

## NEWSLETTER

From Ghandchi Schmid Partners | Jasmin Ghandchi Schmid  
Date February 25, 2009  
Re **Collective Investment Schemes**  
**Abolition of the Swiss Finish for collective investment schemes**

The Swiss legislation on collective investment schemes contains various requirements that exceed the European minimum standard for UCITS III (so-called “Swiss Finish”). This is not only relevant for collective investment schemes to be established based on the Swiss legislation but it is also relevant for foreign collective investment schemes that shall be publicly marketed in Switzerland since those foreign collective investment schemes have to comply with these additional requirements. In general the Swiss finish includes the following requirements:

- **Two-thirds rule:** according to art. 12 para. 1 of the Federal Act on Collective Investment Schemes (“CISA”) the designation of a collective investment scheme shall not give rise to confusion or deception. The Federal Banking Commission, until December 31, 2008 the supervisory authority<sup>1</sup>, defined that at least two-thirds of the assets of the collective investment scheme had to be invested according to its designation in order to comply with this provision. This rule also applies to foreign collective investment schemes to be publicly marketed in Switzerland (art. 120 para. 2 subpara. c CISA). The supervisory authority decided to abolish the application of the two-thirds rule. However, art. 12 para. 1 CISA and art. 120 para. 2 subpara. c CISA still apply and shall ensure that investors are not misled. In relation to foreign collective investment schemes the supervisory authority takes the position that it can be assumed that foreign collective investment schemes complying with the UCITS III directive comply a priori with the requirement set forth in art. 120 para. 2 subpara. c CISA and it will not be assessed whether the designation is misleading. In case of other foreign collective investment schemes that shall be publicly marketed in Switzerland the supervisory authority will have to verify compliance with art. 120 para. 2 subpara. c CISA. However, the two-thirds rule will no longer apply.
- **Prohibition of the double dipping:** according to art. 31 para. 4 of the Ordinance on Collective Investment Schemes (“CISO”) the holders of an authorization must not charge any issue or redemption commission and may only charge a reduced management commission if the acquired target fund is associated/connected with them. The Swiss standard of the prohibition of the double dipping exceeds the European standard. On the one hand an association/connection is assumed if the holder of the authorization holds more than 10 % of the capital or the voting rights. On the other

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<sup>1</sup> As of January 1, 2009 the supervisory authority is the Financial Markets Supervisory Authority FINMA



hand it is only possible to charge a reduced management commission. The Swiss prohibition of the double dipping shall now become aligned with the European standard by adapting art. 31 para. 4 CISO. An association/connection will be assumed if a “relevant” participation exists and no limitations regarding the management commissions shall apply. The duty to disclose the management commissions continues to apply. According to the supervisory authority it can be assumed that foreign collective investment schemes complying with the UCITS III directive comply a priori with the requirements set forth in art. 120 para. 2 subpara. a-c CISA. In case of other foreign collective investment schemes that shall be publicly marketed in Switzerland the supervisory authority will have to verify compliance with art. 120 para. 2 subpara. a-c CISA.

- **Disclosure (so-called formal requirements):** these requirements apply to foreign collective investment schemes. Basically, they refer to the duty to disclose certain issues, in particular risk warning regarding the maximum exposure by using leverage; risk warning regarding potential negative consequences in case of currency hedging; disclosure regarding the exclusion or non-exclusion of liability of one sub-fund for the other sub-funds; and certain information for investors in Switzerland. For UCITS as well as for NON-UCITS the risk warnings and the disclosure requirements are met otherwise. Therefore, it was decided to abolish these requirements. However, the duty to disclose information according to the sample annex “Additional information for investors in Switzerland” issued by the Swiss Fund Association remains.

It is expected that the abolition of the Swiss Finish for collective investment schemes will stimulate Switzerland as a fund location. It is also expected that the authorization procedures for foreign collective investment schemes to be publicly marketed in Switzerland will be simplified and authorization procedures will be shorter.

The modifications summarized above will enter into effect on March 1, 2009. The guidelines regarding the approvals for foreign collective investment schemes for UCITS and NON-UCITS have been adapted last week and are available on the website of the FINMA: (<http://www.finma.ch/d/beaufsichtigte/kapitalanlagen/Seiten/default.aspx>).

Please do not hesitate to contact us if you have any further questions.