

## FUND DISTRIBUTION AND MARKETING IN SWITZERLAND UNDER THE 2020 FINSA REGULATION

Dear Clients and Friends,

We are writing to you for an update regarding the recent changes in the Swiss regulation for fund distribution, marketing and offering.

As you may be aware the Federal Act on Financial Services (“FinSA”) entered into force on 1<sup>st</sup> January 2020.

In order to comply with the new requirements, a transition period of 24 months for most of the new requirements was introduced by the Financial Services Ordinance (“FinSO”) in November 2019.

Below, you will find a summary of the most relevant changes for fund managers and distributors marketing in Switzerland.

### 1. Funds marketed to Swiss qualified Investors



#### Rules during the transition period (from 1<sup>st</sup> January 2020 to 31 December 2021)

During the transition period of 24 months, foreign fund managers must choose to either:

- Continue to abide by the Collective Investment Schemes Act (“CISA”) rules, which have been in force since 2015;
- Comply with the new FinSA rules, which include:
  - A client segmentation according to the new criteria in article 4 FinSA;
  - Rules of conduct according to article 7 ff FinSA; these include information, suitability, appropriateness, documentation, accountability, transparency and diligence duties;
  - Organizational measures according to article 21 ff FinSA; these include measures about internal organization, external providers, remuneration and operational policies.

If a foreign manager chooses to comply with the new rules before the end of the 24 months transition period, they must notify this in writing to their auditing firm and their Swiss representative, indicating the date from which they opt to abide by the new framework (articles 105 and 106 FinSO).

As of the time of this writing, no official or practical guidelines exist about how to fully and reliably implement the new FinSA rules. The general consensus is that it is advisable to keep on complying with the CISA rules for the duration of the transition period while waiting for a clearer way forward.

As long as foreign fund managers continue to abide by the CISA framework, they must maintain the agreements with their Swiss representative and Swiss paying agent.

An additional requirement that fund managers must satisfy in all cases is the affiliation to an authorized ombudsman. The delay for this is 6 months from the date that an ombudsman will be officially authorized by the Federal Department of Finance. As of the time of writing, no ombudsman has been authorized.

Finally, if the manager is not subject to prudential supervision in their home jurisdiction, they will need to register their client advisors in a special client advisors registry. The delay for this is also 6 months from the date when such registry will be authorized.

### Rules after the transition period (from 1st January 2022)

From 1<sup>st</sup> January 2022, with the expiration of the transition delay, compliance with the FinSA rules will become mandatory. Fund managers will be required to comply with all the obligations listed above.

The requirement to appoint a Swiss representative and a Swiss paying agent will still apply when offering a foreign fund to the following categories of investors, or if investors in the following categories are already invested in the foreign fund:

- High-Net-Worth-Individuals (HNWI);
- Family office and similar investment structures with no professional treasury operations;
- Advisors of the above if unregulated;
- Non-supervised Independent Wealth Managers;
- Banks and other regulated entities offering foreign funds to HNWI with whom they have not entered into a discretionary or advisory investment management agreement.

On the other hand, the appointment of a Swiss representative and a Swiss paying agent will no longer be required to market to other categories of qualified investors, including among others:

- Pension funds with professional treasury operations;
- Family office and similar investment structures with professional treasury operations;
- Authorized Independent Wealth Managers.

## 2. Funds marketed to Swiss non-qualified Investors

The same transition period and obligations explained above apply to funds marketed to Swiss non-qualified investors. Nevertheless, the requirement to appoint a Swiss Representative and Paying Agent is maintained in all cases when distributing UCITS funds authorized by FINMA to the public.

A FINMA authorization for public distribution will still be required. Starting on 1 January 2020, the following changes are introduced in the authorization process:

- The documentation of the UCITS funds can be submitted to FINMA in English. The requirement of translating them into a Swiss official language has been dropped. As such, the FINMA approval process will be considerably less expensive and quicker;

- For the authorization of ETFs, the listing of all active share classes on a Swiss stock exchange is no longer required. Only classes that are marketed in Switzerland must be listed, which will save costs.

FINMA fees for UCITS authorization are currently lower compared to previous years. Considering that the process no longer involves the translation of the documents, we recommend to our clients with UCITS funds to go through the authorization for public distribution with FINMA. Oligo will take care of the process without any additional fees involved.

Having the UCITS funds authorized by FINMA for public distribution has the following advantages:

- Funds are listed on the FINMA website facilitating due diligence from potential investors;
- Better exposure to private banks, which often require FINMA authorization of the funds in order to include them in their recommendation list;
- Facilitated access to Pension Funds that generally only invest in funds that are fully authorized in Switzerland;
- Broader availability on fund platforms, including Fundinfo, Swiss fund data or any banking platform.

## Questions?

For any question you may have, please call us at our offices at +41 21 311 17 77 or contact [info@oligofunds.ch](mailto:info@oligofunds.ch).