

Revised information for asset managers on the obligation to submit to supervision (Ethics of the Profession)

Zurich, June 7, 2010

Dear Sir or Madam,

On September 30, 2009 the transition period concerning of the Federal Act on Collective Investment Schemes (**CISA**; SR 951.31; in force since January 1, 2007) as defined in FINMA-Circular 2008/8 expired as well as the statutory period for submission under Ethics of the Profession for asset managers. During 2008 and 2009 PolyReg has referenced these circumstances in all its education events, in information letters to membership applicants since April 2009 and in circular letters of November 24, 2008 and June 9, 2009. Nevertheless uncertainty or lack of awareness about which asset managers are affected of the obligation of submission under ethics of the profession is detectable. This information letter is intended to answer that question. We kindly ask you to review the following explanations carefully.

Kind Regards,

Matthias Schaad
Executive Director SRO PolyReg

Am I affected of this information letter?

Does the following statement apply?

„As an asset manager I use collective investment schemes (**CIS**) such as investment funds, SICAV, SICAF, ETF, hedge funds etc. as investment vehicles for my clients, that is I acquire such CIS for my clients on customer order“.

Does the following statement apply?

„My clients are not exclusively qualified investors“.

→ If **both** statements apply you are affected by the content of this letter. Please continue reading!

1. Who does the duty of submission apply to?

The obligation of submission under Ethics of the Profession (**EP**) exists for asset managers (**AM**) who acquire CIS for their clients **and** whose clients do not already qualify exclusively as qualified investors (**QI**) in the sense of CISA, unless customers decide on acquisition of CIS all autonomously and place an order accordingly. By submission under EP the AM's clients are further considered QI by act of law.

2. Where is the obligation derived from?

Using CIS by AMs causes a problem regarding „**public advertising**... According to Art. 3 CISA any advertisement is considered public if it is not directed exclusively towards QIs. According to Art. 19 Para. 1 CISA distribution of CIS is subject to authorization and qualifies as public advertising (cf. overview 1).

Public advertising without authorization is unlawful and may be punished according to Art. 148 Para. 1 lit. d CISA (imprisonment of up to three years).

It is **no public advertising**, if the advertisement is directed exclusively towards QI in terms of Art. 10 Para. 3 CISA. QI might be high-net-worth individuals. According to FINMA-Circular 2008/8 recital 13 ff. a QI is considered „who confirms in writing that he or she either directly or indirectly holds financial net investments of at least two million Swiss francs at the time of purchase... If clients do not measure up to this

requirement, distributing CIS to them qualifies as public advertising.

Regarding FINMA-Circular 2008/8 recital 6 ff. it is **neither considered public advertising**, if a subscription order is placed which will be charged to the customer based upon a written asset management agreement, as long as this contract was entered into with an independent AM according to Art. 6 Para. 2 of the Ordinance on Collective Investment Schemes (**CISO**).

According to **Art. 6 Para. 2 CISO** investors are deemed to be QI who have concluded a written discretionary management agreement with an independent AM (= not part of a bank or securities trader) provided that such AM is governed by the Anti Money Laundering Act **and** by the code of conduct (=EP) employed by a specific industry body, such code of conduct being recognized by FINMA (and provided such discretionary management agreement complies with the recognized EP concerned).

Since 27th April 2009 PolyReg is in possession of such FINMA-recognized EP. Submission has been possible since June 2009.

3. What is the benefit of EP-submission?

EP-governed AMs are allowed to use all forms and kinds of CIS for their customers.

Customers of EP-governed AMs are deemed to be QI. Thus the AM avoids punishment for unauthorized public advertising (cf. overview 2).

To AM submitting themselves under the EP of Polyreg (PolyAsset) a label is awarded which the AMs might use in connection with their provision of relevant financial services on business correspondence or on websites. The label can be shown diagrammatically as follows:



4. Is there an alternative?

Due to the requirement of authorization of CIS-distributors according to Art. 19 Para. 1 CISA and due to the risk of punishment according to Art. 148 Para. 1 lit. d CISA there is **only one** alternative for asset managers: Omit use of Collective Investment Schemes.

Caution: Obtaining authorization by FINMA as CIS-distributor only allows distribution of specific CIS approved for distribution in Switzerland (cf. overview 3) in terms of sales intermediary arrangements whereas asset managers are considered to act on the basis of buy-side intermediary arrangements. Accordingly companies operating at both levels must comply with both relevant regulations and distinctly divide these rules, when dealing with clients. An asset manager may not simultaneously take on the role of a distributor when dealing with the same customer.

