss Federal Council and the Swiss Financial Market Supervisory Authority (FINMA) decided in January 2009 that certain material and formal requirements in relation to the approval of foreign collective investment schemes for public distribution in or from Switzerland (called the ***'Swiss Finish'***) will be relaxed with effect from 1 March 2009. Accordingly, the new Swiss standards will certainly be welcomed by providers of foreign collective investment schemes seeking to access the Swiss market. The importance of Switzerland as a major market for collective investment schemes will be further enhanced.

By Marco Häusermann

1) The 'Swiss Finish': Overview

The set of formal and material rules referred to as the 'Swiss Finish' are stricter than the corresponding rules under the EU Undertakings for Collective Investment in Transferable Securities (UCITS) III directives. This includes:

- ***naming of the collective investment scheme:*** at least ***two thirds*** of the investments of a collective investment scheme must be compliant with the name of the collective investment scheme to the extent that such a name indicates a certain investment strategy (*e.g.* if the name of an investment fund is German Equity Fund, at least two thirds of its investments must be in German equity);

- ***management fees for investments in related target funds (no double dip):*** if a foreign collective investment scheme invests in related target funds, the licensed market participants are not allowed to levy any issuance and redemption commissions and shall levy only a ***reduced management fee*** (according to the current practice of the FINMA, generally ***no more than 0.25%***). A target fund is considered as related if, for example, the target fund is managed by a company to which the management company of the foreign collective investment scheme is related by virtue of a direct or indirect interest of ***more than 10% of the capital or the votes;***

- ***information and transparency rules*** require specific information (or risk warnings) for Swiss investors regarding:

  - the maximum leverage ratios permitted by the foreign collective investment scheme;

  - the possible negative consequences of a currency hedging for different unit classes;

  - the principle that sub-funds of a foreign umbrella fund are considered separate collective investment schemes and, therefore, are liable solely for their own liabilities (or for the provision of a disclosure warning if this is not the case);

  - Swiss-related aspects in relation to a foreign collective investment scheme such as the name of its representative in Switzerland, the place where the scheme documents can be obtained and the form and date of publications in Switzerland;

  - the payment of reimbursements *(Rückvergütungen)* and trailer fees *(Bestandespflegekommissionen)* by the foreign collective investment scheme to third parties (in line with the Swiss Funds Association's 'Guidelines on transparency with regard to management fees' dated 7 June 2005).

2) The 'Swiss Finish': New Standards

The relaxing of the 'Swiss Finish' was originally initiated when the FINMA definitively renounced to regulate the performance fee with effect from 1 April 2008. As of 1 March 2009, the following new standards will apply to the 'Swiss Finish' rules:

a) Name of the Foreign Collective Investment Scheme

The FINMA will no longer impose quantitative (two thirds) investment requirements but will shift the responsibility to the licensed market participants to ensure that the name of a foreign collective investment scheme does not confuse or deceive investors. The

FINMA requires that ***licensed market participants inform investors in a clear and comprehensive way on the investment policy in the offering materials.*** The FINMA reserves the right to intervene in the case of a deceptive naming. Only in obvious and severe cases may the FINMA intervene while the approval process is ongoing.

b) Management Fees/No Double Dip

In accordance with existing Swiss law and the rules of the UCITS III directives, levying ***issuance and redemption commissions*** remains prohibited if investments are made in related target funds.

Regarding the ***management fee,*** the definition of a related target fund under the Collective Investment Schemes Ordinance will be amended to the extent that the 10% capital and voting right threshold in a common management company is being replaced by a *'**substantial** indirect or direct investment'* test. The meaning of a 'substantial' investment though remains unclear, however, EU practice seems to indicate that the threshold is closer to 30% than to 10%. Further guidance from the FINMA would be desirable.

In addition, the FINMA will no longer impose a quantitative maximum amount (*i.e.* 0.25%) of ***management fee*** but leave it to the licensed market participants ***to transparently and comprehensively disclose the maximum level of management fees*** charged at the level of the collective investment scheme itself and at the level of the related target fund in the scheme documentation in the offering materials. In their annual reports, licensed market participants must disclose the proportions of the management fee borne by the collective investment scheme and the related target fund in which it invests.

The FINMA may also extend the above concepts to investments other than in target funds.

c) Information and Transparency Rules

i. Leverage and Currency Hedging Warning

The handling of leveraging and currency hedging for unit classes under the current Swiss collective investment schemes law is, other than under the old Investment Fund Act, equivalent to the regulations under the UCITS III directives. The warnings about risk and costs associated with leveraging and hedging will therefore no longer be required.

ii. Liability between Sub-funds

As the UCITS III directives do not predefine a liability concept between sub-funds of an umbrella fund but leave the answer to the member states' own regulations, the FINMA has come to the conclusion that a specific disclosure or risk warning (if sub-funds would be liable for liabilities of other sub-funds) for investors in Switzerland is no longer necessary as this issue will anyway be dealt with in the offering materials of the foreign collective investment scheme.

d) Special Annex to the Prospectus of Foreign Collective Investment Schemes for Swiss Investors

The Swiss Funds Association in cooperation with the FINMA prepared a template for an annex to the prospectus of a foreign collective investment scheme to be publicly distributed in or from Switzerland. The annex specifies certain information on the foreign collective investment scheme that must be separately disclosed to investors in Switzerland, in particular information regarding (i) the representative and paying agent in Switzerland, (ii) the place from which the offering materials and other related information can be ordered, (iii) the place and date of publications in Switzerland, (iv) the payment of reimbursements *(Rückvergütungen)* and trailer fees *(Bestandespflegekommissionen)* and (v) the place of performance and the applicable jurisdiction.

The annex must be provided to investors in Switzerland together with the other offering materials.

3) Impacts of the New Standards

The new standards are relevant for ***Swiss collective investment schemes*** as regards the naming (no longer a two thirds' rule) and the double-dip rule.

For ***UCITS III compatible*** foreign collective investment schemes the changes apply to the extent that these collective investment schemes will be publicly distributed in or from Switzerland.

As regards ***non-UCITS III compatible*** foreign collective investment schemes that will be publicly distributed in or from Switzerland, the FINMA will continue to conduct a full review and analysis of the schemes. Approval will be granted if, inter alia, a collective investment scheme enjoys an equivalent level of supervision in its home country in a way that is intended to protect investors and if the organization, the investor rights and investment policy of the fund management company or the investment scheme company are equivalent to Swiss law. If the FINMA concludes that the foreign collective investment scheme is subject to rules equivalent to these Swiss standards, the benefits of the new Swiss standards will also apply to non-UCITS III compatible foreign collective investment schemes.

4) Outlook

On 13 January 2009, the European Parliament voted in favor of the proposed reform of the UCITS III directives. It is expected, subject to the approval of the new UCITS IV directive by the European Council, that these rules will be implemented by the various EU member states by no later than 1 July 2011. The UCITS IV directive includes proposals for a short and harmonized 'Key Investor Information' document, a simplified notification procedure to facilitate cross-border distribution of UCITS, a new framework for (cross-border) mergers of UCITS and permission of 'master-feeder' structures, the

strengthening of co-operation between national regulators and management company passporting.

These changes of EU laws and regulations will require ongoing monitoring and further adjustments to Swiss laws and regulations will be necessary in the future to ensure a continuing smooth approval process for UCITS compliant collective investment schemes in Switzerland on the one hand and Swiss collective investment schemes in the EU on the other hand.

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