



## Switzerland - Financial Markets Regulation Changes – Implications for Irish UCITS and AIFs

New Swiss financial markets legislation, the Swiss Federal Financial Services Act (FinSA) and Swiss Federal Financial Institutional Act (FinIA), will come into force on **1 January 2020**, with a transition period of up to 2 years for certain key provisions. The changes aim to align Swiss regulation more closely with MiFID II.

**Immediate actions to be taken by foreign funds offered in Switzerland are minimal and relate principally to the identification of advertising information as such.** Provisions for the registration of individuals conducting the offer/marketing in Switzerland, and registration of financial service providers with an Ombudsman apply from 30<sup>th</sup> June 2020 at the earliest, with the full regime including reclassification of investors applying from 31 December 2021.

***This briefing does not constitute legal advice and highlights key provisions of the legislative changes only.***

### ▣ Identification of Advertising Materials and update of Websites - Effective **1 January 2020**

All advertising materials relating to a financial instrument or collective investment scheme distributed in Switzerland must clearly identify such information as advertising. It is recommended that the following, or similar, wording be included at the beginning of the disclaimer in any advertising document: ***“This is an advertising document”***.

Any advertising material must be in line with information included in the Prospectus and KIIDs (where relevant). It is also recommended that any advertising document should indicate where the Prospectus and any KIIDs may be obtained.

### Dillon Eustace Fund Registration Team contacts:



**Tara O'Callaghan**

DD: +353 (0)1 673 1831

[tara.ocallaghan@dilloneustace.ie](mailto:tara.ocallaghan@dilloneustace.ie)



**Fionnán Gannon**

DD: +353 (0)1 673 1867

[fionnan.gannon@dilloneustace.ie](mailto:fionnan.gannon@dilloneustace.ie)



**Helen Daly**

DD: +353 (0)1 673 1830

[helen.daly@dilloneustace.ie](mailto:helen.daly@dilloneustace.ie)



**Aisling Barry**

DD: +353 (0)1 673 1864

[aisling.barry@dilloneustace.ie](mailto:aisling.barry@dilloneustace.ie)

An advertisement is defined as “**Any communication directed to investors which is aimed at drawing attention to particular financial services or financial instruments**”. It is likely that a wide range of communications would be considered advertising, including for example, monthly factsheets or emails promoting performance of a financial product or the suitability of a product for investment.

It is also recommended that websites containing information on collective investment schemes offered in Switzerland include a Swiss disclaimer: “**This website may contain advertising**”.

The requirement to identify advertising material as such will also apply in the promotion of investment advisory and asset management services.

The legislation provides that *advertising* foreign funds triggers the same registration, representation and paying agency duties as the *offering* of foreign funds.

▣ **Notification to any Permanent Advisory Clients that they are newly classified as Qualified Investors – Effective 1 January 2020**

Any funds (or other entities) which have existing mandates with permanent advisory clients are required to notify such clients that they are no longer considered non-Qualified Investors, and are instead reclassified as Qualified Investors with effect from 1 January 2020.

▣ **Translation Requirement Abolished – Effective from 1 January 2020**

It is expected that the requirement to translate documentation for FINMA filings/Swiss investors will be removed for documents approved on or after 1 January 2020. However, the change in the official Swiss language will have to be notified in advance to FINMA and Swiss Investors, with the official fund documentation (e.g. signed Prospectus) refiled in English with FINMA in advance of any further filings being facilitated in English.

▣ **Register of Persons Carrying Out Marketing Activity/Client Advisers in Switzerland – Effective 30 June 2020**

Prior to marketing funds to non-qualified/private investors, and following the authorisation of a fund with FINMA, the individual persons offering, promoting or marketing a fund or financial instrument in Switzerland will be required to register with an authorised registration office. In certain cases such client advisers offering funds to qualified/professional investors will also be required to register. The registration office will among other things, verify the expertise and experience of the client advisers.

