



Circular 2013/9 Distribution of Collective Investment Schemes

Distribution under the Collective Investment
Schemes legislation

Circular 2013/9

Distribution of Collective Investment Schemes

Distribution under the Collective Investment Schemes legislation

1 Table of Contents

I.	Title page	pg. 1
II.	Circular 2013/9	pg. 2

2 Other Languages

DE: FINMA-RS 2013/9 Vertrieb kollektiver Kapitalanlagen 10.9.2013

FR: Circ.-FINMA 2013/9 Distribution de placements collectifs 10.9.2013

IT: Circ. FINMA 2013/9 Distribuzione di investimenti collettivi di capitale 10.9.2013

Unofficial translation issued in July 2016

Circular 2013/9

Distribution of Collective Investment Schemes

The distribution of fund units under the Collective Investment Schemes legislation

Reference:	FINMA circ. 13/9 –Distribution of Collective Investment Schemes
Issued:	28 August 2013
Entry into force:	1 October 2013
Last amendment:	28 August 2013
Concordance:	formerly FINMA circ. 08/8 Public advertising collective investment schemes
Legal bases:	FINMASA Article 7(1)(b) CISA Articles 1, 3, 4, 5, 10, 13, 19, 120, 123, 124, 148, 149, 158d, 158e CISO Articles 3, 4, 6, 6a, 30, 30a, 128, 128a, 131a, 133, 144c

Addressees

BA	ISA	SESTA	CISA	AMLA	OTHER
Banks					
Fin. groups & conglomerates					
Other intermediaries					
Insurers					
Ins. groups & conglomerates					
Intermediaries					
Stock exchanges & participants					
Securities Dealers					
Fund management company					
SICAV					
Limited partnerships for CIS					
SICAF					
Custodian banks					
Managers domestic CIS					
Distributors					
Representative of foreign CIS					
Other intermediaries					
SRO					
DUF					
SRO Supervised					
Audit companies					
Rating agencies					

Table of Contents

I.	Purpose and scope of application	margin no.	1-3
II.	General concepts	margin no.	4-23
A.	Distribution	margin no.	4-14
a)	"Offering" and "advertising" considered as distribution (Article 3(1) CISA and Article 3(1) CISO)	margin no.	4-7
b)	Exceptions	margin no.	8-14
B.	Qualified investors	margin no.	15-17
a)	Qualified investors as per Article 10(3) CISA	margin no.	15
b)	High net worth individuals as per Article 10(3 ^{bis}) CISA (Articles 6 and 6a(1) CISO)	margin no.	16
c)	Investors as Article 10(3 ^{ter}) CISA (Article 6a(2) CISO)	margin no.	17
C.	Distribution to qualified and non-qualified investors	margin no.	18-21
III.	Legal consequences of distribution	margin no.	22-65
A.	Distribution to non-qualified investors	margin no.	22-55
a)	Authorization of relevant documents	margin no.	22-23
b)	Representative's duties	margin no.	24-52
c)	Distribution license	margin no.	53-55
B.	Distribution to qualified investors	margin no.	56-65
a)	Appointment of representatives and paying agents	margin no.	56-61
b)	Distribution license	margin no.	62-65
IV.	Internet-based distribution	margin no.	66-96
A.	General aspects	margin no.	66-80
a)	Distribution in Switzerland	margin no.	68-79

Table of Contents

b)	Discussion sites	margin no.	80
B.	Internet-based distribution to qualified investors in Switzerland	margin no.	81-89
a)	Distribution license	margin no.	82-83
b)	Website requirements	margin no.	84-89
C.	Internet-based distribution to non-qualified investors in Switzerland	margin no.	90-96
a)	Distribution license	margin no.	91
b)	Website requirements	margin no.	92-96
V.	Transitional provisions	margin no.	97

I. Purpose and scope of application

This circular's purpose is to specify the concept of "distribution of collective investment schemes" in more detail, clarifying which activities constitute an act of distribution. In addition, the legal consequences of a given activity qualifying as distribution are described. 1

