

**PRIVATE PLACEMENT OF COLLECTIVE INVESTMENT SCHEMES IN SWITZERLAND:
REVISED CIRCULAR PUBLIC MARKETING/COLLECTIVE INVESTMENT SCHEMES EFFECTIVE AS OF 1 OCTOBER 2007 (THE "REVISED CIRCULAR") ISSUED BY SWISS FEDERAL BANKING COMMISSION ("FBC")**

Key Points:

- Following the entry into force of the new Swiss Collective Investment Schemes Act ("CISA") on 1 January 2007 the FBC have now issued the Revised Circular. The Revised Circular defines in more detail the various categories of **qualified investors** listed in article 10 CISA the offering and distribution of collective investment schemes to which is not deemed to constitute public marketing. The categories of qualified investors listed in article 10 CISA and now further defined in the Revised Circular are very **similar to the investor categories already exempt under the old Circular**. Also the part of the Revised Circular dealing with the restrictions applicable to the distribution of collective investment schemes over the internet remains almost unchanged.
- Contrary to the old Circular the Revised Circular does not contain a numerical exemption. Therefore the **20 investors *de minimis* rule is no longer applicable under the Revised Circular**.
- The Revised Circular defines:
 - **independent asset managers**; and
 - investors who have entered into a written asset management agreement with such independent asset managers

as qualified investors,

PROVIDED that (in accordance with article 6 section 2 of the new Swiss Collective Investment Schemes Ordinance, "CISO"):

- a) such independent asset managers are a financial intermediaries subject to the Swiss Money Laundering Act;
- b) such independent asset managers are subject to the code of conduct of an industry organisation acknowledged by the FBC as minimum standard (the FBC will yet need to define which code(s) of conduct meet this standard); and
- c) the asset management agreement complies with the recognised standards of an industry organisation.

HOWEVER, the Revised Circular provides a transition period until 1 October 2009 to fulfil the requirements described in a) through c) above.

Our view: We think that the recognition of independent asset managers as qualified investors under certain conditions combined with an adequate deadline comes as a welcome liberalisation for foreign fund providers. One point which remains to be clarified, however, is whether before 1 October 2009 the written confirmation in accordance with article 6 section 1 CISO by a high net worth individual to own at least CHF 2 million in financial assets may be provided to any independent asset manager.

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

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