

Factsheet

September 2009

Regulation of Independent Asset Managers in Switzerland

There are basically two categories of regulation for independent asset managers in Switzerland: independent asset managers licensed for the asset management for collective investment schemes and other categories of clients (including private clients) under the supervision of the Swiss Financial Market Supervisory Authority (FINMA) (“CISA Managers”) and independent asset managers regulated by self-regulatory organizations (“SROs”) licensed and supervised by FINMA (“IAMs”).

Regulation of CISA Managers

CISA Managers are regulated by FINMA on a MiFID compatible level. The regulatory framework and the supervision follow internationally accepted standards. After initial problems, they are now accepted by most EEA regulators for the management of EEA domiciled undertakings for collective investments. Only a limited number of regulators (among them the French and the Italian) still try to impose restrictions on these Swiss service providers.

Although CISA managers are under supervision for all their investment service activities (including management of individual portfolios and investment advice) by FINMA under MiFID compatible standards, they are not admitted to offer and render investment advice and portfolio management services to private clients in most EEA countries.

Regulation of IAMs

The IAMs were integrated into the Swiss anti-money laundering regulation in 2000. Since then they have either had to be licensed by the supervising authority (until 2008 by the Money Laundering Control Office, as of 2009 by FINMA), or they had to be a member of an authorized and supervised SRO. Their supervision was limited to aspects of anti-money laundering regulations. They were under no obligation to follow any conduct of business rules.

In the framework of revised Swiss regulations for collective investment schemes, the regulatory framework for IAMs has been extended over the past three years to include such conduct of business rules. These rules emanate from the existing SROs, but need approval by the regulator (FINMA) under a clearly specified minimum standard for portfolio management, which is applicable to all firms offering such services (including banks and securities dealers).

Under supervisory aspects, the top priority of supervision, control and enforcement lies with the licensed SROs. The supervising authority, however, has the right to intervene with the activities of SROs including the right to overrule any enforcement decision by a SRO or the right to attract enforcement proceedings at any time. FINMA supervises the SROs closely and intervenes regularly in the enforcement of the conduct of business rules and the anti-money laundering regulations.

Although Swiss financial market regulations are not directly bound by MiFID, the Swiss legislator adopts the EU regulations voluntarily in most fields, including financial services regulations. Thus, the Swiss IAMs are (as of October 1, 2009) subject to a regulatory framework that is materially consistent with the regulation of investment advice and portfolio management under the EEA regulatory framework.

There are basically two exceptions: The requirement of a government license, which is substituted to the membership in a licensed and supervised SRO; and the minimum capital requirements, which, in view of the existing capitalization of Swiss IAMs on a level far above EU minimal requirement, have not been adopted in the Swiss regulatory framework.

The Role of “Self-Regulation” in the Swiss Regulatory System of Financial Markets

“Self-regulation”, as further explained hereafter, plays a substantial role in the Swiss regulatory system of financial markets. The term “self-regulation” has, in an international context, often led to misunderstandings. EU politics and the regulators in EU countries see self-regulation as the “absence of governmental or regulatory influence on the actors in the market”.

Critical remarks such as “self-regulation is no regulation” have been cited regularly. This perception is faulty with respect to the Swiss system of “self-regulation”, which is a balanced system of cooperation between professional associations, SROs, with the political rule making and the regulator. It seems, therefore, worthwhile to give a brief overview on the system and the mechanics of self-regulation in the Swiss financial market regulatory system.

The Four Pillars of Swiss Self-Regulation

Self-regulation in the Swiss financial market regulatory system is founded on four pillars:

Voluntary Self-Regulation Self-organisation without governmental content or agenda setting. Generally accepted trade practices.	Delegation of Enforcement Rules and regulations defined by law and the supervising authority are enforced by approved self-regulatory organizations under governmental supervision.
Self-Regulation accepted as regulatory minimum standard Supervisory authorities accept standards of self-regulation as regulatory minimum standards instead of regulating themselves.	Mandatory Self-Regulation The law itself provides for the selfregulation and leaves room for detailed regulation to be accepted by the supervisory authority.

Except for the field of voluntary self-regulation, all fields of self-regulation are under control, supervision and the ultimate decision-making of the regulator. Swiss self-regulation is not a “laissez faire” policy undertaken partly by legislators and the regulator, but a “public private partnership” in which the governmental side uses the know-how and experience of professional associations and SROs, but retains the ultimate decisive power.

Rules and regulations that derive from public private partnerships in this framework have a higher degree of acceptance within the industry concerned than unilateral rulemaking by the regulator. The industry concerned is largely involved in the rulemaking. The result is a balanced system of regulations, that can not only be implemented easier, but also has a higher degree of respect within the regulated profession. It is a concept that specifically suits smaller countries, which – in order to be competitive on an international level – cannot afford to waste resources through inefficient ways of rulemaking. It requires a deep understanding and acceptance of democratic processes such as those that been developed in Switzerland over centuries.

The Self-Regulation of SAAM

The self-regulation of SAAM covers all four pillars of the Swiss self-regulatory system. The Swiss Code of Conduct for Independent Asset Management is a regulatory framework for investment advice and portfolio management services that follows international standards for rules of business conduct. It complies with all requirements for sound and efficient protection of interests of professional and private investors. By setting up a system of differentiated rules, this self-regulation provides a

framework that is well-adopted by smaller and larger firms. It guarantees that small and micro enterprises can also be active in the profession of independent asset management in the future. In combination with a concept of risk-based audits, the extensive possibilities of the SRO and the supervising authority to directly intervene in the business conduct of the association's members, this system of self-regulation guarantees an irreproachable activity with regard to all aspects of the profession of the independent asset manager.