

SFA News

4/08 – Winter 2008

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Editorial

As the year draws to an end...

Dear readers ...

And so a turbulent year is slowly coming to a close, one that will live long in the memory of many investors and will have further implications yet in many regards. Although the fund industry did not escape unscathed from the market turmoil, it is ultimately likely to emerge strengthened from the financial crisis: on the one hand, dealing with regulatory issues is nothing new for it, and on the other, the protection for investors enshrined in the CISA is once again in high regard.

For the time being, however, the focus is on recharging batteries and taking some distance from our daily business to replenish our confidence. We at the Swiss Funds Association SFA would like to wish you all a restful festive season with your friends and families and many interesting and pleasing moments in the New Year.

All the very best !

The Board of Directors and Executive Board of the SFA



Latest News

Vote on UCITS IV

A big step towards a real single market for investment funds

The position taken at the beginning of December by the European Parliament's Committee on Economic and Monetary Affairs (ECON) and the approval by the ECOFIN Council of the EU member states on 3 December 2008 represent important milestones en route to UCITS IV. The new directive is aimed at significantly enhancing efficiency, for example through the acceleration of the notification procedure and new rules on mergers and master-feeder funds, as well as the newly introduced Management Company Passport. In addition to this, the new concept of Key Investor Information will boost the already high level of investor protection. The fund industry is confident that the Directive can be adopted in early 2009.

Happy 70th Birthday!

A big day for Switzerland's oldest equity fund

America Canada Trust Fund (AMCA), Switzerland's first equity fund, was launched on 12 December 1938. This fund still exists today as part of UBS (CH) Equity Fund – USA, making it the oldest existing equity fund under Swiss law.

Deadlines coming up!

Reminders

In this section we highlight any significant deadlines coming up over the short term. This is aimed at assisting your planning, but it is by no means an exhaustive list.

31 December 2008

Guidelines on the Distribution of Collective Investment Schemes – Provisions for Distributors (Section 6): transitional provision regarding documentation of contact initiated by the investor expires.

1 January 2009

Guidelines on the Valuation of the Assets of Collective Investment Schemes and the Handling of Valuation Errors in the case of Open-End Collective Investment Schemes: deadline for amending internal directive in line with the changed guidelines.

30 June 2009

Guidelines on the Distribution of Collective Investment Schemes: deadline for amending existing distribution agreements.

1 July 2009

Guidelines on the Valuation of the Assets of Collective Investment Schemes and the Handling of Valuation Errors in the case of Open-End Collective Investment Schemes: deadline for specific definition of the provisions on compliance with forward pricing.



Fund markets

Key data on the international fund business

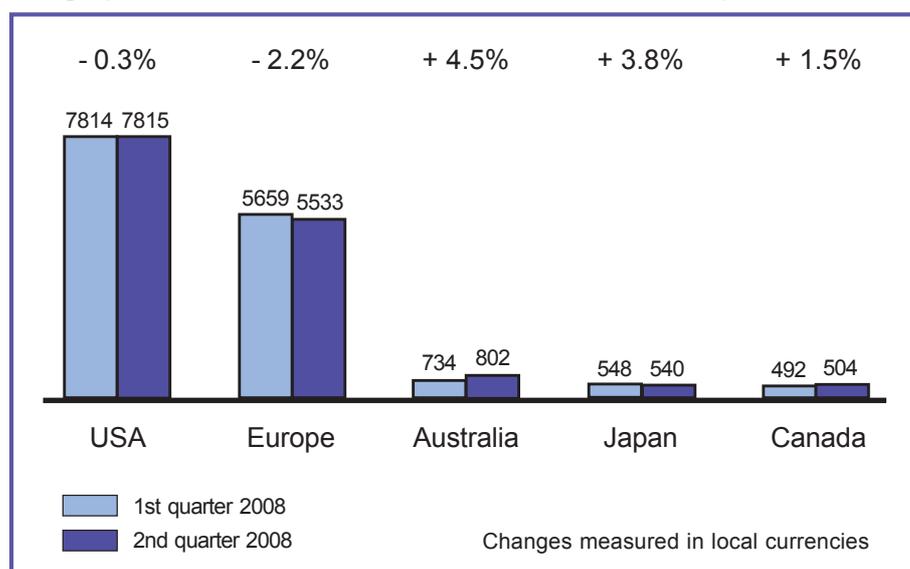
EUR 15.63 trillion in fund assets worldwide as of end-June 2008

The extreme decline in fund assets between January and the end of March was halted in Q2 2008. As of the end of June, the total stood at EUR 15.63 trillion, only a touch lower than the EUR 15.69 trillion recorded at the beginning of April (-0.4%). One fact that may be of interest is that money market funds posted net outflows again for the first time after 12 consecutive quarters of inflows.

US defends top spot

In local currency terms and taking into account funds of funds, the decline in Europe in Q2 2008 was much more pronounced than that in the US (-2.2% vs just -0.3%). Australia in particular was able to catch up with a +4.5% increase, although it remains at a relatively low level. As of the end of June 2008, fund assets overseas totaled some EUR 7.8 trillion. According to the latest EFAMA report, a total of around EUR 5.5 trillion were invested in funds in Europe.

Geographical trends in investment fund assets in Q2/08 (in EUR billions)

