

NEW GUIDELINES REGARDING DUTIES OF SWISS REPRESENTATIVES OF FOREIGN FUNDS ("GUIDELINES") ISSUED BY THE SWISS FEDERAL BANKING COMMISSION ("FBC") TODAY:

FBC SUMMARISES PRACTICE AND COMMUNICATES TIGHT PUBLICATION/FILING DEADLINES

Key Points:

- The Guidelines provide a summary of the various duties of the Swiss representative of foreign funds by consolidating provisions from various regulation levels such as the Investment Fund Act, the Investment Fund Ordinance, the FBC's own practice and self-regulatory sources, whereby emphasis is put on the duties in the area of publications, notifications and filing of required documents with the FBC.
- Whereas many points were already part of the regular practice of the FBC, the following requirements seem rather challenging to comply with:
 - The Swiss representative has to publish changes to the prospectus, simplified prospectus (if not only reflecting changes to the prospectus) and changes to the articles/regulations of a foreign fund **within 2 weeks after the effective date** of the respective document(s); the FBC newly require the Swiss representative to set out a rationale for the changes in the publication and, moreover, explicitly recommend to pre-file any changes and respective draft publications;
 - The Swiss representative has to notify the FBC by filing the respective documents in a Swiss official language, if required, duly signed by the fund, the custodian and the Swiss representative and copies of the publications regarding the respective changes **within the same 2 weeks after the effective date** of the respective document(s); any filing of such documents needs to be accompanied by a new confirmation of the regulator of the jurisdiction of origin and a mark-up of the document versus the last version filed with the/and approved by the FBC; after the said two weeks, **only the newly amended documents may be used in Switzerland**.

Our view: There are a two main points yet to be clarified:

- The Guidelines do not provide for any explicit transition period: We think that for documents with effective dates before 1 May 2006 practical solutions for complying with the Guidelines need to be found on a case by case basis taking into account that the practice generally applied by the FBC allowed for much longer deadlines.
- The Guidelines do not set out practical procedures for the case where (i) an introduction of (a) new sub-fund(s) is combined with other changes to the prospectus/simplified prospectus and (ii) the FBC have not issued the authorisation for the new sub-fund(s) within two weeks.

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