This circular is aimed at banks, insurance companies, securities dealers, fund management companies, SICAVs, limited partnerships for collective investment schemes, SICAFs, asset managers of collective investment schemes, representatives of foreign collective investment schemes, distributors as well as to all other persons who distribute collective investment schemes. 2

Chapter II is also applicable to internal assets (Article 4 CISA) as well as to structured products (Article 5 CISA). 3

II. General concepts

A. DISTRIBUTION

a) "Offering" and "advertising" considered as distribution (Article 3(1) CISA and Article 3(1) CISO)

Any offering and any type of advertising for collective investment schemes that (i) is not exclusively aimed at investors as per Article 10(3)(a) and (b) CISA or (ii) does not fall under the exception as per Article 3(2) CISA, respectively, constitutes a distribution of collective investment schemes. 4

Any offering, i.e. the actual offer to conclude a contract and any type of advertising, i.e. the use of promotional material, the content of which is used to offer certain collective investment schemes, constitutes distribution. "Offering" or "advertising" includes any type of activity that aims at encouraging the acquisition of units of collective investment schemes by an investor. 5

The nature and form of such activity is irrelevant. As such, namely the following are of relevance: print and electronic media of every kind, such as newspapers and magazines, direct mail, brochures, fact sheets, recommendation lists and information letters sent to the clients of a bank or of another financial intermediary, offers to financial intermediaries (that do not qualify as investors as per Article 10(3)(a) and (b) CISA) for forwarding to their clients, information on opportunities to subscribe to collective investment schemes (e.g. securities number, subscription agent), press conferences, telemarketing, unsolicited phone calls (cold calling), presentations (road shows), trade shows geared to finance, sponsored reports on collective investment schemes, home visits by financial intermediaries of any kind, websites and other forms of e-commerce, subscription slips and online subscription opportunities and e-mails. 6

Distribution also includes indirect distribution. This is why offering or advertising "managed fund accounts" in particular constitutes the distribution of collective investment schemes. "Managed fund accounts" are characterized by the fact that collective investment schemes are used in the context of a defined concept, and that their economic effect is comparable to a fund of funds or an asset allocation fund. 7

b) Exceptions

aa) Offers and advertising for supervised financial intermediaries and insurance companies (Article 3(1) CISA; Article 3(4) CISO)

(No further comments.)

8

bb) Provision of information and the acquisition of collective investment schemes in a mere executing function (Article 3(2)(a) CISA; Article 3(2)(b) CISO)

(No further comments.)

9

cc) Provision of information and the acquisition of collective investment schemes in the context of advisory agreements (Article 3(2)(a) CISA; Articles 3(2)(a) and (3) CISO)

This exception is not applicable to acts of a third party, who, without being a party in the advisory agreement, offers or advertises collective investment schemes to the investors or the independent asset manager as per Article 3(2)(c) CISA.

10

dd) Provision of information and the acquisition of collective investment schemes in the context of asset management mandates (Article 3(2)(b) and (c) CISA)

This exception is not applicable to acts of a third party, who, without being a party in the asset management mandate, offers or advertises collective investment schemes to the investors or the independent asset manager as per Article 3(2)(c) CISA.

11

If an independent asset manager, not subject to a code of conduct recognized by the FINMA as per Article 3(2)(c) CISA, provides information on collective investment schemes (CIS) or acquires CISs in the context of an asset management mandate, it may only purchase Swiss CISs and exclusively in the context of an asset management mandate concluded with qualified investors pursuant to Article 10(3) or (3^{bis}) CISA (Article 3, 13 and 19(1^{bis}) CISA and Article 30a CISO).

12

ee) Publication of prices, quotes, net asset values and tax data by supervised financial intermediaries (Article 3(2)(d) CISA; Article 3(5) CISO)

(No further comments.)

13

ff) Offers of employee stock option programs (Article 3(2)(e) CISA; Article 3(6) CISO)

(No further comments.)