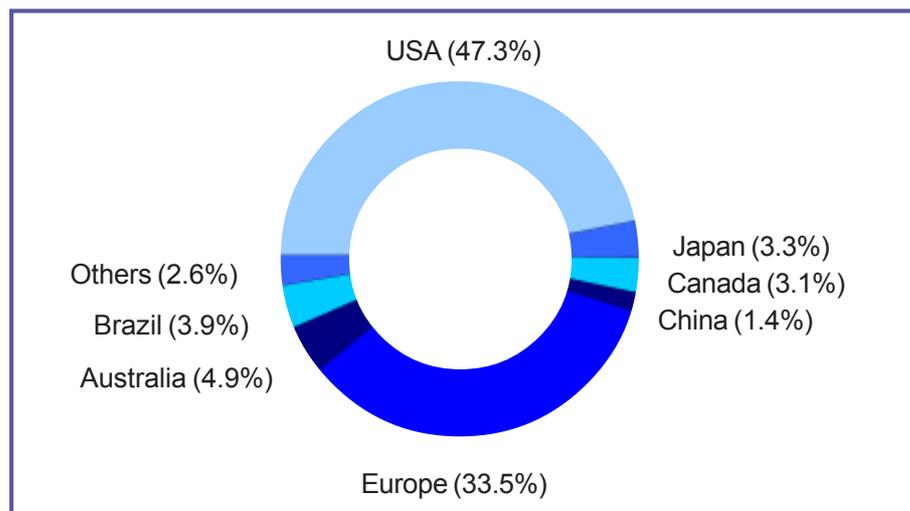


Source: EFAMA International Statistical Release, October 2008

Little change in the international breakdown

Comparing the data gathered, the US still accounted for a relatively stable proportion of the global assets invested in funds as of the end of second quarter (around 47%). Europe followed in second place with 33.5%, with Australia clearly establishing itself as the third force with a 4.8% share (cf. chart on page 6). All in all, however, there was relatively little change in the structure compared with the previous quarter. If non-UCITS assets were also taken into account, Europe would have a market share of around 40% compared with about 42.6% for the US.

Geographical trends in investment fund assets by end of June 2008 (in EUR billions)



Source: EFAMA International Statistical Release, October 2008

Global fund universe of 68'469 funds

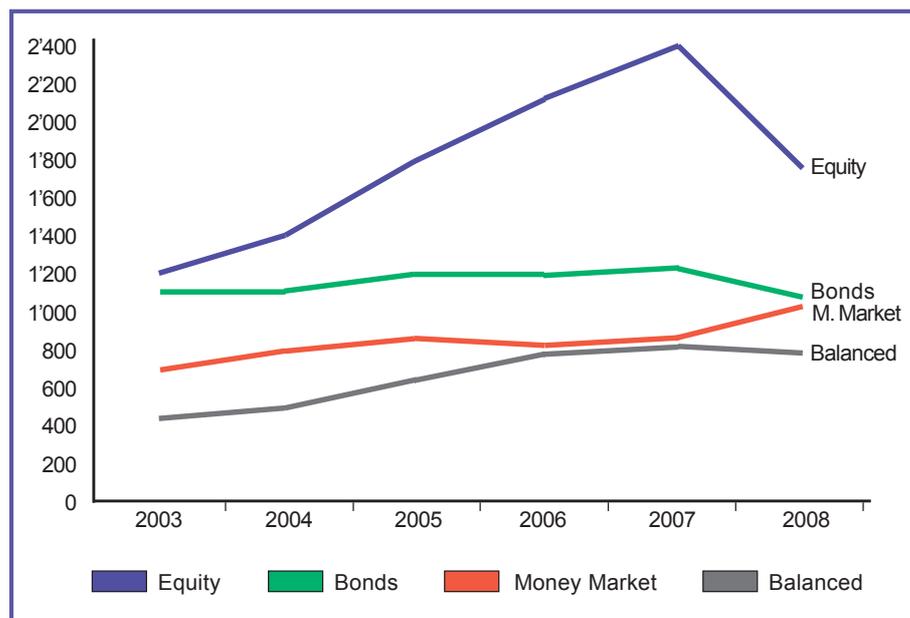
By the end of June 2008, the fund universe covered by EFAMA had risen further to a total of 68'469 different products. This corresponds to an increase of 2119 funds in the year to date. As regards the types of fund, around 40% can be described as equity funds, 21% as mixed products, and 18% as bond funds. The money market fund category accounts for just 5%, while some 16% of the products can be allocated to the "other funds" category.

A look at Europe

The net outflows in Europe increased to EUR 59 billion in Q2, following on from EUR 42 billion in the first three months of the year. Virtually all fund categories experienced capital outflows. Equity funds, for example, posted outflows of EUR 16 billion, while the corresponding figure for bond funds was some EUR 25 billion. Money market funds also recorded net outflows of EUR 18 billion, this after posting a record high increase of EUR 82 billion in the previous quarter.

With net inflows of EUR 11.4 billion in Q2, Luxembourg defended its leading position in Europe, this being in part attributable to shifts in favor of balanced products. Italy, Spain and France suffered the heaviest outflows, while the UK, Liechtenstein and Norway were together with Luxembourg in showing a positive balance for the first six months.

Net sales into UCITS in Europe since mid-2003



Source: EFAMA International Statistical Release, September 2008 (annual figures in EUR billions)

Swiss financial accounts

Volumes of assets and liabilities for 2003 to 2007

In mid-November 2008, the Swiss National Bank (SNB) again presented financial accounts for Switzerland, showing the volumes and structure of the financial assets and liabilities in the individual sectors of the economy.

The results for 2006 show household financial assets at CHF 1878 billion, thus exceeding the high from 2005 by CHF 129 billion. However, much of these assets are not directly disposable as they are tied into pension provision.

For the fund industry, the weighting of funds in private household assets is interesting. While the weighting remained at 9% through to 2003, it rose slightly above 10% for the first time in 2004 and increased again in 2007 to 11.7% (up CHF 14.5 billion to CHF 224.6 billion). The weighting of structured products stood at 2.7% in 2007; the corresponding holdings have increased by CHF 8.1 billion to CHF 51 billion at present.

Source: www.snb.ch/e (under Publications)

Decline on Swiss fund market

Clear drop in volumes

The investment funds covered by the statistics in Switzerland depreciated by CHF 90 billion in the first nine months of 2008, a decrease of 15%. The turbulence on the financial markets hit equity funds the hardest.

Development of fund assets in 2008

Fund category	Volume 31.12.07	Volume 30.06.08	Volume 30.09.08	Change in value 01.01.08 - 30.09.08
Money market	75.7	89.4	93.6	+ 17.9
Bonds	122.8	105.0	98.0	- 24.8
Equities	181.8	151.6	127.8	- 54.0
Asset allocation	136.3	122.2	116.5	- 19.8
Real estate	12.6	17.3	18.2	+ 5.6
Alternative Investments	18.4	20.9	17.0	- 1.4
Other	52.9	43.6	39.4	- 13.5
Total Swiss market	600.5	550.0	510.5	- 90.0

Source: Swiss Fund Data (in CHF bn)

Money market funds and real estate funds especially in demand

Investors steadily placed considerable volumes of fresh assets in money market funds. Marked shifts of investment capital into these products clearly reflect the currently prevailing preference for investments offering stability in value, but also confirm the high degree of trust investors have in investment funds as an instrument.

