

NEW GUIDELINES ISSUED BY SWISS FUNDS ASSOCIATION ("SFA") ON RETROCESSIONS AND USE OF MANAGEMENT FEE IN GENERAL

The new *"Guidelines on transparency with regard to management fees"* of the SFA (the "Guidelines") allow retrocessions under certain conditions and require separate disclosure in the prospectus of the parts of the management fee paid for administration, asset management and distribution.

Guidelines (download: www.sfa.ch/download.php?id=527) were issued by the SFA after negotiations with the Swiss Federal Banking Commission ("FBC") - who have acknowledged them as binding - and will enter into effect on 1 August 2005 with a transition period until 31 December 2006 during which prospectuses have to be amended.

- Applicability: all domestic and foreign funds admitted for public distribution in Switzerland.
- Summary:
 - Permissibility of retrocessions under certain conditions:
 - In the terminology of the Guidelines two categories of retrocessions exist:
 - reimbursements: payments to investors ("Reimbursements");
 - trailer fees: payments to distributors ("Trailer Fees").
 - Both Reimbursements and Trailer Fees may only be paid out of the part of the management fee reserved for distribution as disclosed in the prospectus (details see below);
 - Reimbursements may only be paid to the following institutional investors which are from an economic perspective deemed to be holding the fund's shares/units for third parties: Life insurers, pension funds and similar schemes, domestic and foreign fund management companies, foreign funds and Swiss investment companies. Additional categories may be approved by the FBC following an application;
 - Trailer Fees may only be paid to:
 - authorised fund distributors or regulated institutions exempt from such specific authorisation; or
 - distributors distributing funds exclusively to:
 - institutional investors with a professional treasury function*; or
 - discretionary clients on the basis of a written investment management agreement*.

* as defined in detail in the FBC-Circular 03/1 (see fundcircular #4 of 25 June 2003, download: www.nastra.ch/fotos/pdf/nastra_fund_circular_4.pdf)

- share classes with 0% management fee are permissible in the case of publicly distributed funds if such classes are reserved to institutional investors with a professional treasury function*.
- new disclosure requirements:
 - (a) in the prospectus (amendments must be effective by 31 December 2006 at the latest):
 - (i) separate indication of percentages of the management fee that will be used to cover the costs of administration, asset management and distribution of the fund;
 - (ii) indication of maximum percentages for the three components is permissible, provided that these maxima do in aggregate not exceed 150% of the maximum aggregate management fee;
 - (iii) the disclosure has to be made for each share class if different levels of the management fee are applied (the Guidelines further require that the conditions for the subscription of such share classes must be transparent and follow objective criteria and that the portion of the management fee disclosed to be covering administration costs must be borne by all share classes);
 - (iv) disclosure of the fact if Reimbursements/ Trailer Fees are paid out of the distribution part of the management fee;
 - (v) if the fund receives retrocessions from other funds it invests in it has to disclose how these are used;
 - (vi) in the case of foreign funds the disclosures may be placed on the page containing the special information for investors in Switzerland.
 - (b) in the annual and semi-annual reports (requirement applicable for reports covering periods ending on or after 1 August 2005):
 - (i) indication of the management fee effectively charged if the prospectus of the fund only shows the maximum management fee;
 - (ii) disclosure referred to under (a) (iv) until the prospectus is amended accordingly.
- Compliance:
 - checked by the auditors of domestic funds;
 - the Swiss representative of foreign funds is required to obtain a written confirmation by the foreign fund/fund manager that the indications made in the prospectus in the context of the new disclosure requirements are complied with in practice.

For more information feel free to contact any of our investment fund specialists (www.nastra.ch/).

* as defined in detail in the FBC-Circular 03/1 (see fundcircular #4 of 25 June 2003, download: www.nastra.ch/fotos/pdf/nastra_fund_circular_4.pdf)

Note: None of the information contained herein is to be regarded as binding legal advice.