14

B. QUALIFIED INVESTORS

a) Qualified investors as per Article 10(3) CISA

(No further comments.)

15

b) High net worth individuals as per Article 10(3^{bis}) CISA (Articles 6 and 6a(1) CISO)

A "similar situation" as per Article 6(1)(a)(1) CISO is present if an investor executed an average of 10 transactions of significant size in each quarter on a particular market over the previous four quarters.

16

c) Investors as per Article 10 (3^{ter}) CISA (Article 6a(2) CISO)

(No further comments.)

17

C. DISTRIBUTION TO QUALIFIED AND NON-QUALIFIED INVESTORS

If the distribution fulfills the definition as per Article 3 CISA and the activity is aimed exclusively at qualified investors as per Article 10(3)(c) and (d), or (3^{bis}) CISA, this constitutes a distribution to qualified investors.

18

Acts of distribution towards independent asset managers as per Article 3(2)(c) CISA are deemed to be distribution to qualified investors, provided that these confirm in writing to use the information only for clients that are regarded as qualified investors as per Article 10 CISA.

19

Acts of distribution towards qualified investors as per Article 10(3^{ter}) CISA without the inclusion of the supervised financial intermediary in question pursuant to Article 3(2)(b) CISA or the independent asset manager concerned as per Article 3(2)(c) CISA are deemed to be distribution to non-qualified investors (Article 6a(2) CISO).

20

Listing a foreign collective investment schemes at a Swiss stock exchange is deemed to be distribution to non-qualified investors.

21

III. Legal consequences of distribution

A. DISTRIBUTION TO NON-QUALIFIED INVESTORS

a) Authorization of authoritative documents

According to Article 120(1) CISA, the distribution of foreign collective investment schemes in or from Switzerland to non-qualified investors is subject to the FINMA's prior approval. For this, the representative must submit to the FINMA the relevant documents, such as the prospectus, the articles of incorporation or the fund contract.

22

The FINMA grants approval if the conditions set out in Article 120(2) CISA are met, i.e. in particular if for the units distributed in Switzerland, a representative of the foreign collective investment scheme has been appointed (Article 123(1) CISA).

23

b) Representative's duties

aa) Principle and duties in general

Representatives represent the foreign collective investment scheme toward investors and the FINMA. It is not permitted to restrict their power of attorney as representatives (Article 124(1) CISA). In addition, they must meet the statutory requirements to act in good faith, exercise due diligence and provide information pursuant to Article 20(1) CISA.

24

They must comply with the statutory reporting, publication and disclosure obligations, as well as with the codes of conduct of relevant industry organizations, which have been declared to be the minimum standard by the FINMA (Article 124(2) CISA).

25

bb) Legal publication and reporting requirements

aaa) Relevant documents

Representatives are to publicize relevant documents pursuant to Articles 13a and 15(3) CISO, i.e. the prospectus, the simplified prospectus or the KIID, the fund contract, the articles of incorporation and the investment regulations, as well as any other document necessary for a fund to be approved under foreign law, which corresponds to the documents as per Article 15(1) CISA. In principle, the relevant documents must be publicized in one of the official languages of Switzerland. 26

Publications (incl. those concerning changes in the relevant documents as per Article 133(3) CISO) and advertisements (Article 133(2) CISO) must indicate the following: 27

- the collective investment scheme's country of origin; 28
- the local representative; 29
- the local paying agent; 30
- the place where documents as per Articles 13a and 15(3) CISO, as well as of the annual and semi-annual report, can be obtained. 31

bbb) Annual and semi-annual reports

The representative is obliged to publicize the annual and semi-annual reports in one of Switzerland's official languages. 32

ccc) Publication of net asset value or issue and redemption prices

The representative is to publicize issue and redemption prices or the net asset value with the note "does not include commissions" together with each issue and redemption of units, but at least twice a month, in the publication media mentioned in the prospectus. For collective investment schemes (including real estate funds) for which the right to redeem fund units at any time as per Article 109(3) CISO has been restricted, the above-mentioned publication must take place at least once a month. The weeks and days of the week in which publications take place must be specified in the prospectus (Article 133(4) CISO as well as Article 79 CISO-FINMA). 33

ddd) Amendments

The representative immediately submits the annual and semi-annual reports to the FINMA, immediately¹ notifies it of any amendments to the relevant documents and publicizes them in the publication media² (Article 39(1) as well as Article 41(1), 2nd sentence also apply (Article 133(3) CISO)). 34