Despite the turbulence on the stock markets and certain foreign real estate markets, Swiss real estate funds also proved to be a stable, tried-and-tested investment. As an addition to domestic funds, Switzerland's big banks have set up real estate funds abroad featuring investment policies with an international focus, and are also successfully selling these products outside Switzerland.

Number of funds continuing to rise

As at the end of September, the number of investment funds registered in Switzerland had risen from 5795 to 6287.

Development of number of funds by type of fund / fund location (in brackets: institutional funds)

Fund type / Fund location	As of end- December 2007		As of end- September 2008		Change in the year 2008	
Swiss funds	1'202	(490)	1'277	(522)	75	(32)
Limited Partnerships f. coll. inv.	1	(1)	4	(4)	3	(3)
Securities funds	189	(0)	191	(0)	2	(0)
Other funds for tradit. invest.	857	(471)	920	(498)	63	(27)
Other funds for altern. invest.	125	(9)	132	(13)	7	(4)
Real estate funds	30	(9)	30	(7)	0	(-2)
Non-Swiss funds	4'593		5'010		417	
Luxemburg	3'300		3'723		423	
Ireland	647		613		- 34	
Other countries	646		674		28	
Total Swiss and Non-Swiss	5'795	(490)	6'287	(522)	492	(32)

Source: SFBC (as of 5 October 2008)

The net increase of 492 products came as the result of the following changes:

Status	Swiss funds	Non-Swiss funds	Total
Newly approved	150	804	954
Approval rescinded	75	387	462
Total	75	417	492

Further drop in assets under management in Q3

Securities totaling CHF 4.52 trillion held in Swiss custody accounts

According to the latest SNB statistics, the securities holdings in client custody accounts at Swiss banks had fallen to CHF 4.518 trillion as of end-September 2008, a drop of 13.70% in the year to date and 4.2% lower than in mid-year.

According to the SNB Monthly Statistical Bulletin for November 2008, the securities holdings of non-resident clients have fallen by 13.80% in the year to date to CHF 2.65 trillion. Meanwhile, in the case of resident custody account holders the corresponding decrease was -13.55% to CHF 1.87 trillion. Non-resident clients thus now account for 58.5% of securities holdings (unchanged over the year to date).

Comparison of fund holdings

A comparison of fund holdings shows a decline in volumes for both resident and non-resident custody account clients. Between the beginning of the year and the end of September 2008, the fund assets held by resident custody account clients fell by CHF 113 billion to CHF 576 billion (-16.4%), while the corresponding figure for non-resident clients dropped by CHF 140 billion to CHF 860 billion (-14.0%). It is still primarily resident clients that hold funds under Swiss law in their custody accounts; at around CHF 277 billion these holdings make up almost half of the corresponding total. Non-resident investors' holdings in collective investment schemes under Swiss law have remained steady at 9-10%, hence the drop in volume stems solely from foreign funds.

Weightings of funds stable

The weightings of funds have remained extremely stable throughout the year, both for resident and non-resident custody account clients. The weighting of fund holdings in custody accounts of resident clients fluctuated only slightly between 31.9% at the beginning of the year and 30.8% at the end of September. It was no different in the case of non-resident custody account clients, where the weighting remained in a narrow range between 32.3% and 33.0% (and currently stands at 32.5%). The volatile markets have therefore not prompted custody account clients to turn their backs on funds as investment products.

Market for index funds grows

Managed assets passed the EUR 100 billion mark

Despite the financial market crisis, exchange-traded index funds are more popular than ever. Lipper reported that the volume of assets under management in these products in Europe passed the EUR 100 billion mark as of the end of June 2008.

Increasing diversity

Until recently, index funds were regarded not only as a cost-effective but also above all as a transparent alternative to actively managed investment funds. While the latter have an immense diversity in terms of the different strategies and focuses, the few providers of ETFs have mostly concentrated on the major indexes such as the EURO STOXX, SMI or the Dow Jones.

However, the number of different index funds has shot up. In the second half of November, there were already some 150 funds traded on the SIX Swiss Exchange. Even in the crisis month of October, the Swiss Exchange posted record turnover in ETF trading with a volume of CHF 7.6 billion – almost double the September figure. One reason for this, among others, may be that investors switched to more transparent and listed investment funds so as to exclude the issuer risk in the case of structured products.

The E in ETF increasingly also stands for exotic

There are now corresponding index funds for almost all countries, sectors, styles and asset classes. While the heavyweights cover the large indexes and are broadly diversified, niche ETFs entail practically the same risks as highly specialized sector or regional funds. And with exotic markets such as the Korean stock market or UK real estate companies now also accessible with index funds, the boundary between active and passive investment funds is becoming increasingly blurred. The popular cliché of the active fund market being complex and the index fund market being simple no longer tallies with reality.

Swiss interest in stocks waning

Around 20% of the population hold equities

The Swiss seem to be losing interest in stocks. According to a study conducted by the University of Zurich, the number of shareholders has not increased any further over the past four years. 20% of the Swiss population currently own equities, although 1.7% of them only hold stocks of the company they are employed by. At the turn of the century, almost one in three Swiss people held shares.

According to the report, this lethargy is understandable given the losses suffered on the stock markets. The SMI is about at the same level as it was ten years ago, and it is therefore possible to talk of a lost decade for saving in stocks. The younger generation in particular is refraining from making equity investments: the proportion of equity investors aged below 40 fell by more than 5%. Meanwhile, the over-50s have increasingly acquired shares and now account for almost half of the share owners in Switzerland.

Marked regional differences in terms of share ownership

The popularity of saving in equities also varies very strongly in the different regions of Switzerland. While 20.9% of the people in the German-speaking region are shareholders, the corresponding figure in the French-speaking part of Switzerland is just 12.8%, while in Ticino it is a mere 6.5%.



National environment

Financial Market Supervision Act

Entry into force in full

In mid-October 2008, the Federal Council passed the implementing decrees for the Financial Market Supervision Act (FINMAG) and passed this law into force in full from 1 January 2009. The new Swiss Financial Market Supervisory Authority (FINMA) can thus start operations as planned at the beginning of 2009.

