

New regulations for independent asset managers in Switzerland

December 2, 2009

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1. Industry: Independent Asset Managers in Switzerland

- **Managed capital**

Independent asset managers in Switzerland are managing capital amounting to CHF 500 billions

- **Market share**

Represents around 15% of the asset management market in Switzerland

- **Employment**

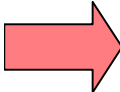
Generates 10'000 jobs

- **Growth**

Industry in constant development since the eighties



2. Regulation of asset managers in Switzerland until end of 2008

Actor	Main applicable laws	Specific federal supervision	Self regulation
Banks	<ul style="list-style-type: none"> ▪ Federal act on banks ▪ Federal act on stock exchange and securities trading ▪ Anti-money laundering act 	<ul style="list-style-type: none"> ▪ Direct federal supervision ▪ Supervisory body: FINMA 	Self regulation by the Swiss Bankers Association (code of conduct and directives)
Securities dealers	<ul style="list-style-type: none"> ▪ Federal act on stock exchange and securities trading ▪ Anti-money laundering act 	<ul style="list-style-type: none"> ▪ Direct federal supervision ▪ Supervisory body: FINMA 	Self-regulation by the Swiss Bankers Association (code of conduct and directives)
Asset managers of collective investments	<ul style="list-style-type: none"> ▪ Federal act on collective investments schemes ▪ Anti-money laundering act 	<ul style="list-style-type: none"> ▪ Direct federal supervision ▪ Supervisory body: FINMA 	Self-regulation by the competent self-regulation body regarding the prevention of money laundering. Some directives of the Swiss Funds Association
Fund managers of collective investments	<ul style="list-style-type: none"> ▪ Federal act on collective investments schemes ▪ Anti-money laundering act 	<ul style="list-style-type: none"> ▪ Direct federal supervision ▪ Supervisory body: FINMA 	Self-regulation by the competent self-regulation body regarding the prevention of money laundering. Some directives of the Swiss Funds Association
 Independent asset managers	Anti-money laundering act	<ul style="list-style-type: none"> ▪ Indirect federal supervision ▪ Supervisory body: FINMA ▪ Indirect supervision limited to the prevention of money laundering 	Self-regulation by the competent self-regulating body generally limited to the prevention of money laundering

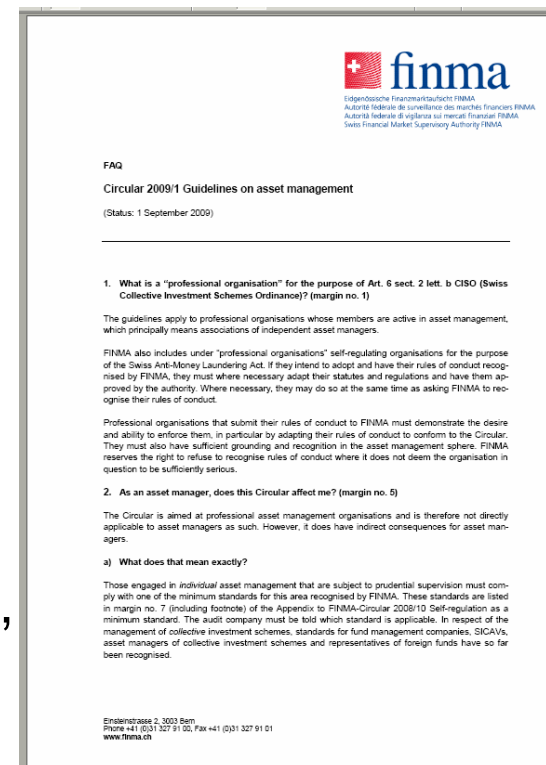
3. Regulation of independent asset managers after the entry into force of the FINMA circular 2009/1 (January 1, 2009)

Actor	Main applicable laws	Specific federal supervision	Self regulation
Independent asset managers	Anti-money laundering act	<ul style="list-style-type: none"> ▪ Indirect federal supervision ▪ Supervisory body: FINMA ▪ Indirect supervision regarding the prevention of money laundering ▪ Indirect supervision regarding guidelines on asset management. Code of conduct enforced by FINMA as a minimum standard 	<ul style="list-style-type: none"> ▪ Self- regulation regarding prevention of money laundering ▪ Self-regulation regarding minimum standards on asset management/code of conduct established by the chosen self regulating body

4. Guidelines on asset management/ Circular FINMA 2009/1 Purpose

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- 01.01.09 Entry into force of the Circular FINMA 2009/1
- The Circular 2009/1 sets out minimum standards to guide professional organisations in drawing up their own self-regulation provisions, to be recognized by FINMA
- The circular 2009/1 defines minimum requirements (duty of loyalty, exercise of due diligence, disclosure obligations, remuneration)
- 7 professional organisations now have their self-regulating provisions on asset management (codes of conduct) recognized by FINMA (ARIF, OAR-G, GSCGI, ASG, ...)



