

**PUBLICATION OF PERFORMANCE DATA/TER/PTR OF COLLECTIVE INVESTMENT SCHEMES: REVISED GUIDELINES EFFECTIVE AS OF 1 JULY 2008 (THE "REVISED GUIDELINE(S)") ISSUED BY THE SWISS FUNDS ASSOCIATION SFA ("SFA")**

*Key Changes:*

**Performance data:**

- Indication of YTD data is no longer required. If performance data for the current calendar year (YTD) is published voluntarily, it must newly be calculated to the end of a month no more than **60 days** (instead of previously 40 days) before the publication date.
- It is clarified for non-distributing Swiss collective investment schemes for the purposes of the calculation of their performance that it may be assumed that **Swiss federal withholding tax** is immediately reinvested in the collective investment scheme.
- The provision regarding the disclosure requirements in case of **extraordinary circumstances** such as substantial divergence of the weightings for individual assets from benchmark weightings has been deleted.
- A new provision regarding the so-called **“Repositioning” (change in investment policy)** has been added, requiring the disclosure of a change in the investment policy in a suitable manner provided that such change is lasting and thus changes the investment character significantly.
- It is newly clarified that performance data must be indicated for all **classes of units with different reference currencies**.
- The Revised Guideline explicitly states that - under the conditions specified therein - in case of a **merger of collective investment schemes** it is not only permissible to continue the track record of the “acquiring” collective investment scheme but also the track record of the “acquired” collective investment scheme, provided the latter is larger in terms of assets.
- In case of **non-recognised or non-publicly accessible indices used for performance comparisons**, it is no longer required to disclose the index composition and the independent index provider(s) in the prospectus. Instead it must be disclosed in the prospectus that such information is contained in the annual and semi-annual reports.
- In their Circular 15/08 with which the Revised Guidelines were announced the SFA sets out that in the case of collective investment schemes the business year of which does not correspond with the calendar year, the **performance data to be published in the annual and semi-annual reports may be indicated for the respective business year instead of the calendar year**.

**TER/PTR:**

- According to the Revised Guideline **TER/PTR** do not only **have to be published** in the annual and semi-annual reports and the simplified prospectus but **in the full prospectus as well**.
- If a **performance-related fee** is paid to the asset manager of the collective investment scheme, this remuneration is to be **included in the TER and stated separately as a percentage of the average net assets**. The SFA have abolished the previous requirement according to which the TER had to be disclosed including and excluding performance-related fees.

**Both Revised Guidelines:**

- The Revised Guidelines do not contain a specific provision regarding the **checks by the auditors** anymore. However, given that the Revised Guidelines are considered by the Swiss Federal Banking Commission as a minimum standard of self-regulation, the compliance with these Guidelines by Swiss representatives of foreign collective investment schemes remains subject to an auditing requirement.

*Our view:*

Besides the updates of the references to the legal provisions following the change of the Swiss collective investment schemes legislation effective since 1 January 2007 the Revised Guidelines contain a number of useful clarifications.

However:

- the requirement to publish TER/PTR in the full prospectus as well seems rather anachronistic in times where common efforts aiming at the reduction of the "Swiss Finish"-requirements are made in the context of the so called "Swiss Financial Sector Masterplan". **After an informal inquiry at the SFA it seems to us that this new "Swiss finish" point was not intended and that a clarification could be made that the requirement to publish TER/PTR in the full prospectus as well is not maintained in the case of foreign collective investment schemes.**
- we think that an opportunity has been missed to clarify existing uncertainties with respect to the duty to have performance data/TER and PTR figures audited in certain fund documents of foreign collective investment schemes.

Finally we think that in the case of foreign collective investment schemes the **calculation** of the performance data/TER and PTR figures should be regarded as primarily subject to the "home country rule" and only where no "official" rules exist in the jurisdiction of origin the Revised Guidelines may be referred to.

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

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