In addition to the FINMAG, two implementing ordinances will also come into force on 1 January 2009:

- The ordinance on the charging of fees and duties by the financial market supervisory body will pass on the costs of supervision in accordance with the “user pays” principle as much as possible, avoiding cross-subsidies between the individual supervisory segments. The fees and duties will be largely based on the previously applicable fee schedules in the areas covered by the SFBC, the FOPI and the MLCA.
- The ordinance on financial market auditing covers the provisions on auditing in the financial market sector.

Investment foundations

Looking into making investment foundations subject to the CISA

In September 2008, the Council of States decided to regulate investment foundations under the BVG and to make them subject to the new supreme supervisory body. Against this backdrop, the Federal Department of Finance has ceased work in this regard until the conclusion of the parliamentary consultations on the draft version of the “change to the Swiss Federal Law on Occupational Retirement, Survivors’ and Disability Pension Plans (structural reform)“.

CISO-FINMA

Change in name

The entry into force of the FINMAG also entails a raft of name changes. From 1 January 2009, the erstwhile SFBC Ordinance on Collective Investment Schemes (CISO-SFBC) will be known as the FINMA Ordinance on Collective Investment Schemes, or CISO-FINMA for short.

New Ordinance of the FINMA on Stock Exchanges and Securities Trading

(SESTO-FINMA)

FINMA will put the new FINMA Stock Exchange Ordinance into effect on 1 January 2009. Art. 48 SESTO-FINMA provides for a transitional period through to the end of June 2009 in respect of the obligation to disclose shareholdings. The publication by the SFBC serves as preliminary information for the affected market participants. On behalf of FINMA, the SFBC will publish in good time a commentary on the changes set to enter into force on 1 January 2009.

www.ebk.admin.ch/e (News)

Naked short sales

SFBC emphasizes ban

In September 2008, the SFBC pointed out that naked short sales are not permitted and are not compatible with the requirements of the SFBC Circular "Rules on Oversight regarding Market Behavior", specifically when they are intended to cause market distortions or used to manipulate the market. Such short sales are prohibited for nostro transactions and for clients. Banks must ensure that when clients sell securities they are able to deliver the securities on settlement. The SFBC will intervene in the event of any such violations.

Act on Securities Held With an Intermediary

Passed by both houses

The regulations on the custody and administration of securities are to be modernized. Both houses of the Swiss parliament passed the Act on Indirectly Held Securities in their autumn sessions. This revision takes into account the fact that securities now scarcely exist in physical form any longer. The new act replaces 72-year-old regulations that had long since become outdated in the IT era.

Provisions on insider trading

Revision in force

The Federal Council passed the revision of the relevant article of the Swiss Penal Code dealing with insider trading into force on 1 October 2008. Under the new provisions, it is now a crime to exploit confidential price-sensitive information of any kind. Article 161 of the Swiss Penal Code previously restricted the scope of the term "confidential price-sensitive information". The provisions on insider trading now also cover securities sales made prior to a profit warning so as to cushion the price loss.

New Life Insurance Directive

In force since 1 November 2008

The new Life Insurance Directive of the Federal Office of Private Insurance (FOPI) further specifies and clarifies the supervisory requirements for life insurance set out in Articles 120 to 154 of the Supervision Ordinance. The content of the directive is based largely on existing practice. In particular, the directive provides specific details on the new rules for improving the transparency of insurance products. Following extensive consultations, the new Life Insurance Directive entered into force on 1 November 2008 (FOPI News no. 18 of 3 October 2008).

Reporting procedure for withholding tax

Administrative simplifications for collective investment schemes

As of 1 January 2009, the Federal Council will expand the scope of the reporting procedure to include collective investment schemes and public authorities and organizations, and the restriction on cash dividends is to be lifted. Swiss parent companies, collective investment schemes and public authorities and organizations are in future to be able to use the reporting procedure for all forms of distributions of their subsidiaries. Moreover, collective investment schemes are to be able to make distributions using the reporting procedure provided their investors are exclusively domestic tax-exempt institutions which provide occupational pension plans and restricted pension cover. These measures will lead to a clear reduction in money flows in the delivery and refunding of withholding tax.

The ordinance governing withholding tax was also brought in line with the new legislation on collective investment schemes in force since the beginning of 2007. In particular, the eligibility with regard to the issuing of declarations of domicile was expanded.

Source: Official compilation of Swiss federal legislation (AS), page 5073

Guidelines on the valuation of securities without market prices

Stricter fiscal approach

The guidelines issued by the Swiss Tax Conference (SSK) on the valuation of securities without market prices – which are relevant for wealth tax – have been revised. The new guidelines were issued on 28 August 2008 replace those from 1995. They were recently published on the SSK website and are to apply to financial statements from 1 January 2008.

www.steuerkonferenz.ch (Circulaires / CI 28)

Code of Conduct for Securities Dealers

Revised version

The new version of the Code of Conduct for Securities Dealers has been published in a brochure in 4 languages (English, German, French

and Italian), which can be ordered from the website of the Swiss Bankers Association (delivery towards the end of 2008). They will also be available to download as a PDF. The changes enter into force on 1 July 2009.

Key change for collective investment schemes:

Proviso in respect of special regulations for collective investment schemes (Art. 3.6)

This provision states that the statutory regulations of the CISA naturally apply notwithstanding. Vice versa, securities dealers are exempt from the SFA's Guidelines on Distribution because they are instead bound by the code of conduct and dual regulation is to be avoided. The wording of Art. 3.6 takes this into account.

www.swissbanking.org (Publications/Shop)

SOGC⁺

40% discount

The technical implementation of SOGC⁺ involving the Swiss Official Gazette of Commerce (SOGC) and the recognized electronic platforms has now been completed (cf. also SFA News 2/08, page 13). The new technical functions of SOGC⁺ are now available and make it possible to deliver legally required announcements electronically via recognized electronic platforms pursuant to Art. 39 CISO. SOGC will offer a 40% discount on the publication of data submitted electronically.



National activities of the SFA

SFBC discussion paper „Incentive systems and conflicts of interest regarding the distribution of financial products“

The SFA welcomes the SFBC's proposal of increased product-neutral transparency at the point of sale

At the beginning of September 2008, the SFBC opened the consultative process on incentive systems and conflicts of interest regarding the distribution of financial products (SFBC report „Distribution Remunerations“). In this, it proposes greater transparency for end-clients in respect of distribution remunerations.

