

ABOLISHMENT OF SWISS FINISH NOW EFFECTIVE:**SWISS FINANCIAL MARKET SUPERVISORY AUTHORITY FINMA ("FINMA") ADAPTS GUIDELINES FOR THE REGISTRATION OF UCITS**

Following the decision to abolish the "Swiss finish" with effect as from 1 March 2009 (see fund circular #20 of 28 January 2009), the FINMA has, amongst others, adapted its guidelines regarding applications for approval for public distribution of UCITS in Switzerland (the "Guidelines for UCITS").

○ **Swiss finish abolished:** The following former requirements have been dropped:

- Prohibition of double-dipping with regard to management fees,
- risk disclosure regarding currency-hedged share classes,
- disclosure of overall risk exposure,
- indication regarding the qualification of a fund as sophisticated or non-sophisticated UCITS and risk measurement method applied,
- indication of the prevailing prospectus language.

○ **Requirements still applicable:**

1. The full prospectus needs to be translated into German, French or Italian and needs to contain an annex with information for investors in Switzerland which contains information regarding:
 - the Swiss representative and the Swiss paying agent,
 - the place where the relevant fund documents may be obtained free of charge,
 - the Swiss publication instruments,
 - the place of performance and jurisdiction, as well as
 - the information required pursuant to the "Guidelines on transparency with regard to management fees" by the Swiss Funds Association SFA ("SFA").

The SFA has published a model annex for the "sales prospectus" containing the said information ("SFA Annex", English translation by the SFA attached hereto

2. If an umbrella fund does not provide for segregated liabilities between the sub-funds, this fact has to be disclosed in a transparent way in the full prospectus.
3. The Guidelines for UCITS require that in an application for approval the fulfilment of the approval requirement that a fund-name may neither be misleading nor confusing (article 120 section 2 lit. c of the Swiss Collective Investment Schemes Act ("CISA")) shall be established.
4. The former administrative practice regarding prospectus addenda (see nastra fund circular # 2 of 2 April 2003) is still applicable.

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

5. With regard to the simplified prospectus which needs to be translated into German, French or Italian, the Guidelines for UCITS do not anymore contain the explicit requirement to disclose TER/PTR/performance. However, we assume that the respective SFA-Guidelines remain applicable which may or may not result in the need to disclose additional information in relation to TER/PTR/performance in the simplified prospectus. The further general requirements to simplified prospectuses should remain unchanged.
- When releasing their new guidelines the FINMA communicated that they will generally not accept pre-filings for foreign funds (UCITS and non-UCITS) anymore.
 - It should finally be noted that the general duties of Swiss representatives of UCITS in the course of the maintenance of a Swiss registration remain unchanged.

Our view:

- We think that article 120 section 2 lit. c CISA contains a clear duty of the FINMA to ensure that a name of a foreign fund to be approved for public distribution in Switzerland is neither misleading nor confusing and that therefore a (continuing) approval of a given fund should be regarded conclusive evidence that the FINMA does not regard the name of such fund to be misleading or confusing from a regulatory point of view. After the suppression of the practice paper applicable to fund-names (containing the so called "Two-thirds Rule" etc.), there are no written guidelines anymore to which an applicant or the FINMA could refer in this respect. From a FBC/FINMA consultation paper issued in September 2008 one could conclude that names of UCITS are generally deemed to comply with article 120 section 2 lit. c CISA but that in "obvious cases" of misleading fund names the FINMA could intervene. It will need to be clarified what the FINMA would deem to be an "obvious case" and when and to which extent the FINMA will in practice examine names, investment policies and investments of UCITS.
- As in the case of any change in administrative practice, experience will have to be gained first with the handling of the new situation by the FINMA but we are confident that fund providers will benefit from this more liberal attitude of our regulator as from today.

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