Industry Professionals serving as non-executive directors to Alternative Funds

This edition of IPAF's newsletter brings you news from Switzerland. Sarah Caygill is IPAF's Swiss-based panel director.

22 days until the new Swiss fund distribution regulations come into place

With the 28th February deadline approaching fast, foreign funds marketing in Switzerland need to comply with the latest regulations or risk committing a criminal offence.

Switzerland's investment fund universe is worth some CHF840 billion according to latest estimates from SFAMA (Swiss Funds & Asset Management Association), and is undergoing some major changes.

With so much coverage over recent years about AIFMD, many investors, distributors and fund managers have not yet woken up to the fact that the new Swiss rules are quite different and that the deadline to comply is imminent. In essence, rules and limitations differ depending on which investor base is targeted i.e. a fully open market for qualified investors, versus restricted structures for retail. Funds targeting retail need to register with FINMA, the Swiss Financial Regulator, whereas funds targeting qualified investors need only to appoint a Swiss Regulated Representative. Failure to comply with this regulation and having unregulated distribution after the 28th February 2015 deadline is a criminal offence under Swiss law.

When was this regulation brought in?

Swiss law governing Collective Investment Schemes (CISA) was revised in response to AIFMD and effective as of March 2013 with a transition period until the 28th February 2015.

Which sort of investor are you targeting and how do you comply?

Investor Type	*Example*	*How to comply*
1. Non-qualified investors, opting-in to the protection of CISA	Retail and high net worth investors (HNWI)	Must be approved directly by FINMA for public distribution – this is a burdensome and expensive process
2. FINMA regulated qualified investors	Banks, insurance companies and fund management companies	Do not need to apply for additional authorisation, but must limit marketing and distribution in Switzerland to banks, insurance companies and fund management companies
3. Qualified investors not regulated by FINMA	Pension funds, companies with professional treasury departments, HNWIs who waive CISA protection, independent asset managers wealth advisors and family offices	Require Swiss Representation via a FINMA authorised representative

What about Reverse Solicitation?

Funds without Swiss Representation may respond to reverse solicitation, but this must be genuine reverse solicitation, which requires detailed documentation and proof which is recorded over a considerable period of time.

What about Qualified investors who are not FINMA regulated?

Marketing to Qualified Investors who are not FINMA regulated (category 3 investors) requires Funds to appoint a Swiss Representative and a Paying Agent, which must be a Swiss Bank. The Distributor must be regulated and authorised to distribute funds to qualified investors either in Switzerland, or in a jurisdiction where the supervision is considered appropriate by FINMA. FINMA does not provide a list of all the appropriate jurisdictions.

What is a Swiss Representative and what does it do?

There are now half a dozen Swiss Representatives, such as Hugo Fund Services, who are responsible for ensuring that distribution is done in compliance with the law. This entails establishing legal domicile for the Fund in Switzerland, serving as a communication channel between Swiss based investors, FINMA and the Fund, approving marketing documentation for compliance within the law and ensuring regulatory oversight for Switzerland.

What is a Paying Agent?

A Swiss Bank Paying Agent needs to be appointed by the Fund for redemptions and subscriptions. However, investors can decide whether they want to use the appointed Swiss Bank or another bank. In practice, the Paying Agent is rarely used, and it is hoped that when the regulation is reviewed the need for a paying agent will be abolished.

In conclusion….

Switzerland introduced this regulation to come into line with the AIFMD. As far as category 3 investors are concerned, it is generally considered to be constructive (with the possible exception of the Paying Agent provisions). FINMA offers the market a pragmatic approach to oversight of funds distributed in Switzerland and allows for a broad range of fund strategies and types to be available to investors. The adjustment process is simple and the cost of compliance via a Swiss Representative is relatively low.

About Sarah Caygill

Sarah is resident in Switzerland and is an experienced portfolio manager and asset allocator. She is on the IPAF Group panel of directors and serves as an independent non-executive director for hedge and private equity funds; she is also a consultant, including to Hugo Fund Services.

About IPAF

IPAF provides Industry Professionals – independent, knowledgeable and experienced people - as non-executive directors to Alternative Funds. IPAF is run from London with a panel of 16 directors, across 8 jurisdictions including Cayman, Ireland, Switzerland, the Channel Islands, Malta, Bermuda, Barbados and the UK. All the IPAF directors are independent of each other and no additional fee is charged by IPAF to a fund that selects a member of its panel: the fund only pays the director's fees. For more information please telephone 020 7340 6316 or email info@ipafgroup.com.

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