

GUIDELINES FOR DISTRIBUTION OF FOREIGN INVESTMENT FUNDS IN SWITZERLAND

MATTEO RISOLDI AND JOANA DE BURGO OF OLIGO SWISS FUND SERVICES OFFER A UNIQUE INSIGHT INTO THE SWISS MARKET



Matteo Risoldi is an analyst and the IT manager at Oligo Swiss Fund Services. He has more than 10 years in IT research and development. He previously worked at a Swiss Fintech company. Matteo is in charge of the development of the Oligoworld online distribution platform.



Joana De Burgo has been an analyst and compliance officer at Oligo Swiss Fund Services since 2014, when Oligo was launched. She previously worked at a fund of hedge funds management company in Switzerland. Joana is in charge of the clients' follow up and of the client onboarding process.

Switzerland is a politically stable and neutral country. There are more than 4000 ultra-high-net-worth individuals in Switzerland as of the beginning of 2017.¹ Seed capital from insurances, banks and foundations is also present in sizeable amounts. The size of the fund market in Switzerland has reached CHF912bn in December 2016, just three billion short of its all-time high.²

These facts make the Swiss market an attractive location for selling investment funds. When looking at the number of funds authorised for public distribution in Switzerland, foreign funds outnumber Swiss funds by about four to one.³

FULFILLING OBLIGATIONS TO DISTRIBUTE A FUND IN SWITZERLAND

Located in the middle of Europe, Switzerland is not part of the European Union. As such, the AIFMD rules do not apply. The distribution of foreign funds in Switzerland is regulated by a specific set of rules, where the function of the Swiss representative is central.

It is important to note that the Swiss Financial Market Supervisory Authority (FINMA) has defined distribution in such a way that any activity that promotes a fund is considered distribution. In this perspective, a simple email or phone call is distribution.

After a transition period of two years, a revision of the Collective Investment Schemes Act (CISA) came into full force on 1 March, 2015. Among the key changes that were introduced, the Swiss investor base was segmented in three groups:

- Regulated qualified investors, i.e. banks, insurance companies and fund managers managing more than CHF100m in Switzerland
- Non-regulated qualified investors, e.g. pension funds, independent asset managers, HNWI and family offices
- Non-qualified, or retail, investors

A foreign fund distributing or intending to distribute to retail or to non-regulated qualified investors in Switzerland is required to appoint a Swiss representative and a Swiss paying agent.

While the obligation for a representative and paying agent is waived in the case of reverse solicitation, it is considerably difficult to make sure that a contact with an

investor actually fulfils the very strict requirements for the definition of reverse solicitation, i.e. without any form of prior solicitation by the fund manager. For this reason, it is largely considered to be safer to appoint a representative and paying agent.

Once a foreign fund manager takes the decision to approach the Swiss market, the first step is generally to secure the services of a Swiss representative. The representative will initially discuss with the fund manager about the Swiss regulation in general and about the aspects which are specific to the type of the fund. A list of Swiss paying agents will also be provided for the client to choose from. Services and pricing models for Swiss representation can vary, although the general trend is that prices have been dropping since 2015.

After the initial contact, an onboarding process follows which typically takes a few weeks, during which the representative executes due diligence work on the fund, a representation contract is established, and the fund's legal and marketing documents are amended for distribution in Switzerland.

DISTRIBUTION TO NON-QUALIFIED INVESTORS (RETAIL DISTRIBUTION)

Distribution to retail investors is subject to a further authorisation by FINMA. Obtaining authorisation for retail distribution involves providing a set of required documents and translating legal material in a Swiss official language (German, French or Italian) if necessary. Representatives lead the fund throughout this process to bring it to a good end.

Funds domiciled in countries where the supervisory authority has a cooperation and information exchange agreement with FINMA can apply for authorisation. As recently as December 2016, funds domiciled in Hong Kong joined this category.⁴

It is worth noting that Ucits funds have a fast track approval for retail distribution.