4. Guidelines on asset management (Circular FINMA 2009/1) Framework (1/4)

- **Voluntary compliance** with a code of conduct on asset management recognized by FINMA
 - **Mandatory compliance**: Independent asset managers offering collective investment schemes in the course of their asset management activities are required to comply with a code of conduct on asset management recognized by FINMA
 - See FINMA – Circular 2008/8 on public advertising collective investment schemes
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4. Guidelines on asset management (Circular FINMA 2009/1)

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Framework (2/4)

- Purpose of the Circular 2008/8 : defines the term « **public advertising** »
- Distribution of **publicly advertised** collective investment schemes in or from Switzerland requires FINMA's approval (circ 2008/8 n. 3 and 6)
- Public advertising is not considered as such if it is exclusively addressed to **qualified investors** (circ 2008/8 n.10)

4. Guidelines on asset management (Circular FINMA 2009/1) Framework (3/4)

- **Qualified investors** (Art. 10 al. 3 Federal act on collective investment schemes « CISA »):
 - supervised financial intermediaries such as
 - banks
 - securities dealers
 - fund management companies
 - asset managers of collective investment schemes
 - supervised insurance companies
 - high net worth individuals (financial assets of a least CHF 2 million)
 - investors who entered into a written asset management agreement with a supervised financial intermediary (**≠ independent asset manager**)

4. Guidelines on asset management (Circular FINMA 2009/1)

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Framework (4/4)

- **Qualified investors** (art. 6 al. 2 Ordinance on collective investment schemes, “CISO, Circular 2008/8 n.12):
 - **Independent asset managers and investors** who entered into a written agreement to the extent that:
 - a. the asset manager as financial intermediary is subject to the Money Laundering Act (“MLA”)
 - b. the asset manager is subject to a professional code of conduct recognized as a minimum standard by FINMA; and
 - c. the asset management contract contains the recognised guidelines of a professional organisation
- Independent asset managers complying with these 3 requirements do not need FINMA’s approval to distribute collective investment schemes
- Deadline to comply: September 30, 2009 (Circular 2008/8 n. 35)

5. Form and content of the asset management contract

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- **Form of the contract:** written form is mandatory
- **Minimum content of the contract:**
 - scope of the asset manager's powers
 - investment goals and restrictions
 - reference currency
 - method and frequency of reporting to the client
 - remuneration of the asset manager
 - possibility of delegating tasks to third parties

6. Obligations of asset managers (1/3)

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a. **Guarantee of proper business conduct** (“garantie d’activité irréprochable”)

b. **Duty of loyalty**

- Safeguard of the clients’ interests
- Prevention of conflict of interests
- Investments in the client’s interest:
 - prohibition of churning
 - prohibition of front, parallel and after running

6. Obligations of asset managers (2/3)

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c. Exercise of due diligence

Asset managers must:

- adapt their organisations
- ensure investments are always in line with investment objectives and restrictions described in the contract
- ensure adequate risk diversification
- review the investment strategies periodically

Asset managers may:

- not accept any assets of clients (exception: FINMA authorization as a bank or as a securities dealer)
- delegate asset management tasks to third parties in the interest of the client
 - selection, instruction and monitoring
 - definition in writing of the delegated tasks
 - qualifications of the third parties
 - compliance with comparable rules of conduct

6. Obligations of asset managers (3/3)

d. Disclosure obligations

- Information on the existence of the code of conduct
- Information on the risks associated with the investment objectives and restrictions agreed (information provided in a standardized form accepted)
- Information on any key changes in the asset manager's organisation
- Reporting to the clients on the asset management, on a regular basis or on demand
 - reporting in compliance with customary standards in the industry i.e. calculation method, selected period, etc ...