To facilitate the FINMA's assessment whether the annual and semi-annual reports are complete in regard to the required information, the representative must complete a checklist³ which it submits to the FINMA together with the relevant reports. 35

In case of amendments to the relevant documents as per Article 13a CISO, an amendment application must be submitted to the FINMA using the corresponding application template⁴. 36

¹ Within a maximum of two weeks of the publication of the report, but at the latest within two months after the end of the first half year or within four months after the end of the business year (Article 89(1) and (3) CISO).

² No later than one month after the entry into force of the amendments, the amended documents (incl. track-change drafts) must be submitted to the FINMA in one of Switzerland's official languages and publicized in the publication media. These amended documents must be publicized by this deadline regardless of whether the FINMA has approved the amendments or not.

³ Available at www.finma.ch > supervised institutions.

⁴ Available at www.finma.ch > supervised institutions.

In cases listed in Article 15(1) and (4) CISO, the representative must submit to the FINMA an amendment application using the corresponding application template⁵. 37

The representative must immediately inform the FINMA in the following cases, among others (if nothing to the contrary is stated below): 38

- if a collective investment scheme is consolidated or liquidated in whole or in part, as well as if its legal form is changed;⁶ 39
- if a collective investment scheme is not launched after all or only partially, or if it is not foreseen for distribution in Switzerland; 40
- any changes in personnel, especially if qualified managerial staff is concerned (Article 14(1)(a) CISA, in connection with Article 10 and Article 15(1)(a) CISO) at the fund management company and/or its delegates at one of the foreign collective investment schemes it represents; 41
- if one of the foreign collective investments represented by it delays the repayment of units (Article 81(1) CISA, in conjunction with Article 110 CISO);⁷ 42
- if the representative itself is at the object of a merger, split, transfer or change of legal form (and if this results in a change in representative, a prior approval by the FINMA is mandatory; Article 120(2^{bis}) CISA); 43
- if the representatives changes its external auditor (must be publicized in advance); 44
- if the insurance contract is amended, canceled or terminated for other reasons (publication in advance, if possible, otherwise immediately); 45
- if the representative is being sued for damages; 46
- if there are changes to the representative's company or address; 47
- In case the paying agent changes (publication in advance); 48
- if measures are taken by foreign regulatory authorities against a collective investment scheme, namely the revocation of its license; 49
- if a representation agreement is terminated (prior approval mandatory as per Article 120(2^{bis}) CISA). 50

eee) Specific publication requirements

The representative is to publicize a summary of the main changes, indicating where the exact wording of the changes can be obtained at no cost (at least obtainable at its offices; Article 133(3) CISO, in conjunction with Article 27(2) CISA and Articles 39(1) and 41(1) 2nd sentence CISO). 51

Changes due to a mere act of law that do not affect the rights of the investors or which are only formal in nature must still be reported to the FINMA. However, the FINMA may declare such changes as not subject to publication (Article 133(3) in conjunction with Article 41(1^{bis}) CISO). 52

⁵ Available at www.finma.ch > supervised institutions.

