

SWISS FINANCIAL MARKET SUPERVISORY AUTHORITY FINMA ABOLISHES "SWISS FINISH" FOR FOREIGN COLLECTIVE INVESTMENT SCHEMES AS FROM 1 MARCH 2009

The following communication has been released by the FINMA today:

"The Federal Council has decided today to adapt article 31 of the Ordinance on Collective Investment Schemes (CISO) to the European Law. The amendment will enter into force on March 1st, 2009. On the same date, the Swiss Financial Market Supervisory Authority FINMA will suppress the "Swiss Finish" falling within its competence.

On September 16th, 2008, the Swiss Federal Banking Commission (SFBC; today the Swiss Financial Market Supervisory Authority FINMA) opened the consultation process about the suppression of the "Swiss finish" with the approval of the Federal Department of Finance. The suppression of the "Swiss Finish" should contribute to reposition the Swiss Funds Market and promote Swiss Collective Investment Schemes. Hence, the "Swiss Financial Centre Dialogue Steering Committee (STAFI)", the goal of which is in particular the effective improvement of the international competitiveness of the Swiss financial sector, decided on September 2nd, 2008, that it supported the initiative of the SFCB respectively the FINMA. Besides the suppression of formal requirements it is in particular the adaptation of article 31 para. 4 CISO to the European minimal standard that is meant by the suppression of "Swiss Finish". The consultation participants welcomed the proposal.

According to today's decision of the Federal Council, the amendment of article 31 CISO will come into force on March 1st, 2009. On the same date, the FINMA will suppress the "Swiss Finish" points falling within its competence. Besides the suppression of formal requirements, the FINMA renounces to quantitative specifications regarding the denomination of collective investment schemes. It is therefore the duty of the licensees to guarantee the legal transparency requirements according to the development of the financial markets. The investors have to be informed about the assets of the collective investment scheme in the documents of the latter. The information has to be transparent and comprehensive and the market participants have to make sure that the investors are not misled.

The suppression of these formal and quantitative specifications gives the opportunity to FINMA to proceed to a even more qualitative analysis in the future.

The existing Annex I "Fund Name and Investment Policy" dated December 14th, 2005 of the "Guidelines for applications regarding the approval of contracts of investment funds, the approval of additional subfunds, the approval of contract amendments" (Edition April 1st, 2008) will be suppressed accordingly and further Guidelines will be adapted appropriately. These amendments will enter into force on March 1st, 2009."

Our view:

- We think that the abolition of the "Swiss finish" (in particular the "Two-Thirds Rule" and the prohibition of double-dipping of management fees) will offer **great opportunities** to fund providers offering UCITS as the main barriers to **fully access the Swiss market** are expected to vanish.
- It should however be mentioned as well that the abolishment of the "Swiss finish", in particular of the "Two-Thirds Rule" will shift additional responsibilities to fund providers and Swiss representatives (e.g. judgement whether or not a fund name may be misleading).
- Further, it remains to be seen what consequences the "more qualitative analysis" which the FINMA intends to apply will have.
- Finally, to avoid any doubt, a number of Swiss self-regulatory and other requirements are expected to remain applicable.

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.