5. I missed the deadline – What now?

If you are affected by this information letter but are not yet governed by FINMA-recognized EP you are working illegally since October 1, 2009, if you still use CIS for your non-QI customers.

In order to resolve your dilemma immediate submission under Polyreg's EP (PolyAsset) is required. To obtain EP governance just file a complete submission application with PolyReg as soon as possible. Please find the relevant form at:

<http://www.polyreg.ch/d/formulare/srunterstellung.pdf>

Until submission is not effected you should cease purchase of CIS. Existing positions may be retained and do not have to be sold.

6. Additional requirements / Costs?

PolyAsset-EP prescribe certain mandatory formalities and contents of your AM-Agreements. Submission also implies that you have to be able to provide EP-compliant agreements to new customers effective from date of submission to supervision.

Corrections to your (standard) contract are needed. In order to facilitate such adjustments, PolyReg provides a checklist (Prüfbericht A) and offers the service of compliance pre-checks. Find the checklist at:

<http://www.polyreg.ch/d/formulare/pruefbericht-sr-a.pdf>

For adjustments of contracts with existing clients you benefit from a (not extendable) deadline expiring 31st December 2010.

PolyAsset-EP governance has a yearly and additional flat fee of 800.— Swiss Francs. PolyAsset-AM choose and mandate auditors themselves. This allows full control of assessment costs.

7. Where to find more info about PolyAsset?

PolyAsset-EP, regulations on supervision and sanctioning of PolyAsset-EP, audit reports and submission application may be found online at:

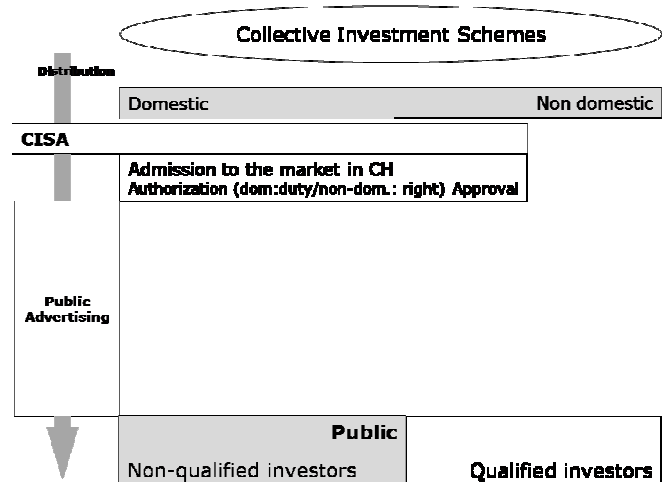
<http://www.polyreg.ch/d/mitgliedschaft/standesregeln.html>

8. Where to find further information?

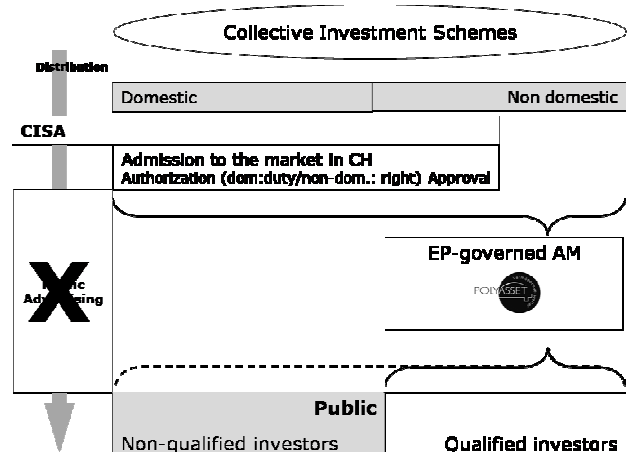
FINMA provides further information in the following circulars:
<http://www.finma.ch/d/regulierung/Documents/finma-rs-2008-08.pdf>
<http://www.finma.ch/d/regulierung/Documents/finma-rs-2009-01.pdf>
<http://www.finma.ch/d/regulierung/Documents/finma-rs-2008-10.pdf>
 Please be also aware of:

<http://www.finma.ch/e/FAQ/BEAUF SICHTIGTE/Seiten/faq-vermoegensverwaltung.aspx>

Overview 1: Disposition of CISA



Overview 2: Disposition of CISA / EP-governed AM



Overview 3: Disposition of CISA / Fund distributor