⁶ The following must be publicized without delay in the Swiss official publication media: after a consolidation, its completion as well as the conversion ratio, and after a liquidation, the final payment. if a collective investment scheme approved for distribution in Switzerland is consolidated with one not authorized for distribution, the latter may only be mentioned by name in the corresponding publication; no further details are allowed;

⁷ If the delay lasts more than one day, the representative has to notify the FINMA immediately, stating the reasons for the delay. In addition, it must immediately inform the investors concerned about the postponed repayment.

c) Distribution license

The distribution of collective investment schemes to non-qualified investors pursuant to Article 13(1) CISA requires a license, with the exception of the parties stipulated in Article 8 CISO. 53

A distributor is not subject to licensing for the distribution of unit-linked life insurance. Prior to concluding the policy, the insurance company must inform the policy holder according to investor information required for fund management companies or SICAVs for investors in open-ended collective investment schemes as stipulated in Articles 75-77 CISA. The relevant implementing regulations (namely Articles 106-107e as well as Annexes 1-3 of the CISO) must also be considered (cf. margin no. 158 of FINMA circ. 2016/6 "Life Insurance"). 54

The person distributing the units must keep minutes as described in Article 24(3) CISA and Article 34a CISO and must comply with the duty to inform the buyer of fees, costs and distribution commissions as per Article 20(1)(c) CISA. 55

B. DISTRIBUTION TO QUALIFIED INVESTORS

a) Appointment of representative and paying agent

The distribution of foreign collective investment schemes solely addressed at qualified investors presupposes the appointment of a representative and a paying agent (Article 120(4) and Article 123(1) CISA). 56

Article 120(2^{bis}) CISA does not apply to the distribution of foreign collective investment schemes to qualified investors. In such cases, the representative will not require a FINMA approval beforehand in order to terminate its mandate. 57

Representatives represent the foreign collective investment scheme toward investors and the FINMA. It is not permitted to restrict their power of attorney as representatives (Article 124(1) CISA). In addition, they must meet the statutory requirements to act in good faith, exercise due diligence and provide information pursuant to Article 20(1) CISA. 58

As stipulated in Article 30a CISO, the representatives of a foreign collective investment schemes which in Switzerland is distributed exclusively to qualified investors must conclude a written distribution contract with the financial intermediary as described in Article 19(1^{bis}) CISA. 59

The representatives must ensure that it makes available to the investors the relevant documents on the foreign collective investment schemes as described in Article 13a CISO and that these documents contain the relevant information as per Article 133(2) CISO. The representatives must ensure that the names of the collective investment schemes represented by them will not give rise to any deceptions or confusion (Article 120(4) CISA). 60

Representatives are not subject to any legal duties to notify or publicize (Article 133(5) CISO). This means that they do not need inform the FINMA of its mandates. 61

b) Distribution license

The distribution of Swiss collective investment schemes to qualified investors neither requires a license nor is such a license available (Article 13(1) CISA e contrario). 62

However, within Switzerland, only financial intermediaries adequately supervised in Switzerland or abroad may distribute foreign collective investment schemes to qualified investors (Article 19(1^{bis}) CISA). In Switzerland, to be considered as adequately supervised as per Article 19(1^{bis}) CISA, the financial intermediary must either have a distribution license issued by the FINMA or be dispensed from requiring such a license as per Article 8 CISO (Article 30a CISO in analogy). 63

A distributor is not subject to licensing if only distributing unit-linked life insurance. Prior to concluding the policy, the insurance company must inform the policy holder according to investor information required for fund management companies or SICAVs for investors in open-ended collective investment schemes as stipulated in Articles 75-77 CISA. The relevant implementing regulations (namely Articles 106-107e as well as Annexes 1-3 of the CISO) must also be considered (cf. margin no. 56 of FINMA circ. 2008/39 "Unit-linked Life Insurance" and margin no. 57 of FINMA circ. 2008/40 "Life Insurance"). 64

The person distributing the units must keep minutes as described in Article 24(3) CISA and Article 34a CISO and must comply with the duty to inform the buyer of fees, costs and distribution commissions as per Article 20(1)(c) CISA. 65

IV. Internet-based distribution

A. GENERAL ASPECTS

The content of a website, the purpose of which is to sell units of collective investment schemes, qualifies as distribution. 66

In view of the cross-border nature of the internet, this also requires the respecting of relevant international rules. 67

a) Distribution in Switzerland

If it is obvious from the overall impression that there is a link to Switzerland, it is assumed that a website is targeting Swiss investors. When assessing the overall impression, the following indicators are of relevance: 68

