

New cooperation agreement between the Swiss Financial Market Supervisory Authority (FINMA) and the Luxembourg Commission for the Supervision of the Financial Sector (CSSF)

On 21 January 2014, the FINMA and the CSSF entered into a memorandum of understanding (MoU), whose objective is to enhance the joint cooperation between these authorities as regards the supervision of distribution, in Switzerland, of foreign collective investment schemes (CIS) to non-qualified investors.

The MoU was a condition precedent to the ability, for the FINMA, to continue approving the distribution of foreign CIS in Switzerland to retail clients as from 1st March 2014. Indeed, article 120 of the Swiss Federal Act of 23 June 2006 on Collective Investment Schemes Act, as amended (CISA), stipulates that “an agreement of cooperation and exchange of information must have been entered into between the FINMA and the supervisory authorities impacted by the distribution”.

The introduction of such new rule in the CISA, amended for the last time on 1st March 2013, stems from a willingness of the Swiss Parliament to reinforce its current cooperation with key supervisory authorities and enhance the protection of retail clients.

The new rule is applicable as from 1st March 2014 and impacts all foreign CIS distributed in Switzerland to the retail public. It must be noted that the conclusion of cooperation agreements is not required when foreign CIS are distributed to qualified investors, as defined by the CISA.

The process of conclusion of MoU generally started early in 2013 and the FINMA has already secured such MoU with the Irish, French, German (and now Luxembourg) supervisory authorities. Such choice of jurisdictions does not come as a surprise. Indeed, all foreign CIS currently distributed in Switzerland mostly originate from the markets mentioned above and Switzerland currently ranks third in terms of target countries for the distribution of foreign CIS.

The FINMA expects to enter into additional MoU with other foreign supervisory authorities, which could possibly include Austria, Liechtenstein, the United Kingdom, Malta, Belgium, Guernsey, Denmark, The Netherlands, Jersey and Norway, jurisdictions from which foreign CIS distributed in Switzerland also originate.

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