

No more “Swiss Finish” for collective investment schemes: A step in the right direction

On January 20, 2009, the Finma decided to abolish its formalistic practice known as “Swiss Finish” with respect to both Swiss and foreign collective investment schemes. On the same date, the Federal Council adapted art. 31 of the Collective Scheme Ordinance (CISO) to the EU standard. These changes entered into force on March 1, 2009.



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For many years, the approval process of collective investment schemes for public distribution in and from Switzerland has been impaired by the practice of the Swiss regulator known as Swiss Finish. These formal and material requirements caused substantial inconvenience, in particular with respect to foreign schemes. Indeed, before an approval could be obtained in Switzerland, the documentation usu-

ally needed to be amended abroad to comply with the Swiss Finish requirements. If the investment scheme was already approved in several jurisdictions, changes to the documentation required by the Swiss regulator needed to be implemented in all relevant jurisdictions. Most importantly, the Swiss Finish did not significantly enhance the protection of the investors.

Following the issuance of the Swiss Financial Sector Master Plan in September 2007, the Swiss Financial Centre Dialogue Steering Committee (Stafi) suggested that the Swiss Finish practice be abolished to improve the international competitiveness of the Swiss Financial Sector.

On March 18, 2008, the Swiss Federal Banking Commission (SFBC) initiated the process by repealing its requirements with respect to performance fees. In September 2008, the SFBC opened a consultation pertaining to the abolition of the rest of the Swiss Finish. The response to the consultation was overwhelmingly positive. On January 20, 2009, the Swiss Financial Market Supervisory Authority (Finma), which had in the meantime succeeded the SFBC, officially an-

nounced that the Swiss Finish would be abolished. To implement these changes, the Finma, in particular, amended its three Guidelines pertaining to the approval process of Swiss, Ucits and Non-Ucits schemes per March 1, 2009.

Swiss Finish

There is no formal definition of the Swiss Finish. It is however generally understood as the Swiss material and formal requirements for an approval of a collective investment scheme which are more stringent than those foreseen in the European Ucits Directive.

Material requirements

Name of the investment scheme (the “two-thirds” rule)

At least two-thirds of the investments made by the collective investment scheme must pertain to the asset category appearing in its name. The prospectus of the investment scheme must contain explicit wording to this effect.

Although this quantitative requirement has now been abolished for both Swiss and foreign investment schemes, the name chosen for an investment scheme may nevertheless not be misleading (art. 12 par. 1 of the Collective Investment Scheme Act [CISA]). The Finma will continue to examine whether the name is in line with the investment policy throughout the lifetime of the scheme.

Double-dip prohibition

The fund management company may not charge an issuance or redemption fee and only a reduced management fee (max. 25%) if an investment is made in a target scheme (i) which it

manages itself or (ii) which is managed by a company to which it is bound by common management, control or more than 10% of the capital or voting rights.

Under the new rules, as in the EU, it is still forbidden to levy commissions for the same service twice. However, in the amended version of art. 31 CISO, the threshold of 10% of the capital or voting rights has been replaced by the more generic notion of "substantial interest". Furthermore, the management fee is no longer capped at 25%. The documentation of the investment scheme must nevertheless disclose the maximum management fee that will be charged.

Since this provision is now compatible with the European standards for Ucits schemes, an adaptation of the wording of the foreign prospectus is no longer necessary to comply with Swiss standards. Swiss and Non-Ucits schemes need to ensure that they are in compliance with the amended art. 31 CISO.

Formal requirements (prospectus of foreign schemes)

Leverage

- Commitment limitation (210% of the total net assets, of which 200% by means of derivatives and 10% by means of credit)
- Leverage related risks
- Risk measurement procedure

Cross-liability between sub-funds

- Absence of cross-liability between sub-funds or
- Risk warning clause regarding such cross-liability

Hedging risks for different currency classes

- Potential negative impact on the NAV of one currency class due to hedging commitments pertaining to another currency class

These formal requirements to the prospectus of Ucits schemes have now been abandoned. Indeed, according to the definition of Swiss equity schemes in art. 53 CISA, such schemes comply with the legislation of the EU. The requirement of equivalent rules in the home jurisdiction foreseen in art. 120

CISA to qualify for an approval in Switzerland is now deemed to be generally fulfilled for Ucits schemes. Accordingly, it is no longer necessary to proceed with amendments to the prospectus regarding these points in the home jurisdiction.

Non-Ucits schemes must however still demonstrate in each instance that the rules they are subject to in their home jurisdiction are equivalent to those applicable to Swiss schemes (art. 120 CISA).

Reimbursements and trailer fees / Information for investors in Switzerland

- Information pertaining to reimbursements and trailer fees in compliance with the Swiss Funds Association's (SFA) Transparency Guideline
- Various additional information regarding, in particular, the country of origin of the scheme, the representative and the paying agent in Switzerland, the publication of the NAV and other statutory publications

This information is provided in an attachment to the prospectus for Swiss investors. There have been no changes with respect to these requirements. The only new development is that the SFA has now issued a template for this attachment which has been approved by the Finma. The use of this template should hopefully avoid further issues pertaining to the wording of this document. The template is to be used for the prospectus of Ucits and Non-Ucits schemes.

Formal requirements (simplified prospectus of foreign schemes)

Risk disclosure / Total expense ratio / Portfolio turnover ratio

This information is no longer required for Ucits schemes. For Non-Ucits schemes the information in the simplified prospectus must be equivalent to the requirements for Swiss schemes even if no simplified prospectus is required in the home jurisdiction.

Information for investors in Switzerland

All the information for Swiss investors must still be provided both for Ucits and Non-Ucits schemes.

Conclusion and outlook

The abolishment of the Swiss Finish took place in the context of the efforts to increase the competitiveness of the Swiss financial market. In particular, it was often emphasized that such a step would contribute to enhancing Switzerland's position as a production centre for Swiss collective investment schemes.

By simplifying the procedures a step in the right direction has been taken. However, it remains doubtful that the changes described above will increase the attractiveness of Switzerland as a domicile for collective investment schemes. The main issues which have discouraged promoters from establishing Swiss schemes have yet to be dealt with. Until Switzerland can offer a competitive tax environment (in particular with respect to withholding tax) and an uncomplicated, swift authorization procedure it is unlikely that more Swiss schemes will be established than in the past.

As regards Ucits schemes, the approval procedure has indeed been substantially simplified. This can be considered as quite a positive development. Nevertheless, since the Finma requires that the "information for investors in Switzerland" becomes an integral part of the prospectus, it can still be necessary to re-file the prospectus in the home jurisdiction prior to being able to obtain an approval in Switzerland. Furthermore, since the Finma no longer proceeds with preliminary reviews of the scheme documentation, there is always a risk that unforeseen issues be raised.

Since the new rules have just entered into force on March 1, 2009, it is too early to assess to what extent the duration of the approval procedure will effectively be reduced as a result of the changes described above.

Finally, with respect to Non-Ucits schemes, there appears to be a trend to apply the notion of "equivalency to Swiss schemes" more strictly than in the past, respectively than under the old Investment Fund Law. The changes of the rules set out above will most likely not have a particular impact on the approval process of Non-Ucits schemes.

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