

Press Release

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Embargo:

FINMA Circular “Distribution of collective investment schemes” enters into force

The Swiss Financial Market Supervisory Authority FINMA has fully revised its Circular ‘Public advertising – collective investment schemes’. The main aim of this revision is to provide a detailed definition of the term ‘distribution of collective investment schemes’. The Circular has thus been adapted to match the terms of the revised Collective Investment Schemes Act and Collective Investment Schemes Ordinance, which became law on 1 March 2013. It enters into force on 1 October 2013 and completely replaces the existing Circular (FINMA-Circ. 2008/8).

The main aim of the fully revised Circular (now FINMA-Circ. 2013/9) is to provide a detailed definition of the term ‘distribution of collective investment schemes’. The Circular sets out which activities are to be deemed ‘distribution’, whether they constitute ‘distribution to qualified investors’ or ‘distribution to non-qualified investors’ and what the legal consequences are. It now also lays down the obligations pertaining to distributors of foreign collective investment schemes. A further section deals with distribution via the Internet.

The full revision of the existing Circular ‘Public advertising – collective investment schemes’ (FINMA-Circ. 2008/08) was made necessary by the entry into force of the partially revised Collective Investment Schemes Act (CISA) and Collective Investment Schemes Ordinance (CISO) on 1 March 2013, which replaced the term ‘public advertising’ with the more broadly defined term ‘distribution’. This removed the distinction that was previously drawn between ‘public’ and ‘non-public’ advertising.

Respondents to the consultation acknowledge need for full revision

Respondents to the consultation welcomed the new version of the Circular in principle. They acknowledged in particular the need to adapt the Circular in line with the revised legislation. Some suggested using the Circular to define additional aspects. While FINMA largely took the respondents’ suggestions for formal changes into account, it essentially kept to its original ideas regarding content, since some of those suggestions went beyond the legal framework provided by CISA and CISO. As

usual, FINMA has produced a consultation report detailing how input from the respondents to the consultation was incorporated into the final wording of the Circular.

Since the FINMA Circulars “Unit-linked life insurance” (FINMA-Circ. 2008/39) and “Life insurance” (FINMA-Circ. 2008/40) relate to the Circular “Distribution of collective investment schemes”, the full revision has also caused both of these to be adapted. However, these adaptations have no material impact. The fully revised Circular enters into force, together with the two slightly adapted circulars, on 1 October 2013.

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