- the website explicitly addresses investors domiciled or residing in Switzerland; 69
- the contact address is in Switzerland or the representatives, distributors, paying agents or other financial intermediaries are domiciled or residing in Switzerland; 70
- net asset values, issue or redemption prices are publicized in Swiss francs (with the exception of Article 3(5) CISO); 71
- An official Swiss language is used (this indicator is only valid in conjunction with one or several other indicators); 72
- the text refers to Swiss or foreign legal provisions which may be of interest to persons domiciled or residing in Switzerland (e.g. the presentation of fiscal advantages of the collective investment scheme's domicile); 73
- hyperlinks to other websites or references to other media (newspapers, radio, TV stations, etc.) which provide a Swiss context. 74

If a website is addressed to investors in Switzerland and if these offers are not only visible to investors listed in Article 10(3)(a) and (b), the website is considered to be a distribution in Switzerland (Article 3(4) CISO). The responsible for the website must meet the requirements stipulated in Sections B and C. 75

A website does not constitute distribution in Switzerland if its offer explicitly excludes investors in Switzerland in the disclaimer or if investors in Switzerland are barred from accessing the website. 76

aa) Disclaimer

A visitor to a website may not circumvent the disclaimer. This is ensured with a pop-up window which automatically appears on the screen and where the potential investor must confirm that he or she has taken note of its content. It must appear before the potential visitor has accessed the website's content. If it is possible to subscribe to units in collective investment schemes online, the disclaimer must be shown at the moment in which a potential investor contacts the online distributor of the CIS to subscribe to units, thereby forcing the potential investor to acknowledge it. 77

A generic disclaimer stating that the website is not considered as a distribution in countries for which the distributor does not hold a distribution license is not sufficient. 78

bb) Restricted access to the website

An access restriction must be able to discern the potential investor's domicile or residence. Basically, it is at the discretion of the distributors of collective investment schemes how they wish to restrict the access to their websites (questionnaires, passwords, etc.), provided the access criteria are transparent to the visitor. An online questionnaire is only valid as access restriction if the website visitor must indicate his or her domicile or residence. Distributors of collective investment schemes may rely on the information provided by the website visitors. 79

b) Discussion Sites

Basically, entering a so-called "discussion site" (e.g. newsgroup, bulletin board, chat room, etc.) is not considered as distribution. Nevertheless, as soon as individual aspects in their overall impression indicate that the website is referring to Switzerland, such sites could be considered as distribution in case access is unrestricted and if they are also used by distributors or advertisers of collective investment schemes. 80

B. INTERNET-BASED DISTRIBUTION TO QUALIFIED INVESTORS IN SWITZERLAND

Should a website address itself exclusively to qualified investors in Switzerland as per Article 10(3)(c), (d) and (3^{bis}) CISA or as stipulated in margin no. 19, to independent asset managers as per Article 3(2)(c) CISA, this constitutes the distribution to qualified investors in Switzerland. 81

a) Distribution license

The party responsible for the website domiciled in Switzerland must hold a distribution license as per Article 13(1) CISA if the collective investment scheme is not Swiss (also see margin no. 62). 82

Parties responsible for a website located abroad must be a financial intermediary authorized to distribute collective investment schemes in its own country of incorporation and must have written distribution agreements with the relevant representative in Switzerland as per Article 30a CISO. 83

b) Website requirements

If a website addresses itself to qualified investors in Switzerland, it must feature a disclaimer or an access restriction which meets the following requirements: 84

aa) Disclaimer

A generic disclaimer must explicitly inform Swiss investors that the website is only for qualified investors. The disclaimer is not to be considered as an investor check (qualified investors as per Article 10 CISA) which takes place when acquiring units of collective investment schemes. Specifically, it should neither be considered as evidence as required in Article 6(1) and (5) CISO, nor as written declaration as per Article 6a CISO. 85

