

**PRIVATE PLACEMENT OF INVESTMENT FUNDS IN SWITZERLAND:
CIRCULAR RE PUBLIC MARKETING EFFECTIVE AS OF 1 JULY 2003 ISSUED BY SWISS FEDERAL BANKING COMMISSION
("FBC") TODAY**

Key Points:

- public marketing triggers licence requirement for funds as well as distributors.
- **definition of public marketing:**
 - marketing: use of means of marketing of any kind which serve to directly or indirectly offer and/or distribute funds; type and form of means of marketing irrelevant (e.g. fact sheets and price publications considered marketing).
 - public marketing: **any marketing directed to more than 20 investors in total within one business year.**
 - **exemptions:** no public marketing (i.e. targeting of more than 20 investors permitted) in the following cases (list conclusive):
 - offering/distribution to **institutional investors** the **financial asset of which are managed by at least one professional, if marketing material used is usual for this type of business** (e.g. personal contacts, "road shows"). **The FBC** does not provide a general definition of the term institutional investor, but:
 - explicitly **lists the following types of institutions as institutional investors: Banks, securities dealers** (as defined in the Federal Act on Stock Exchanges and Securities Trading, the "Securities Dealers"), **fund management companies, insurance companies, pension funds, public bodies, industrial and trading companies; and**
 - **explicitly excludes high net worth individuals as well as independent investment managers.**
 - distribution by **Banks, Securities Dealers and independent investment managers to their existing customers:**
 - on the **basis of an already existing written discretionary investment management agreement**
 - which provides for **remuneration** of the discretionary management services rendered and
 - which **complies with Swiss Bankers' Association standards for investment management agreements or equivalent standards.**
- Banks may only let their customers participate in their special in-house funds ("bankinterne Sondervermögen") on the basis of a written mandate agreement with the respective customer to manage his investments on a discretionary basis.
- Licence requirement for distributors applies also in the case of indirect distribution of funds (e.g. managed fund-accounts or similarly structured fund-like investment management services) if such service is publicly marketed.

➤ **internet:**

- the **content of a website** is considered **public marketing in Switzerland** if **directed to Swiss investors** (regardless of whether subscriptions can be made on-line); **possible indicators:**
 - it explicitly addresses Swiss investors;
 - it contains an address in Switzerland;
 - it publishes prices in CHF;
 - it is in German, French or Italian (only together with other indicator(s));
 - refers to legal provisions relevant for Swiss investors;
 - contains hyperlinks to other websites or mentions other media which refer to Switzerland.
- **exemptions** (no public marketing):
 - use of specific **disclaimer:**
 - In the case information regarding funds not registered in Switzerland is shown on subsequent web-pages the disclaimer must mention that the respective funds may not be offered or distributed in Switzerland;
 - The disclaimer may not be skipped and must pop up and be confirmed by the visitor:
 - before any information regarding funds not registered in Switzerland is shown; and
 - again immediately before an on-line subscription (if such feature is offered at all) can be made.
 - or, **access restrictions:**
 - based on verification of:
 - domicile of visitor (i.e. exclusion of Swiss domicile required), or
 - type of visitor (offering/distribution to which would qualify as non-public marketing as described on page 1 above).
 - e.g. by asking visitor in on-line questionnaire (the respective answer by the visitor may be relied on).

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