In its response to the hearings, the SFA welcomed this approach. What is particularly pleasing is that the SFBC sees only a limited need for action in terms of supervisory law aspects, and does not regard a ban on distribution remunerations as being either called for or proportionate. Instead a similar approach is to be adopted to the stance the SFA has long since applied in the fund sector, namely applying a minimum transparency standard with regard to collected distribution remunerations

as part of general regulations. The SFA expressly welcomes the choice of a pragmatic solution via the „Guidelines on asset management“.

This tallies with the long-standing desire of the SFA to establish product-neutral transparency at the point of sale for all financial products, and not just in the fund sector. A unilateral focus solely on collective investment schemes would do too little to address the reality of the distribution of financial products and the general need among investors for transparency irrespective of the product in question.

Draft Circular „Guidelines on asset management“

General approval from the SFA on the guidelines on asset management

At the beginning of September 2008, the SFBC also initiated the consultative process on a draft circular „Guidelines for the recognition of self-regulation measures in respect of asset management as a minimum standard“. The guidelines are meant to serve as a reference for all codes of conduct that industry bodies in the asset management sector submit to the SFBC for recognition as a minimum standard.

The SFA supports the efforts of the supervisory authority to impose a form of minimum regulation in respect of self-regulation in the asset management sector. However, in the SFA's view the guidelines on asset management are too strongly shaped by the circumstances in the segment of independent asset managers. They therefore take too little account of the fact that the SFA only ever applied self-regulation to persons and institutions that were already subject to the CISA, and thus the supervision of the SFBC.

In particular, the SFA regards the proposed controlling and sanction mechanisms as being unnecessary and superfluous. A solution should follow the same approach as the current regulations and envisage compliance being checked by an external body (recognized auditing firm), with a report being sent to the supervisory authority.

Abolishing the „Swiss finish“ for collective investment schemes

SBA, SIA, SIX Group and SFA jointly welcome the abolition of the „Swiss finish“

As part of a consultative process, the SFBC proposed in mid-September 2008 that the „Swiss finish“ for collective investment schemes be abolished. The four private-sector associations/organizations represented in the Financial Sector Dialogue Steering Committee (STAFI) issued a joint response. The Swiss Bankers Association (SBA), the Swiss Insurance Association (SIA), the SIX Group (formerly Swiss Financial Market Services) and the Swiss Funds Association SFA (SFA) welcome the abolition of the „Swiss finish“ for collective investment schemes. In particular, the four support the waiving of case-by-case regulation on the naming of collective investment schemes, which the SBA and SFA have called for for some time. The amendment of the ban on double dipping pursuant to Art. 31.4 CISO in line with the European standard was also welcomed.

Model annex to the prospectus drawn up

To ensure in future that the prospectuses of all foreign collective investment schemes distributed in Switzerland contain the legally required information, the SFA has drawn up a model annex „Information for investors in Switzerland“. The use of this model annex should obviate the need for a full check of the prospectus by the supervisory authority.

Preliminary proposals developed by STAFI to be implemented quickly

However, the abolition of the „Swiss finish“ alone will not be sufficient to drive on the Swiss fund sector. The latter will as a result be even more open compared with most European fund markets, and will be weakened further if there is not additional easing. Hence, the preliminary proposals developed within the framework of the STAFI must be pushed forward quickly. This is essential if competitive advantages are to be created for Swiss investment funds.

The urgently expected positive decision on the abolition of the „Swiss finish“ is still pending.

Consultation on two FTA Circulars

Collective investment schemes as the subject of withholding tax and stamp duty

At the beginning of November 2008, there was a final discussion between the FTA, SBA and SFA on the circular submitted to the consultation process. The FTA has in principle heeded the issues raised by the fund industry (cf. last issue of SFA News). The circular will now be submitted to an internal validation process within the FTA and should be published on the FTA website in December 2008.

The taxation of collective investment schemes and their investors

A roundtable meeting involving the FTA, SBA and the SFA was held at the beginning of November 2008 to discuss the circular on the taxation of collective investment schemes and their investors. Based on this valuable dialog, various specific issues are being looked at in more detail. The circular is not expected to be published until the beginning of 2009.

VAT Sector Brochure No. 14 – Financial Industry

Joint working group

A joint working group under the lead of the Main Division VAT of the FTA is revising Sector Brochure no. 14, which covers the financial industry. As things stand at present, the FTA is now prepared to refrain from the requirement of the so-called direct representation in the distribution of approved collective investment schemes. This would address a key concern for the fund industry. The amended VAT Sector Brochure no. 14 will probably be published toward the end of 2008.



International environment

UCITS management company passport

CESR consultation paper

The introduction of the management company passport would allow a UCITS to be managed by a management company authorized and supervised in a member state other than its home member state. To obtain further input from external stakeholders, CESR held a short consultation on its paper and arranged an open hearing in mid-October 2008.

www.cesr.eu (Consultation / 15 October 2008)

Eligible assets for investment by UCITS

CESR guidelines

The UCITS Directive lays down a set of rules concerning what financial instruments a UCITS can invest in (eligible assets). Article 1 of the Directive defines these, at a high level, as being „transferable securities and... other liquid financial assets“. Other articles, in particular Article 19, set out the rules in more detail. Article 53a of the Directive provides that technical amendments may be made to the Directive to clarify definitions „in order to ensure uniform application of [the] Directive throughout the Community“. In October 2004 the Commission issued a mandate to CESR requesting its technical advice. At the beginning of October 2008, CESR issued its updated guidelines regarding clarification of definitions relating to eligible assets.

www.cesr.eu (Documents / Standards, Recommendations & Guidelines)

Regulatory standards on funds of hedge funds

IOSCO consultation

IOSCO launched a consultation on „Proposed Elements of International Regulatory Standards on Funds of Hedge Funds Related Issues Based on Best Market Practices“. IOSCO's deadline for consultation is 5 January 2009.

www.iosco.org/library/pubdocs/pdf/IOSCOPD281.pdf



SFA internal business

Newsletter at www.sfa.ch

Growing popularity

In addition to more than a thousand registered employees of member institutions, the SFA Newsletter – which provides e-mail updates on the latest developments on the SFA website – is also sent out to a similar number of other subscribers.

To subscribe go to www.sfa.ch (Newsletter)

New members

Five additional members admitted

The Board of Directors and the Executive Board have been pleased to welcome five new members to the SFA in November 2008.