7. Remuneration of asset managers

- Type, terms and elements of the remuneration defined in writing
- Definition in writing of the ultimate destination of all inducements by third parties (e.g. retrocessions, finder's fees, custody fees...)
 - information on any conflict of interests that might arise as the result of accepting third party inducement
 - if possible, information on the calculation parameters of inducements received or to be received, by type of products
 - at the request of the clients, disclosure of the amount of inducements already received

8. Final provisions of Circular 2009/1

- Deadline to comply with the code of conduct of a professional organisation: September 30, 2009
- Deadline for the adjustment of asset management contracts (depends on the chosen professional organisation)
 - existing contracts: December 31, 2010
 - new contracts: must immediately be in line with the chosen code of conduct

9. Monitoring and sanctions (1/2)

Monitoring

- Professional organisations must put in place a system for **controlling** the compliance with the codes of conduct and for **enforcing** them in the events of violations
- Main objects to be controlled :
 - conformity of asset management contracts
 - compliance with the disclosure obligations
- Some professional organizations provide for a monitoring system expanding beyond the above objects and including for example a control of the adequacy of the investments with the designated investment objectives and restrictions, a control of the risk diversification, etc.

9. Monitoring and sanctions (2/2)

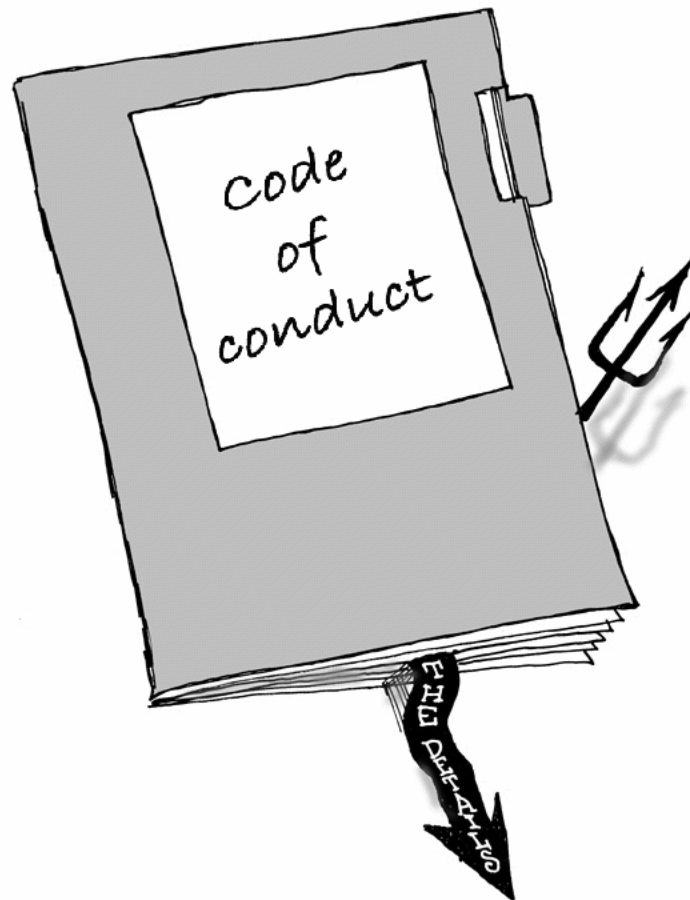
Sanctions

- Different type of sanctions are provided for in each recognized codes of conduct.
- It generally starts from a reprimand or a fine and can go up to the exclusion from the professional organisation
- FINMA must be informed about the disciplinary proceeding and the resulting sanction
- Implications of breaching the minimum standards recognised by FINMA:
 - breach may affect the guarantee of irreproachable business activity (Art. 14 MLA)
 - breach may give rise to prohibited public advertising of collective investment schemes, which is punishable by law (Art. 148 sect. 1 lit.d. CISA)

10. Conclusions

- In issuing the Circular 2009/1 and establishing a minimum standard in asset management, the authorities addressed a long standing market requirement
- Circular 2009/1 sets out a minimum standard and leads to a certain homogenization of the activity of asset managers in Switzerland
- Asset managers offering collective investment schemes must comply with a code of conduct of one of the professional organizations recognized by FINMA and must ensure their asset management contracts are in adequacy with the guidelines of said code of conduct
- A thorough review of the contract by a specialized legal counsel is strongly advised in order to examine the compliance with the relevant code of conduct.

“the Devil is in the details”



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