FINMA-authorised funds are allowed to market in the big distribution platforms, including the ones from well-established banks, thus accessing a broader scope of potential investors.

CHOOSING A SWISS REPRESENTATIVE

There are currently about 15 independent firms offering



Zurich, Switzerland

representation services for foreign funds in Switzerland. They fall into two groups:

- Firms that are licensed to represent funds distributed to qualified investors only
- Firms that are licensed to represent funds distributed to all types of investors, including retail investors

A fund wishing to be distributed in Switzerland should carefully consider which investor segments they want to address, and choose a Swiss representative with the appropriate licence.

Representatives that are licensed to represent funds for distribution to retail investors will have a deep knowledge and experience about how to proceed in the best possible way, including providing resources such as professional translation services and direct communication channels with FINMA and with the big distribution platforms.

THE SWISS REPRESENTATIVE, A LONG-TERM PARTNER FOR FOREIGN FUNDS

The role of the Swiss representative, as established in the CISA, is to ensure that the funds' distribution activities comply with the Swiss law.

While it is a legal obligation to appoint a Swiss representative for distribution in Switzerland, in some firms the role of representatives evolved very quickly beyond that of a simple legal representative. A Swiss representative in addition to the legal and procedural expertise, can collaborate on the fund's distribution in Switzerland.

Today, Swiss representatives can:

- Help building relations between their client funds and Swiss-based distributors and investors
- Organise cap intro events and conferences to help funds meet investors
- Act as a global distributor to organise retrocessions for placement agents in Switzerland
- Assist the fund with cross-border registration in multiple countries within and beyond Europe

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 SWITZERLAND, A
 SMALL COUNTRY WITH
 SUBSTANTIAL CAPITALS,
 IS ONE OF THE LARGEST
 MARKETS IN THE WORLD
 FOR INVESTMENT FUNDS.
 LET US SEE WHAT YOU
 NEED TO DISTRIBUTE YOUR
 FUND IN SWITZERLAND
 ”

- Publish fund information and documents on electronic platforms dedicated to Swiss investors

- In some cases, act as a point of contact between potential investors and the fund

This makes the Swiss representative a constant point of reference, source of business, and long-term partner for a fund's distribution activity in Switzerland.

IN SUMMARY

Switzerland is a large and attractive market for foreign investment funds with very specific, yet easy to fulfil, requirements for distribution. The main points to retain are:

- All activity of addressing a Swiss investor in any way (except for regulated qualified investors) is distribution, and requires appointing a Swiss representative and a Swiss paying agent
- There is a large market for retail distribution
- Ucits funds as well as funds from agreed countries can apply for retail distribution authorisation
- The Swiss representative is the main hub through which a fund can fulfil its regulatory obligations in Switzerland
- The relation between the fund and the Swiss representative is an active one, with an ongoing exchange of useful contacts and information

For any question concerning funds representation and distribution in Switzerland, please feel free to contact Oligo Swiss Fund Services (a regulated Swiss representative for funds addressed to both qualified and retail Swiss investors) at info@oligofunds.ch. ■

¹ Credit Suisse Research Institute, Global Wealth Report 2016

² SFAMA, statistics on fund markets, December 2016

³ SFAMA, annual report 2015

⁴ FINMA agreements in accordance with Art. 120 para. 2 let. e CISA, December 2nd 2016

Swiss Fund Services **oligo**

FUND REPRESENTATION AND DISTRIBUTION
TO **QUALIFIED** AND **NON-QUALIFIED** INVESTORS IN SWITZERLAND
CROSS-BORDER REGISTRATION AND DISTRIBUTION

Swiss Investors

Swiss Authorities

Distributors

Funds

oligo
Swiss Fund Services

Oligo Swiss Fund Services SA
Av. Villamont 17 - 1005 Lausanne (Switzerland)
www.oligofunds.ch - www.oligoworld.ch
info@oligofunds.ch - +41 21 311 17 77