- AXA Investment Managers Switzerland Ltd, Zurich
- Bank Morgan Stanley, Zurich
- Banque Cantonale Vaudoise, Lausanne
- Saint George Capital Management SA, Lugano
- Union Investment (Schweiz) AG, Zurich

Change in the SFA Board of Directors

New representative of the insurance industry

At its most recent meeting, André Ullmann was co-opted into the Board of Directors of the Swiss Funds Association SFA. André Ullmann has had a lengthy career in the financial industry, and is Country Head and COO of AXA Investment Managers Switzerland Ltd in Zurich. André Ullmann has taken over the insurance industry's seat on the Board of Directors that was previously held by Stephan Heitz, who has taken on a new career direction and therefore had to step down. The SFA would like to take this opportunity to thank Stephan Heitz for his sterling efforts and commitment.

International Investment Funds Association

SFA joins

The SFA has joined the International Investment Funds Association (IIFA), which is based in Montreal. This association recognizes the important role of investment funds globally and the responsibilities of such funds to their investors. The IIFA is accordingly dedicated to:

- advancing the interests of investment fund investors
- facilitating the continued growth of the sector internationally

- promoting public understanding of investment funds around the world, and
- encouraging adherence to sound practices and high ethical standards by all participants in the investment funds industry.

www.iifa.ca

„Alternative Investments“ specialist committee

Website

A separate website for Alternative Investments went live in summer 2008. For more information, please visit the new internet address www.SwissAlternativeInvestments.ch

Hedge funds

At the beginning of December 2008, the specialist committee presented information on the current developments with regard to hedge funds at a media event held in Zurich. Dr. Philipp Cottier, a member of the Board of Harcourt and Chairman of the Business Council of the SFA Alternative Investments specialist committee, outlined how hedge funds have held up in the current financial market crisis. Felix Oegerli, Head of Prime Finance at Zürcher Kantonalbank, looked at the increased importance of securities lending and short selling for the functioning of the financial markets. Dr. Matthäus Den Otter, CEO of the SFA, also presented the association's position on the demands currently being made of hedge funds.

„Real Estate Funds“ specialist committee

Preparations made for issues specific to real estate funds with regard to the revision of the CISO

The „Real Estate Funds“ specialist committee met twice in the autumn, and worked on detailing issues specific to real estate funds with regard to the revision of the Collective Investment Schemes Ordinance (CISO). The focus was essentially on the following four proposals:

- liberalization of the requirements in the case of acquiring undeveloped land (possibility to invest 10% of the fund's assets in undeveloped land)
- liberalization of the investment restrictions in respect of building land and leasehold land (for building land 50% instead of 30%, for leasehold land 50% instead of 20% and for both investments together 50% instead of 30%)
- the use of derivative financial instruments also to hedge credit risks
- refraining from an onsite valuation when selling a property.

The specialist committee also approved the brochure „Swiss Real Estate Funds – A Tried-And-Tested Asset Class“. The SFA's aim in publishing this document is to provide information on real estate funds under Swiss law and their characteristics. The brochure, which summarizes all the key facts about this fund category, is available in English, German and French, and can be obtained from the SFA office (cf. also www.sfa.ch, under Publications).

Media event on real estate funds held on 5 November 2008

A media event entitled „Swiss real estate funds defying the crisis“ was held in Zurich on 5 November 2008. At this event, representatives of the specialist committee spoke on the facts and trends with regard to indirect real estate investments and presented the new SFA brochure „Swiss Real Estate Funds – A Tried-And-Tested Asset Class“. The event was well received in the print media.

„Products & Operations“ specialist committee

European Fund Classification Forum

The specialist committee met with Swiss Fund Data AG to discuss adjusting its fund database in line with the requirements of the European Fund Classification Forum (EFCF). The committee also discussed the transposition of the EFCF standard to Switzerland. It also passed the „Checklist for an Internal Directive“ in respect of the „Guidelines on the Valuation of the Assets of Collective Investment Schemes and the Handling of Valuation Errors in the case of Collective Investment Schemes“.

„Legal & Compliance“ specialist committee

Need for interpretation with regard to the new SFBC Market Behavior Rules

At its autumn meeting, the „Legal & Compliance“ specialist committee covered a number of issues, including the documents submitted for consultation by the SFBC (Abolishing the „Swiss finish“, SFBC report on „Distribution Remunerations“ and the SFBC Circular „Guidelines on asset management“). Particular attention was paid to the draft version for an SFBC circular „Guidelines for the recognition of self-regulation measures in respect of asset management as a minimum standard“. The committee is also working on a model fund contract for other funds for traditional investments. The main issue, however, was the new SFBC Market Behavior Rules, the scope of which is formulated too generally. In the consultation phase, the SFA already criticized making all licensees under the CISA subject to these rules as being too sweeping. The SFA has in the meantime submitted a proposal to the SFBC for focusing the scope more precisely. Given that most fund management companies and SICAVs delegate investment decisions, in such cases neither the fund management company or the SICAV should come under these rules.

„Taxes“ specialist committee

CISA circular on direct taxes

As indicated in the last issue of SFA News, the SFA met with the FTA to discuss the circular on the taxation of collective investment schemes and their investors. Representatives of the „Taxes“ specialist committee were able to represent the interests of the fund industry at a roundtable discussion involving the FTA, SBA and the SFA in mid-November 2008. Further clarification on certain issues will be required over the near term. The circular is therefore not expected to be published until the beginning of 2009.

„Distribution & Marketing“ specialist committee

New committee set up

The SFA Board of Directors set up the „Distribution & Marketing“ specialist committee in the summer. At its autumn meeting, it acknowledged the nominations received and appointed the members. The Chairman of the new committee is Dr. Raoul-Philipp Bachmann, Managing Director at Credit Suisse in Zurich. The list of members can be found on the SFA website.

www.sfa.ch (The SFA / Specialist Committees / Distribution & Marketing)

„International Affairs“ specialist committee

New committee set up

The SFA Board of Directors decided in the summer to set up a permanent „International Affairs“ working group, to be headed by Dr. Matthäus Den Otter, CEO of the SFA. At its autumn meeting, it acknowledged the nominations received. It also decided to change the permanent working group into a specialist committee and appointed the corresponding members. The list of members can be found on the SFA website.

www.sfa.ch (The SFA / Specialist Committees / International Affairs)

Swiss Funds & Asset Management Forum

On 2 April 2009 in Bern

The Swiss Funds and Asset Management Forum 2009 will take place at the Hotel Bellevue in Bern as part of the 16th AGM of the SFA on 2 April 2009.

