

**SWISS FEDERAL BANKING COMMISSION ("FBC") OPENS PUBLIC CONSULTATION ON ABOLITION OF SO CALLED "SWISS FINISH" FOR SWISS AND FOREIGN FUNDS (CONSULTATION PERIOD ENDS 10 OCTOBER 2008)**

The FBC are proposing to abolish a number of requirements applied in particular also to collective investment schemes complying with UCITS III ("UCITS") to be registered for public distribution in and from Switzerland. After the FBC had summarised most of these requirements in their guidelines applicable to the registration of foreign funds such requirements became known as the "Swiss finish".

***Requirements proposed to be abolished:***

- **"Two-Thirds Rule"** (including other requirements applied by the FBC to fund-names and investment policies): The FBC argue that the fund providers should in the future decide themselves whether or not the name of a fund may be misleading in the sense of article 12 section 1 of the Swiss Collective Investment Schemes Act ("CISA"). As regards the FBC's duty pursuant to article 120 section 2 (c) CISA to assess in the case of foreign funds to be registered whether or not their name may be misleading, the FBC set out that according to article 53 CISA Swiss securities funds (Effektenfonds) comply with the laws of the European Community and therefore UCITS *a priori* are compliant with article 120 section 2 (c) CISA. As UCITS are subject to a supervision serving the protection of investors, the FBC think that it is therefore ensured that investors are not misled. In case of non-UCITS the FBC will verify whether the laws of the jurisdiction of origin contain a provision equivalent to article 12 section 1 CISA and in the case of Swiss funds the FBC will monitor compliance with the latter during the life of the fund.
- **Prohibition of double dipping of management fees when investing in other collective investment schemes:** The FBC propose an amendment of article 31 of the Swiss Collective Investment Schemes Ordinance by the Federal Council ("CISO") to limit the double-dipping prohibition to the level applicable to UCITS (i.e. application only to subscription and redemption fees and indication of max. management fees on both levels). As regards the FBC's duty pursuant to article 120 section 2 (b) CISA to assess in the case of foreign funds to be registered whether the respective provision is equivalent with the provisions of the CISA the FBC use the same argumentation on the basis of article 53 CISA for UCITS as in the case of the "Two-Thirds Rule" and state that even before the amendment of article 31 CISO the requirement will not need to be checked anymore. In the case of non-UCITS and Swiss funds the requirement will change after the amendment of article 31 CISO.
- **So called formal requirements:**
  - o **to be dropped:**
    - Indication of segregation of liabilities of sub-funds in umbrella funds in the information for Swiss investors (the FBC seem to assume that any foreign umbrella fund to be registered in Switzerland provides for such segregation of liabilities).
    - Specific risk warning regarding maximum total exposure through use of derivatives and borrowings.
    - Specific risk warning that liabilities from currency hedging transactions in relation to one share class may affect the net asset value of other share classes of the same sub-fund.
  - o **to be maintained on the basis of model wordings to be provided by the SFA Swiss Funds Association:**

- Information for investors in Switzerland in the narrower sense (foreign funds): e.g. indication of Swiss representative, Swiss paying agent, place where principal documents of fund can be obtained, information on price publications and legal publications etc.
- Information required by the SFA Guidelines on transparency with regard to management fees.

***Our view:***

We think that the abolition of the "Swiss finish" would offer great opportunities to fund providers offering UCITS as the main barriers to fully access the Swiss market would vanish. The FBC chose a very progressive approach and it remains to be seen whether in the light of the current market turmoil consumer protection issues or political opposition will arise in the public consultation, in particular with regard to the abolition of the "Two-Thirds Rule". It should be mentioned as well that the abolition of the "Swiss finish", in particular of the "Two-Thirds Rule" shifts additional responsibilities to fund providers (e.g. judgement whether or not a fund name may be misleading). Finally it will yet need to be clarified whether the FBC's pragmatic argument of UCITS being equivalently supervised and therefore *a priori* complying with article 120 section 2 CISA is legally viable.

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