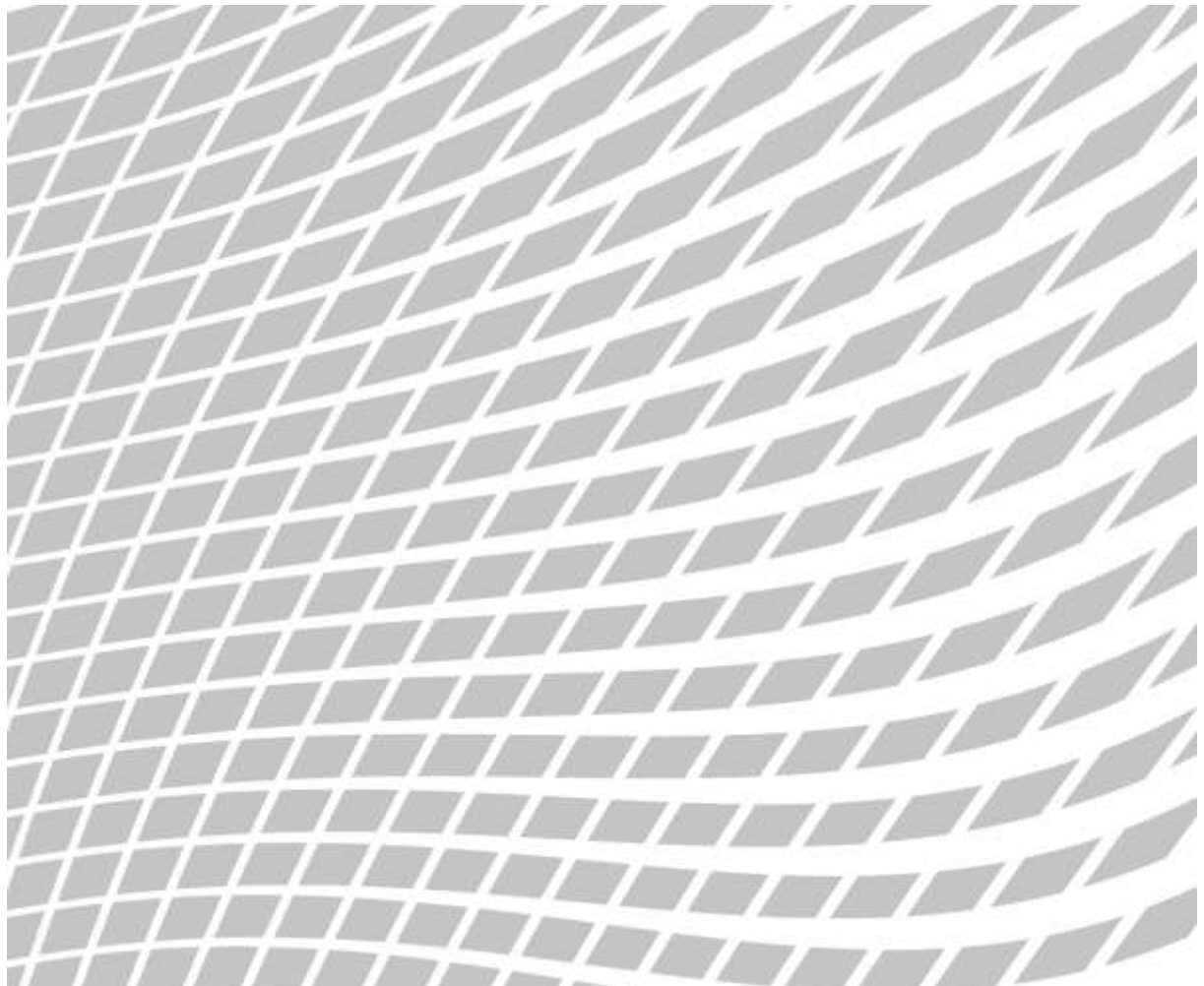


3 April 2014

Total revision of the FINMA Collective Investment Schemes Ordinance

Key points



1. Following the partial revision of the Federal Act on Collective Investment Schemes (CISA) and the Collective Investment Schemes Ordinance (CISO) that came into force on 1 March 2013, the legal basis for the FINMA Collective Investment Schemes Ordinance (CISO-FINMA) has changed. Moreover, the Federal Council has requested FINMA to expand on the rules set out in CISO. To enhance investor protection and maintain market access in light of the standards that have been changed at the national and international level, the CISO-FINMA is under revision.
2. Revision of CISO-FINMA aims to overhaul and simplify the Ordinance. Provisions that are no longer relevant will be deleted or adjusted, and consistency improved by listing the rules for products and institutions in two separate titles (Title 1 and Title 2).
3. FINMA Circular 2008/37 "Delegation by fund management companies / SICAVs" will be abrogated and, in line with principle-based requirements, incorporated into CISO-FINMA (Art. 66 draft CISO-FINMA). At the same time, asset managers of collective investment schemes and representatives of foreign collective investment schemes are to be included in the Ordinance. The principles on the delegation of duties will nevertheless remain unchanged. Where there is good reason, exceptions can be made, e.g. for start-ups.
4. The risk assessment models for derivatives will be revised. Risk calculation using Commitment Approach II will be excluded from calculating risks in different risk categories in line with EU regulations to determine overall exposure (Art. 35 ff. draft CISO-FINMA). Assessment is made based on calculating the market value of the derivatives' underlying base value (equivalent underlying assets). Criteria will be included for the model approach, the application of which is mandatory (Art. 33 para. 4 draft CISO-FINMA).
5. To minimise the risks involved in managing securities, a key section on requirements for the management and custody of securities will be introduced that comprises all OTC derivative investment techniques and business transactions (Art. 50 ff. draft CISO-FINMA). Furthermore, securities must be highly liquid, have trading day values and be issued by a creditworthy issuer who is independent of the counterparty. Additional requirements for the management and custody of securities will also be specified.
6. Article 73a of the revised CISO provides for setting up master feeder structures, requiring FINMA to regulate the details in this regard. This has been addressed in Articles 56–64 draft CISO-FINMA. Key issues are to enhance transparency for feeder fund investors, improve cooperation between the master and feeder funds, prevent conflicts of interest and protect feeder fund investors when the master fund is closed.
7. Article 12a CISO now explicitly requires licence holders to ensure that appropriate and efficient risk management is in place, capturing all business activities. Article 67 ff. draft CISO-FINMA prescribes the minimum requirements for risk management with respect to fund management companies, SICAVs and asset managers of collective investment schemes.

8. The aforementioned asset managers must issue guidelines in line with the minimum requirements specified in Article 68 draft CISO-FINMA. This will ensure that all business activity risks are captured, controls are made regularly and reporting is carried out.
9. Under Article 78 draft CISO-FINMA, custodian banks are to introduce internal guidelines on controlling fund management companies and SICAVs as prescribed in Article 73 para. 3 CISA. Points to be included in particular are details on organisation, controlled function competence, types of control, principles for control planning and processing, escalation process and reporting.
10. Article 73 ff. draft CISO-FINMA regulates the details on calculating the de minimis threshold under Article 1b para. 1 CISO and professional liability insurance under Article 21 para. 3 let. b CISO for asset managers of collective investment schemes.
11. Following the revision of company and accounting law in the Swiss Code of Obligations (CO), the title on Accounting, valuation, accountability and publication requirements has been adjusted appropriately.
12. The title on Auditing and auditing reports reflects the changes made to the FINMA Auditing Ordinance, whereby a large part of this title has been deleted.