If the offer is strictly limited to professional and institutional investors and the fund manager/distributor is subject to prudential supervision in its home country, its client advisers will be exempt from the registration obligation.

A list of authorised client adviser registers is expected to be available on the FINMA website.

A violation of these registration requirements carries severe penal consequences.

*Note: The effective date of this provision is 6 months from the first register being confirmed by FINMA, and so may be later than 30 June 2020.*

**☐ Affiliation with Ombudsman in Switzerland – Effective 30 June 2020**

Foreign fund managers and distributors of foreign funds will be required to be affiliated with a Swiss Ombudsman within six months of the authorisation of such an Ombudsman by FINMA.

*Note: The effective date of this provision is 6 months from the authorisation of the Ombudsman by FINMA, and so may be later than 30 June 2020.*

**☐ Reclassification of Investors - Effective 31 December 2021**

In order to more closely align Swiss investor classification with MiFID II, the existing investor categories “Regulated Qualified/Unregulated Qualified/Non-Qualified Investor” will be replaced as follows:

Professional Investors		Private Investors	
<ul style="list-style-type: none"> <li>☐ Independent Wealth Managers</li> <li>☐ Regulated insurance institutions</li> <li>☐ Banks</li> <li>☐ Pension funds</li> <li>☐ Companies with professional treasury management</li> <li>☐ Security Dealers</li> <li>☐ Regulated fund management companies</li> <li>☐ Other regulated companies</li> </ul>	<ul style="list-style-type: none"> <li>☐ High Net Worth Individuals who opt out of private investor category</li> <li>☐ Family offices without a professional treasury management which opt out of private investor category</li> </ul>	<ul style="list-style-type: none"> <li>☐ Individuals and High Net Worth Individuals</li> <li>☐ Family offices without a professional treasury management</li> <li>☐ All non-professional investors</li> </ul>	
Requirements	Requirements	Requirements	
<ul style="list-style-type: none"> <li>☐ Register the client advisers in certain cases</li> </ul>	<ul style="list-style-type: none"> <li>☐ Appoint a Swiss Representative</li> <li>☐ Appoint a Swiss Paying Agent</li> <li>☐ Register the client advisers in certain cases</li> </ul>	<ul style="list-style-type: none"> <li>☐ Appoint a Swiss Representative</li> <li>☐ Appoint a Swiss Paying Agent</li> <li>☐ FINMA registration for public offer</li> <li>☐ Register the client advisers</li> </ul>	

### ▣ **Opting-In to a Classification of Professional/Private - Effective 31 December 2021**

Existing clients which would meet the criteria to opt-in as professional investors must be advised of their opportunity to do so and of the associated risk of such an election.

Conversely, certain professional investors (such as pension funds) may elect to be treated as private clients (requiring FINMA registration, local agents, etc).

It is recommended that clients should be contacted at an early stage and well in advance of the December 2021 effective date to determine their classification. Any decisions to opt in or out of a professional/private classification should be made in writing.

### ▣ **Basic Information Sheet – 31 December 2021**

Any fund offered to a private client, and certain non-UCITS offered to certain qualified investors, will be required to prepare a basic information sheet including Swiss disclosures. The KIID or PRIIP KID supplemented with Swiss disclosures will suffice until this date.

### ▣ **Distribution Agreements – Effective 31 December 2021**

The Swiss Representative will no longer be required to be a party to distribution agreements.

Many of the provisions of FinSA have yet to be formalised, and further detail on the implementation of the provisions is expected in the coming months.

For further information, please contact a member of the fund registrations team or your usual Dillon Eustace contact.

## **December 2019**

### DILLON EUSTACE

#### **Dublin**

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

#### **Cayman Islands**

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

#### **New York**

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

#### **Tokyo**

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

#### **DISCLAIMER:**

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

#### **Copyright Notice:**

© 2019 Dillon Eustace. All rights reserved.