More detailed information will be published on the Internet in due course.

www.sfa.ch/forum

4th SFA Funds Forum Ticino

A date for your diaries

Friday, 18 September 2009, afternoon event in Lugano

More detailed information will be published on the Internet in due course.

www.sfa.ch/events

3rd SFA Asset Management Conference

A date for your diaries

Friday, 27 October 2009, morning event in Zurich

More detailed information will be published on the Internet in due course.

www.sfa.ch/events



Interesting reading

SwissBanking

2007/08 Annual Report

In mid-September 2008, the Swiss Bankers Association published its 2007/08 Annual Report with detailed coverage of the past financial year.

www.swissbanking.org (Publications/Annual Report)

Banking Barometer 2008

Economic Trends in the Swiss Banking Industry

In September 2008, the Swiss Bankers Association published the latest edition of its Banking Barometer. This study on economic trends in the sector in Switzerland was conducted by BAK Basel Economics in conjunction with the SBA.

www.swissbanking.org (Publications/Shop)

Commentary on the agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence

Published in German, English and Italian

In response to requests from many parties, at the beginning of October 2008 the Swiss Bankers Association also published the commentary on the agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 08) in German, English and Italian.

www.swissbanking.org (The fight against money laundering)

Dividends paid during the financial year

New developments

In its Legal News of September 2008, Ernst & Young sets out the current practice regarding dividend distribution during the financial year, together with the new features proposed in the Federal Council's statement for the revision of the law relating to limited companies of 21 December 2007 in respect of interim dividends.

www.ey.com/ch/legal

www.fundinfo.com

Now also with fund ratings

Ratings on individual funds from five different ratings agencies are now freely available on the Internet for the first time on the fund information platform of fundinfo AG. Users can keep constant tabs on how S&P Fund Management Rating, Feri Rating & Research, Sauren Fonds-Research AG, Citywire and Morningstar rate the funds. The practical sorting function makes it possible to draw up a transparent overview of the ratings of individual funds.

www.fundinfo.com

Committee of European Securities Regulators (CESR)

Interim report from January to June 2008

In mid-October 2008, CESR published its Interim Report on the Activities of CESR to the European Commission.

www.cesr.eu (Documents/Annual Reports)

Banking supervision in Switzerland

Current status and outlooks on the eve of the FINMA

With the entry into force of the Federal Act on the Swiss Financial Market Supervisory Authority (FINMAG), the supervision of banks, insurance companies and other financial intermediaries will be brought together under the Swiss Financial Market Supervisory Authority (FINMA) as a single body. Against this backdrop, this publication highlights the current status and the outlooks for banking supervisory legislation in Switzerland. The focus is initially on the purpose and objectives of banking legislation and the current structure of banking supervision. It outlines the position, organization and supervisory instruments of the Swiss Federal Banking Commission and the role of auditing firms in the dualistic audit model.

www.staempfliverlag.com (ISBN 978-3-7272-9141-8)

Regulation and reputation

The Swiss financial sector and its companies' compliance

In their book, Prof. Monika Roth and Mario Erni look in detail at the theory of regulation and reputation, as well as the relationship between the two. Particular attention is paid to the Swiss financial sector and its specific characteristics.

www.dike.ch (ISBN 978-3-03751-123-7)

Collective investment schemes

Legislation and publications

Ernst & Young has published an updated and expanded edition of its brochure on collective investment schemes, covering the Collective Investment Schemes Act and its ordinances, selected SFBC circulars and the guidelines of the Swiss Funds Association SFA (including an index). The publication is available free of charge from

http://www2.eycom.ch/publications/_cart/de.aspx/publications/items/asset_management/2008_kag

Liability risk in the investment business

Between market risk and liability

In October 2008, Baker & McKenzie published a new edition of its brochure written by Dr. Urs Schenker, which covers liability issues in the case of asset management mandates, banks and securities traders without asset management mandates, investment recommendations and the avoidance of liability problems.

You can place orders with Baker & McKenzie, Zurich (Ph. + 41 44 384 14 14)

German Investment Fund Legislation

New edition

Freshfields Bruckhaus Deringer has issued a new edition of its publication on Germany's investment law and investment tax law and their English translations. In addition to the laws, there is an introduction covering the key regulatory content of the revision.

You can place orders with Dr. Tillman Kempf (tillman.kempf@freshfields.com) and Katja Simone Wülfert (katja.wuelfert@freshfields.com).

Swiss Finance Institute

Senior Management Program in Banking

The Swiss Finance Institute has advertised its 2009 Senior Management Program in Banking.

www.swissfinanceinstitute.ch/smp_brochure_2009.pdf

Real estate investments

Update on practice

The benefits of real estate investments lie in their special risk/return profiles and diversification characteristics. The course content covered by Fund-Academy's update on practice includes: the character of and distinctions between different forms of real estate investments; issues pertaining to returns, correlation and risk; key legal and fiscal principles; the use of such products on the client front, in portfolio management

and in asset allocations; and the respective suitability in different phases on the stock market. The seminars are planned for 26/27 January and 25/26 June 2009. SFA members will receive a CHF 400 discount on the course costs of CHF 1800.

www.fund-academy.com



Special report

When do companies with capital investments become investment companies with fixed capital (SICAF) requiring authorization?

Dr. Stefan Grieder and Dr. Jana Essebier, VISCHER Anwälte Basel/Zurich

As of 15 November 2008, not a single investment company with fixed capital (SICAF) had been authorized pursuant to the provisions of the Collective Investment Schemes Act (CISA). This may be attributable to the fact that certain investment companies avoided the authorization requirement by being listed on the stock exchange or by restricting eligibility to qualified investors. However, there are likely to be a sizeable number of companies that make capital investments but that either do not want to or are unable to have their shares listed or restrict investor eligibility. These companies must ask themselves whether they qualify as a SICAF and require authorization as such from the SFBC. This poses tricky demarcation questions for real estate companies and participation companies in particular, and neither can turn to a clear definition in the law or published practice by the SFBC for answers. Below we address some of these questions.

