

To the members of the SFAMA

Basel, 4th August 2015
member/circular DCA

N°24/2015

AIFMD – Switzerland’s Efforts have been positively acknowledged by ESMA

Dear Sir and Madam,

With circular 31/2014 we informed you about the launch of the ESMA Call for Evidence on AIFMD passport and third country AIFMs (**ESMA Call for Evidence**).

On 8 January 2015 the SFAMA published on its website its answer to this ESMA Call for Evidence
(<http://www.sfama.ch/de/publikationen/initiatives-statements-position-papers/stellungnahmen>).

On 30 July 2015 ESMA published its Advice in relation to the application of the AIFMD passport to non-EU AIFMs and AIFs (**ESMA Advice**) and its Opinion on the functioning of the passport for EU AIFMs and the national private placement regimes (**ESMA Opinion**):
<http://www.esma.europa.eu/de/node/79475?t=326&o=home>

ESMA Advice

In opting for a country-by-country assessment of the potential extension of the marketing passport, ESMA was of the view that there was only a sufficient level of information available on six jurisdictions; namely the US, Guernsey, Jersey, Hong Kong, Switzerland and Singapore.

ESMA concluded that no obstacles exist to the extension of the passport to Guernsey and Jersey, while Switzerland will remove any remaining obstacles with the enactment of pending legislation. No definitive view has been reached on the other three jurisdictions (Hong Kong, Singapore and USA) due to concerns related to competition, regulatory issues and a lack of sufficient evidence to properly assess the relevant criteria.

Therefore, ESMA advises the European Parliament, the Council and the Commission that there will be no significant obstacles impeding the potential application of the AIFMD passport to Switzerland, upon the enactment of the amendments to SESTA including the provisions on cooperation. The new version of SESTA adopted by the Parliament in June is due to enter into force on 1 January 2016.

Next steps

Within three months of receipt of positive advice and opinion from ESMA, the European Commission should adopt a delegated act in order to activate the relevant AIFMD provisions extending the passport.

Nevertheless in its Advice ESMA highlights the possibility for the European Commission to wait until ESMA has delivered positive advice on a sufficient number of non-EU countries, before introducing the passport in order to avoid any adverse market impact that a decision to extend the passport to only a few non-EU countries might have. In fact it is unclear under AIFMD whether the European Commission has the discretion to extend the passport on a jurisdiction by jurisdiction basis.

Impact on Swiss asset managers until 2018 and after

It is worth noting that granting Swiss asset managers the option to obtain the AIFMD license doesn't alter the existing market access via the national private placement regimes (**NPPRs**) at least for another period of 3 years. During a transitional period of 3 years starting with the introduction of the envisaged passport regime, the NPPRs for Swiss asset managers and their funds will co-exist subject to certain minimum harmonised conditions. After that 3-years period of co-existence, ESMA shall issue another advice whether the NPPRs shall be brought to an end (see article 68 AIFMD).

In this transitional period the passport is an option for Swiss actors who will have the possibility to market in the EU via NPPR or using the passport. Hence, the AIFMD passport is another option to access the EU market.

Efforts have a positive effect

Switzerland has made considerable efforts to get a positive advice from ESMA. Looking at ESMA's reasoning of its advice on Switzerland in detail, one can find further important statements from ESMA which can be generally understood as a positive signal for Switzerland's access to the EU market in the context of other European legislative initiatives.

With the CISA Revision, Switzerland has implemented the AIFMD standards in its regulation. Switzerland has also concluded cooperation agreements with all EU member states. In addition since one year the SFAMA together with other Associations, the FINMA and the SIF are lobbying for the AIFMD Passport by the European Institutions.

With this Circular, we would like to thank all persons who have contributed to achieving a Swiss legislation on alternative funds which is comparable - without being similar - to the EU one and which should ensure that Switzerland obtains the AIFMD passport in a near future.

Please note that the SFAMA will organise a Q&As Session on the consequences of the ESMA Advice beginning of September. The invitation to this Q&As Session will follow as soon as possible.

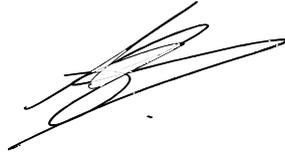
We will keep you informed about any further developments on this issue. For further questions please don't hesitate to contact either Delphine Calonne (delphine.calonne@sfama.ch) or Markus Fuchs (markus.fuchs@sfama.ch).

Sincerely yours,

Swiss Funds & Asset Management Association SFAMA



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