Should the website also offer collective investment schemes for which there is no representative or paying agent in Switzerland, the website must also display a disclaimer which explicitly indicates that those collective investment schemes may not be distributed in Switzerland. If only a few collective investment schemes dispose of a representative and/or a paying agent in Switzerland, these must be specified. 86

bb) Restricted access to the website

Website access must be able to discern investor categories (qualified investors as per Article 10 CISA). Interested investors must first answer all of the control questions before they are granted access to the website. 87

Distributors of collective investment schemes may rely on the information provided by the website visitors at the time they were accessing the website. However, the information provided is not to be considered as an investor check (qualified investors as per Article 10 CISA) which takes place when acquiring units of collective investment schemes. Specifically, it should neither be considered as evidence as required in Article 6(1) and (5) CISO, nor as written declaration as per Article 6a CISO. 88

Should the website also offer access to collective investment schemes without representatives and/or paying agents in Switzerland, qualified investors may only access areas which contain indications of collective investment schemes (or distributors thereof) for which a FINMA-authorized representative and/or paying agent has been appointed in Switzerland. 89

C. INTERNET-BASED DISTRIBUTION TO NON-QUALIFIED INVESTORS IN SWITZERLAND

If the website is not restricted to qualified investors but also grants access to non-qualified investors in Switzerland, this is considered to be distribution to non-qualified investors in Switzerland. 90

a) Distribution license

The entity/person responsible for the website is required to possess a distribution license as required in Article 13(1) CISA. 91

b) Website requirements

Should the website also offer collective investment schemes not licensed for distribution by the FINMA, it must either contain a disclaimer or restrict access to that area, both of which must meet the following requirements: 92

aa) Disclaimer

If there is no FINMA-issued distribution license, the disclaimer must explicitly state that the collective investment schemes in question are not approved for distribution to non-qualified investors in Switzerland. If only a few collective investment schemes are authorized for distribution in Switzerland, these must be specified. The disclaimer is not to be considered as an investor check (qualified investors as per Article 10 CISA) which takes place when acquiring units of collective investment schemes. Specifically, it should neither be considered as evidence as required in Article 6(1) and (5) CISO, nor as written declaration as per Article 6a CISO. 93

bb) Restricted access to the website

Website access must be able to discern investor categories (qualified investors as per Article 10 CISA or non-qualified). Interested investors must first answer all of the control questions before they are granted access to the website. 94

Distributors of collective investment schemes may rely on the information provided by the website visitors at the time they were accessing the website. However, the information provided is not to be considered as an investor check (qualified investors as per Article 10 CISA) which takes place when acquiring units of collective investment schemes. Specifically, it should neither be considered as evidence as required in Article 6(1) and (5) CISO, nor as written declaration as per Article 6a CISO. 95

Non-qualified investors must only be granted access to websites which exclusively contain references to collective investment schemes licensed for distribution in Switzerland. 96

V. Transitional provisions

In regard to the distribution of collective investment schemes to high net worth individuals as described in Article 10(3^{bis}) CISA, the transitional provisions of the law (Articles 158d and 158e CISA) and its implementing ordinance (Article 144c CISO) apply. Moreover, Article 24 CISA and Article 34a CISO will only enter into force on 1 January 2014. 97

Contacts

Philipp Rickert

Partner, Head of Financial
Services,
Member of the Executive
Committee
Zurich
Tel. +41 58 249 42 13
prickert@kpmg.com

Helen Campbell

Partner, FS Transformation
Tel. +41 58 249 35 01
hcampbell@kpmg.com

Thomas Dorst

Partner, Assurance & Regulation
Tel. + 41 58 249 54 44
tdorst@kpmg.com

Nicolas Moser

Partner, Geneva Office
Tel. +41 58 249 37 87
nmoser@kpmg.com

www.kpmg.ch

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received, or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. The scope of any potential collaboration with audit clients is defined by regulatory requirements governing auditor independence.

© 2020 KPMG AG is a subsidiary of KPMG Holding AG, which is a member of the KPMG network of independent firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss legal entity. All rights reserved.