What does the law say?

According to Art. 110 CISA, a SICAF is a corporation whose sole object is collective investment, and which is neither listed on a Swiss stock exchange nor which is aimed exclusively at qualified investors pursuant to the CISA. As regards what is deemed to be a collective investment scheme, Art. 7.1 CISA defines this in a general form as being assets raised from investors for the purpose of collective investment and which are managed for the account of such investors (externally managed), with the investment requirements of the investors being met on an equal basis. The ordinance provides more specific detail, namely that the SICAF's primary object is to generate income and/or capital gains and that it does not pursue any entrepreneurial activities in the true sense (Art. 122.1 CISO). On closer examination, the definition in the law leaves certain questions unanswered. For example, the characteristics of external management and meeting the requirements of investors equally do not help when it comes to drawing a

distinction in that they apply not just to investment companies but to all stock companies. The investment of collective capital and generating income and/or capital gains are – at least from the perspective of the shareholders – also a typical characteristic of every stock company. What is helpful in determining what is an investment company requiring authorization is that the law excludes operating companies and holding companies from the scope of the CISA (Art. 2.2d and Art. 2.2e CISA).

Are investment companies in the form of a limited liability company (GmbH) per se not required to obtain authorization?

One confusing aspect when seeking to determine what is a SICAF is that Art. 110 CISA contains both prerequisites for assuming a requirement to obtain authorization and prerequisites for granting authorization. At the first glance, you could think that only corporations (Aktien-gesellschaften) can be deemed to be SICAFs, and investment companies in other legal forms (e.g. GmbH) are not required to obtain authorization. On proper reading, however, Art. 110 CISA only states that investment companies requiring authorization must be set up as corporations to receive authorization from the SFBC. If the legal form were to be a prerequisite for the requirement to obtain authorization, this would open the door for the law to simply be circumvented by converting an investment company into a GmbH.

Are investment companies that do not have collective investment as their sole purpose (so-called mixed companies) per se not required to obtain authorization?

As regards determining the object of an investment company, Art. 110 CISA seems to suggest that mixed companies – i.e. companies that pursue other purposes in addition to the investment of collective capital – are not subject to the requirement to obtain authorization. As with the legal form, the exclusivity of the determination of the purpose of an investment company is a prerequisite for receiving authorization as a SICAF, but not a prerequisite for the assumption of an authorization requirement. Otherwise, investment companies could circumvent the CISA at any time by pursuing a secondary purpose (e.g. investment advice).

Are real estate companies, participation companies or other companies with investments in assets that are difficult to trade per se not required to obtain authorization?

In literature on this subject, some put forward the view that a SICAF requiring authorization is only deemed to exist if a rapid and substantial change in the risk profile of the investor is possible. According to this interpretation, companies that invest in assets that are not easily tradable, such as real estate or unlisted interests, are per se not required to obtain authorization. This interpretation is to be rejected. There is a lack of the required principles in the wording of the law, as well as in the history of its development and in its purpose, for there to be an authorization requirement differentiated by the type of investment asset. In addition to this, real estate funds are a typical form of open-end collective investment scheme. And finally, the ordinance states that the provisions concerning permitted investments for other funds shall apply accordingly (Art. 123 CISO). The investments of other funds also often have only limited marketability (cf. Art. 69.2 CISA), and there is no apparent reason why closed-end collective investment schemes should be treated differently from open-end schemes. Hence real estate companies and participation companies can also be SICAFs requiring authorization.

What is the difference between operating companies and investment companies?

According to the Federal Council's opinion and the literature, operating companies not requiring authorization pursuant to Art. 2.2d CISA are engaged in business activities. By contrast with investment companies, the generation of income or capital gains is not their primary object. That much is clear. However, given that the ultimate purpose of a typical public limited company is to continually generate income for its shareholders, additional determining criteria must be found for SICAFs. The defining factor in this regard is in particular the form and degree of the company's own contribution to increasing the value of an investment. For example, investment companies typically generate their income by holding and selling assets. Their own contribution, with which they add value for the investors, is restricted to the decisions on buying and selling the assets as well as in the administration of these assets. Apart from that, the added value derives from other factors, such as the business success of one of the holdings or an increase in the market prices of the assets. By contrast, operating companies contribute directly through their own efforts to the business success of the asset. They typically have their own set-up and employees to provide the necessary input.

When are participation companies deemed to be holding companies not requiring authorization?

According to company law, holding companies are companies whose primary object is to hold stakes in other companies (Art. 671.4 Swiss Code of Obligations [OR]). Under company law, holding minority stakes is also sufficient. The CISA requires more for a company to be deemed exempt from the authorization requirement. For this the participation company must by way of a majority of the votes or by any other way bring together the companies to form a group under single management (Art. 2.2e CISA). According to the literature, this definition covers not only actual group management companies but also parent companies or sub-holding companies that have delegated the group management function to management companies. Given the clear wording of the law, companies holding minority interests do not qualify as holding companies under the CISA. Insofar as such a company does not qualify as an operating company, it can therefore be deemed to be an investment company requiring authorization. According to the opinion presented here, the prerequisite for qualification as an operating company is that the company must through its own efforts contribute directly to the business success of the interests it holds. This can take place in particular through active participation in the business management of firms in which the company holds a minority interest.

When are mixed companies deemed to be investment companies requiring authorization?

Mixed companies is the term used for companies that also make capital investments on their own account in addition to their operating activities, which is regularly the case in practice for larger companies in particular. As was outlined above, such mixed companies can in principle also be required to obtain authorization. The question that arises, however, is where the boundary is to be drawn, and how pronounced the investment activity has to be for an authorization requirement to be assumed. Based on the object of the law and the explicit exemption of operating companies from the scope of the CISA, the proportion of capital investment relative to operations must be very high for an authorization requirement to be assumed. In particular, the

professional treasury facilities of larger companies should not lead to them being made subject to the CISA; this is also undisputed in principle in the pertinent literature.

Careful clarification of the authorization requirement is called for

This article shows that the degree of uncertainty as to when a company with capital investments qualifies as an investment company requiring authorization is not to be underestimated. The SFBC's practice will have to show the way in this regard going forward. In any case, it is advisable for companies with significant capital investment to carefully clarify the authorization requirement, and to discuss the matter with the SFBC if there is any doubt.



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